

**GOVERNMENT OF PUERTO RICO
PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU**

**IN RE: REVIEW OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY SYSTEM
REMEDIATION PLAN**

CASE NO.: NEPR-MI-2020-0019

SUBJECT: Request for Confidential Treatment of Portions of Luma's Responses to Requests for Information on SRP of LUMA's April 16 filing and Motion for Partial Reconsideration and Submitting Revised Public Version of System Remediation Plan in Compliance with of Resolution and Order issued on April 23, 2021, submitted by LUMA on April 27, 2021.

RESOLUTION AND ORDER

I. Introduction

On February 24, 2021, LUMA ENERGY, LLC as ManagementCo, and LUMA ENERGY SERVCO, LLC as ServCo (collectively, "LUMA") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled LUMA's Submittal and Request for Approval of System Remediation Plan ("February 24 Petition") in compliance with Section 6.22(a) (2) of Act 57-2014.

On February 24, 2021, LUMA also submitted a document titled *Request to Submit Portions of Section 6 of the System Remediation Plan Confidentially, and Memorandum of Law in Support Thereof* ("February 24 Request of Confidential Treatment") As of the Request of Confidential Treatment, LUMA asked confidential designation and treatment for portions of Section 6 of Exhibit 1 of the February 24 Petition. Section 6.0 includes several portfolios of the System Remediation Plan Improvement Programs. LUMA alleged that portions of Section 6 of Exhibit 1 contain information that qualifies as sensitive commercial information and trade secrets under Act 80-2011¹ and Critical Energy Infrastructure Information ("CEII") under federal law,² which is also protected under Puerto Rico law.³

On April 6, 2021, the Energy Bureau issued a Resolution and Order on "Completeness" of LUMA's System Remediation Plan ("SRP") ("April 6 Resolution") and directing LUMA to,

¹ Known as the *Law for the Protection of Commercial and Industrial Secrets of Puerto Rico*, as amended.

² See 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674.

³ Known as *Puerto Rico Energy Transformation and RELIEF Act*, as amended.



within ten days, provide information and responses to the requests for information that were included in the Attachment A to the April 6 Resolution. ("Requests for Information")

On April 16, 2021, LUMA submitted a document titled Motion in Compliance with Resolution and Order of April 6, 2021 and Submitting Responses to Requests for Information, ("Motion in Compliance") submitting its responses to the seventeen Requests for Information that are included in Attachment A to the April 6 Resolution.⁴ Also Luma informed that within the next ten days, they will be submitting a separate memorandum of law in support of their request to file some of the attachments under seal of confidentiality.

On April 19, 2021, LUMA submitted a document titled Motion Submitting Corrected Attachment 3 to Luma's Responses to SRP Requests for Information ("Motion Submitting Corrected Attachment"). LUMA estates that in the Motion in Compliance submitted in April 16, the response to SRP request for information number 12 includes an Attachment 3 that has an involuntary formatting mistake that misplaced contents of the third and fourth comments,⁵ therefore LUMA submitted a corrected Attachment 3.

On April 23, 2021 the Energy Bureau issued a Resolution and Order (April 23 Resolution) denying in part LUMA's requests for confidential designation and treatment for some portions of Section 6 of the System Remediation Plan, made as part of the February 24 Request for Confidential Treatment.⁶

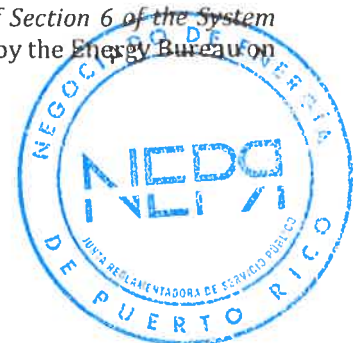
On April 26, 2021, LUMA submitted a document titled Memorandum of Law in Support of Request for Confidential Treatment of Portions of Luma's Responses to Requests for Information on SRP ("April 26 Request of Confidential Treatment"). As of the Request of Confidential Treatment, LUMA asked for confidential designation and treatment of several attachments or portions thereof, of the Responses to SRP Requests for Information.

On April 27, 2021, LUMA submitted a document titled Motion for Partial Reconsideration and Submitting Revised Public Version of System Remediation Plan in Compliance with Order ("Motion for Partial Reconsideration of April 23 Resolution"), through

⁴ See Exhibit A - Responses to Request for Information attached to the Motion in Compliance with Resolution and Order of April 6, 2021 and Submitting Responses to Requests for Information, submitted by LUMA on April 16, 2021.

⁵ Attachment 3 (table titled "SRP Program Briefs-OMA Provisions, Energy Laws, and Public Policies, and Program Briefs." See RFI-LUMA-20-0019-21046-PREB-012 Attachment 3). At pages 15, 16, 23 through 25, and 30, the table included as Attachment 3 to LUMA's response to SRP request for information number 12, has an involuntary formatting -1 mistake that misplaced contents of the third and fourth comments.

⁶ See Resolution and Order, Determination on LUMA's Request to Submit Portions of Section 6 of the System Remediation Plan Confidentially, and Memorandum of Law in Support Thereof, issued by the Energy Bureau on April 23, 2021.



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which LUMA request partial reconsideration of the portion of the Resolution and Order issued by the Energy Bureau on April 23, 2021 regarding the request for confidential treatment of information included in Section 6 of LUMA's System Remediation Plan ("SRP Section 6"), particularly, Sections 3.2 of some programs and all of the Sections 3.3 of SRP Section 6 on LUMA's projected costs and resources needs for its proposed System Remediation Plan ("SRP") spending programs. LUMA argued that disclosure of those portions of SRP Section 6 will provide detailed information on hiring and acquisition needs, as well as LUMA's assessments of the same, to potential bidders or contractors who will use the data to craft their proposals with the published amounts in mind.

II. Analysis, Applicable Law and Determination

A. April 26 Request of Confidential Treatment

In the Request for Confidential Treatment, LUMA alleged that several attachments or portions thereof, of the Responses to the SRP Requests for Information include: confidential information in the form of critical energy infrastructure information or critical electric infrastructure information ("CEII") that garners protection from public disclosures pursuant to federal statutes and regulations⁷ and the Energy Bureau policy on management of confidential information;⁸ sensitive commercial information and trade secrets under Act 80-2011;⁹ confidential information that LUMA and that therefore is also protected under Puerto Rico law.¹⁰ For these reasons, LUMA requests the Energy Bureau to grant confidential designation and treatment to the referred attachments or portions thereof, of the Responses to SRP Requests for Information. Table 1 below details the attachment or portions of the Responses to SRP Requests for Information which LUMA requested confidential designation and treatment:

⁷ 6 U.S.C. §§ 671-674; 18 C.F.R. §388.113 (2020).

⁸ See Resolution in case No. CEPR- MI-2016-0009, issued on August 31, 20216.

⁹ Known as the *Law for the Protection of Commercial and Industrial Secrets of Puerto Rico*, as amended.

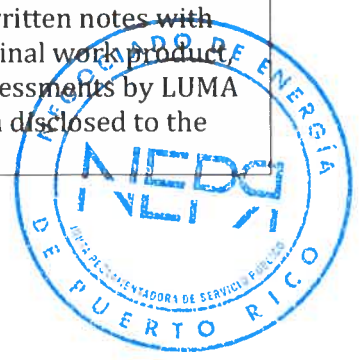
¹⁰ Known as *Puerto Rico Energy Transformation and RELIEF Act*, as amended.



Table 1: LUMA's April 26 Request for Confidential Designation and Treatment

Document	Document Type	Pages in which Confidential Information is Found	Summary of Legal Basis for Confidentiality Protection	Summary of Reasons Why Each Claim Conforms to Legal Basis for Confidentiality
RFI- LUMA-MI-20-0019-21046- PREB-001 Attachment 1	PDF	Pages 33-36; 60-80; 127- 131; 164-168; 182- 187; 383-413; 672-673	Critical Energy Infrastructure Information	Section III B of the Memorandum of Law provides the legal basis to establish that the specified sections of the RFI-LUMA- MI-20-0019-21046- PREB-001 Attachment 1 includes confidential information.
RFI- LUMA-MI-20-0019-21046- PREB-001 Attachment 2	PDF	Entire Document**	Critical Energy Infrastructure Information	Section III B of the Memorandum of Law provides the legal basis to establish that the specified sections of the RFI-LUMA- MI-20-0019-21046- PREB-001 Attachment 2 includes confidential information. These are handwritten notes that also contain confidential, original work product, and sensitive assessments by LUMA personnel that has not been disclosed to the public.
RFI- LUMA-MI-20-0019-21046- PREB-001 Attachment 3	Excel	Entire Document**	Critical Energy Infrastructure Information	Section III B of the Memorandum of Law provides the legal basis to establish that the specified sections of the RFI-LUMA- MI-20-0019-21046- PREB-001 Attachment 3 includes confidential information.
RFI- LUMA-MI-20-0019-21046- PREB-001 Attachment 4	PDF	Entire Document**	Critical Energy Infrastructure Information	Section III B of the Memorandum of Law provides the legal basis to establish that the specified sections of the RFI-LUMA- MI-20-0019-21046- PREB-001 Attachment 4 include confidential information. These are handwritten notes with confidential, original work product, and sensitive assessments by LUMA that has not been disclosed to the public.

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Document	Document Type	Pages in which Confidential Information is Found	Summary of Legal Basis for Confidentiality Protection	Summary of Reasons Why Each Claim Conforms to Legal Basis for Confidentiality
RFI- LUMA-MI-20-0019-21046- PREB-001 Attachment 5	Excel	Entire Document**	Critical Energy Infrastructure Information	Section III B of the Memorandum of Law provides the legal basis to establish that the specified sections of the RFI-LUMA- MI-20-0019-21046- PREB-001 Attachment 5 includes confidential information.
RFI- LUMA-MI-20-0019-21046- PREB-001 Attachment 6	Excel	Entire Document**	Critical Energy Infrastructure Information and/or	Section III B of the Memorandum of Law provides the legal basis to establish that the specified sections of the RFI-LUMA- MI-20-0019-21046- PREB-001 Attachment 6 includes confidential information.
RFI- LUMA-MI- 20-0019- 21046- PREB-002 Attachment 1	PDF		Critical Energy Infrastructure Information	Section III B of the Memorandum of Law provides the legal basis to establish that the specified sections of the RFI-LUMA- MI-20-0019-21046- PREB-002 Attachment 1 includes confidential information
RFI- LUMA-MI- 20-0019- 21046- PREB-002 Attachment 2		Pages 4; 13	Critical Energy Infrastructure Information	Section III B of the Memorandum of Law provides the legal basis to establish that the specified sections of the RFI-LUMA- MI-20-0019-21046- PREB-002 Attachment 2 includes confidential information.

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Document	Document Type	Pages in which Confidential Information is Found	Summary of Legal Basis for Confidentiality Protection	Summary of Reasons Why Each Claim Conforms to Legal Basis for Confidentiality
RFI- LUMA-MI-20-0019-21046- PREB-003 Attachment 1	Excel	Entire Document**	Sensitive Commercial Information and Trade Secrets	Section III A of Memorandum shows that the specified portions of RFI-LUMA-MI-20- 0019-21046-PREB-003 Attachment 1 includes information for: (i) acquisition of goods and services, (ii) LUMA original supporting work papers and work product with estimations, methods and assumptions, including future acquisitions, and (iii) and expenditure categories by year, that may provide unfair advantages to suppliers or proponents and could harm the public interest.
RFI- LUMA-MI-20-0019-21046- PREB-012 Attachment 2	Excel	Entire Document*	Critical Energy Infrastructure Information Sensitive Commercial Information and Trade Secrets under	Section III B of Memorandum provides the legal basis to establish that the specified sections of the RFI-LUMA- MI-20-0019-21046- PREB-012 Attachment 2 includes confidential information. Section III A of this Memorandum shows that the specified portions of RFI-LUMA-MI-20- 0019-21046-PREB-012 Attachment 1 includes LUMA's original and confidential assessments and calculations on system performance whose disclosure would harm LUMA's interests protected by law.
** It is impractical or not feasible to redact this document due to formatting and/or because its entire contents are confidential. It is requested that the Bureau accept the confidential unredacted version of this document and that it is kept confidentially.				

Act 57-2014¹¹ establishes that any person having the obligation to submit information to the Energy Bureau, can request privilege or confidential treatment to any information that the party submitting understands deserves such protection.¹² Specifically,

¹¹ *Id.*

¹² Section 6.15 of Act 57-2014.



Act 57-2014 requires the Energy Bureau to treat as confidential the submitted information provided that “the Energy Bureau, after the appropriate evaluation, believes such information should be protected”.¹³ In such case, the Energy Bureau “shall grant such protection **in a manner that least affects the public interest, transparency,** and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted.”¹⁴

Upon review of LUMA’s arguments and the applicable law, the Energy Bureau **GRANTS** confidential designation and treatment to attachment or portions of the Responses to SRP Requests for Information as described in Table 2 below, pursuant to the provisions of Article 6.15 of Act 57-2014.

Table 2: Designated Confidential Information

Document	Document Type	Pages in which Confidential Information is Found	Summary of Legal Basis for Confidentiality Protection	Energy Bureau Determination
RFI- LUMA- MI- 20-0019- 21046- PREB- 001 Attachment 1	PDF	Pages 33-36; 60-80; 127- 131; 164-168; 182- 187; 383-413; 672-673	Critical Energy Infrastructure Information	Grants Confidential Designation and Treatment
RFI- LUMA- MI- 20-0019- 21046- PREB- 001 Attachment 2	PDF	Entire Document**	Critical Energy Infrastructure Information	Grants Confidential Designation and Treatment LUMA must file a redacted public version removing all irrelevant comments or notes and the facility id (name, number and location)

¹³ *Id.*

¹⁴ *Id.* (Emphasis added).



Document	Document Type	Pages in which Confidential Information is Found	Summary of Legal Basis for Confidentiality Protection	Energy Bureau Determination
RFI- LUMA-MI- 20-0019-21046- PREB-001 Attachment 3	Excel	Entire Document**	Critical Energy Infrastructure Information	Grants Confidential Designation and Treatment
RFI- LUMA-MI- 20-0019-21046- PREB-001 Attachment 4	PDF	Entire Document**	Critical Energy Infrastructure Information	Grants Confidential Designation and Treatment LUMA must file a redacted public version removing all irrelevant comments or notes and the facility id (name, number and location)
RFI- LUMA-MI- 20-0019-21046- PREB-001 Attachment 5	Excel	Entire Document**	Critical Energy Infrastructure Information	Grants Confidential Designation and Treatment LUMA must file a redacted public version removing all irrelevant comments or notes and the facility id (name, number and location)
RFI- LUMA-MI- 20-0019-21046- PREB-001 Attachment 6	Excel	Entire Document**	Critical Energy Infrastructure Information	Grants Confidential Designation and Treatment LUMA must file a redacted public version removing all irrelevant comments or notes and the facility id (name, number and location)
RFI-LUMA-MI- 20-0019-21046- PREB-002 Attachment 1	PDF	Pages: 10; 15; 19; 32; 34; 38	Critical Energy Infrastructure Information	Grants Confidential Designation and Treatment

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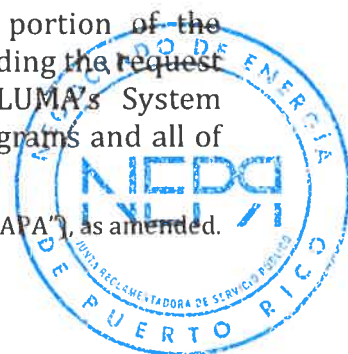
Document	Document Type	Pages in which Confidential Information is Found	Summary of Legal Basis for Confidentiality Protection	Energy Bureau Determination
RFI- LUMA-MI- 20-0019- 21046- PREB-002 Attachment 2	PDF	Pages: 4; 13	Critical Energy Infrastructure Information	Grants Confidential Designation and Treatment
RFI- LUMA-MI- 20-0019- 21046- PREB- 003 Attachment 1	Excel	Entire Document**	Sensitive Commercial Information and Trade Secrets	Grants Confidential Designation and Treatment
RFI- LUMA-MI- 20-0019- 21046- PREB- 012 Attachment 2	Excel	Entire Document*	Critical Energy Infrastructure Information Sensitive Commercial Information and Trade Secrets	Grants Confidential Designation and Treatment

B. Motion for Partial Reconsideration of the April 23 Resolution, submitted by LUMA on April 27, 20201:

Pursuant to Section 11.01 of Regulation 8543,¹⁵ and the provisions of Act 38-2017, “Any party dissatisfied with the Energy Bureau final decision may file a motion for reconsideration before the Energy Bureau, which shall state in detail the grounds supporting the petition and the remedy that, according to petitioner, the Energy Bureau should have granted.” The affected party shall file and served its motion for reconsideration under the terms and provisions of the “UAPA”.

As estate before, LUMA request partial reconsideration of the portion of the Resolution and Order issued by the Energy Bureau on April 23, 2021 regarding the request for confidential treatment of information included in Section 6 of LUMA’s System Remediation Plan (“SRP Section 6”), particularly, Sections 3.2 of some programs and all of

¹⁵ Known as the *Uniform Administrative Procedures Act of the Government of Puerto Rico* (“UAPA”), as amended.



the Sections 3.3 of SRP Section 6 on LUMA's projected costs and resources needs for its proposed System Remediation Plan ("SRP") spending programs.

LUMA argued that disclosure of those portions of SRP Section 6 will provide detailed information on hiring and acquisition needs, as well as LUMA's assessments of the same, to potential bidders or contractors who will use the data to craft their proposals with the published amounts in mind. LUMA also requests reconsideration of the Energy Bureau determination that pages 349 through 352 of Appendix F to the SRP, should be filed for the public record and alleged that the information include Critical Energy Infrastructure Information ("CEII") whose disclosure would expose key system infrastructure to undue harm and vulnerabilities and therefore that should be kept confidential and shielded from public disclosure. For these reasons, LUMA requested the Energy Bureau to partially reconsider the April 23 Resolution and maintained confidential the attachments or portions included in Section 6 of LUMA's SRP, particularly, Sections 3.2 of some programs and all of the Sections 3.3 of SRP Section 6 of the Responses to the Request of Information, and pages 349 through 352 of Appendix F to the SRP.

Finally, LUMA alleged that they submitted with the Motion for Partial Reconsideration of the April 23 Resolution, a revised public version of the SRP that makes public Sections 3.1 of SRP Section 6 and several Sections 3.2, excluding Sections 3.2 for some programs briefs as outlined in Section V of their Motion, per the Energy Bureau determination in the April 23 Resolution. It also makes public the portions of pages 333 and 334 of Appendix D to the SRP that reference the Build Back Better Report by Navigant Consulting and the "Conceptual Transmission and Distribution 10-Year Capital Investment Plan," by Sargent & Lundy ("Sargent & Lundy Conceptual T&D Report).

After analyzing LUMA's arguments in the Motion for Partial Reconsideration of April 23 Resolution, and the applicable law, the Energy Bureau determines to **GRANTS** confidential designation and treatment, under Article 6.15 of Act 57-2014, to the items (attachments or portions included in Section 6 of LUMA's SRP, particularly, Sections 3.2 of some programs and of the Sections 3.3 of SRP Section 6 of the Responses to the Request for Information), contained in Table 1 below.

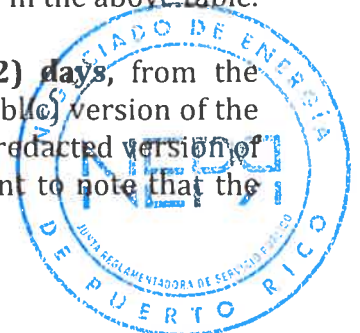
Motion for Partial Reconsideration of Attachments & Energy Bureau Determination		
System Remediation Plan	Sections	Energy Bureau Determination
Distribution Streetlighting	Section 3.3	Grants Confidential Designation and Treatment, only to the first and fourth bullets of Section 3.3 in page 59.
IT OT Telecom System & Networks	Section 2.1-2.6	The Energy Bureau already granted Confidential Designation and Treatment as determined by the Energy Bureau on April 23, 2021 Resolution and Order of Sections 2.1-2.6 in pages 102-107, excluding Section 3.3.
Transmission Substation Security	Section 2.1-2.6	The Energy Bureau already granted Confidential Designation and Treatment as determined by the



Motion for Partial Reconsideration of Attachments & Energy Bureau Determination		
System Remediation Plan	Sections	Energy Bureau Determination
		Energy Bureau on April 23, 2021 Resolution and Order of Sections 2.1-2.6 in pages 138, 139 and 140, excluding Section 3.3.
Physical Security for Distribution Facilities	Section 2.1-2.6	The Energy Bureau already granted Confidential Designation and Treatment as determined by the Energy Bureau on April 23, 2021 Resolution and Order of Sections 2.1-2.6 in pages 150, 151 and 152, excluding Section 3.3
Critical Energy Management System Upgrades	Section 2.1-2.6	The Energy Bureau already granted Confidential Designation and Treatment as determined by the Energy Bureau on April 23, 2021 Resolution and Order of Sections 2.1-2.6 in pages 166, 166 and 168, excluding Section 3.3
Control Center Construction & Refurbishment	Section 2.1-2.6	The Energy Bureau already granted Confidential Designation and Treatment as determined by the Energy Bureau on April 23, 2021 Resolution and Order of Sections 2.1-2.6 in pages 170,171 and 172, excluding Section 3.3.
Critical Energy Management & Load Generation Balancing	Section 2.1-2.6	The Energy Bureau already granted Confidential Designation and Treatment as determined by the Energy Bureau on April 23, 2021 Resolution and Order of Sections 2.1-2.6 in pages 178,179, 180 and 182 excluding Section 3.3.
HR Programs	Section 3.3 only the First bullet	Grants Confidential Designation and Treatment only for the first bullet of Section 3.3 in page 250.
Waste Management	Section 3.3 only the third bullet	Grants Confidential Designation and Treatment only for the third bullet of Section 3.3 in page 304.
Appendix F	See redacted pages	The Energy Bureau already granted confidential designation and treatment of the referred redacted pages of Appendix F in the April 23, 2021 Resolution and Order

Upon further review of the documents filed by LUMA on April 16, 2021, as part of the Motion in Compliance with Resolution and Order of April 6, 2021 and Submitting Responses to Requests for Information, the Energy Bureau **DETERMINES** to partially reconsider its determination on confidentiality as established in the April 23 Resolution, and therefore, **GRANT** confidential treatment and designation regarding the first and fourth bullets of Section 3.3 in page 59; the first bullet of Section 3.3 in page 250 and the third bullet of Section 3.3 in page 304 of Section 6 of the System Remediation Plan as contained in the above table.

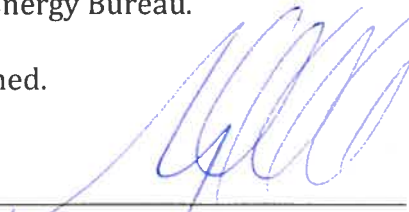
The Energy Bureau **ORDERS** LUMA to submit, within **two (2) days**, from the notification date of this Resolution and Order, a revised redacted (*i.e.*, public) version of the attachments or portions included in Section 6 of LUMA's SRP and the unredacted version of response, in accordance with this Resolution and Order. It is important to note that the



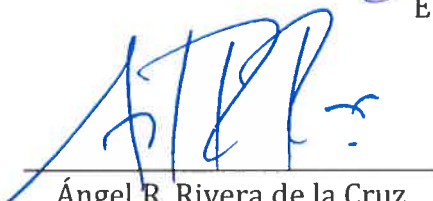
commencement of the Technical Conference scheduled in the instant case for May 14 and 17, 2021 is predicated in LUMA's timely compliance with this Resolution and Order.

The Energy Bureau **WARNS** LUMA that, noncompliance with any provision of this Resolution and Order, may result in the imposition of fines pursuant to Act 57-2014¹³ and applicable Energy Bureau's regulations and any other appropriate administrative sanctions, as deemed appropriate by the Energy Bureau.

Be it notified and published.



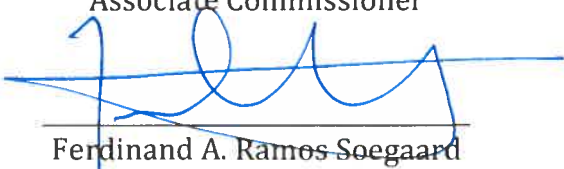
Edison Avilés Deliz
Chairman



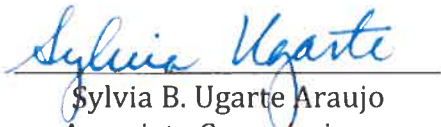
Ángel R. Rivera de la Cruz
Associate Commissioner



Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



Sylvia B. Ugarte Araujo
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on May 6, 2021. I also certify that on May 6, 2021 a copy of this Resolution and Order was notified by electronic mail to the following: kbolanos@diazvaz.law, jmarrero@diazvaz.law and margarita.mercado@us.dlapiper.com. I also certify that today, May 6, 2021, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today May 6, 2021.


Sonia Seda Gaztambide
Clerk