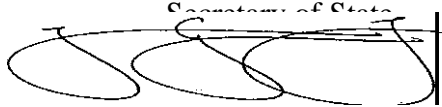


PUERTO RICO ENERGY COMMISSION  
COMMONWEALTH OF PUERTO RICO

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Approved: Hon. Victor A. Suarez-Melendez

*Secretary of State*  


By: Francisco E. Cruz-Febus

Deputy Secretary for Government Affairs

**AMENDMENT TO REGULATION NUMBER. 8653, REGULATION ON THE  
CONTRIBUTION IN LIEU OF TAXES (CILT)**

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**COMMONWEALTH OF PUERTO RICO  
PUERTO RICO ENERGY COMMISSION**

**AMENDMENT TO REGULATION NO. 8653, REGULATION ON THE  
CONTRIBUTION IN LIEU OF TAXES (CILT)**

**CHAPTER I - GENERAL PROVISIONS**

**ARTICLE 1.- GENERAL PROVISIONS**

**Section 1.01.- Title.**

This Regulation shall be known as the *Regulation on the Contribution in Lieu of Taxes (CILT)*.

**Section 1.02.- Authority.**

The Energy Commission of Puerto Rico ("Commission" or "Energy Commission") adopts this Regulation pursuant to Section 22 of Act No. 83, May 2, 1941, as amended, the Electric Energy Authority Act of Puerto Rico ("Act No. 83"), Articles 6.3 and 6.27 of Act 57-2014, as amended, the Puerto Rico Energy Transformation and RELIEF Act ("Act 57-2014"), of Articles 15 and 21 of Act 4-2016, as amended, the Revitalization of the Electric Energy Authority of Puerto Rico Act ("Act 4-2016"), and of Act No. 170, August 12, 1988, as amended, the Uniform Administrative Procedure Act ("LPAU").

**Section 1.03.- Purpose and Executive Summary.**

On October 19, 2015, the Commission adopted Regulation No. 8653, the Regulation on Contribution in Lieu of Taxes ("CILT") ("Regulation 8653"), fulfilling the mandate established in Section 22 of Act No. 83. The purpose of Regulation 8653 is to establish the mechanism and the guidelines that govern the implementation and distribution of the contribution that the Electric Energy Authority ("AEE" or "Authority") must make to the municipalities as compensation for the exemption of the Authority from municipal taxes by virtue of said Section 22 of Act No. 83.

Among other provisions, Regulation 8653 established the guidelines that govern the calculation for setting the maximum cap for energy consumption of the municipalities covered by the CILT, the adjustments to the maximum cap, as well as the percentage rate of annual municipal savings. Likewise, the Regulation defined and identified the entities whose consumption would be included in the CILT contribution, as well as the applicable guidelines on the procedure for suspending electricity service for the municipalities.

Act 4-2016 enter into force on February 16, 2016, which, among other things, substantially amended the provisions on the CILT in Section 22 of Act No. 83. The Commission adopts this Amendment to Regulation 8653 to facilitate the implementation of the Amendments introduced.

The changes introduced in this Amendment include new provisions on establishing a direct charge to consumers for the CILT, subsidies, and Public Illumination, among others; changes in the way the

maximum cap on municipal consumption is calculated; changes in the savings goals for municipal consumption; changes in the distribution mechanism for the additional contribution to the municipalities that exceed the municipality's savings goal; to condition the additional contribution on the aggregate savings of the municipalities exceeding the global goal of reduction in consumption; changes in adjusting the maximum cap based on the load associated with new efficient construction; the way of estimating consumption in mixed-use facilities (facilities that house CILT-covered entities and entities not covered); changes in the procedure for the determination by the State Office on Energy Public Policy ("acronym in Spanish, OEPPE) of the maximum cap for municipal consumption beginning in FY 2018-2019; and the establishment of an adjustment mechanism for when projected revenues of the AEE that are billed directly to consumers for the CILT, subsidies, and Public Illumination, among others, are insufficient or exceed the projected AEE revenues.

In view of the above, and because of this Amendment, new procedures must be adopted and some AEE and municipal operations must be modified. Likewise, the municipalities should implement immediate and continuous measures to modify their energy consumption.

#### **Section 1.04.- Publication Format for Amendments to Regulation 8653.**

The effective and successful exercise of the Commission's jurisdiction is closely tied to establishing a stable and reliable regulatory framework, which is accessible and easy to examine and understand. In adopting and publishing its guidelines and regulations, the Commission seeks to ensure the greatest possible degree of clarity and accessibility by promoting a proper interaction between the Commission and the entities it regulates, providing clarity regarding the obligations, rights, and responsibilities of the parties.

The Amendments introduced in Act 4-2016 require modifying most of the provisions of Regulation 8653. The Commission decided that the separate publication of the Amendments could cause confusion, by forcing the parties to examine many regulatory pronouncements to determine their rights, responsibilities, and obligations. In view of this, the Commission is publishing in this Amendment the entire content of Regulation 8653, as amended, as a result of the ordinary approval process as provided in the LPAU. The Commission has found it appropriate to include as part of this Amendment all the provisions of Regulation 8653 as amended, to make the regulatory guidelines more accessible to the public, thereby avoiding the need to review multiple regulatory texts as well as fostering procedural economy and efficiency in the examination of the guidelines and regulations.

For the benefit of the public and in fulfillment of the responsibility of the Commission to ensure the transparency of all its procedures, the Commission includes as Appendix A of this Amendment a detailed summary of Sections of Regulation 8653 that have been amended and the nature of the Amendments being made.

Regulation 8653 amended in this document are Sections 1.02, 1.03, 1.08, 1.17, 2.01, 2.02, 2.03, 2.04, 2.05, 2.06, 2.07, 2.08, 2.09, 2.10, 2.11, 2.12, 3.01, 3.02, 3.03, 3.04, 3.05, 3.06, 4.01, 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 5.01, and 5.02.

In addition, there is a new Section 1.04 and subsequent sections of Chapter I have been renumbered. Likewise, Sections 2.02 and 2.04 were eliminated, and subsequent sections of Chapter II were

renumbered. Sections 4.04 and 4.05 were eliminated, and subsequent sections of Chapter IV were renumbered. Chapter VII of Regulation 8653 was amended to move the former section 4.01 to be renumbered as section 7.01 and to add the new section 7.02. All sections formerly in Chapter VII were eliminated. Finally, a Chapter VIII and a new Article VIII were added to include new sections 8.01, 8.02, 8.03, 8.04, and 8.05. The references to the amended sections were adjusted in the amended Regulation.

**Section 1.05.- Application.**

This Regulation shall apply to and establish the guidelines for the procedures that the AEE carries out to calculate and distribute the CILT; the procedures for the municipalities to request compliance with this Regulation from the AEE; the procedures on annual savings in municipal energy consumption; the procedures on suspension of electricity for municipalities; and any other procedure that may be inferred from this Regulation regarding the implementation of the guidelines and public policy on energy that govern the CILT.

**Section 1.06.- Interpretation.**

This Regulation shall be interpreted in a manner that furthers the highest public interest and the protection of the interests of the residents of Puerto Rico, so the procedures may be carried out swiftly, fairly, and economically.

**Section 1.07.- Provisions of Other Regulations.**

This Regulation may be supplemented by other regulations of the Energy Commission of Puerto Rico compatible with this Regulation.

**Section 1.08.- Unforeseen Procedures.**

When a specific procedure has not been foreseen in this or any other regulation of the Commission, the procedure may be carried out in any manner that is consistent with Act 57-2014, as amended.

**Section 1.09.- Definitions.**

A) For this Regulation, these terms shall have the meaning set forth below, except that by the context of any provision the contrary is established:

- 1) "For-profit Activity or Services " refers to Acts, business, services, or transactions carried out by a municipality, by any municipal entity that this constituted or established under the laws of the Commonwealth of Puerto Rico (as for example, a company, association, organization, foundation, institution, municipal corporation municipal enterprise, franchise, etc.) or by any company, association, organization, foundation, institution, corporation or group of people that operates totally or substantially for profit.

- 2) "Not for Profit Activity or Services" refers to Acts, business, services or transactions provided by a municipality or by any special municipal corporation municipal enterprise, or other municipal entity that this constituted or established according to the laws of the Commonwealth of Puerto Rico (for example, a company, association, organization, foundation, institution, or group of people) for providing services or public purposes, which are not for profit and provided to the public for free at the cost of or less than the cost of producing such services.
- 3) "Mayor" refers to the highest official of a municipal government.
- 4) "Public Illumination" refers to municipal public illumination and any municipal or state illumination system, owned by or the property of the AEE, or that has been transferred to the AEE for operation and maintenance, which because of the nature of the electricity service it is provided with does not have a meter for electricity consumption. Municipal public illumination with a meter will be considered part of the metered municipal consumption that will be included in the calculation of Baseline Consumption that will be subject to the limits of the maximum cap. Consumption of electric energy for public illumination is not part of the consumption covered by the CILT.
- 5) "FY" refers to the twelve (12) month period between July 1 of a calendar year and June 30 of the following calendar year.
- 6) "Authority" or "AEE" refers to the Electric Power Authority of Puerto Rico.
- 7) " Private thoroughfare" refers to streets, roads or highways not transferred to a government entity and that are excluded from Article 256 of the Puerto Rico Civil Code because they have not been paid for or maintained with public funds and are not for public use.
- 8) "CILT" refers to the contribution in lieu of taxes, as provided in Section 22 of Act No. 83, May 2, 1941, as amended, the Puerto Rico Electric Power Authority Act.
- 9) "Energy Commission" or " Commission" refers to the "Energy Commission of Puerto Rico", as well as its examining officials, administrative judges and the entire group of commissioners, when they act on behalf of the Commission.
- 10)"Conservation" refers to any reduction in the consumption of electricity that is a product of changes in the energy consumption patterns of the municipalities.
- 11) "Consumption" or " Electricity Consumption" refers to the demand for electric energy, in kWh, by the customer, whether the municipality or for-profit or not-for-profit entities, due to the use of electrical equipment, devices, or appliances in municipal facilities.



- 12) "Baseline Consumption" refers to the average electricity consumption of the municipalities, in kWh per year, for the three years of the highest consumption from FY 2003-2004 to FY 2013-2014, as established in Section 2.03 of this Regulation, which will be the baseline for calculating the maximum cap established by the OEPPE for the first period beginning upon the approval of this Regulation. From FY 2018-2019 on, the Baseline Consumption will be established by the OEPPE and revised every three (3) years.
- 13) "Special Municipal Corporation" or "Special Corporation" refers to non-profit entities with an independent and separate existence and legal personality from the municipality that created the corporation under Act 81-1991, as amended, the Autonomous Municipalities Act of the Commonwealth of Puerto Rico and Act 164-2009, as amended, the General Corporations Act.
- 14) "Municipal Enterprise" refers to a for-profit municipal corporate organization or entity, the purpose of which is to create business to promote enterprises, increase funds for the municipality, or manage franchises, as provided in Sections 1.003 (jj) and 2.004 (u) of Act 81- 1991, as amended.
- 15) "Municipal Entity" includes the municipality, its branches, or offices, municipal enterprises, franchises, special municipal corporations, as well as any legal person and any form of business organization created by the municipality under the laws of the Commonwealth of Puerto Rico.
- 16) "Private Non-profit Entity that provides municipal services" refers to private non-profit entities, constituted or established according to the laws of the Commonwealth of Puerto Rico, that have a written contract with the municipality to provide the public with services that the municipality has provided or proposes to provide in exchange for the use of municipal property to provide such services.
- 17) "Estimated CILT Contribution" refers to the projection made by the Authority to determine the economic equivalent of the maximum cap of the CILT contribution for a municipality, during a given fiscal year.
- 18) "Franchise" refers to a contract or express agreement between a municipality and one or more natural or legal persons, in which a franchisee is granted for the right to participate in the business of providing, selling, or distributing goods or services, on a for-profit basis, under a marketing plan or system substantially underwritten by the owner of the franchise, associated with the trademark of the owner of the franchise, service mark, commercial name, logo, advertising, procedures handbook, menu, uniformity in materials and colors, uniforms or other commercial symbols designated to the owner of a franchise or its affiliates, as provided in Sections 1.003 (kk) and 2.004 (u) of Act 81-1991, as amended.
- 19) "Gross Income" refers to all the AEE income generated in each fiscal year from the sale of electricity to clients.

- 20) "Inspection" refers to the action of the AEE to check or verify the meter or any other equipment that the AEE may have installed on municipal facilities or properties to provide electricity. For this Regulation, this term includes visits by the AEE during business hours or hours open to the public to observe in plain sight the activities or services provided on municipal property or facilities.
  - 21) "Municipal facility" refers to all real property, facilities, structures, buildings, including annexes and the land on which they are located, that is in the possession of a municipal entity for any public purpose or use, whether not for profit or for profit.
  - 22) "Municipality" refers to the legal entity of local government, comprise of a Legislative Branch and an Executive Branch, under the Constitution of the Commonwealth of Puerto Rico and its laws, which has a geographic demarcation with all its words and has a particular name.
  - 23) "OEPPE" refers to the "State Office for Public Policy on Energy."
  - 24) "OIPC" refers to the "Independent Office for Consumer Protection."
  - 25) "Person" includes any natural person, company, or legal person, regardless of the manner of organization.
  - 26) "City Market" refers to the municipal facility that has spaces, stands, concessions and other commercial facilities, which are primarily devoted to the sale and marketing of agricultural products, whose lease contracts are regulated by Act 81-1991, as amended, the Autonomous Municipalities Act of the Commonwealth of Puerto Rico of 1991.
  - 27) "Municipal Property" refers to any real property for which title is held by a municipal entity, acquired through any conveyance or deed.
  - 28) "Rate" refers to all charges collected by the AEE as compensation, tariff, fee, toll, rent, or classification for any electricity service, in effect at the time this regulation is approved, as well as any that may be approved by the Commission under the provisions of Act 57-2014, as amended.
  - 29) "Maximum cap" refers to the maximum consumption of each municipality of the contribution that will be covered by the CILT, calculated by the OEPPE, as established in this Regulation.
- B) Any word used in the singular in this Regulation will be understood to include the plural, unless otherwise indicated by the context. Likewise, the terms used in the masculine gender will include the feminine and vice versa.

### **Section 1.10.- Dates and Time Periods.**

In computing any time period established in this Regulation, or by order of the Commission, the day the act, event, or default occurs will not be counted, after which the established term will begin to elapse. When a date or expiration date falls on a legal holiday, Saturday or Sunday, such date or expiration date will be extended to the next day that is not a legal holiday or a Saturday or Sunday.

### **Section 1.11.-Language.**

- A) If there is any discrepancy between the version in Spanish and the version in English of this Regulation, the version in Spanish shall prevail.
- B) Proceedings before the Commission will be held in Spanish. However, at the request of a party, and when warranted, the Commission may order that the proceedings be held in English if this is not incompatible with a fair adjudication.
- C) The allegations, pleadings, and motions shall be drafted in Spanish in English, as preferred by the party. Documents that must be drafted by a party or other person that does not know Spanish or English may be drafted in the vernacular of that party or person if they are accompanied by a certified translation into Spanish or English.
- D) It will not be necessary or compulsory to translate documents submitted in English. However, where it is needed for exercising justice or when the translation of the documents submitted is indispensable for a fair adjudication, the Commission will order that the allegations, motions, or documents requested be translated into Spanish.
- E) All documents submitted in any language other than Spanish or English must be accompanied by a certified translation into Spanish or English.

### **Section 1.12.- Severability**

If any article, provision, word, sentence, subsection, or section of this Regulation were challenged before a court and found to be unconstitutional or null and void, such judgment will not affect, impair, or invalidate the remaining provisions of this Regulation, but the effect thereof shall be limited to the article, provision, word, sentence, subsection, or section found to be unconstitutional or null and void. The nullity or lack of validity of any article, word, sentence, subsection, or section in any specific case will not affect or impair in any manner the application of such in any other case, unless such are specifically and expressly invalidated in all cases.

### **Section 1.13.- Forms.**

The Commission will establish the forms it deems necessary for the procedures to be implemented under this Regulation, and the Commission will make such available to the public on its Internet portal. Nevertheless, the fact that the Commission has not yet adopted one or forms, is in process

of revising such, or the Internet portal is not in service will relieve no party of its obligation to comply with this Regulation or the orders of the Commission.

**Section 1.14.- Mode of Submission.**

The forms, documents, and appearances required by virtue of this Regulation, or any order of the Commission must be submitted before the Commission in electronic format according to the instructions established by the Commission, in relation to the electronic filing system.

If the electronic filing system is temporarily not operating or functioning, the forms, documents, and appearances required by virtue of this Regulation or by any order of the Commission shall be submitted before the Commission in accordance with the instructions established by the Commission.

**Section 1.15.- Effect of the Submission.**

If the document submitted was prepared or formulated by the party submitting it, it shall be deemed that such party has certified that the contents of the document is true and that, according to the party's knowledge, information, and belief, formed after reasonable inquiry, the document is based on correct facts, arguments, legal sources, and information.

**Section 1.16.- Jurisdiction of the Commission to address complaints or appeals before the Commission regarding this Regulation.**

- A) The OEPPE, the OIPC, the AEE, the municipal entities, or any other person with standing, affected by any violation of the provisions of this Regulation may file a complaint before the Commission against the party that committed the violation.
- B) Any person with standing unsatisfied with a decision of the AEE or the OEPPE under this Regulation, may file an appeal before the Energy Commission of Puerto Rico pursuant to Regulation No. 8543, the Regulation on Adjudicatory Proceedings, Notices of Violations, Rate Review, and Investigations of the Commission, or the under the subsequent versions of such Regulation. In these cases, the pleadings must be submitted before the Commission within thirty (30) days from the date on which the AEE or the OEPPE, issued a final decision on the subject matter of the pleading.
  - 1) The person who files the appeal shall include a copy of the ruling of the AEE or of the OEPPE, respectively, along with proof of the date on which the decision was notified, as well as a copy of all documents that have been filed, submitted, or received during the proceedings that culminated the decision being appealed.
- C) Any person with standing (i) that has clear and convincing proof of the private nature of a street whose illumination system is being unduly treated as public Illumination, (ii) that has submitted such proof to the municipality in whose jurisdiction this private street is located, so that the electricity account for the illumination be transferred to the owner of the private street,

and (iii) that the municipality or the AEE has not taken any action to transfer the account, may file a complaint before the Commission against the AEE or the municipality, as the case may be.

- 1) The person that files the complaint, should include as part of such the proof submitted to the municipality, as well as a copy of any brief or document that has been filed, submitted, received, or exchanged with the municipality or the AEE regarding the private nature of the street and the transfer of the electricity account to the owner of the street.

### **Section 1.17.- Confidential Information.**

If in compliance with the provisions of this Regulation or any order of the Commission, a person has the obligation to submit to the Commission any information which to the knowledge of such person is confidential or privileged under the Rules of Evidence, the person shall identify the information as confidential or privileged and will request that the Commission protect that information, and will set forth in writing the arguments that support the confidential or privileged nature of the information. The Commission will evaluate the petition and, if it determines that the information warrants protection, it will proceed according to the provisions of Article 6.15 of Act 57-2014, as amended.

### **Section 1.18.- Effect.**

Under the LPAU Act, Regulation 8653 went into effect thirty (30) days after it was filed at the Department of State and the Library of the Legislature. The provisions of Regulation 8653 that have been modified by this Amendment will be in effect thirty (30) days after it has been filed at the Department of State and the Library of the Legislature, as provided in Sections 2.8 and 2.13 of the LPAU Act.

## **CHAPTER II - CONTRIBUTION IN LIEU OF TAXES**

### **ARTICLE 2.- GENERAL PROVISIONS ON THE MECHANISM FOR CALCULATING AND DISTRIBUTING THE CILT**

#### **Section 2.01.- Charges for the CILT and others.**

Based on new rates approved by the Commission, every year the Authority will calculate the cost of subsidies, assistance, and contributions under current legislation, rural electrification programs, public irrigation systems, public illumination, and the CILT. As may be approved by the Commission, the AEE shall establish a separate charge in its transparent bill for the cost of the CILT and the other aforementioned subsidies as follows:

- A) Payment in lieu of municipal taxes, CILT;
- B) Cost of subsidies, contributions, public illumination, the rural electrification program, and the public irrigation system.

## **Section 2.02.- Insufficiency of AEE income to cover the CILT.**

If the projected income of the AEE as directly billed to consumers to cover the cost of the subsidies, the rural electrification program, the public irrigation system, public illumination, contributions, and the CILT is insufficient or exceeds the projected revenues established in the duly approved rate, the insufficiency or excess will be evaluated and addressed in a periodic review process of such charges according to the rate approved by the Energy Commission.

If the revenue collected by the end of the annual rating cycle of the AEE is insufficient or exceeds the actual cost of the CILT and the subsidies, contributions, public illumination, rural electrification program, and public irrigation system, the AEE may include an adjustment for the following rating year. In such case, within forty-five (45) days, to be counted from the effective date of the adjustment, the AEE will submit to the Commission all the information to demonstrate the need for the adjustment and that the lack of revenue was not due to reasons attributable to the AEE. The AEE will bear the burden of proof to show that its revenue policies are aligned with industry standards. The Commission may request any additional information it may consider necessary for evaluating the need for the adjustment.

The Commission will evaluate the information and if it finds that the lack of revenue is due to reasons attributable to the inefficiency of the AEE in its billing or collection processes not aligned with industry standards, the Commission will order the AEE to set aside the adjustment and credit clients for the amount collected for the adjustment during the applicable period. Likewise, if the Commission finds that the adjustment established by the AEE is not in accord with the deficiency in the revenue or is arithmetically wrong or is excessive for recovering such, the Commission will order the AEE to modify the adjustment and credit customers for the amount billed in excess due to the error identified by the Commission.

The AEE may not recover an amount greater than the cash equivalent of the maximum cap assigned to the municipalities, unless it shows to the satisfaction of the Commission, that the deficiency is due to reasons attributable to extraordinary changes in the cost of fuel or in the demand for energy or deficiencies in revenues not attributable to inefficiencies of the AEE.

If there are outstanding debts with the municipalities for the additional contribution based on savings on energy consumption, as provided in Section 4.04 of this Regulation, which the AEE is unable to recover through the adjustment mechanism established in this Section, that additional contribution shall be paid to the municipalities from the administrative and operational savings that the AEE must make as required in Act 57-2014 and Act No. 83. The debt for the additional contribution to the municipality must be paid within no more than twelve (12) months to be counted from the fiscal year in which the municipality could receive the additional contribution.

Notwithstanding this Section, the fact that AEE revenues are insufficient in a given fiscal year for the AEE to pay the CILT contribution in full does not release the municipalities from paying for the consumption in excess of the contribution, as set forth in paragraph (C) of Section 2.05 of this Regulation.

### **Section 2.03.- Baseline Consumption and Maximum Cap for Municipal Consumption.**

The maximum cap for municipal consumption will be calculated based on the average consumption of electricity of the municipalities, in kWh per annum, for the three years of highest consumption between FY 2003-2004 and FY 2013-2014.

The maximum cap for consumption will be calculated as follows for each municipality:

- A) The three years with the highest consumption from FY 2003-2004 to FY 2013-2014 will be identified and the average total consumption in kWh will be calculated for those years, which will be the Baseline Consumption.
- B) Average consumption in kWh will be calculated for public illumination, for each of the three years identified in the above subsection.
- C) The average consumption for public illumination will be subtracted from the Baseline Consumption.
- D) The result of this operation will be the maximum cap for consumption for fiscal years 2016-2017 and 2017-2018.
- E) Nevertheless, as provided in Chapter III of this Regulation, the consumption of electricity by the properties or facilities excluded from the CILT by Act 57-2014 and this Regulation will be excluded from the maximum cap.

The Authority will bill the municipality for all consumption in excess of the maximum cap for collection as provided in Section 2.05 of this Regulation.

### **Section 2.04.- Certification of new municipal facilities; Adjustments of the maximum cap.**

As provided in Section 3.05 of this Regulation, for FY 2017- 2018, the maximum cap may be adjusted in view of the load created by newly developed municipal facilities if the new construction has been duly certified as being efficient, according to the parameters established for this purpose by the OEPPE through regulations, and that the property or facility houses an entity engaged in not-for-profit activities or services. If a municipal facility does not comply with the efficiency parameters, the OEPPE will determine the adjustment of the maximum cap, based on the percentage of compliance of the new construction with efficiency standards. furthermore, the amount of the adjustment of the maximum cap shall be proportional to the percentage of compliance of the new structure with the efficiency parameters established by the OEPPE, considering the estimated total consumption of the new construction.

All municipalities that may pursue an adjustment of their maximum cap due to the construction of new energy efficient properties or facilities, shall apply for the adjustment of the OEPPE, once a use permit has been obtained from the Permit Management Office of the Commonwealth of Puerto Rico or the entity that is responsible for issuing such. The OEPPE will have thirty (30) days from the receipt of the application to process the application. In cases in which the OEPPE certifies that the

new construction that is the subject of the application is efficient or that the construction partially complies with the efficiency standards, the OEPPE will estimate the corresponding adjustment of the maximum cap of the municipality. Within ten (10) days to be counted from the date of certification, the OEPPE shall send the municipality and the AEE, by email and certified mail return receipt requested, a copy of the certification issued for the new construction, setting forth the amount that according to the OEPPE will be the adjustment of the maximum cap. Once the OEPPE has issued the certification, the municipality may submit a request for adjustment of its maximum cap to the AEE, which will be evaluated as provided in Section 3.05 of this Regulation.

The OEPPE shall establish through regulation the process for applying for certification of efficiency of new construction as described above, as well as the efficiency parameters that the municipalities must comply with to obtain the certification, within one hundred and twenty (120) days, to be counted from the effective date of this Amendment.

**Section 2.05.- Report on electricity consumption, invoice for consumption in excess of the maximum cap, and notification of additional contribution.**

- A) Every month, the AEE will send each municipality a report on the consumption of each facility covered by the CILT with an independent meter for consumption.
- B) The report must show (i) the contribution available to the municipality in kWh during the current fiscal year, (ii) the balance of such contribution after discounting the consumption of electricity by the municipality during the month being covered in the report, (iii) the consumption for the same month in the previous year for each facility, (iv) a calculation of cumulative consumption at that date compared to cumulative consumption at the same date during the previous year for each facility and (v) an itemized total of the requirements under (iii) and (iv) of this subsection. Once the municipality has exhausted the maximum cap on consumption in kWh for the current fiscal year, subsequent reports shall indicate the amount consumed in excess of the maximum cap during the period covered by the report and the corresponding monetary value of that excess consumption, according to the service contracts established for each municipal account and the rates in effect when the report is drafted.
- C) The AEE will send each municipality a final invoice setting forth in detail the excess consumption and the amount owed by the municipality regarding such consumption, within thirty (30) days to be counted from the last day of the Fiscal Year in which the excess consumption occurred. The municipality shall make the necessary arrangements with the AEE to address or liquidate the debt within forty-five (45) days to be counted from (i) the date the invoice was sent to the municipality by email, or if the municipality receives the invoice by regular mail, from three (3) days following the date of the invoice, or (ii) if the procedure for objecting to the invoice has been exhausted, as provided in Chapter V of this Regulation. If the municipality does not reach an agreement with the AEE or makes no payment within the established, the AEE will begin the process of suspending the electricity service, as provided in the guidelines in Chapter V of this Regulation.
- D) In cases in which annual consumption in kWh of a municipality is less than its maximum cap, the AEE will send it a report within thirty (30) days, to be counted from the last day of the



Fiscal Year for that the consumption, which will include (i) the total consumption, (ii) the savings regarding the maximum cap, and (iii) additional contribution to which it is entitled under this Regulation.

- E) Within (12) months, to be counted from the effective date of Act 4-2016 , the AEE must modify its meter-reading systems and software so that all of the municipality's meters that are invoiced against the CILT are read on the same day. The AEE shall notify the Energy Commission of the changes to be implemented at least thirty (30) days before the date of implementation in its systems.

**Section 2.06.- Total annual municipal Consumption.**

At the end of each fiscal year, the AEE will calculate the total consumption of the municipality in kWh for that period. The AEE will notify the OEPPE, the OIPC, and the Commission of this calculation for the municipality within thirty (30) days to be counted from the last day of the fiscal year.

**Section 2.07. Notification to the municipalities of the estimated CILT contribution and quarterly revisions.**

On or before April 30 of each fiscal year, the Authority will notify each municipality of the estimated monetary value and in kWh of the CILT contribution for the next fiscal year. The monetary value will be estimated by projecting the average cost for electricity for the next fiscal year, based on the actual cost of total consumption in kWh of each municipality during the previous fiscal year.

The estimated CILT contribution, calculated in dollars and in kWh, will be revised quarterly by the AEE until March 31 of each year, according to the adjustments made pursuant to Section 3.05 of this Regulation or based on consumption associated with the connection of new load to the system, as provided in Section 3.06 of this Regulation. No revision of the estimated contribution made after that date will be included in the maximum cap for the following fiscal year.

**Section 2.08. Development of efficiency goals for municipal energy consumption; Calculation of the Baseline Consumption and the maximum cap beginning in FY 2018-2019.**

Beginning in FY 2018-2019, the OEPPE shall establish the Baseline Consumption and the maximum cap of each municipality and review such every three (3) years to verify that they comply with the individual goals of conservation and energy efficiency, pursuant to the guidelines established by the Commission through regulation.

The new maximum caps for the following three (3) year period will be notified to the municipalities on or before April 15, 2018. Any revision of maximum caps that the OEPPE may make after that date shall be notified to the municipalities on or before April 15 of the fiscal year before such maximum caps will be in effect.

As provided in Section 22 of Act No. 83, as amended, the OEPPE shall recommend the mechanism to be used to establish temporary caps if it is impossible to review the energy consumption of one or more municipalities. If for justified reasons the OEPPE is not able to revise the maximum caps of the municipalities for FY 2018-2019 and has not recommended the mechanism for establishing temporary caps, the maximum cap of each municipality for FY 2017-2018 will be adopted as the temporary maximum cap. This temporary maximum cap will continue to be in effect until the OEPPE revises and establishes a new maximum cap.

The Commission will establish by regulation, in consultation with the OEPPE, the metric it will use to establish the energy consumption in municipal facilities, as well as the parameters for encouraging and measuring the energy efficiency in the municipal facilities, including the efficiency goals in energy consumption for each municipality. Beginning in FY 2018-2019, this metric will be considered the energy consumption standard to determine the contribution that each municipality is entitled to within the CILT parameters. The Commission will also establish the consequences of failing to meet the respective efficiency goals of the municipalities beginning in that fiscal year.

**Section 2.09. Publication of electricity consumption of the municipalities.**

The AEE will publish information on the electricity consumption of each municipality every month on its Internet portal. This information will include, but shall not be limited to, the total consumption in kWh for the month, the maximum cap for annual consumption, the cumulative consumption during the current fiscal year, the monetary value of monthly consumption, and the cumulative monetary value during the current fiscal year.

**Section 2.10. Reports of the AEE on the application of the CILT formula.**

- A) On or before December 31 of every year, the AEE will submit a detailed report on the consumption of each municipality and the consumption for public illumination, subsidies, and contributions. The AEE shall include the following as part of the report:
  - 1) A copy of the financial statements of the AEE, a report to bond holders, and any other report that includes the following information:
    - a) Gross income of the AEE;
    - b) The revenue collected by direct invoicing of consumers to cover the cost of subsidies, rural electrification programs, the public irrigation system, contributions, public illumination, and the CILT;
    - c) A certification by auditors external to the AEE stating that the calculation or reconciliation in the methodology used to determine the maximum cap for consumption or the CILT of the municipalities is correct;
    - d) The annual amount invoiced for electricity or the additional contribution of each municipality; and

- e) The cost of consumption for public illumination, subsidies, and other contributions.
  - 2) Once the audited financial statements have been issued, the AEE will submit a certification by the external auditors of the AEE regarding the calculation of the CILT contribution.
- B) This report must be submitted by the AEE to the Energy Commission, the OEPPE, the OIPC, the Office of the Commissioner of Municipal Affairs (OCAM), the Mayors Association, the Federation of Mayors, the Office of the Secretary of the House of Representatives, the Office of the Secretary of the Senate of Puerto Rico, and any municipality that may request the report.

### **CHAPTER III.- MUNICIPAL UNITS INCLUDED IN THE CILT CONTRIBUTION**

#### **ARTICLE 3. PROVISIONS ON MUNICIPAL UNITS**

##### **Section 3.01.- Consumption covered by the CILT.**

The CILT contribution shall include: (1) the electrical consumption of all municipal properties and facilities used for not-for-profit activities or services according to this Chapter and the procedure established in Section 3.03 of this Regulation; (2) the consumption of electricity by the corporations or businesses that provide public services related to health care and health care facilities ("facilities"), as defined in Act No. 101, June 26, 1965, as amended, the Health Care Facilities of Puerto Rico; (3) the consumption of electricity in the City Markets, as defined in this Regulation; and (4) the consumption of electricity by municipal facilities, which due to exceptional circumstances the Commission determines should be included as part of the CILT, according to Section 3.04 of this Regulation.

##### **Section 3.02.- Consumption excluded from the CILT.**

Consumption of electricity on any municipal property or facility used: (1) for for-profit activities or services; (2) by non-profit private entities that do not provide municipal services; or (3) by people that are not a municipal entity, will not be considered within the CILT contribution. Likewise, the consumption for public illumination shall be excluded from the CILT.

Except for public illumination, the electricity consumption of the properties or facilities referred to in the previous paragraph shall be invoiced separately from the invoice for municipal consumption subject to the CILT contribution. The AEE shall consider such municipal entities as customers different from the municipality, so the guidelines and procedures established by the AEE for its non-municipal customers will be applied to them, including, but not limited to, the procedures for the review of invoices and the suspension of electricity service for lack of payment.

The cost of public illumination will be invoiced directly to AEE customers, as provided in Section 2.01 of this Regulation.

**Section 3.03.- Procedure for classifying municipal properties, facilities, and entities.**

A) On or before December 31 of each year, all municipalities will provide the AEE with the necessary the information for evaluating and classifying the properties and facilities where municipal entities or persons engaged in non-profit activities or services are located, as defined in this Regulation, for the purpose of identifying the accounts, properties, and facilities for which the consumption will be included in the CILT contribution for the following fiscal year. For this purpose, the municipalities, on or before of that date, shall provide the AEE with, the following information:

- 1) A list of all the properties and facilities owned by a municipal entity or that are in the possession of or occupied by municipal entities. This list shall specify the following for each property and facilities:
  - a) The names of the persons or entities in the immediate possession of the property or facility (or part of it) and the conveyance or deed by which they have such possession;
  - b) A description of activities carried out or the uses made of the property or facility;
  - c) The date on which each of these persons or entities began to use the property or facility (or part of it);
  - d) The number of the service contract (or the meter number) under which electricity is provided for the property or facility;
  - e) For all municipal properties or facilities that are (1) "mixed use," that house entities or activities that are included in the CILT and entities or activities that are excluded from the CILT, and (2) that do not have separate meters for such activities, the municipality shall also submit:
    - i. A list of all the entities housed in the property or facility, including whether it is an entity included in or excluded from the CILT.
    - ii. The kind of activity carried out by each entity (e.g. office, hotel, recreational park, health services, grocery store, etc.).
    - iii. Surface area in square feet (ft<sup>2</sup>), occupied by each entity.
- 2) A list of all municipal entities, specifying:
  - a) The street and mailing addresses of each entity;
  - b) The date on which they were organized and the date on which they began to operate;
  - c) The authorized representative of each municipal entity;

- d) A description of the functions of each municipal entity or the services it provides;
  - e) The location of the properties or facilities where each municipal entity carries out its activities, identified by service contract number or meter number of each property or facility;
  - f) In the case of the entities with their own legal personality, the municipality shall include a copy of the certificate of incorporation and, if applicable, the Tax Exemption issued by the Department of the Treasury;
  - g) In addition, a certification will be included which is signed by the representative of each municipal entity stating:
    - i. Whether the municipal entity collects a fee, rent, or charge from the public for the services offered, for entering or for using the properties or facilities that the municipal entity operates or manages.
    - ii. Whether the municipal entity generates annual income that exceeds the production costs of the services provided or the operational costs of its activities.
    - iii. Whether the municipal entity operates or carries out activities on a for-profit or non-profit basis.
- 3) A list of all the municipal properties and facilities used for recreation, such as parks, coliseums, plazas, basketball courts, activity centers, community recreation sites or centers, among others, specifying:
- a) The date since which each property and facilities has been used for such activities;
  - b) The number of the service contract of the meter used for electricity at the property or facility; and
  - c) Whether for-profit or non-profit activities are carried out at each municipal property or facilities.
- 4) Any other information that may be required by the Authority.
- B) The AEE will evaluate the information submitted by the municipality and classify the municipal facilities according to this Regulation. On or before March 31 of each year, the AEE will notify the municipality of the municipal properties and facilities for which their electricity consumption will be included, subject to a maximum cap applicable to the municipality for the following fiscal year for the CILT contribution. In facilities that house entities whose consumption is included in the CILT and entities whose consumption is excluded, the AEE will notify the share (the percentage) of the consumption that will be

included in the CILT and the percentages that will be excluded, under Section 3.04 of this Regulation. The consumption excluded from the CILT will be invoiced separately to the entity or to the municipality, as provided in Section 3.02 of this Regulation.

- C) The consumption of electricity of all municipal properties and facilities as well as of municipal entities whose information has not been submitted to the AEE on or before December 31 will be excluded from the CILT benefit during the fiscal year following the deadline for filing. The municipality will be responsible for the payment of the entire consumption of such municipal properties, facilities, and entities, regardless of the nature of the activities or services provided at the property or facility, or the nature of the activities or services provided by the municipal entity.
- D) On or before March 31 of each year, the AEE will submit to the Commission and the OEPPE a detailed report, by municipality, regarding the municipal properties and facilities, which, as notified to the municipalities, will benefit from the CILT contribution. The report will include, among other things:
  - 1) The street address of each municipal property or facility;
  - 2) The name of the municipal entity or the third party that occupies or is in possession of the municipal property or facility;
  - 3) The number of the electricity contract for the municipal property or facility, the rate of the account and the consumption of the municipal facility in kWh for the fiscal year before the report, as well as any other additional information that the AEE may consider relevant to provide.
- E) On or before April 15 of each year, the OEPPE will notify the AEE of the maximum cap of the CILT contribution for each municipality for the next fiscal year.
- F) Any person with standing may file a complaint to the Commission against any person who acting under this Regulation, has submitted or offered false, manipulated, or adulterated information to the AEE. Any person who acting under this Regulation submits or offers false, manipulated, or adulterated information will be subject to sanctions or fines of up to ten thousand dollars (\$10,000.00) for each document or piece of information falsified, adulterated, or that has false information.

**Section 3.04.- Municipal properties and facilities that house entities or activities whose consumption is included in the CILT and entities or activities whose consumption is excluded.**

- A) When a municipal property or facility that does not have separate meters and houses entities or activities whose consumption is included in the CILT and entities or activities whose consumption is excluded, the municipality shall ensure that measurement is separated by installing separate meters that allow for differentiating between the consumption of the different entities or activities. When there is consumption by entities or activities that are both

included and excluded regarding the CILT, the consumption of the latter will be invoiced separately by the AEE.

- B) If separate measurement is not possible for technical or cost reasons, or for any other justifiable reason, the AEE, at the request of the municipality, may invoice the part of the consumption of the facilities that house entities or activities whose consumption is excluded from the CILT: (1) based on estimates, (2) using supplementary meters or submeters, or (3) a combination of them:
- 1) If the consumption of the entity or activity excluded from the CILT can be measured with supplementary meters or submeters, such consumption shall be subtracted from the total consumption of the property or municipal facility and shall be invoiced to that entity or to the municipality according to the service contracts in effect.
  - 2) In the remaining cases, the AEE will estimate the consumption of each entity or activities according to the following procedure:
    - a) The AEE will classify each entity in the municipal facility according to its primary activities (e.g. education, sale of beverages or food, office, etc.), according to how these activities are defined in the *Commercial Buildings Energy Consumption Survey*, published by the U.S. Energy Information Administration.
    - b) For each classification, the AEE shall identify the Consumption Intensity in kWh/ft<sup>2</sup>, according to the most recent *Commercial Buildings Energy Consumption Survey* at the time of making the analysis. For purposes of the estimate, the data to be used will be the Electricity Consumption and Expenditure Intensities for All Buildings.
    - c) The AEE will determine the surface area in square feet (ft<sup>2</sup>) for each entity or activity, according to the information provided by the municipality.
    - d) The estimated energy consumption of each entity or activity shall be the product of the consumption intensity and the corresponding surface area.
    - e) The AEE will divide on a pro-rata basis the actual consumption of the property or facility among the entities or activities that thereof, based on the estimated energy consumption of each one. The portion of the actual consumption that corresponds to the entities or activities excluded from the CILT will be invoiced monthly to them or to the municipality, according to the current service contracts.
  - 3) The municipality may submit to the AEE, a duly justified request to have the invoicing of the consumption of the property or municipal facility that houses entities or activities that are CILT included and excluded be done on the basis of estimates, using supplementary meters or submeters, or a combination of such, using the parameter established in this subsection (B). The AEE shall have thirty (30) days from the submission of the request to the AEE to evaluate the request and notify the municipality of its decision.

- C) Notwithstanding subsections (A) and (B) of this Section, and only in exceptional circumstances, if the installation of separate meters, supplementary meters or submeters is unduly burdensome, or if it is impossible to establish an estimate of the portion of the consumption of the properties or facilities that house the entities or persons whose consumption is excluded from the CILT, or if there is any other justified reason, the municipality may submit a duly justified request to the Commission to have the electricity consumption of the property or municipal facility in question, or part of it, included within of the CILT. In the request, the municipality will set forth, as a minimum, the reasons it believes that the installation of separate meters, supplementary meters or submeters is unduly burdensome or that it is impossible to establish an estimated consumption of the properties or facilities that house entities or activities whose consumption is excluded from the CILT. The Commission will evaluate the request and notify the decision in writing to the municipality and the AEE.
- D) If the municipality does not submit the request referred to in subsections (B) and (C) of this Section before the deadline in Section 3.03 of this Regulation or does not properly justify the electricity consumption of the property or municipal facility that is the subject of the request, that property or facility will be excluded from the CILT and the total consumption of it will be invoiced separately to the municipality.
- E) Any property or facility that the municipality constructs or remodels by over fifty percent (50%) shall have separate meters for areas that may be the subject of any legal transaction that implies the transfer of possession to any entity or person other than municipality or that could house any for-profit activity or service, as defined in this Regulation.

**Section 3.05.- Revision of the CILT contribution in consideration of the classification of municipal properties, facilities, and entities.**

Once the procedure for classifying the municipal properties, facilities and entities has been completed as established in Section 3.03 of this Regulation, the AEE will review the estimated CILT contribution for the first quarter of each fiscal year as provided in Section 2.07 of this Regulation. The AEE will notify each municipality of the revised CILT contribution on or before September 30.

**Section 3.06.- New municipal properties or facilities; Adjustment of the maximum cap.**

When a municipality requests that the Authority include within the CILT the electricity of a new municipal property or facility it shall include as part of the request a copy of the certification issued by the OEPPE pursuant to Section 2.04 of this Regulation and the regulations of the OEPPE, as well as the information required in paragraph (A) of Section 3.03 of this Regulation, regarding new municipal properties or facilities. Once it has been verified that the new construction was certified as efficient by the OEPPE, the AEE will carry out the evaluation and classification procedure established in Section 3.03 of this Regulation, to determine whether the electricity consumption the new property or facility will be included in or excluded from the CILT contribution. If the project does not meet the efficiency parameters established by the OEPPE, the maximum cap will be adjusted according to Section 2.04 of this Regulation.



The AEE will have forty-five (45) days, from the date on which the municipality files the request, to notify the municipality whether or not the electricity consumption of the new property or facility will be included in or excluded from the CILT contribution. If it is to be included, it will apply and implement the adjustment as estimated by the OEPPE, beginning in the quarter following the date of the request.

**Section 3.07.- Inspections of the AEE.**

The AEE may inspect the municipal properties or facilities that are the subject of a request to corroborate the information provided by the municipalities under this Chapter.

**Section 3.08.- Procedure for excluding municipal facilities from the CILT contribution.**

In cases where as a result of an investigation or inspection carried out under Section 3.07 of this Regulation, the AEE identifies any municipal entity, property, or facility that this receiving the benefit of the CILT contribution in violation of this Regulation or of any order of the Commission, the AEE will exclude the consumption of such municipal property or facility from the CILT contribution and advise the OEPPE, which will make the corresponding adjustment of the maximum cap of the municipality. The AEE will also remove those facilities from the municipal invoice and invoice the service as provided in Section 3.02 of this Regulation.

Before excluding the consumption from the contribution and making the corresponding adjustment, the AEE will notify the municipality of its findings. The municipality will have ten (10) days, to be counted from the date on which the notification was deposited in the mail or is sent by email, whichever is the longer period, to respond and state its position. The AEE will have a maximum of (10) days from the date on which the municipality's response is deposited in the mail or sent by email to the AEE, whichever is the longer period, to evaluate the municipality's response and make a final decision, which it will notify to the municipality.

**CHAPTER IV.- MUNICIPAL ENERGY SAVINGS**

**ARTICLE 4.- PROVISIONS ON THE REDUCTION IN MUNICIPAL ELECTRICITY CONSUMPTION AND CALCULATION OF THE MAXIMUM CAP FOR CONSUMPTION BEGINNING IN FY 2018-2019**

**Section 4.01.- Annual savings in municipal electricity consumption.**

As provided in Section 22 of Act No. 83, as amended, the municipalities shall annually reduce their electricity consumption covered by the CILT in an amount equivalent to five percent (5%) of its current maximum cap, calculated as provided in Section 2.03 of this Regulation.

This provision will guide the annual savings of municipal electricity consumption from the time this Amendment is in effect, pursuant to Section 22 of Act No. 83, as amended, and Section 2.08 of this Regulation.

After the completion of the first period of reductions in consumption under this Regulation, the municipalities will continue to implement efficiency measures in electricity consumption according to the individual reduction and energy efficiency parameters, rules, and goals that the OEPPE may establish for each municipality.

**Section 4.02. Collaboration of the OEPPE with the municipalities.**

The OEPPE will provide technical collaboration, free of cost, to the municipalities to assist them in achieving the goals set forth in this Chapter.

**Section 4.03. Guidelines for the calculation of the maximum cap for consumption beginning in FY 2018-2019.**

The Commission shall establish by regulation, in consultation with the OEPPE, the guidelines that will govern the review process of the Baseline Consumption by the OEPPE beginning in FY 2018-2019.

**Section 4.04. Excess annual savings established for municipal electricity consumption.**

If at the time this Amendment is in effect, any municipality exceeds a percentage rate of savings of five percent (5%) of the maximum cap in the first fiscal year or ten percent (10%) in the second or third fiscal year, that municipality will receive from the AEE an additional contribution equivalent to one hundred percent (100%) of the savings achieved in excess of the percentage rate for the fiscal year in which the savings were obtained. The monetary value of the additional contribution will be calculated based on current rates at the closing of the fiscal year in which the excess in annual savings occurred. The AEE will notify the municipality regarding the additional contribution under the provisions of Section 2.05 of this Regulation.

Notwithstanding the foregoing, the payment of the additional contribution to the municipalities will be subject to the reduction in the aggregate consumption of all the municipalities being at least five percent (5%) in the first fiscal year and ten percent (10%) in the second or the third fiscal year, . Therefore, if during a given fiscal year the reduction in the aggregate consumption of the municipalities does not exceed the percentage rate for that fiscal year, the AEE will not make any payment for savings in municipal consumption, regardless of the individual level of savings of each municipality.

If the required reduction in municipal aggregate consumption has been achieved, the surplus or excess of such savings will be distributed as an additional contribution, subject to the following conditions:

- A) If any municipality exceeds its maximum consumption cap, the Authority shall reserve that excess of the additional amount to be paid to the municipalities that exceeded their savings by five percent (5%) in the first fiscal year and ten percent (10%) in the second or third fiscal year, as the case may be. The AEE shall distribute the remainder among the municipalities entitled to the additional contribution, on a pro-rata basis according to the individual surplus in kWh over savings required in the corresponding year. The AEE shall distribute the reserved amount among the municipalities that surpassed their savings goal to the degree that the

municipalities whose consumption exceeded their maximum cap pay the amount owed the AEE. For this purpose, on or before of the last day of the quarter following the receipt of any payment made by a debtor municipality, the AEE shall distribute on a pro-rata basis among the municipalities that surpassed their savings goals an amount equivalent to the payments received for the excess consumption. For the purposes of this paragraph, quarters will be the periods of time between January 1 and March 31, April 1 and June 30, July 1 and September 30; and October and December 31 of every calendar year.

- B) Notwithstanding the above, if the AEE does not recover from its customers the money equivalent to the maximum consumption of the municipalities collected through the separate rate for such purposes, no payment shall be made regarding the savings and the amount due to each municipality as an additional contribution based on its savings in electricity consumption shall be reserved to be paid at the time that the income of the Authority under the CILT is sufficient to comply with the additional contribution owed. This additional contribution will be made by establishing priorities for payment proportionally based on the savings in consumption achieved by each municipality.

**Section 4.05.- Failure to achieve annual savings established for municipal electricity consumption.**

If a municipality fails to comply with the percentage of the reduction provided in Section 4.04 of this Regulation during a given fiscal year, its rate of reduction or savings shall be an additional five percent (5%) for the following fiscal year. Therefore, that municipality will be unable to benefit from the incentive of the additional contribution due to savings in its electricity consumption until it exceeds a fifteen percent (15%) reduction rate in its consumption for the following fiscal year.

**CHAPTER V.- REVIEW OF MONTHLY CONSUMPTION REPORTS AND ANNUAL INVOICES AND SUSPENSION OF ELECTRICITY FOR LACK OF PAYMENT**

**ARTICLE 5.- PROVISIONS ON THE PROCEDURE FOR THE REVIEW OF MONTHLY CONSUMPTION REPORTS AND ANNUAL INVOICES AND SUSPENSION OF THE ELECTRICITY OF MUNICIPAL UNITS INCLUDED IN THE CILT CONTRIBUTION**

**Section 5.01.- Procedure for the review of monthly consumption reports and annual invoices for municipal electricity.**

The procedure for the review of municipal monthly consumption reports and electricity invoices covered under the CILT will be carried out according to this Section and any other regulations adopted by the Commission for this purpose.

- A) Any municipality may object to the monthly consumption report or its electricity invoice and request an investigation by the AEE within forty-five (45) days, to be counted from the date the monthly consumption report or the invoice was sent to the municipality by email, or if the municipality receives the monthly consumption report or the invoice by regular mail, to be counted from three (3) days following the date of the monthly consumption report or the invoice. It will not be necessary to make any payment to object to the monthly consumption

report and request the corresponding investigation. On the other hand, to be able to object to the invoice and request the corresponding investigation, the municipality shall pay fifty percent (50%) of the consumption billed in excess of the maximum cap.

- B) Despite the foregoing, no municipality may use this procedure to object to or challenge the rate in effect or the Transition Charge for securitization invoiced by the AEE or the Servicer, as these terms are defined in Act 4-2016.
- C) The municipality may notify the AEE of its objection and request an investigation of its monthly consumption report or invoice by certified mail, telephone, fax, or email if such objection and request are submitted through the contacts specified for such purposes by the AEE and the date of sending the objection and request for investigation may be determined.
- D) Once the objection and request for investigation have been made, the AEE must initiate the investigation or administrative process as warranted within thirty (30) days, to be counted from the date on which the municipality notified its objection and request for an investigation. If the AEE fails to initiate the process within thirty (30) days, the objection will be adjudicated in favor of the municipality.
- E) The AEE must conclude the investigation or administrative process, issue the corresponding resolution, and respond to the municipality within sixty (60) days, to be counted from the date the investigation or administrative process was initiated. The AEE shall notify the municipality of the results of the investigation or administrative process in writing at its mailing address of record or at the email address as provided with the notice of objection and request for investigation. When notifying the results of the investigation or administrative process, the AEE will advise the municipality of its right to file a reconsideration of such results and the period of time within which it should file the reconsideration.
- F) If the municipality does not agree with the results of the investigation or administrative process of the AEE, it must file a written request to the AEE for the reconsideration of that initial decision made by a senior official. All requests for reconsideration must be filed within twenty (20) days to be counted from the notification of the AEE's decision on the results of the investigation or administrative process. The municipality may file and notify the request for reconsideration to the AEE by certified mail, fax, or email, provided that it is filed through the specific contacts provided by the AEE for this purpose and it is possible to ascertain the date the request for reconsideration was sent.
- G) The AEE shall have thirty (30) days from the submission of the request for reconsideration to evaluate the request and notify the municipality in writing of its final decision regarding the investigation. If the AEE fails to make such written notification within thirty (30) days, the objection will be adjudicated in favor of the municipality. All final decisions must clearly in writing that the municipality may appeal before the Commission and a description of the manner in which the appeal should be made.
- H) If the municipality disagrees with the decision of the AEE regarding its objection to the monthly consumption report or its electricity invoice, it may commence formal review

proceedings before the Commission within thirty (30) days, to be counted from the date of notification of the final decision.

- I) In the appeal before the Commission the municipality as complainant must show it has met the requirements established in this Section. likewise, the AEE shall establish in its first appearance before the Commission it has strictly met the requirements established in this Section
- J) The Commission will review *de novo* the final decision of the AEE regarding the objection and the results of the investigation
- K) All monthly consumption reports that the AEE may submit to the municipality shall set forth in a conspicuous way that the municipality has forty-five (45) days in which to object to the report and request an investigation by the AEE, which is without affecting the service. If the forty-five (45) day term has elapsed with no objection by the municipality to the consumption report or a request for an investigation of such, it will be understood that the municipality has accepted the validity of the report and it will lose the right to challenge such in any future claim or proceeding.
- L) All invoices that the AEE may send to the municipality shall conspicuously state that the municipality has forty-five (45) days to object to the invoice, pay fifty percent (50%) of the consumption in excess of the maximum cap invoiced, and request an investigation by the AEE, which is without affecting the service.
- M) The submission of the objection to a monthly report or an invoice, as well as a request for an investigation by the AEE will not release the objecting municipality from its duty to pay the amount in excess of its maximum cap and not objected to in future invoices for electricity that the AEE may submit to the municipality.

### **Section 5.02. Payment plan.**

When the municipality's consumption exceeds its maximum cap, which had not been invoiced or was a part of a review procedure, the municipality may undertake a payment plan, in accordance with its financial means, which may have a duration of up to twenty-four (24) months. The municipality must request such payment plan from the AEE within forty-five (45) days as described in paragraph (C) of Section 2.05 of this Regulation. As a condition for the approval of a payment plan, the municipality in question must pay the AEE twenty-five percent (25%) of the total debt covered by such plan.

The AEE and the municipality may enter an agreement to ensure compliance by the latter with the payment plan assigning to the AEE the rights of the municipality to remittances to the Municipal Revenue Collection Center (CRIM) that are sufficient to cover such payments. The AEE and the municipality shall execute the documents and instruments that may be necessary to perfect such assignment of rights and conveyances.

**Section 5.03.- Default on payment plan.**

If a municipality defaults on its payment plan, the AEE shall suspend the electricity service of such municipality, in accordance with this Chapter. The electricity service of the municipality will be reconnected when the municipality cures the default.

**Section 5.04.- Failure to pay consumption in excess of the CILT contribution.**

If the municipality fails to pay an amount invoiced for consumption in excess of the maximum cap after forty-five (45) days have elapsed as described in paragraph (C) of Section 2.05 of this Regulation and fails to use or exhaust the procedure for objecting to invoices established in Section 5.01 of this Regulation or fails to request a payment plan under Section 5.02 of this Regulation, the AEE shall suspend the electricity service of that municipality until such payment is made, under this Chapter.

**Section 5.05.- Notification of suspension of service.**

In the event of lack of payment by the municipality within the established term for such payment, the AEE shall implement a suspension plan for the municipality's electricity service, according to Section 5.06 of this Regulation, and shall notify the municipality within seven (7) days, to be counted from the date of the expiration of the forty-five (45) day term described in paragraph (C) of Section 2.05 of this Regulation. The suspension plan will be implemented after ten (10) days to be counted from the date of notification.

**Section 5.06.- Suspension plan for electricity service for municipal facilities.**

When the AEE has complied with the procedural requirements of this Chapter with regard to the failure to pay an invoice for electricity by a municipality, it shall implement a suspension plan according to the following provisions:

- A) The AEE shall establish a schedule for suspension of services which will be notified to the municipality and the OEPPE at least forty-eight (48) hours before commencing the implementation of it.
- B) The suspension of services will be completed within a maximum of thirty (30) days from the date of notification of the plan.
- C) The AEE will publish the suspension plan on its Internet portal at least forty-eight (48) hours before the implementation of the plan. On the portal, the plan must be readily accessible to the public. For this purpose, the AEE must establish a link to the suspension plan on the home page of the Internet portal. As soon as the AEE has published the suspension plan on its Internet portal, it shall issue a press release on the plan for dissemination in the media. It shall also publish notices of this plan in the communications applications to which it has access. In addition, the municipality shall post the suspension plan on the bulletin boards of the facilities affected by the suspension plan.

- D) The plan will consist of the suspension of the electricity service of municipal facilities or properties in the order established in the list with the order of suspension that the municipality has submitted to the AEE under Section 5.07 of this Regulation. If the municipality has not submitted a list with an order for suspension of service, the plan will consist of the suspension of the electricity service of municipal facilities or properties that provide services subject to the suspension, according to the order established in Section 5.09 of this Regulation.
- E) When a municipality has not submitted a list with the order of suspension of service and the suspension plan is governed by the order established in Section 5.09, such suspension plan will not include the municipal facilities or properties that house municipal entities that provide services not subject to the suspension of electricity service in Section 5.08 of this Regulation.
- F) The suspension plan for services will never be implemented on a Friday, Saturday, Sunday or holiday, nor on a business day before a holiday.

**Section 5.07.- Order for Suspension List of the Municipality.**

- A) All municipalities may submit to the AEE in writing a list of the order for suspension for municipal facilities and properties under the suspension plan of electricity service. The municipality will identify on the list all municipal facilities and properties, specifying the account used for the electricity service for each one of such municipal facilities and properties, and place such in order of preference for the suspension of electricity. To that effect, the property or facility that this in first place on the list will be the first facility or property for which the AEE will suspend electricity service when, under this Regulation, the AEE must implement the suspension plan. The property or facility that this in the last place on the list, will be the last property or facility for which electricity service will be suspended in the implementation of a suspension plan.
- B) Notwithstanding the above, under no circumstances will municipal properties and facilities that provide health services be included in a plan for the suspension of electricity service.
- C) The document with the list of the order for suspension of service will be signed by the mayor of the municipality that submits the list. This document shall be sent to the AEE by certified mail, return receipt requested, within sixty (60) days of the effective date of this Regulation . If the municipality seeks to change the order for suspension of service, it may send written notification to the AEE by certified mail, return receipt requested, on or before June 1 of each year, to be effective on July 1 of the new fiscal year.
- D) Absent a list of the order for suspension of service submitted by the municipality under this Section, the plan for the suspension of electricity service to be followed by the AEE for that municipality will be governed by Section 5.09 of this Regulation.

**Section 5.08.- Municipal services that will not be subject to the suspension of electricity service.**

Municipal properties and facilities that house municipal entities that provide the followings services will not be a part of the suspension plan to be followed by the AEE absent a list of the order for suspension submitted by a municipality:

- A) Healthcare services
  - 1) Diagnosis and Treatment Centers (CDT)
  - 2) Hospitals
  - 3) Urgent care centers
  - 4) Emergency centers
  - 5) Rehabilitation centers
  - 6) Elderly care centers
  - 7) Corporations or businesses that provide public services related to health care and healthcare facilities as defined in Act No. 101, June 26, 1965, as amended, the Health Care Facilities Act of Puerto Rico".
- B) Security services
  - 1) Municipal police
  - 2) Municipal emergency and disaster management office
- C) Municipal schools

The municipalities shall advise the AEE of any change that implies the loss of status as not subject to suspension of any facility considered within ten (10) days of the change.

**Section 5.09.- Municipal services that are subject to suspension of electricity service.**

The following services will be subject to the suspension of electricity service:

- A) City Council Office
- B) Office of the City Manager
- C) Internal Audit Office
- D) Municipal Procurement Office
- E) Budget Office
- F) Offices of municipal consortia
- G) Information Systems Office
- H) Planning Office
- I) Municipal Permits Office
- J) Human Resources Office
- K) Office of the Municipal Secretary



- L) Community centers
- M) Faith-based community initiatives Office
- N) Community Affairs Office
- O) Passive recreation parks, botanical gardens, or other non-sports recreational spaces
- P) Sports facilities
- Q) Any other municipal service not mentioned in Section 5.07 of this Regulation

If any of the municipal facilities listed in this Section should share the same meter with any of the municipal facilities listed in Section 5.08 of this Regulation, the services that are provided there will be services that are not subject to the suspension of electricity service for the purposes of the electricity suspension plan for the municipality.

**Section 5.10.- Accounts of municipal properties or facilities that house municipal services not subject to suspension; priorities in the application of payments.**

When a municipality is in default regarding debt owed to the AEE, the AEE will apply on a priority basis any payment received from that municipality to the invoices for the accounts of the municipal properties or facilities that house municipal entities that provide services not subject to suspension, despite the item to which the municipality may have attributed such payments or the age of the respective amounts owed. The AEE will state this on the receipt issued to the municipality for the payment made.

**Section 5.11.- Responsibility of the AEE to fulfill the suspension plan for municipal electricity service.**

The municipality's list of the order for suspension, or in the absence of it, the suspension plan for electricity as provided in Section 5.09 of this Regulation, shall be a part of any service contract between the municipality and the AEE. The AEE will strictly fulfill this suspension plan for electricity service. The AEE will not have discretionary powers regarding the implementation of the plan, except in those aspects that could affect the reliability and stability of the electric power system.

**Section 5.12.- Information for municipalities.**

- A) When the municipality executes a service contract with the Authority, the Authority will advise the municipality of the procedure established in compliance with this Chapter. The information to be provided includes the following, but is not limited to such:
  - 1) Each stage of the process of the suspension of electricity and the terms of each stage.
  - 2) The rights, functions, and obligations of each party, to wit, the AEE and the municipality.
  - 3) The Authority's availability to explain the process to the municipality to clarify questions regarding the process.
  - 4) Any other information that the AEE may consider relevant.

For services under existing contracts, the AEE will have ninety (90) days, to be counted from the effective date of this Regulation , to notify each municipality of the requirements of this Section.

## **CHAPTER VI.- PROCEDURE FOR MUNICIPAL UNITS EXCLUDED FROM THE CILT CONTRIBUTION**

### **ARTICLE 6.- PROVISIONS ON THE PROCEDURE FOR THE REVIEW OF INVOICES AND THE SUSPENSION OF ELECTRICITY SERVICE FOR MUNICIPAL UNITS EXCLUDED FROM THE CILT CONTRIBUTION**

#### **Section 6.01.- Procedure for the review of electricity invoices and suspension of service for municipal units excluded from the CILT contribution.**

The procedure for the review of invoices and the suspension of the electricity service for municipal units excluded from the CILT contribution will be carried out according to Article 6.27 of Act 57-2014 and the regulations that the Commission may adopt.

## **CHAPTER VII. PUBLIC ILLUMINATION**

### **ARTICLE 7.-PUBLIC ILLUMINATION**

#### **Section 7.01.- Inventory of Public Illumination.**

- A) Within one hundred and eighty (180) days, to be counted from the date of approval of this Regulation, the AEE will prepare an inventory of public illumination and, upon completion of the inventory, shall submit a copy of such to the OEPPE and the Commission. The inventory will include the specific location of each light fixture, a description of each, and the estimated monthly and annual electricity consumption in kWh of each of these. The period of time may be extended for one hundred eighty (180) days by the Commission at the Commission's discretion for just cause, upon written request to the Commission within the original term. In the request for an extension of time, the AEE shall provide a detailed report of the work performed during the original term, as well as a partial inventory of the public light fixtures of the public illumination. In addition, the AEE shall submit a detailed work plan for completing the inventory.
- B) For this Regulation, any outdoor illumination system that operates on a private street is not considered a part of public illumination and it will be listed separately in the inventory referred to in this Section. It shall be the responsibility of the owner of the private street to request electricity service and pay for the costs of separation and the cost of electricity consumption of such illumination system.
- C) Within one hundred and eighty (180) days to be counted from the date of approval of this Regulation, each municipality shall submit to the AEE a list of the private streets within the municipal limits, the name and the last known address of the owner of the private street, will report whether at the time the list is submitted, the street has an outdoor illumination system

that is interconnected and operating as public illumination or whether the outdoor illumination is paid for by one or more owners of the street.

- D) The AEE shall disconnect the electricity service of any private street that has an outdoor illumination system that is accounted for as public illumination, as notified by the municipality. The AEE shall notify the owner of the private street of its intention to disconnect the service at least seven (7) days before the scheduled date for the disconnection and will refer the owner to the proper Commercial Office for orientation on applying for connection and payment for such a system.
- E) The AEE will revise the public illumination inventory every three (3) years, after the submission of the first inventory, following the parameters established in this Section. The AEE shall submit a copy of this revised inventory to all the municipalities, to the OEPPE and the Commission, no later than March 31 of the fiscal year in which the inventory was revised. The three (3) year term will elapse from the date on which the AEE submits the most recent inventory to the Commission.
- F) All requests by a municipality for the installation of new public illumination or the substitution of existing public illumination will be governed by the regulations that the OEPPE and the AEE may approve for such purposes, pursuant to the provisions of Section 7.02 of this Regulation.
- G) For this Regulation, it will be assumed that the streets are public unless otherwise demonstrated, until the municipality has evidence to the contrary, or until an administrative or judicial forum determines otherwise.

#### **Section 7.02.- Regulations for the Installation of New Public Illumination.**

Within one hundred twenty (120) days, to be counted from the effective date of this Amendment, the OEPPE shall establish by regulation the criteria and guidelines for determining whether a request for the installation of new public illumination or the substitution of existing public illumination is warranted or justified. In this regulation, the OEPPE shall establish the criteria for determining the reasonability of the request, as well as the criteria for the efficiency of the equipment to be installed to achieve the most energy savings at the lowest reasonable cost. The regulation shall establish the procedure for the certification that the proposed new public illumination facility or substitution of existing public illumination complies with the criteria and parameters established by the OEPPE.

Within one hundred eighty (180) days, to be counted from the effective date of this Amendment, the AEE shall establish the administrative procedure that will govern the request processes for the installation of new public illumination or the substitution of existing public illumination.

The administrative procedure of the AEE shall include the caveat that all requests to the AEE for the installation of new public illumination or substitution of existing public illumination shall be accompanied by a certification by the OEPPE that the illumination complies with the criteria and for meters established by the OEPPE by regulation.

Every three (3) months the Authority shall adjust the public illumination inventory and the estimated public illumination consumption according to new developments. Such will be a part of the analysis and adjustment for the following rating year, pursuant to the provisions of Section 2.02 of this Regulation. The Authority will publish the most recent public illumination inventory on its Internet portal, including the date of the most recent revision of the inventory.

## **CHAPTER VIII.- TRANSITIONAL PROVISIONS**

### **ARTICLE 8.- TRANSITIONAL PROVISIONS**

#### **Section 8.01.- Distribution of the revenues of the AEE to cover the CILT and other obligations during the period prior to the effective date of the newly approved rate.**

From the effective date of this Amendment until the effective date of a new rate approved by the Commission, the AEE will obtain and separate the funds for covering the cost of the subsidies, assistance, and contributions provided under current legislation, rural electrification programs, public irrigation systems, public illumination, and the CILT, as established in the rates in effect at the time this Amendment is in effect.

Notwithstanding the provisions of Section 3.01 of this Regulation, the consumption for public illumination will be excluded from the CILT once the new approved rate and the separate charges that are approved by the Commission is in effect, according to which the AEE will invoice the cost of public illumination directly to AEE customers, as provided in of Section 22 of Act No. 83 and Section 2.01 of this Regulation.

#### **Section 8.02.- Classification of municipal properties, facilities, and entities for FY 2016-2017.**

- 1) Within ninety (90) days, to be counted from the effective date of this Amendment, the municipalities will provide the AEE with the information required in paragraph (A) of Section 3.03 of this Regulation, to identify whose consumption will be included as part of the CILT contribution for FY 2016-2017.
- 2) The AEE will evaluate the information it has been provided with under the above paragraph and will notify each municipality, the OEPPE, and the Commission within one hundred and fifty (150) days, to be counted from the effective date of this Amendment, regarding the municipal properties and facilities whose electricity consumption will be included in the corresponding CILT contribution, subject to the maximum cap applicable to the municipality for FY 2016-2017. The AEE will bill the municipalities separately for the consumption of the facilities not included as part of the CILT contribution for FY 2016-2017, under this Regulation.
- 3) The consumption of the electricity service of municipal properties and facilities, and municipal entities whose information has not been submitted to the AEE on or before the term established in the first paragraph of this Section, will be excluded from the benefit of the CILT contribution during the FY 2016-2017. In this scenario, the municipality will be responsible for the payment of the total consumption of these properties, municipal

facilities, and entities, despite the nature of the activity or services provided in the property or facility, or the nature of the activity or services provided by the municipal entity.

- 4) When the municipality only submitted to the AEE part of the information required in this Section, the AEE will determine, based on the partial information provided, the municipal properties, facilities, and entities whose consumption of electricity service will be included in the CILT contribution during FY 2016-2017 and will be excluded of such benefit, under the paragraphs (C) and (D) of Section 3.03 of this Regulation.

**Section 8.03.- Adjustment of the maximum cap in consideration of the classification of the municipal properties, facilities, and entities for FY 2016-2017.**

Within thirty (30) days from the date of delivery by the AEE of the information required in subsection (2) of Section 8.02 of this Regulation, the OEPPE will adjust the maximum cap of each municipality to exclude the equivalent to average annual consumption in kWh of the facilities whose electricity consumption will be excluded of the CILT contribution. The OEPPE will notify each municipality with a copy to the AEE and the Commission of the adjustment that has been made.

**Section 8.04.- Report on the municipal properties and facilities that will benefit from the CILT during FY 2016- 2017.**

Within one hundred fifty (150) days of the effective date of this Amendment, the AEE will submit to the Commission and the OEPPE a report on the municipal properties and facilities that according to the notification made to the municipalities will benefit from the CILT contribution for 2016-2017 as required in paragraph (E) of Section 3.03 of this Regulation.

**Section 8.05.- Review of the CILT contribution in consideration of the classification of the municipal properties, facilities, and entities for FY 2016-2017.**

Upon completing the classification procedure for municipal properties, facilities, and entities as established in Section 8.02 and the procedure for the adjustment of the maximum cap established in Section 8.03 of this Regulation, the AEE will review the estimated CILT contribution for FY 2016-2017 and shall notify each municipality of the respective revised estimate, specifying the corresponding credits within one hundred and eighty (180) days from the effective date of this Amendment, as established in Section 2.07 of this Regulation.

So agreed by the Commission in San Juan, Puerto Rico, on September 21, 2016.

s/  
Agustín F. Carbó-Lugo  
President

s/  
Angel R. Rivera-de la Cruz  
Associate Commissioner

s/  
José H. Roman-Morales  
Associate Commissioner