

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

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IN RE:
IN RE: PUERTO RICO ELECTRIC POWER
AUTHORITY PERMANENT RATE

CASE NO. NEPR-MI-2020-0001

**SUBJECT: Submission of CILTA, SUBA-HH and
SUBA-NHH Proposed Factors and Request for
Confidential Treatment.**

**MOTION SUBMITTING CILTA, SUBA-HH AND SUBA-NHH RECONCILIATIONS
AND PROPOSED FACTORS AND REQUEST FOR CONFIDENTIAL TREATMENT
OF EXCEL SPREADSHEETS**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME now **LUMA Energy, LLC** (“ManagementCo”), and **LUMA Energy ServCo, LLC** (“ServCo”), (jointly referred to as the “Operator” or “LUMA”), and respectfully state and request the following:

I. Submission of CILTA, SUBA-HH and SUBA-NHH Reconciliations and Proposed Factors

This honorable Energy Bureau’s approval and revisions of the factors associated with several riders including, contributions in lieu of taxes cost adjustment (CILTA), help to human subsidies (SUBA-HH), non-help to human subsidies (SUBA-NHH), Fuel Charge Adjustment (FCA), the Purchased Power Charge Adjustment (PPCA), and the Fuel Oil Subsidy (FOS), arise under a Resolution and Order dated April 23, 2019 issued in Case No. CEPR-AP-2015-0001 and NEPR-AP-2018-0003. The particulars of the timing to file annual proposed CILTA, SUBA- HH and SUBA-NHH factors are stated in the Tariff Book for the Puerto Rico Electric Power Authority (PREPA), at page 55 for CILTA, page 57 for SUBA-HH and page 59 for SUBA-NHH. The filings before this Energy Bureau of the proposed factors are due before the end of the eleventh month of

each annual time-period. *See id.* The proposed factors would go into effect in the first billing cycle of the first month of the annual time-period. *See id.*

On June 3, 2021, LUMA requested additional time to file the CILTA, SUBA-HH and SUBA-NHH annual proposed factors. On even date, this honorable Energy Bureau granted LUMA until June 10, 2021 at noon, to file the CILTA, SUBA-HH and SUBA-NHH annual proposed factors (“June 3rd Resolution and Order”).

Exercising its role and duties over system regulatory matters pursuant to Section 5.6 of the Puerto Rico Transmission and Distribution Operation and Maintenance Agreement (“OMA”) as supplemented by the Puerto Rico Transmission and Distribution System Supplemental Terms Agreement, LUMA prepared the CILTA, SUBA-HH and SUBA-NHH proposed factors to be applied from July 2021 until June 2022.

It is respectfully informed that due to unexpected technical and logistical difficulties beyond LUMA’s control, the process to complete this filing was delayed and LUMA was not able to complete the filing at noon today. Finalization and review of the thirty-two files that are being submitted today, took longer than anticipated. Given the technical and data-intensive nature of the filing, the noon deadline proved insufficient. LUMA completed the filing as soon as possible. LUMA respectfully requests that the Bureau accept and consider the filing.

LUMA hereby respectfully submits the annual reconciliation of the CILTA, SUBA-HH and SUBA-NHH riders for May 2020 to April 2021 and the proposed factors to be applied during Fiscal Year 2022. This submission includes nine excel files that are being filed publicly via email as Exhibit A to this Motion.

With this Motion, LUMA is also submitting via email twenty-three confidential excel spreadsheets “Exhibit A-Confidential” with formulae intact. It is hereby respectfully requested that the Bureau accept and maintain Exhibit A-Confidential under seal of confidentiality.

II. Request for Confidential Treatment of Excel Files and Supporting Memorandum of Law.

The confidential excel files mentioned in Section I of this Motion *supra*, are excel spreadsheets submitted in native format (.xls) and with formulae intact. *See* Exhibit A-Confidential. They include formulae and original calculations made by LUMA personnel that reveal confidential procedures and include sensitive commercial information belonging to LUMA and/or the Puerto Rico Electric Power Authority (“PREPA”), and that are thus protected by law from disclosure and that should not be disclosed in native form.

A. Applicable Laws and Regulation to submit information confidentially before the Bureau.

The bedrock provision on management of confidential information that is filed before this Bureau, is Section 6.15 of Act 57-2014, known as the “Puerto Rico Energy Transformation and Relief Act.” It provides, in pertinent part, that: “[i]f any person who is required to submit information to the Energy Commission believes that the information to be submitted has any confidentiality privilege, such person may request the Commission to treat such information as such” 22 LPRA §1054n. If the Bureau determines, after appropriate evaluation, that the information should be protected, “it 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.” *Id.*, Section 6.15 (a).

Relatedly, in connection with the duties of electric power service companies, Section 1.10 (i) of Act 17-2019 provides that electric power service company shall provide information requested by customers, except for confidential information in accordance with the Rules of Evidence of Puerto Rico.”

Access to the confidential information shall be provided “only to the lawyers and external consultants involved in the administrative process after the execution of a confidentiality agreement.” *Id.* Section 6.15(b). Finally, Act 57-2014 provides that this Energy Bureau “shall keep the documents submitted for its consideration out of public reach only in exceptional cases. In these cases, the information shall be duly safeguarded and delivered exclusively to the personnel of the [Bureau] who needs to know such information under nondisclosure agreements. However, the [Bureau] shall direct that a non-confidential copy be furnished for public review”. *Id.* Section 6.15 (c).

The Bureau’s Policy on Confidential Information details the procedures that a party should follow to request that a document or portion thereof, be afforded confidential treatment. In essence, the referenced Policy requires identification of the confidential information and the . . . filing of a memorandum of law explaining the legal basis and support for a request to file information confidentially. *See* CEPR-MI-2016-0009, Section A, as amended by the Resolution of September 16, 2016, CEPR-MI-2016-0009. The memorandum should also include a table that identifies the confidential information, a summary of the legal basis for the confidential designation and a summary of the reasons why each claim or designation conforms to the applicable legal basis of confidentiality. *Id.* paragraph 3. The party who seeks confidential treatment of information filed with the Bureau must also file both “redacted” or “public version”

and an “unredacted” or “confidential” version of the document that contains confidential information. *Id.* paragraph 6.

The aforementioned Bureau policy on management of confidential information in procedures states the following with regards to access to validated Trade Secret Information:

1. Trade Secret Information
Any document designated by the [Energy Bureau] as Validated Confidential Information because it is a trade secret under Act 80-2011 may only be accessed by the Producing Party and the [Bureau], unless otherwise set forth by the [Bureau] or any competent court.

Id. Section D (on Access to Validated Confidential Information).

Relatedly, Bureau Regulation No. 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Proceedings*, includes a provision for filing confidential information in adjudicatory proceedings before this honorable Bureau. To wit, Section 1.15 provides that, “a person has the duty to disclose information to the [Bureau] considered to be privileged pursuant to the Rules of Evidence, said person shall identify the allegedly privileged information, request the [Bureau] the protection of said information, and provide supportive arguments, in writing, for a claim of information of privileged nature. The [Bureau] shall evaluate the petition and, if it understands [that] the material merits protection, proceed accordingly to . . . Article 6.15 of Act No. 57-2015, as amended.” *See also* Bureau Regulation No. 9137 on *Performance Incentive Mechanisms*, Section 1.13 (addressing disclosure before the Bureau of Confidential Information and directing compliance with Resolution CEPR-MI-2016-0009).

B. Grounds for Confidentiality

Under the Industrial and Trade Secret Protection Act of Puerto Rico, Act 80-2011, 10 LPRA §§ 4131-4144, industrial or trade secrets are deemed to be any information:

- (a) That has a present or a potential independent financial value or that provides a business advantage, insofar as such information is not common knowledge or readily accessible through proper means by persons who could make a monetary profit from the use or disclosure of such information, and
- (b) for which reasonable security measures have been taken, as circumstances dictate, to maintain its confidentiality.

Id. §4131, Section 3 Act. 80-2011.¹ Trade secrets include, but are not limited to, processes, methods and mechanisms, manufacturing processes, formulas, projects or patterns to develop machinery and lists of specialized clients that may afford an advantage to a competitor. *See* Statement of Motives, Act 80-2011. As explained in the Statement of Motives of Act 80-2011, protected trade secrets include any information bearing commercial or industrial value that the owner reasonably protects from disclosure. *Id.* *See also* Article 4 of Puerto Rico's Open Data Law, Act 122-2019 (exempting the following from public disclosure: (1) commercial or financial information whose disclosure will cause competitive harm; (2) trade secrets protected by a contract, statute or judicial decision (3) private information of third parties). *See* Act 122-2019, Articles 4 (ix) and (x) and (xi)).

The Puerto Rico Supreme Court has explained that the trade secrets privilege protects free enterprise and extends to commercial information that is confidential in nature. *Ponce Adv. Med. v. Santiago Gonzalez*, 197 DPR 891, 901-02 (2017) (citation omitted).

¹ Relatedly, Rule 513 of the Rules of Evidence of Puerto Rico provides that the owner of a trade secret may invoke the privilege to refuse to disclose, and to prevent another person, from disclosing trade secrets, provided that these actions do not tend to conceal fraudulent actions or lead to an injustice. 32 P.R. Laws Annot. Ap. VI, R. 513. If a court of law mandates disclosure of a trade secret, precautionary measures should be adopted to protect the interests of the owner of the trade secret. *Id.*

The excel spreadsheets that have been submitted today in native form and with formulae intact as Exhibit A-Confidential are protected as trade secrets. They have commercial value to LUMA and PREPA as they reveal confidential processes and analysis to produce calculations in support of the public filing of the proposed factors for the CILTA, SUBA-NHH and SUBA-HH riders. LUMA and PREPA keep and maintain these native files confidentially and do not disclose them to the public nor to unauthorized third parties.

LUMA appreciates the importance of placing the Energy Bureau in the position of reviewing the reconciliations and fixing the annual factors. However, to avoid future competitive harms that could ensue if original format spreadsheets with formulae and calculations are publicly disclosed, LUMA respectfully requests that the excel files submitted today as Exhibit A Confidential, be received, kept and maintained confidentially by this Energy Bureau.

The confidential spreadsheets included as Exhibit A-Confidential are: (1) documents with commercial and financial value, and (2) involve data that **is not common knowledge or readily accessible** by third parties who may seek to profit from the data or gain commercial advantages. The spreadsheets are business documents showing processes, methods and mechanisms, that garner protection under Act 80-2011. They are original documents that have not been disclosed to the third parties and whose disclosure would reveal sensitive and private commercial processes employed by LUMA and PREPA. The disclosure of this sensitive commercial information would place LUMA and PREPA in vulnerable and disadvantageous commercial positions that could affect LUMA customers and impact rates. Reasonable measures have been taken to protect the files from disclosure and avoid unauthorized access by third parties that could seek to gain commercial

advantages. It is respectfully submitted that Exhibit A-Confidential are trade secrets protected from public disclosure by Act 80-2011.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned, **accept** the filing of the CILTA, SUBA-HH and SUBA-NHH annual proposed factors, **deem** that LUMA complied with the June 3rd Resolution and Order, and **grant** the request to keep confidentially the spreadsheets that have been filed in excel format and with formulae intact as Exhibit A-Confidential to this Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 10th day of June 2021.

I hereby certify that I filed this Motion using the electronic filing system of this Energy Bureau.



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