

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

NEPR

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

CASE NO. NEPR-MI-2020-0001

SUBJECT: Submission of Revised Spreadsheets and Calculations in Support of CILTA, SUBA-HH and SUB-NHH Annual Reconciliations and Proposed Factors and Request for Confidential Treatment.

MOTION IN COMPLIANCE WITH ORDERS ISSUED IN THE TECHNICAL CONFERENCE HELD ON JUNE 22, 2021 AND SUBMITTING REVISED SPREADHSEETS AND ADDITIONAL DOCUMENTS IN SUPPORT OF CILTA, SUBA-HH AND SUBA-NHH RECONCILIATIONS AND PROPOSED FACTORS AND REQUEST FOR CONFIDENTIAL TREATMENT

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”), through the undersigned counsel, and respectfully state and request the following:

I. Introduction

On June 10th, 2021, LUMA filed a *Motion submitting CILTA, SUBA-HH and SUBA-NHH Reconciliations and Proposed Factors and Request for Confidential Treatment of Excel Spreadsheets* (“June 10th Submission of Reconciliations and Proposed Factors”) before this Puerto Rico Energy Bureau (“Energy Bureau”). Thereafter, on June 11, 2021, LUMA requested leave from the Energy Bureau to amend the June 10th Submission of Reconciliations and Proposed Factors and resubmit the proposed CILT, SUBA-HH and SUBA-NHH proposed factors (“June 11th LUMA Submission”). On June 16, 2021, LUMA filed a revised submission of annual reconciliations and proposed CILT, SUBA-HH and SUBA-NHH rider factors.

This honorable Energy Bureau held a technical conference on June 22, 2021 to discuss LUMA's submissions of annual reconciliations and proposed CILTA, SUBA-HH and SUBA-NHH rider factors and LUMA's filings on quarterly reconciliations and proposed FCA, PPCA and FOS rider factors ("June 22nd Technical Conference"). LUMA personnel answered questions from the Energy Bureau and provided explanations in support of the aforementioned submissions. The Energy Bureau issued several bench orders for LUMA to revise several calculations included in support of LUMA's submissions of annual reconciliations and proposed CILTA, SUBA-HH and SUBA-NHH rider factors. The Energy Bureau set June 24, 2021 at noon as the deadline for compliance with the bench orders issued in the June 22nd Technical Conference.

LUMA hereby respectfully complies with the bench orders issued in the June 22nd Technical Conference and submits revised calculations for the annual reconciliations and proposed CILTA, SUBA-HH and SUBA-NHH rider factors. This submission of revised annual reconciliations and proposed factors for CILTA, SUBA-HH and SUBA-NHH riders factors includes 11 excel spreadsheets that are being filed publicly via email as Exhibit A-Values to this Motion. With this Motion, LUMA is also submitting via email 11 confidential excel spreadsheets Exhibit A-Confidential with formulae intact. LUMA is also submitting 9 supporting documents as requested by the Bureau in both public and confidential form. *See* Exhibit A-Confidential and Exhibit A- Values, *Supporting Files*. As explained in Section III *infra*, it is hereby respectfully requested that the Bureau accept and maintain Exhibit A-Confidential under seal of confidentiality.

II. Revised Calculations

A. Annualized Reconciliation

As requested by the honorable Energy Bureau, LUMA made an adjustment to the annual reconciliations to correct the prior period adjustment. Today, LUMA is submitting a revised spreadsheet entitled “ANNUAL RECONCILIATION,” that in the tab entitled, “RECONCILIATION SUMMARY”, includes the adjustments on a monthly basis.

B. Revisions to Supporting Documents on Subsidies Costs

In compliance with an order issued by the honorable Energy Bureau in the June 22nd Technical Conference, LUMA hereby submits supporting documents for the subsidies costs in the Subsídios (Raw data) May 2020 to April 2021 and Alumbrado Público (Raw Data Reconciliation) May 2020-April 2021 excel workbooks. *See Exhibit A-Confidential and Exhibit A- Values, Supporting Files.*

C. Supporting Data for May 2020 Adjustment for Hotels (Hotel Discount).

During the June 22nd Technical Conference, the Energy Bureau inquired about the basis for the Hotel Discount reflected in the “CILT & SUB Costs May20-Apr-21” tab of the “ANNUAL RECONCILIATION” spreadsheet. LUMA hereby submits data supporting the Hotel Discount value in question in the Subsídios .(Raw data) May 2020 to April 2021 file. *See Exhibit A- Confidential and Exhibit A- Values, Supporting Files.*

D. Clarification on Annualized Adjustments to CELI from prior years 2017 through 2019.

During the June 22nd Technical Conference the Energy Bureau inquired about the basis for the annualized 2020 adjustments reflected in the “ANNUAL RECONCILIATION” spreadsheet, tab entitled “Resumen Anualizado 2020”. The Energy Bureau sought to confirm that the annualization does not include duplicate consideration of adjustments of prior periods. LUMA submits the following documents to support the previous periods adjustments:

1. CELI FY 2017 (Act jun 2021)
2. CELI FY 2018 (Act jun 2021)
3. CELI FY 2019 (Act jun 2021)
4. CELI FY 2020 (Act jun 2021)
5. CELI FY 2021 (Act jun 2021)
6. CILT Adjustments Analysis

A summary of results of the analysis can be found in “ANNUAL RECONCILIATION” excel workbook, tab “CELI Ajustes GL Previous Years”. All adjustments have been consolidated in row 12 of the RECONCILIATION SUMMARY tab. The document entitled CILT Adjustments Analysis includes the explanation on the adjustments and how they compare with the prior period adjustment.

E. Contribution to PREB.

LUMA made two changes with respect to PREB contributions. The first to adjust the previous period payments, as shown in the CILT & SUB Costs MAY20-APR21 tab of the “ANNUAL RECONCILIATION” excel workbook incorporate the Energy Bureau’s Resolution and Order of June 19, 2020 in case NEPR-MI-2020-0007 (restated in the Resolution and Order of June 28, 2020 issued in this proceeding at page 15) on the applicable regulatory charge for the Fiscal Year 2021. The second to incorporate the Energy Bureau’s Resolution and Order of June 24, 2021 in case NEPR-MI-2020-0007 on the applicable regulatory charge for the Fiscal Year 2022. The change can be seen in the Contribution to Puerto Rico Energy Bureau line in the “RESUMEN” tab within the “Subsidios 2022 (PROMOD)” excel workbook.

F. Revisions to “Subsidios 2022 (PROMOD)” spreadsheet on public lightning.

In compliance with several bench orders and requests for clarifications issued by the Energy Bureau during the June 22nd Technical Conference, LUMA revised the spreadsheet entitled “Subsidios 2022 (PROMOD)” to update columns C, D and E of the tab entitled “Alumbrado” for the private consumption of lighting, and revise some linked cells.

G. Updated Calculations in spreadsheet entitled “Ingresos Mensuales 2022 PROMOD.

As discussed during the June 22nd Technical Conference, LUMA revised the spreadsheet entitled “Ingresos Mensuales 2022 PROMOD” to update the revenues forecast due the changes on the smaller classes load.

H. Load calculations, “proyección de consumo y generación de demanda” and “proyección por clase”.

In the revised spreadsheets entitled “proyección de consumo y generación de demanda” and “proyección por clase,” LUMA provided historical consumption data to support annual values in Line 9 of the “Load” tab.

I. Refresh of workbooks

LUMA refreshed all the spreadsheets so that the adjustments detailed in the above sections were tracked and reflected throughout the excel workbooks. The adjustments result in a 0.0012 cents / kWh, or \$0.000012/kWh aggregate decrease to the CILT and subsidies.

III. List of Documents Filed in Support of Quarterly Reconciliations and Proposed CILTA, SUBA-NHH and SUBA-HH Proposed Factors.

Exhibit A-Values and Confidential
Annual Reconciliation – CILT + SUB RIDERS – MAY2020TOAPRIL2021
Año Base Subsidios
Attachment 5-CILT and SUBSIDIESRECONCILIATION-FilingJune2021
Calculo Costo del CELI 2021 (PROMOD)
Distribución Mensual 2022 Updated April 2021 FOMB Macros

Ingresos Mensuales 2022 (PROMOD)
Proyección de Consumo, Generación y Demanda Máxima 2021-50 (May 5, 2021 updated)
Proyecciones x Clase (May 5 2021 updated)
Simulación PROMOD – FY2022
Subsidies Rider Cost Budget Forecast 2022 (PROMOD)
Subsidios 2022 (PROMOD)

9 Supporting Documents Confidential and Values (Public)
CELI FY 2017 (Act jun 2021) (Excel spreadsheet)
CELI FY 2018 (Act jun 2021) (Excel spreadsheet)
CELI FY 2019 (Act jun 2021) (Excel spreadsheet)
CELI FY 2020 (Act jun 2021) (Excel spreadsheet)
CELI FY 2021 (Act jun 2021) (Excel spreadsheet)
Subsidios (Raw Data Reconciliation) May 2020-April 2021(Excel spreadsheet)
Alumbrado Público (Raw Data Reconciliation) May 2020-April 2021 (Excel spreadsheet)
CILT Adjustment Analysis
Public Lighting Subsidy

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

The confidential files mentioned in Sections I and III of this Motion *supra*, that are being submitted with this Motion, are excel spreadsheets submitted in native format (.xls) and with formulae intact and the two supporting documents with original calculations and explanations. *See* Exhibit A-Confidential. They include formulae and original calculations made by LUMA personnel that reveal confidential procedures and methods for the relevant calculations 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,

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.*

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).

The excel spreadsheets that have been submitted today in native form and with formulae intact as Exhibit A-Confidential and the two supporting documents with calculations 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 filings 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 files submitted today as Exhibit A Confidential, be received, kept and maintained confidentially by this Energy Bureau.

The confidential documents 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 revised filing on annual reconciliations and proposed CILTA, SUBA-NHH and SUBA-HH factors; and **grant** the request to keep confidentially the spreadsheets that have been filed in excel format and with formulae intact and the two documents with calculations filed as Exhibit A-Confidential to this Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 24th day of June 2021.



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