

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 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 pages 54-55 for CILTA, pages 56-57 for SUBA-HH, and pages 58-59 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 calculate the CILTA, SUBA-HH, and SUBA-NHH proposed riders to be approved by this Energy Bureau to apply from July 1st, 2023, until June 30th, 2024.

II. Regulatory Formulas for the CILTA, SUBA-HH, and 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 2024 Forecast Costs.

A. CILTA

The total CILTA cost, the prior period adjustment, and other adjustments to the billing from the previous fiscal years totaled \$112,811,611.72. In contrast, the revenue was \$101,381,010.85. As such, the revenue insufficiency was \$11,430,600.87. The CILTA forecast cost for the Fiscal Year 2024 is \$97,583,355.03. LUMA has calculated the Fiscal Year 2024 CILTA factor of \$0.007049/kWh.

B. SUBA-HH

The SUBA-HH cost and the prior period adjustment totaled \$225,289,857.43. However, the revenue totaled \$205,625,663.08. The insufficiency for the SUBA-HH is \$19,664,194.34. The SUBA-HH forecast cost for the Fiscal Year 2024 is \$192,485,728.98. LUMA has calculated the Fiscal Year 2024 SUBA-HH factor of \$0.013717/kWh.

C. SUBA-NHH

The SUBA-NHH cost plus the prior period adjustment was \$14,439,499.08. However, the revenue was \$10,809,936.97. The insufficiency for the SUBA-NHH is \$3,629,562.11. The SUBA-

NHH forecast cost for the Fiscal Year 2024 is \$12,486,437.16. LUMA has calculated the Fiscal Year 2024 SUBA-NHH factor of \$0.001042/kWh.

The Estimated Retail kWh sales for July 2022 to June 2023 were 15,465,689,695.59.

IV. List of Documents Filed in Support of the Annual Reconciliation of the CILTA, SUBA-HH, and 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 2022 to April 2023 and the proposed factors to be applied during Fiscal Year 2024. 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- CILT and SUBSIDIES RIDERS 2024_Values provides the total summary of the calculations for the subsidy riders.

Specifically, the ANNUAL RECONCILIATION-CILT AND SUB RIDERS-MAY 2022 TO APRIL 2023_Values file includes the CILT and Subsidies reconciliations. It encompasses the supporting files with all the data used for the reconciliations.

Additionally, the FY 2024 Subsidies Forecast Values file contains the CILT, and the subsidies forecasted costs with all the intact formulas. The 2024 Revenues Forecast_Values and Customers Forecast 2023 Update_Values¹ files include the data utilized for the subsidies cost forecast.

Finally, the Load Forecast 2023 Update_Values² file has all the data used to determine the load with the intact formulas.

¹ The information contained in this file reflects the forecast for the Fiscal Year 2024.

² The information contained in this file reflects the forecast for the Fiscal Year 2024.

A. Public Files in Values Folder

ANNUAL RECONCILIATION-CILT AND SUB RIDERS-MAY 2022 TO APRIL 2023 Values.xlsx
Load Forecast 2023 Update Values.xlsx
Customers Forecast 2023 Update Values.xlsx
FY 2024 Subsidies Forecast Values.xlsx
2024 Revenues Forecast Values
Attachment 5 - CILT and SUBSIDIES RIDERS 2024 Values.xlsx
Subsidies May 2022 and April 2023 (CC&B Reports Supporting) Values.xlsx
Public Lighting (May 2022 - April 2023) Values.xlsx
Load forecast modifiers Values.xlsx
CELI FY 2022 (May 2023 updated) Values.xlsx
CILT – FY 2023 Values.xlsx

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 2022 TO APRIL 2023.xlsx
Load Forecast 2023 Update.xlsx
Customers Forecast 2023 Update.xlsx
FY 2024 Subsidies Forecast.xlsx
2024 Revenues Forecast.xlsx
Attachment 5 - CILT and SUBSIDIES RIDERS 2024.xlsx
Subsidies May 2022 and April 2023 (CC&B Reports Supporting).xlsx
Public Lighting (May 2022 - April 2023).xlsx
Load forecast modifiers.xlsx
CELI FY 2022 (May 2023 updated).xlsx
CILT – FY 2023.xlsx

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

The confidential Excel files referenced in Section IV 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 Regulations 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 a “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 regard 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. 80-2011.³

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 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.

³ 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.*

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 reconciliations and annual calculated proposed factors, 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 2023.

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 Joannely Marrero, jmarrero@diazvaz.law, and the Independent Consumer Protection Office, through Director Hannia Rivera, hrivera@jrsp.pr.gov.



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Exhibit 1-Public Folder Values
Exhibit 1-Confidential
(to be submitted via email)