

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

NEPR

Received:

Jun 29, 2022

11:47 PM

IN RE:

**PUERTO RICO TEST FOR DEMAND
RESPONSE AND ENERGY EFFICIENCY**

CASE NO.: NEPR-MI-2021-0009

**SUBJECT: Submittal of Solar Energy Generation
and Storage Price Data in Compliance with Energy
Bureau's Bench Order Issued During the
Technical Conference Held on June 22, 2022.**

**MOTION TO SUBMIT SOLAR ENERGY GENERATION AND STORAGE PRICE
DATA IN COMPLIANCE WITH ENERGY BUREAU'S BENCH ORDER ISSUED
DURING THE TECHNICAL CONFERENCE HELD ON JUNE 22, 2022**

TO THE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC¹, and LUMA Energy ServCo, LLC² (jointly referred to as "LUMA") and respectfully state, submit and request the following:

I. Procedural Background

1. On May 14, 2021, this Puerto Rico Energy Bureau ("Energy Bureau") issued a Resolution and Order (the "May 14th Resolution") initiating the referenced proceeding to develop the Puerto Rico Benefit-Cost Test ("PR Test") as required by the Energy Bureau's Regulation for Demand Response of December 21, 2020, Regulation 9246, and under the then Proposed Energy Efficiency ("EE") Regulation issued by the Energy Bureau on April 22, 2021³.

¹ Register No. 439372.

² Register No. 439373.

³ On January 21, 2022, the Energy Bureau published the final version of the Regulation for Energy Efficiency ("EE Regulation"), which was at the time assigned the number 9354 by the Puerto Rico State Department. Regulation number 9354 was subsequently annulled, and the EE Regulation was resubmitted to the State Department and approved by the Puerto Rico Department of State on March 25, 2022, being assigned number 9367.

2. On June 16, 2021, the Energy Bureau issued a Resolution and Order scheduling four Technical Workshops to obtain stakeholder feedback. These workshops were held on June 30, 2021, July 21, 2021, August 25, 2021, and September 22, 2021.

3. After other procedural events, on August 13, 2021, the Energy Bureau issued a Resolution and Order informing, in pertinent part, that it was developing an avoided cost study to be used to develop values for the PR Test (“Avoided Cost Study”).

4. Following two LUMA requests regarding the Avoided Cost Study⁴ and an additional Technical Conference held on November 18, 2021, among other procedural events, on December 14, 2021, the Energy Bureau issued a Resolution and Order determining to continue the development by the Energy Bureau of the Avoided Cost Study and scheduling a virtual Technical Conference for February 8, 2022, to discuss the initial results of the Avoided Cost Study.

5. After other procedural events, on February 7, 2022, the Energy Bureau issued a Resolution and Order (the “February 7th Order”) proposing to adopt a PR Benefit-Cost Test framework as defined in an Attachment A thereof, and a list of prioritized impacts included in an Attachment B thereof, to be included in the application of the PR Test for the Potential Study and the first Three-Year Plan required under Sections 3.02(B) and 4.02 of the Regulation for Energy Efficiency approved January 5, 2022 (the “EE Regulation”), respectively. *See* February 7th Order at pages 2-4 and Attachments A and B.⁵ In the February 7th Order, this Energy Bureau ordered LUMA to file comments on Attachments A and B on or before March 7, 2022. *See id.* at page 4.

⁴ *See LUMA’s Motion Requesting Energy Bureau to Stay Resolution and Order of August 13, 2021 and Schedule Technical Workshop* of August 12, 2021 and *LUMA’s Motion Submitting LUMA’s Comments and Suggestions* of December 13, 2021.

⁵ The February 7th Resolution and Order also included an Attachment C containing a report with the recommendations submitted by the Energy Bureau’s consultants at the conclusion of the Technical Workshops that have been held in this proceeding. *See id.* at page 2 and Attachment C.

6. On February 8, 2022, the Energy Bureau held the Technical Conference (“February 8th Technical Conference”) to discuss the initial results of the Avoided Cost Study, in which the Energy Bureau consultants (Synapse Energy Economics, Inc.) provided a presentation titled “Puerto Rico Avoided Cost Modeling Technical Conference” (the “February 8th Presentation”). During the Conference, the Energy Bureau consultants put forward three discussion questions for feedback and informed that stakeholders and LUMA could provide written comments on the February 8th Presentation. *See id.* at page 48.

7. On March 7, 2022, LUMA submitted its comments to Attachment A (PR Test Framework) and Attachment B (Prioritization of PR Test Impact Development) of the February 7th Order. LUMA also submitted to the Energy Bureau LUMA’s comments to the February 8th Presentation.

8. On June 6, 2022, the Energy Bureau issued a Resolution and Order (“June 6th Order”) providing its responses to the questions and comments submitted by LUMA in its March 7th Motion, by means of written responses included in an Appendix A, detailed data requested by LUMA in an Appendix B, and an updated, more condensed version of the February 8th Presentation with new slides to address LUMA’s questions in an Appendix C. The Energy Bureau scheduled a Technical Conference to discuss the Avoided Cost Study for June 22, 2022, at 10:00 a.m., directed LUMA to attend and be prepared to pose questions regarding the Avoided Cost Study, and invited other interested parties to join.

9. On June 21, 2022, the Energy Bureau posted in the electronic docket of this proceeding copy of the presentation to be provided by its consultants during the Technical

Conference to be held on June 22, 2022, titled “Puerto Rico Avoided Cost Study: Avoided Capacity Costs” (the “Avoided Cost Study Presentation”).

10. On June 22, 2022, the Energy Bureau held the Technical Conference regarding the Avoided Cost Study (the “June 22nd Technical Conference”).

II. Information Requested During June 22nd Technical Conference and Submittal Thereof

11. During the June 22nd Technical Conference, the Energy Bureau consultants provided the Avoided Cost Study Presentation in which they discussed LUMA’s Questions and Comments provided in the March 7th Motion, the consultants’ Avoided Capacity Costs determination, and the Avoided Greenhouse Gas Emissions Costs. The consultants also set forth discussion questions.

12. During the Avoided Cost Study Presentation, LUMA made questions and comments regarding the Avoided Capacity Costs determination. Among these comments, LUMA mentioned that the energy costs discussed in the Avoided Cost Study Presentation were not reflective of the prices of the solar photovoltaic renewable energy generation projects (“PV Projects”) and battery energy storage system projects (“BESS Projects”) approved in the Tranche 1 procurement process⁶ and that this data would be publicly available when the contracts for these projects are executed. Energy Bureau Commissioner Lillian Mateo indicated that LUMA could submit this information under request for confidentiality in compliance with applicable requirements.

⁶ This is the first procurement tranche for utility-scale renewable energy generation and storage resources to be conducted by the Puerto Rico Electric Power Authority (“PREPA”) contemplated under the Final Resolution and Order on the Puerto Rico Electric Power Authority’s Integrated Resource Plan, *In re: Review of the Integrated Resource Plan of the Puerto Rico Electric Power Authority*, Case No. CEPR-AP-2018-0001, of August 24, 2020.

13. During the June 22nd Technical Conference, LUMA also requested that it be provided time following the Technical Conference to submit its written responses to the discussion questions presented by the Energy Bureau's consultants.

14. The Energy Bureau then issued a bench order directing LUMA to submit to the Energy Bureau, by June 29, 2022, the updated data on the pricing of the PV and BESS Projects approved in the Tranche 1 procurement process, and, by July 8, 2022, LUMA's input on the discussion questions put forth by its consultants during the Technical Conference.

15. In compliance with the Energy Bureau's bench order during the June 22nd Technical Conference, LUMA hereby submits, as *Exhibit 1* and under seal of confidentiality, the updated pricing data of the PV and BESS Projects approved in the Tranche 1 procurement process to date.

16. LUMA hereby requests the Energy Bureau to provide confidential treatment to *Exhibit 1*. A Memorandum of Law in support of this request is provided below pursuant to the Energy Bureau's Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 2016, and partially amended on September 16, 2016 ("Policy on Confidential Information").

III. Memorandum of Law in Support of Request for Confidentiality

a. Applicable Laws, Regulations, and Policies

17. Section 6.15 of Act 57-2014 regulates the management of confidential information filed before this Energy Bureau. It provides, in pertinent part, that: "[i]f any person who is required to submit information to the [Energy Bureau] believes that the information to be submitted has any confidentiality privilege, such person may request the [Energy Bureau] 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.* at Section 6.15 (a).

18. Act 57-2014 further provides that 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.* at 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 [Energy Bureau] who needs to know such information under nondisclosure agreements. However, the [Energy Bureau] shall direct that a non-confidential copy be furnished for public review”. *Id.* at Section 6.15(c).

19. In connection with the duties of electric power service companies, Section 1.10 (i), (vii) and (viii) of Act 17-2019 provides that electric power service companies shall “provide documents and information as requested by customers, except for: (i) confidential information in accordance with the Rules of Evidence of Puerto Rico; [...] (vii) trade secrets of third parties; [and] (viii) *issues that should be maintained confidential in accordance with any confidentiality agreement, provided, that such agreement is not contrary to public interest;...*”. (Emphasis added.)

20. The Energy 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, this 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* Policy on Confidential Information, Section A. 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.* at paragraph 3. The party who seeks confidential treatment of information filed with the Energy Bureau must also file both a “redacted” or “public version” and an “unredacted” or “confidential” version of the document that contains confidential information. *Id.* at paragraph 6.

21. Relatedly, Energy 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 Energy Bureau. To wit, Section 1.15 provides that, “a person has the duty to disclose information to the [Energy Bureau] considered to be privileged pursuant to the Rules of Evidence, said person shall identify the allegedly privileged information, request the [Energy Bureau] the protection of said information, and provide supportive arguments, in writing, for a claim of information of privileged nature. The [Energy Bureau] shall evaluate the petition and, if it understands [that] the material merits protection, proceed [according] to [...] Article 6.15 of Act No. 57-2015, as amended.” *See also* Energy Bureau Regulation No. 9137 on *Performance Incentive Mechanisms* at Section 1.13 (addressing disclosure before the Energy Bureau of Confidential Information and directing compliance with the Policy on Confidential Information (CEPR-MI-2016-0009).

b. Discussion

22. The Exhibit 1 contains pricing data contained in the proposals submitted in response to the Tranche 1 RFP which is a procurement process that is ongoing and the object of

negotiations and strategies. This honorable Energy Bureau has maintained under seal the documents including confidential information related to the Tranche Request for Proposals (“RFP”) process. Regarding the confidentiality of these documents, this Energy Bureau has established, through its Resolution and Order of February 2, 2022 (“February 2nd Order”) in case NEPR-MI-2021-0012, that such confidential treatment is required pursuant to Sections 4(g) and 10.2 of the *Joint Regulations for the Procurement, Evaluation, Selection, Negotiation, and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation and Award Process for the Modernization of the Generation Fleet*, Regulation 8815 of October 11, 2016 (“Regulation 8815”), and that only once the RFP is completed, shall it be made public. *See* the February 2nd Order at footnote 28. This Energy Bureau’s action is consistent with the interest of maintaining the purity of the procurement process.

23. Additionally, LUMA is required to maintain the pricing data in Exhibit 1 confidential pursuant to the provisions of Section 13 of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement of June 20, 2020 (“T&D OMA”). In particular, the T&D OMA provides that “any and all written, recorded or oral System Information furnished or made available in connection with [the T&D OMA], or that constitutes Work Product, shall be deemed “Owner Confidential Information” (*see* T&D OMA at Section 13.2(a)(i)), and that LUMA shall “A) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information of [PREPA], and (B) use all Confidential Information of [PREPA] solely for the purposes of performing its obligations under the [T&D OMA and other specified agreements contemplated under the T&D OMA]” (*see id.* at Section 13.2(a)(ii)). The pricing information in question was transmitted by PREPA to LUMA as part of

the documentation of the proposals received by PREPA in response to the Tranche 1 Request for Proposal and for purposes of LUMA's compliance with its obligations under the T&D OMA as T&D System operator, which include the technical evaluation related to the interconnection of these resources. Therefore, this information constitutes Owner Confidential Information under the T&D OMA which LUMA is obligated to maintain in confidence under Section 13 of the T&D OMA.

24. In light of the foregoing, LUMA asks that this Energy Bureau approve this request for confidential treatment the pricing information included in *Exhibit 1* based on it being information forming part of the proposals submitted in an ongoing procurement process subject to confidentiality under Regulation 8815, as well as information subject to confidentiality under the T&D OMA. LUMA is submitting herein a public redacted version and a confidential unredacted version of Exhibit 1. The table below identifies this confidential information:

Document Name	Date Submitted	Confidential Information	Basis of Confidentiality Request
Exhibit 1 to Motion Submitting Solar Energy Generation Price Data in Compliance with Energy Bureau's Bench Order Issued During the Technical Conference Held on June 22, 2022	June 29, 2022	Page 2: in the second column of the Table following the third paragraph the following text: the second to seventh lines under the title "Tranche 1 Solar Economics"; the second to seventh lines under the title "Tranche 1 Energy Storage Economics"; and the first line under the title "Tranche 1 POI + Network Upgrades Capital Cost / MW".	Sections 4(g) and 10.2 of Regulation 8815 and Section 13 of the T&D OMA

WHEREFORE, LUMA respectfully requests the Energy Bureau to **take notice** of the aforementioned, **accept** the solar energy generation and storage pricing data in *Exhibit 1* herein under seal of confidentiality, **approve** the request for confidential treatment of *Exhibit 1* herein, and **find** LUMA in compliance with the Energy Bureau's bench order issued during the June 22nd Technical Conference pertaining to the request for this pricing information.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 29th day of June 2022.

We certify that we filed this motion using the electronic filing system of the Puerto Rico Energy Bureau and that we will send an electronic copy of this motion to counsel of record for PREPA, Katuska Bolaños-Lugo, kbolanos@diazvaz.law.



DLA Piper (Puerto Rico) LLC
500 Calle de la Tanca, Suite 401
San Juan, PR 00901-1969
Tel. 787-945-9107
Fax 939-697-6147

/s/Ana Margarita Rodríguez Rivera
Ana Margarita Rodríguez Rivera
RUA Núm. 16,195
Ana.rodriguezrivera@us.dlapiper.com

/s/ Laura T. Rozas
Laura T. Rozas
RUA Núm. 10,398
laura.rozas@us.dlapiper.com

Exhibit 1

Updated Solar and Storage Pricing Data

[Redacted and Confidential Versions to be Submitted]



Follow-up from June 22nd Avoided Cost Technical Conference

NEPR-MI-2021-0009

CONFIDENTIAL

June 29, 2022

1.0 Updated Solar and Storage Pricing Data

During the June 22, 2022, PR Cost Test Avoided Cost Technical Conference, LUMA offered to provide the Energy Bureau updated solar and storage pricing data. The updated data is provided in the table below.

This price information is confidential and should not be published by the Energy Bureau or its consultants. Release of the confidential information may influence current negotiations and would be detrimental to the procurement process objectives. Release would provide the current proponents in Tranches 1 and 2 or potential proponents in other Tranches with competitive information that could result in higher pricing and increased costs to customers.

Note that the solar and storage pricing data does not include the cost of interconnections. The developers will reprice their offers to include these costs prior to concluding their contracts with PREPA.

Tranche 1 Solar Economics	
Total MW	844
Year 1 Price (\$/MWh)	
Price Cap (\$/MWh)	
Weighted Average Capacity Factor (yr-1)	
Weighted average degradation rate	
Weighted average annual price escalator	
Average Installation Size (DC) MW	
Tranche 1 Energy Storage Economics	
Total MW	490
Total MWh (4-hour duration)	
Weighted Average kW price/Yr	
\$/MWh equivalent	
Escalator	
Degradation and Round-trip efficiency	
Average Size (MW)	
Tranche 1 POI + Network Upgrades Capital Cost / MW	
Weighted Avg 844MW solar+220MW Storage	\$

*The escalator portion of the BESS pricing is not available as of this date but some escalators may be included in final prices. The degradation and round-trip efficiency characteristics of the resources is not yet known.

**The cost of Tranche 1 POI+Network Upgrades is provided in order to provide a complete data set for Synapse. These capital costs are in addition to the \$/MW prices indicated for Solar and Storage resources.