

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

**NEPR**  
**Received:**  
**May 31, 2022**  
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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:**

**COMES now LUMA Energy ServCo, LLC (“ServCo”), (“LUMA”), and respectfully  
state and request the following:**

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

This Honorable Puerto Rico Energy Bureau’s (“Energy Bureau”) 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 Cases Nos. 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”), on page 55 for CILTA, page 57 for SUBA-HH, and page 59 for SUBA-NHIL. The filings before this Energy Bureau of the proposed factors are due before the end of the eleventh month of each annual period. *See id.* The proposed factors would go into effect in the first billing cycle of the first month of the annual period. *See id.*

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’s role is to calculate the reconciliations and CILTA, SUBA-HH and SUBA-NHH proposed riders to be applied from July 2022 until June 2023.

**II. Regulatory Formulas for the CILTA, SUBA-HH, SUBA-NHH Riders.**

**A. CILTA**

The CILTA is a reconciling rate mechanism that recovers the cost of contributions in lieu of taxes (“CILT”) payments to municipalities on an annual basis. The CILTA shall apply to all gross kWh consumed by customers served on all LUMA rates, except the base usage contained in the Residential Fixed Rate. The formula to calculate the CILTA factor is:

$$CILTA = \frac{(CILT + \text{Prior Period Reconciliation})}{\text{Applicable Retail kWh Sales}}$$

**B. SUBA-HH**

The SUBA-HH is a reconciling rate mechanism that recovers the cost of certain subsidies that LUMA must provide to eligible customers annually. The SUBA-HH shall apply to all gross kWh consumed by customers served on all LUMA rates except the base usage contained in the Residential Fixed Rate. The formula to calculate the SUBA-HH factor is:

$$SUBA-HH = \frac{(\text{Subsidies} + \text{Prior Period Reconciliation})}{\text{Applicable Retail kWh Sales}}$$

**C. SUBA-NHH**

The SUBA-NHH is a reconciling rate mechanism that recovers the cost of certain subsidies that LUMA must provide to eligible customers on an annual basis. The SUBA-NHH shall apply

to all gross kWh consumed by customers served on all LUMA rates, except the base usage contained in the Residential Fixed Rate. The formula to calculate the SUBA-NHH factor is:

$$SUBA-NHH = \frac{(Subsidies + Prior\ Period\ Reconciliation)}{Applicable\ Retail\ kWh\ Sales}$$

**III. Annual Reconciliation of the CILTA, SUBA-HH, SUBA-NHH Riders, and the Fiscal Year 2023 Forecast Costs.**

**A. CILTA**

The total CILT cost, the prior period adjustment, and other adjustments to the billing from the previous fiscal years totaled \$61,610,438.57. In contrast, the revenue was \$54,337,791.46. As such, the revenue insufficiency was \$7,272,647.10. The CILTA forecast cost for the Fiscal Year 2023 is \$114,265,755.67. LUMA has calculated the Fiscal Year 2023 CILTA factor of \$0.007361/kWh.

**B. SUBA-HH**

The SUBA-HH cost and the prior period adjustment totaled \$165,295,616.55. However, the revenue totaled \$163,145,980.96. The insufficiency for the SUBA-HH is \$ 2,149,635.60. The SUBA-HH forecast cost for the Fiscal Year 2023 is \$230,934,576.57. LUMA has calculated the Fiscal Year 2023 SUBA-HH factor of \$0.014117/kWh.

**C. SUBA-NHH**

The SUBA-NHH cost plus the prior period adjustment was \$9,878,162.17. Instead, the revenue was \$10,515,299.90. The insufficiency for the SUBA-NHH is \$637,137.62. The SUBA-NHH forecast cost for the Fiscal Year 2023 is \$13,008,425.45. LUMA has calculated the Fiscal Year 2023 SUBA-NHH factor of \$0.000749/kWh.

**IV. List of Documents Filed in Support of the Annual Reconciliation of the CILTA, SUBA-HH, SUBA-NHH Riders, and the Proposed Factors.**

LUMA hereby respectfully submits the annual reconciliation of the CILTA, SUBA-HH, and SUBA-NHH riders for May 2021 to April 2022 and the proposed factors to be applied during the Fiscal Year 2023. As detailed in the table below, LUMA is submitting eleven (11) Excel files filed publicly via email as Exhibit 1-Values to this Motion. Attachment 5 provides the total summary of the calculations for the subsidies riders.

Specifically, the ANNUAL RECONCILIATION-CILT AND SUB RIDERS-MAY 2021 TO APRIL 2022 5-20-2022 file includes the CILT and Subsidies reconciliations. It encompasses the supporting files with all the data used for the reconciliations.

Additionally, the 2023 Subsidies Forecast\_Values file contains the CILT and the subsidies forecasted costs with all the intact formulas. The 2023 Revenues Forecast\_Values and Customers Estimated FY 2023\_Values files include the data utilized for the subsidies cost forecast.

Finally, the Load Forecast FY 2023 file has all the data used to determine the load with the intact formulas.

**A. Public Files in Values Folder**

ANNUAL RECONCILIATION-CILT AND SUB RIDERS-MAY 2021 TO APRIL 2022 5-20-2022_Values
Load Forecast FY 2023_Values
Customers Estimated FY 2023_Values
2023 Subsidies Forecast_Values
2023 Revenues Forecast_Values
Attachment 5 - CILT and SUBSIDIES RECONCILIATION - June 2022_Values
Subsidies May 2021 and April 2022 (CC&B Reports Supporting) _Values
Public Lighting (May 2021 - April 2022) _Values
CELI FY 2022_Values
CILT & SUB Costs MAY21-APR22_Values
CELI FY 2021 (Act June 2021) _Values

**B. Confidential Folder**

Along with this Motion, LUMA is also submitting via email eleven (11) confidential Excel spreadsheets “Exhibit 1-Confidential” with formulae intact, as identified in the table below. It is hereby respectfully requested that the Energy Bureau accept and maintain Exhibit 1-Confidential under seal of confidentiality.

ANNUAL RECONCILIATION-CILT AND SUB RIDERS-MAY 2021 TO APRIL 2022 5-20-2022
Load Forecast FY 2023
Customers Estimated FY 2023
2023 Subsidies Forecast
2023 Revenues Forecast
Attachment 5 - CILT and SUBSIDIES RECONCILIATION - June 2022
Subsidies May 2021 and April 2022 (CC&B Reports Supporting)
Public Lighting (May 2021 - April 2022)
CELI FY 2022
CELI FY 2021 (Act June 2021)
CILT & SUB Costs MAY21-APR22

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

The confidential Excel files referenced in Section I of this Motion, are excel spreadsheets submitted in native format (.xls) and with formulae intact. *See* Exhibit 1-Confidential. They include formulae and original calculations made by LUMA personnel that reveal confidential procedures. They also encompass sensitive commercial information belonging to LUMA and/or PREPA, thus protected by law from disclosure and should not be disclosed in native form.

**A. Applicable Laws and Regulation to Submit Confidential Information Before the Energy Bureau.**

The bedrock provision on managing confidential information filed before this Energy 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 Energy 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 companies shall provide the information requested by customers, except for confidential information under the Rules of Evidence of Puerto Rico. 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 Energy Bureau’s Policy on Confidential Information details the procedures a party should follow to request that a document or portion thereof be afforded confidential treatment. In

essence, the referenced Policy requires identifying confidential information and filing 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 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 policy of the Energy Bureau on the 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 802011 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).

Germanely, 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 Energy 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* 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 for which reasonable security measures have been taken, as circumstances dictate, to maintain its confidentiality.

*Id.* §4131, Section 3 Act. 80-2011.<sup>1</sup>

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

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<sup>1</sup> Correlatedly, 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 revealing trade secrets, provided that these actions do not tend to conceal fraudulent activities or lead to an injustice. 32 PR Laws Annot. Ap. VI, R. 513. If a court of law mandates the disclosure of a trade secret, precautionary measures should be adopted to protect the interests of the trade secret owner. *Id.*



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 confidential commercial information. *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 1-Confidential are protected as trade secrets. They have commercial value to LUMA and PREPA. They also reveal confidential processes and analyses to produce calculations supporting 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 or 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 harm if original format spreadsheets with formulae and calculations are publicly disclosed, LUMA respectfully requests that the excel files submitted today as Exhibit 1-Confidential be received, kept, and maintained confidentially by this Energy Bureau.

The confidential spreadsheets included as Exhibit 1-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 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 1-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 calculated proposed factors, **deem** that LUMA complied with the June 3<sup>rd</sup> 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 1-Confidential to this Motion.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 31st day of May 2022.

I hereby certify that I filed this Motion using the electronic filing system of this Energy Bureau. I will send an electronic copy of this Motion to counsel for PREPA Katuska Bolaños-Lugo, kbolanos@diazvaz.law, and the Independent Consumer Protection Office, through Director Hannia Rivera, [hrivera@jrsp.pr.gov](mailto:hrivera@jrsp.pr.gov).



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*Exhibit 1-Values*  
(to be submitted via email)