

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

IN RE:

ENERGY EFFICIENCY AND DEMAND
RESPONSE TRANSITION PERIOD
PLAN

CASE NO.: NEPR-MI-2022-0001

SUBJECT: Motion to Submit Costs
Associated with Emergency DR Program in
Compliance with Resolution and Order of
August 11, 2023, and Request for
Confidential Treatment

**MOTION TO SUBMIT COSTS ASSOCIATED WITH EMERGENCY DR PROGRAM IN
COMPLIANCE WITH RESOLUTION AND ORDER OF AUGUST 11, 2023, AND
REQUEST FOR CONFIDENTIAL TREATMENT**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME now LUMA Energy, LLC (“ManagementCo”), and LUMA Energy ServCo, LLC (“ServCo”), (jointly referred to as “LUMA”), and respectfully state and request the following:

I. Relevant Background and Procedural History

1. On June 21, 2022, LUMA filed with the Energy Bureau a proposed Energy Efficiency (“EE”) and Demand Response (“DR”) Transition Period Plan containing the description of various EE and DR Programs to be implemented by LUMA during the Transition Period and associated budgets for Fiscal Years (“FY”) 2023 and 2024, including a Battery DR Response Program targeting residential customers with behind the meter batteries and providing incentives for load shifting to batteries during DR event periods and an Emergency DR Program targeted at commercial and industrial customers for customers to voluntarily reduce load and/or shift load to back up generators during DR events. *See Motion Submitting Proposed EE/DR Transition Period*

Plan in Case No. NEPR-MI-2021-0006, *In Re: Demand Response Plan Review, Implementation and Monitoring* of that date and its *Exhibit 1* (this Exhibit 1, the “Proposed TPP”).

2. After other procedural events, on February 16, 2023, the Energy Bureau issued a Resolution and Order (the “February 16th Resolution and Order”) in the instant proceeding in which it considered, amended and approved the Proposed TPP (the Proposed TPP, as approved by the Energy Bureau, the “Approved TPP”).

3. In the February 16th Resolution and Order, the Energy Bureau concluded that the Proposed TPP “represents a reasonable and appropriate launch of EE and DR programs in Puerto Rico and approves all components of LUMA's Proposed TPP that are not specifically addressed” in the February 16th Resolution and Order. *See* February 16th Resolution and Order on page 5. In addition, the Energy Bureau established deadlines for various activities under the Proposed TPP, including for filing the EE Rider, timing for the EE Rider to enter into effect and reporting requirements.

4. In pertinent part, in the February 16th Resolution and Order, the Energy Bureau ordered LUMA to “[d]evelop an emergency battery DR program for existing residential and commercial/customers, for launch in FY2023, to be part of or operated in parallel with its proposed emergency DR program” and to “leverage the capabilities of third-party aggregators to launch this program”.¹ *See id.* The Energy Bureau also provided that “LUMA shall ... refile its request for approval of any additional DR program offerings after establishing agreements with third-party aggregators and enrolling residential and commercial customers in its emergency battery DR

¹ The Energy Bureau also indicates that “LUMA's top priority shall be to work with third-party battery aggregators to develop and launch an emergency battery DR program in FY2023, as part of or paired with its proposed emergency DR program that utilizes backup generators and other load flexibility”. *See id.* at page 15.

program”. *See id.* Regarding customer enrollment, the Energy Bureau indicated that: “LUMA shall prioritize launch of emergency DR program offerings.” *See id.* at page 23.

5. On March 8, 2023, LUMA filed a motion requesting reconsideration of certain requirements or determinations in the February 16th Resolution and Order. *See Motion for Reconsideration of Resolution and Order of February 16, 2023, and Request to Vacate Deadlines* of that date (“March 8th Motion”).

6. On April 3, 2023, the Energy Bureau issued a Resolution and Order (“April 3rd Resolution and Order”) in which it made several determinations regarding LUMA’s March 8th Motion. Among others, the Energy Bureau ordered LUMA to file a petition for approval of the EE Rider on or before April 11, 2023 (*see* April 3rd Resolution and Order on page 5) and ordered LUMA to complete certain activities by specified deadlines, including, among others, to: “file, on or before June 9, 2023, proof that it has enrolled customers in an Emergency DR program” (*see id.* at page 6); “file, on or before 30 calendar days following the EE Rider Approval Date, or July 14, 2023, whichever occurs later, documentation showing that LUMA has the capability to call Emergency DR events” (*see id.*); and “file, on or before 75 calendar days following the EE Rider Approval Date, documentation showing that LUMA is processing energy efficiency incentive/rebate applications” (*see id.*).

7. On April 11, 2023, LUMA submitted a petition for approval of the EE Rider (“EE Rider Petition”).

8. On May 5, 2023, the Energy Bureau held a Technical Conference to discuss the EE Rider Petition filed by LUMA, during which the Energy Bureau issued a bench order requiring LUMA to file a revised Exhibit 1 to the EE Rider Petition, to include certain clarifications that

were discussed during the Technical Conference, including consolidating the Emergency DR and Battery DR Programs into one program.

9. On May 19, 2023, in compliance with the May 5th Bench Order, LUMA filed revised Exhibits 1 and 2 of the EE Rider Petition (these along with the April 11th Motion, the “Revised EE Rider Petition”). *See Motion to Submit Revised Exhibit 1 to EE Rider Petition and Translation Thereof, in Compliance with Bench Order of May 5, 2023* (“May 19th Motion”). The revised Exhibit 1 consolidates the Emergency DR and Battery DR Programs into one program as required by the Energy Bureau in the May 5th Bench Order. *See id.* at pages 3-4 and Exhibit 1.²

10. On June 5, 2023, LUMA filed an *Informative Motion and Urgent Request for Clarification Regarding Requirements Applicable to the Emergency DR Program and Extension to Meet Program Enrollment Deadline in Resolution and Order of April 3, 2023* (“June 5th Motion”). In this motion, LUMA informed that, in accordance with the February 16th Resolution and Order, it had been actively working on the establishment of the Emergency DR Program, prioritizing the Emergency Battery DR component of this program, including leveraging the capabilities of third-party aggregators to enroll the customers and provide other related services. *See June 5th Motion* on page 6. LUMA also requested the Energy Bureau to issue a clarification regarding the applicability of certain provisions of Regulation 8701, Amendment to Regulation No. 8618 on Certification, Annual Fees and Operational Plans for Electric Service Companies in Puerto Rico, as amended (“Regulation 8701”) and of the Regulation for Demand Response, Regulation 9246 (“DR Regulation”), with respect to the DR aggregators or the Emergency DR Program, and explained that the uncertainty surrounding the applicability of these provisions

² A translation of Exhibit 1 of the Revised EE Rider Petition submitted to the Energy Bureau on June 9, 2023. *See Motion to Submit Translation of Revised Exhibit 1 to EE Rider Petition in Compliance with Bench Order of May 5, 2023* of that date.

presented a barrier for the third-party DR aggregators to proceed with enrollment and could delay the execution of the aggregator agreements between LUMA and the third-party DR aggregators. *See id.* at pages 6-8 and 8-9.

11. On June 15, 2023, the Energy Bureau issued a Resolution and Order (“June 15th Order”) addressing LUMA’s June 5th Motion clarifying the issues regarding the applicability of certain provisions of Regulation 8701 and the DR Regulation. *See* June 15th Resolution and Order on pages 4-5. The Energy Bureau also ordered LUMA to file, on or before July 14, 2023, proof that it has enrolled customers in an Emergency DR program and file, on or before July 31, 2023, documentation showing that LUMA has the capability to call Emergency DR events. *See id.*

12. On June 29, 2023, LUMA filed with the Energy Bureau an *Urgent Motion Requesting Determination Regarding the Revised EE Rider Petition and Clarifying the Calculated Factor in the Revised EE Rider Petition and Clarifying the Calculated Factor in the Revised EE Rider Petition Submitted on May 19, 2023* (“June 29th Motion”). In the June 29th Motion, LUMA informed that, as directed by the Energy Bureau through its February 16 Resolution and Order, LUMA had been in continuous communication with government agencies to identify areas of collaboration, including through state or federal funds for the implementation of the Approved TPP, but notwithstanding the government’s optimism in leveraging disaster recovery and federal funding opportunities, the amount and timeline of availability of government funds for the implementation of the Approved TPP in FY2024 remained uncertain. *See* June 19th Motion on page 10. LUMA further explained that given the aforementioned situation, government funding would not be available for LUMA to proceed with the implementation of the Approved TPP by July 1, 2023, and that the only currently available funding mechanism was the EE Rider. *See id.* at page 11. LUMA requested the Energy Bureau to urgently issue a determination regarding the

Revised EE Rider Petition so that LUMA could proceed with the implementation of the Approved TPP. *See id.* at page 13. LUMA stressed that, without such determination and absent a confirmed alternative source of funds, it could not proceed with the implementation of the Approved TPP for FY2024. *See id.* at page 11.

13. On June 30, 2023, the Energy Bureau issued a Resolution and Order in Case No NEPR-MI-2020-0001, *In Re: Permanent Rate of the Puerto Rico Electric Power Authority* (“Permanent Rate Case”) (“June 30th Resolution and Order”) wherein it determined, among others, to suspend the EE Charge [EE Rider] for the month of July 2023 given the “great probability that the costs associated with [EE] programs will be paid with funds not associated with the EE Charge [EE Rider].” *See* June 30th Resolution and Order, page 11.³

14. On July 1, 2023, the Energy Bureau issued a Resolution and Order in the Permanent Rate Case (“July 1st Resolution and Order”) wherein it clarified that it did not suspend the EE and DR programs as a result of the suspension of the EE Charge [EE Rider] and ordered LUMA to continue with the implementation of the TPP and the EE/DR programs. *See* July 1st Resolution and Order, page 2.

15. On July 14, 2023, LUMA filed a motion requesting the Energy Bureau that, given the effect of the funding constraints created by the suspension of the EE Rider approval on the implementation of the Emergency DR program, it suspend the deadlines to submit proof of customers enrolled in an Emergency DR program and documentation showing that LUMA has the capability to call Emergency DR events for the same time period during which the EE Rider is in

³ On June 30, 2023, the Solar and Energy Storage Association of Puerto Rico (“SESA”) submitted to the Energy Bureau in connection with the Permanent Rate Case a letter regarding “SESA Request for PREB Authorization for LUMA to move forward with Energy Efficiency and Demand Response Programs (NEPR-MI-2020-0001)”, requesting, in response to the June 30th Resolution and Order, that the Energy Bureau “issue an order today, affirming the Emergency Battery Demand Response Program’s launch for tomorrow”. LUMA was not formally notified of this submittal.

suspense. *See Response to Orders Staying Approval and Implementation of EE Rider and Request for Suspension of Deadlines to Submit Proof of Customer Enrollment and Documentation on Capability to Call Events Related to Emergency DR Program* (“July 14th Motion”) on pages 10-11. LUMA also requested the Energy Bureau to establish new deadlines based on the date on which the EE Rider is approved and implemented in LUMA’s billing system or the date on which funds from an alternative funding source are disbursed to LUMA or are otherwise unencumbered and readily available to fully cover the cost of the Emergency DR Program. *See id.* at page 11.

16. On July 31, 2023, the Energy Bureau issued a Resolution and Order in Case No. NEPR-MI-2020-0001, *In Re: Permanent Rate of the Puerto Rico Electric Power Authority*, (“July 31st Order”), in which it determined, in pertinent part, that the cost of DR programs will not form part of the EE rider and ordered LUMA to contemplate the DR programs as part of the proposal of factors corresponding to the purchase power cost adjustment (“PPCA”) mechanism, as these consist of purchase of energy. *See July 31st Order* on pages 8 and 10. The Energy Bureau mentions that the costs for the Emergency DR and the Economic DR Programs are \$5,263,0983 (*see id.* at page 8) (which is the amount submitted by LUMA for these programs as part of the Revised EE Rider Petition). In addition, the Energy Bureau ordered LUMA to comply with Section 3.01(B) of the DR Regulation, specifically with respect to requesting approval from the Energy Bureau before implementing the mechanism and costs associated with the compensation that will be offered to service account holders that participate in the DR programs. *See id.* at page 10.

17. On July 20, 2023, the Solar and Energy Storage Association of Puerto Rico (“SESA”) filed a motion titled *SESA reiterated Request for PREB Funding Authorization for LUMA to move forward with EE/DR programs and Further Requests for Clarity of Emergency DR Programs Details* (“July 20 SESA Motion”) in which it expressed, among others, support for the

launch of the Emergency DR program, supported LUMA's July 14th Motion on funding clarity, and requested further clarity and transparency on funding details and substantive and procedural specifics of the Emergency DR program.

18. On August 1, 2023, DR Third Party Aggregators filed a motion titled *Comments Proposing Launch Milestones for the Battery Emergency DR Program Under LUMA EE/DR Transition Period Plan* ("August 1 DR Motion"), laying out a schedule of actions required to launch the Emergency DR program, among others.

19. On August 11, 2023, the Energy Bureau issued a Resolution and Order ("August 11th Order") addressing two interrelated issues raised in LUMA's July 14th Motion, the July 20 SESA Motion and the August 1 DR Motion- to wit, funding availability for the Emergency DR program and expected program schedule.

20. In the August 11th Order, the Energy Bureau makes reference to its determination in the July 31st Resolution and Order to the effect that the EE programs will be funded by the EE Rider and/or external funding, while DR program costs will be recovered through the PPCA. *See* August 11th Order on page 2. The Energy Bureau explains that "[t]his structure for DR program funding reflects the physical similarity between the Emergency DR program and the virtual power plant resources that PREPA is procuring through competitive solicitation and purchased power agreements" and that "[b]y allowing cost recovery of program costs incurred each quarter, this approach also addresses DR Third Party's concern that scalable funding must account for future DR program growth and participation". *See id.*

21. In addition, in the August 11th Order, the Energy Bureau orders LUMA to:

- File, on or before August 23, 2023, "for the Energy Bureau's approval", "the associated cost related to the compensation to be offered to the DR Aggregators and/or ratepayers that

participate in the DR Program which shall be recovered through the PPCA (e.g., \$kW; \$kW/h, etc.)”;

- file, “within two weeks of the Energy Bureau's approval of the compensation to the participants, proof it has published Emergency DR program terms, established agreements with DR aggregators, and enrolled customers in the program” (“Agreement/Enrollment Milestone”); and
- file, “within two weeks of its filing proof of customer enrollment, documentation showing that LUMA has the capability to call Emergency DR events”⁴ (“Capability Milestone”).

See id. at page 3.

22. The Energy Bureau also establishes an updated requirement for LUMA to file “documentation showing that LUMA is processing energy efficiency incentive/rebate applications” by ordering LUMA to file this documentation “on or before 60 days following the earlier of two dates: 1) the date on which the EE Rider is implemented with a value greater than zero, or 2) the date on which LUMA or the Energy Bureau secure a funding commitment from an external source (such as the government of Puerto Rico or Federal funds) sufficient to implement approved EE programs.” *See id.*

II. Compliance with August 11th Order with Respect to Associated Costs of the Emergency DR Program

23. In compliance with the August 11th Order, LUMA herein submits the proposed estimated costs associated with the Emergency DR Program, including the cost related to the compensation to be offered to the DR aggregators that participate in the DR Program to be recovered through the PPCA. *See Exhibit 1.* As discussed in Exhibit 1, LUMA estimates that the

⁴ According to the Energy Bureau, this documentation “shall be a report on a successful test dispatch event, including the number of participants and the capacity dispatched”. *See id.*

costs of the Emergency DR Program proposed to be recovered through the PPCA would be approximately \$5,060,938. In *Exhibit 1*, LUMA provides a breakdown and description of these costs. Part of these costs arise from the compensation to be offered to the DR aggregators, as generally described below and, in more detail, in *Exhibit 1*.

24. As explained in *Exhibit 1*, LUMA's Emergency DR Program⁵ is a Battery Emergency Demand Response Program (the "Program") leveraging the capabilities of third-party DR aggregators to obtain DR resources from PREPA commercial and residential customers with behind the meter batteries. Under this Program, qualified DR aggregators who execute agreements with PREPA (represented by LUMA as PREPA's agent) for participation in the Program ("DR Aggregators"), are required to (a) enroll in the Program their customers who are PREPA residential and commercial customers with behind the meter batteries and meet certain other specified requirements for participation, (b) dispatch the battery resources of the enrolled customers during DR events called by LUMA, and (c) compensate these customers for the energy provided. Customer participation in the Program is voluntary and customers may opt out of the Program at any time. In addition, participation of enrolled customers in DR events is also voluntary, with customers being able to opt out of any DR event at any time. As for compensation, under the Program, LUMA pays DR Aggregators a standard, non-negotiable performance payment for the aggregation services, and the DR Aggregator is, in turn, required to pay enrolled customers for

⁵ Pursuant to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement among LUMA, the Puerto Rico Electric Power Authority ("PREPA") and the Puerto Rico Public Private Partnerships Authority dated as of June 22, 2020, as supplemented and as may be amended from time to time in accordance with its terms ("T&D OMA"), LUMA provides operations and maintenance of the Puerto Rico transmission and distribution system owned by PREPA and related assets ("T&D System") on behalf of or as agent for PREPA. Therefore, the BEDRP program was created and is managed by LUMA on behalf of PREPA and any actions taken by LUMA in connection with the Program are taken on behalf of or as agent for PREPA as owner of the T&D System; any references to any approval, communication, notification or other action issued or taken by LUMA in relation to the Program prior to the expiration or early termination of the T&D OMA shall be deemed an approval, communication, notification or other action issued or taken by PREPA, as owner of the T&D System.

operating their batteries during DR events. LUMA is proposing the performance payment to DR Aggregators described in Exhibit 1, while the incentive to be paid by the DR Aggregator to enrolled customers would be determined by the DR Aggregator according to their unique business model and customer value proposition (the foregoing, the “Compensation Structure”). Exhibit 1 contains more detailed information on the Program and associated costs.

25. In Exhibit 1, LUMA also includes a proposed timeline to achieve the Agreement/ Enrollment Milestone and the Capability Milestone in the August 11th Order. The timeline takes into account the necessary additional coordination and collaboration with the DR Aggregators to be able to achieve these milestones. LUMA will publish the BEDR Program Terms as part of the procurement process that will be issued on Power Advocate. LUMA will issue a Request for Acquisition, notify potential DR Aggregators about the opportunity, and gather qualifications to identify eligible DR Aggregators. All DR Aggregators determined to be eligible through this process will then be invited to execute a Master Aggregator Agreement, which should be complete by mid-September. It should be noted that DR Aggregators will be able to enroll in the program on a rolling basis, even after the process has closed. Once the Agreement is executed, DR Aggregators may begin recruiting and enrolling customers. Shortly after customer enrollment begins, LUMA expects that DR Aggregators will be able to conduct a test event dispatch to confirm their ability to respond to LUMA’s request for additional energy.

26. Contemplating these additional steps, the Proposed Timeline suggests that the Agreement/Enrollment and Capability Milestones might not be achieved by the timeframes established by the Energy Bureau. Although LUMA will endeavor to meet these deadlines, LUMA will be vigilant of how these events develop and timely inform this honorable Energy Bureau of any impacts to these milestone deadlines.

II. Request for Confidential Treatment and Supporting Memorandum of Law

27. Exhibit 1 contain the proposed compensation to be paid to DR Aggregators participating in the Program. LUMA respectfully submits at this time this information is sensitive commercial information that should protected from disclosure. For the reasons stated below, LUMA respectfully requests the Energy Bureau to grant confidential treatment to this information. LUMA’s supporting Memorandum of Law is also included below.

A. Applicable Laws and Regulations

28. The bedrock provision on the management of confidential information filed before this Bureau, is Section 6.15 of Act 57-2014, known as the “Puerto Rico Energy Transformation and Relief Act.” It provides, in pertinent part, that: “if any person who is required to submit information to the Energy [Bureau] believes that the information to be submitted has any confidentiality privilege, such person may request the Commission to treat such information as such” 22 LPRA §1054n. If the Energy Bureau determines, after appropriate evaluation, that the information should be protected, “it shall grant such protection in a manner that least affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted.” *Id.*, Section 6.15 (a).

29. Relatedly, in connection with the duties of electric power service companies, Section 1.10 (i) of Act 17-2019 provides that electric power service companies shall “provide documents and information as requested by customers, except for: (i) confidential information in accordance with the Rules of Evidence of Puerto Rico; [...] (vii) trade secrets of third parties.” *Id.* § 114li(i) (Emphasis added.)

30. Access to the confidential information shall be provided “only to the lawyers and external consultants involved in the administrative process after the execution of a confidentiality

agreement.” *Id.*, Section 6.15(b). Finally, Act 57-2014 provides that this Energy Bureau “shall keep the documents submitted for its consideration out of public reach only in exceptional cases. In these cases, the information shall be duly safeguarded and delivered exclusively to the personnel of the [Bureau] who need to know such information under nondisclosure agreements. However, the [Bureau] shall direct that a non-confidential copy be furnished for public review”. *Id.*, Section 6.15 (c).

31. The Energy Bureau’s Policy on Confidential Information details the procedures a party should follow to request that a document or portion thereof be afforded confidential treatment. In essence, the referenced Policy requires the identification of the confidential information and the ... filing of a memorandum of law explaining the legal basis and support for a request to file information confidentially. *See* CEPR-MI-2016-0009, Section A, as amended by the Resolution of September 16, 2016, CEPR-MI-2016-0009. The memorandum should also include a table that identifies the confidential information, a summary of the legal basis for the confidential designation, and the reasons why each claim or designation conforms to the applicable legal basis of confidentiality. *Id.* paragraphs 3. The party who seeks confidential treatment of information filed with the Bureau must also file both “redacted” or “public version” and an “unredacted” or “confidential” version of the document that contains confidential information. *Id.* paragraph 6.

32. The aforementioned Energy Bureau policy on the management of confidential information in procedures states the following with regard to access to validated Trade Secret Information:

1. Trade Secret Information

Any document designated by the [Energy Bureau] as Validated Confidential

information because it is a trade secret under Act 80-2011 may only be accessed by the Producing Party and the [Bureau], unless otherwise set forth by the [Bureau] or any competent court.

Id. Section D (on Access to Validated Confidential Information).

33. Under the Industrial and Trade Secret Protection Act of Puerto Rico, Act 80-2011, 10 LPRA §§4131-4144, industrial or trade secrets are deemed to be any information:

- (a) That has a present or a potential independent financial value or that provides a business advantage, insofar as such information is not common knowledge or readily accessible through proper means by persons who could make a monetary profit from the use or disclosure of such information, and
- (b) for which reasonable security measures have been taken, as circumstances dictate, to maintain its confidentiality.

Id. §4131, Section 3 Act. 80-2011.⁶ Trade secrets include, but are not limited to, processes, methods, mechanisms, manufacturing processes, formulas, projects, or patterns to develop machinery and lists of specialized clients that may afford an advantage to a competitor. *See* Statement of Motives, Act 80-2011. As explained in the Statement of Motives of Act 80-2011, protected trade secrets include any information bearing commercial or industrial value that the owner reasonably protects from disclosure. *Id.* *See also* Article 4 of Puerto Rico's Open Data Law, Act 122-2019 (exempting the following from public disclosure: (1) commercial or financial information whose disclosure will cause competitive harm; (2) trade secrets protected by a contract, statute, or judicial decision (3) private information of third parties). *See* Act 122-2019, Articles 4 (ix) and (x) and (xi)).

⁶ Relatedly, Rule 513 of the Rules of Evidence of Puerto Rico provides that the owner of a trade secret may invoke the privilege to refuse to disclose, and to prevent another person, from disclosing trade secrets, provide that these actions do not tend to conceal fraudulent actions or lead to an injustice. 32 P.R. Laws Annot. Ap. VI, R 513. If a court of law mandates disclosure of a trade secret, precautionary measures should be adopted to protect the interests of the owner of the trade secret. *Id.*

34. The Puerto Rico Supreme Court has explained that the trade secrets privilege protects free enterprise and extends to commercial information that is confidential in nature. *Ponce Adv. Med. v. Santiago Gonzalez*, 197 DPR 891, 901-02 (2017) (citation omitted).

35. Relatedly, Energy Bureau Regulation No. 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Proceedings*, includes a provision for filing confidential information in adjudicatory proceedings before this honorable Bureau. To wit, Section 1.15 provides that “a person has the duty to disclose information to the [Bureau] considered to be privileged information, request the [Bureau] the protection of said information, and provide supportive arguments, in writing, for a claim of information of privileged nature. The [Energy Bureau] shall evaluate the petition and, if it understands [that] the material merits protection, proceed accordingly to ... Article 6.15 of Act No. 57-2015, as amended.” *See also* Bureau Regulation No. 9137 on *Performance Incentive Mechanism*, Section 1.13 (addressing disclosure before the Bureau of Confidential Information and directing compliance with Resolution CEPR-MI-2016-0009).

B. Grounds for Confidentiality

36. The information on the proposed compensation to be paid to DR Aggregators participating in the Program included Exhibit 1 currently has commercial value to LUMA and should be protected. As mentioned, this compensation is intended to be a non-negotiable amount forming part of a standardized program. If disclosed, it could give rise to attempts by third parties to negotiate it. Given that pursuant to the DR Regulation this compensation should be the minimum amount needed to attract a DR resource, attempts at negotiating it could be contrary to this objective. Disclosure could also raise expectations that, if unmet, could result in disincentivizing participation in the Program. Such a result would create a disadvantage to LUMA in its search for

Program success. LUMA respectfully submits that the implementation of this compensation in the Program- a program that is transitional and intended as a testing ground for these new DR initiatives - will be the most appropriate context to test the compensation and can be used for future adjustments to this amount. Therefore, maintaining the compensation information in confidence has a potential independent financial value and its disclosure at this time could have unintended negative economic consequences. Hence, it currently constitutes a trade secret that should be protected from disclosure pursuant to Act 80-2011. In order to protect this information, the breakdown of the program costs included in Exhibit 1, which if disclosed could be used to determine the compensation, also need to be protected.

37. LUMA is submitting herein a redacted copy of Exhibit 1 for public disclosure and respectfully requests this Energy Bureau maintain the unredacted version under seal of confidentiality.

C. Identification of Confidential Information

Document or file	Page in which Confidential Information is Found	Summary of Legal Basis for Confidentiality Protection, if applicable	Date Filed
<i>Exhibit 1</i>	Pages 5, 6 and 7	Sensitive Commercial Information and Trade Secrets	August 23, 2023

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned, **approve** LUMA’s proposed costs for the Emergency DR Program set forth in

Exhibit 1 herein, including the Compensation Structure, and **grant** LUMA's request for confidential treatment of the specified information in Exhibit 1.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 23rd day of August 2023.

We hereby certify that we filed this Motion using the electronic filing system of this Energy Bureau and that we will send an electronic copy of this Motion to the attorney for PREPA at jmarrero@diazvaz.law; the Independent Office for Consumer Protection at hrivera@jrsp.pr.gov; and agraitfe@agraitlawpr.com, info@sesapr.org, elevin@veic.org, and mrios@arroyorioslaw.com.



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Exhibit 1

Costs Associated with Emergency DR Program



Battery Emergency Demand Response (DR) Program – Cost Structure

NEPR-MI-2022-0001
August 23, 2023

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1.0 Introduction

As operator of the electric transmission and distribution system, LUMA is responsible for helping to implement Puerto Rico's public energy policy, including important customer initiatives such as Energy Efficiency (EE) and Demand Response (DR) programs that are required by law and mandated by the Puerto Rico Energy Bureau (Energy Bureau).

LUMA is committed to working with the Energy Bureau to build a more reliable, more resilient, more customer-focused, and cleaner energy system that benefits everyone in Puerto Rico. To move toward this goal and to make it feasible for energy service customers to become prosumers as envisioned in Law 17¹, reliability solutions are being implemented to benefit all customers. Among these solutions is incorporation of important energy-saving resources like DR programs that help reduce electricity usage during peak periods or when generation capacity is insufficient to support customer demand.

The Battery Emergency Demand Response Program ("BEDRP")² will be an important tool to help increase the energy available to all customers during emergency conditions and reduce the need for load shedding. When there is insufficient generation supply to meet customer energy demand, the System Operator may interrupt service to some customers, "shedding load," in order to maintain system security and reduce the risk of an overall system failure. The System Operator follows specific procedures for load shedding that typically include rotating the customers who have service interrupted when possible. This reduces the duration of the service interruption to specific customers.

The BEDRP will contract with third-party Emergency Demand Response ("EDR") Aggregators who will incentivize eligible customers to use their Behind the Meter ("BTM") batteries for personal generation and export excess energy to the grid during emergency conditions. An EDR Aggregator refers to a qualified entity that has a portfolio of customers with Distributed Energy Resources (DERs) that can be managed collectively to provide energy, capacity, or ancillary services and has executed a standard master aggregation agreement with PREPA, with LUMA acting as agent of PREPA, to participate in the BEDRP. A BEDRP Event occurs when all available generation resources are in use and LUMA acting as System Operator determines that the system will be unable to meet forecasted energy requirements. When there is a BEDRP Event, LUMA can request energy from DR Aggregators to help support electric service stability during emergency conditions.

¹ See: Law 17 - 2019, Puerto Rico Public Policy Act

² Pursuant to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement among LUMA Energy Servco, LLC ("LUMA"), LUMA Energy, LLC, the Puerto Rico Electric Power Authority ("PREPA") and the Puerto Rico Public Private Partnerships Authority dated as of June 22, 2020, as supplemented and as may be amended from time to time in accordance with its terms ("T&D OMA"), LUMA provides operations and maintenance of the Puerto Rico transmission and distribution system owned by PREPA and related assets ("T&D System") on behalf of or as agent for PREPA. Therefore, the BEDRP program was created and is managed by LUMA on behalf of PREPA and any actions taken by LUMA in connection with the Program are taken on behalf of or as agent for PREPA as owner of the T&D System; all references to any approval, communication, notification or other action issued or taken by LUMA in relation to the Program prior to the expiration or early termination of the T&D OMA shall be deemed an approval, communication, notification or other action issued or taken by PREPA as owner of the T&D System.

Energy Efficiency and Demand Response Transition Period Plan
Case No: NEPR-MI-2022-0001

In compliance with the Energy Bureau's Resolution and Order issued August 11, 2023,³ LUMA is providing an overview of the BEDRP, estimated costs including the incentive compensation offered to EDR Aggregators and an explanation the identified BEDRP costs. As determined by the Energy Bureau in its July 31, 2023 Resolution and Order,⁴ the costs related to the DR programs shall be recovered through the Purchase Power Charge Adjustment (PPCA, or generation power supply costs) because emergency demand response financial incentives are considered energy purchases. Secure, long-term funding is essential for the success of DR programs. If approved by the Energy Bureau, FY2024 BEDRP costs will be part of the PPCA calculations presented to the PREB as part of the Permanent Rate docket filings. LUMA is solely responsible for calculating the cost of purchased power adjustments based on the information provided by generators and does not financially benefit from purchased power charge adjustments to customer bills.

LUMA is supportive of Demand Response programs designed to mitigate rotational load shedding, which will benefit all customers in Puerto Rico. The BEDRP is one of many activities that LUMA is carrying out in order to continue to work toward a more reliable, more resilient, cleaner, and more affordable energy future for all Puerto Ricans.

³ See: [Resolution and Order](#) Subject: Addressing Requests for Funding Clarity and Adjusted Milestone Deadlines for Emergency Demand Response Program in Case No/ NEPR-MI-2022-0001, In Re: Energy Efficiency and Demand Response Transition Period Plan.

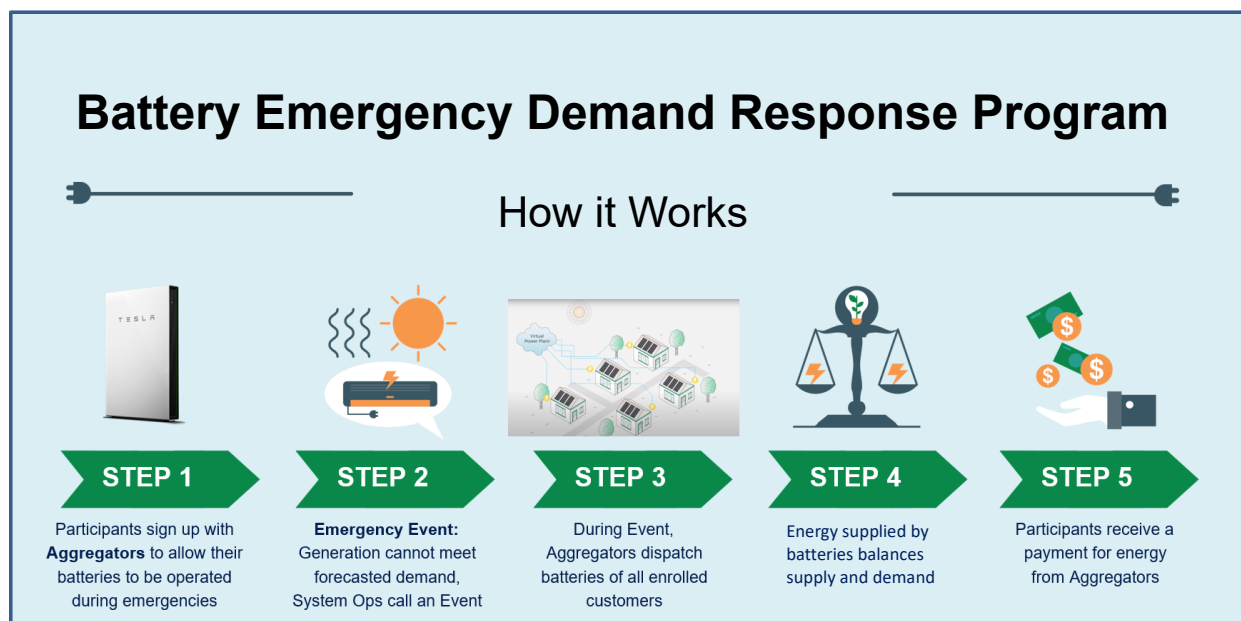
⁴ See: [Resolution and Order](#) Subject: Addressing Requests for Funding Clarity and Adjusted Milestone Deadlines for Emergency Demand Response Program in Case No/ NEPR-MI-2022-0001, In Re: Energy Efficiency and Demand Response Transition Period Plan.

2.0 Program Cost Structure

2.1 Overview

BEDRP targets PREPA residential and commercial customers with BTM batteries that are registered in the LUMA Net Energy Metering (NEM) Program. The Program provides compensation to participating customers for operating their BTM batteries during BEDRP Events. Customer Participation in the Program is voluntary, and participating customers may opt out of the Program at any time. BEDRP Events will be triggered by generation emergencies and will help improve system reliability.

The BEDRP is delivered by DR Aggregators who, as mentioned, must be qualified, and have executed a standard Master Aggregation Agreement with LUMA (acting as PREPA agent). DR Aggregators will be responsible for enrolling and signing agreements with customers in the Program, dispatching battery resources of participating customers during BEDRP Events called by LUMA and compensating these customers for the energy provided. Customers participate in the BEDRP by signing up with a DR Aggregator. LUMA will provide a standard non-negotiable performance payment **REDACTED** to DR Aggregators for their aggregation services, who, in turn, must provide compensation to participating customers for operating their batteries during BEDRP Events according to the DR Aggregators' unique business model and customer value proposition, as per their agreement. The image below illustrates how the Battery Emergency Demand Response Program works.



2.2 Costs

Table 1 below provides a breakdown of estimated costs for the first year of the BEDRP (which would be FY24), along with the inputs and assumptions behind this cost estimate. The total cost for the BEDRP in FY24 is estimated to be \$5.1 million (as shown in row L), which represents the total amount to be recovered through the PPCA as ordered by the Energy Bureau in its July 31, 2023 Resolution and Order.⁵ This total cost includes REDACTED for energy payments to DR Aggregators (row J) and REDACTED for Program Administration (row K). An additional supporting narrative explaining the basis for this cost estimate is provided below.

Table 1. BEDRP Cost Estimate

REDACTED			
L	Total Annual Program Costs	\$5,060,938	J + K

⁵ See: [Resolución y Orden](#) Subject: Determinación sobre los Factores de las Cláusulas de Ajuste Trimestral para el periodo de agosto a septiembre de 2023 in Case No. NEPR-MI-2020-0001, In Re: Permanent Rate of the Puerto Rico Electric Power Authority. Supra

2.3 Explanation of Estimated Program Costs

The Total Annual Aggregator Payment (row J) is based on the estimated Total Annual Energy Delivered (row I) multiplied by the Aggregator Energy Payment (row H) REDACTED. This payment is a standard non-negotiable rate to be offered to all eligible DR Aggregators for the aggregation services. This amount was determined by LUMA based on a review of similar incentives from other jurisdictions and collected input from potential DR Aggregators. The amount was estimated to be the minimum amount required to generate sufficient customer interest and participation in the Program, within current budget limits. DR Aggregators will be required to pass on a portion of the payment to customers, though they have the flexibility to determine the specific terms and conditions of customer payments. Customers may opt out of any BEDRP Events with no penalties, though they would not receive any compensation for events they opt out of. The payment (\$/kWh) should not be compared to the cost of other generation because the BEDRP payment takes into account the value of energy procured during “grid emergencies” when other all other generators are unavailable.

The Total Annual Energy Delivered (row I) is based on the Total Available Energy per Event (row D) multiplied by the Estimated Annual Events (row G). The Total Available Energy per Event assumes that an average of 50% of each customer’s battery energy will be held in reserve for customer backup use and 50% will be used during the Event. The battery reserve is a setting that is determined by each customer and thus is subject to change based on customer preferences.

The current budget is sufficient for starting the program at a small scale to allow time for refining program operations, conducting program evaluation, and any necessary engineering analysis before considering when the program could be scaled up to a larger size. The PPCA mechanism allows an opportunity to revisit program costs on a quarterly basis to adjust and reconcile as necessary. The number of Enrolled Customers (row A) and the Estimated Annual Events (row G) are both determined by the available budget. If the program meets the stated objectives and more budget is made available (including through federal funding), the program could be expanded. A larger program would enable DR Aggregators to enroll more customers and allow LUMA to dispatch more events based on the forecasted system needs.

The Administrative Cost (row L) is based on estimates of LUMA’s annual costs to deliver the program, which includes all program management, system operations, customer service, professional services, and program evaluation expenses that can be directly attributed and allocated to the BEDRP.

At this time additional funding for BEDRP has not been identified. There has been discussion with state and federal agencies on providing additional funding for DR initiatives. To the extent alternative funding sources are identified, obligated, and disbursed to LUMA by the relevant state or federal government entities for purposes of funding the BEDR Program, LUMA will promptly communicate with the Energy Bureau. Those monies could be used in the calculation of the PPCA to reduce the applicable factors or in order to expand the scope of the program.

2.4 Anticipated Timeline

In the August 11 Order, the Energy Bureau ordered LUMA to file, “within two weeks of the Energy Bureau’s approval of the compensation to the participants, proof it has published Emergency DR program terms, established agreements with DR aggregators, and enrolled customers in the program”. The Energy Bureau also ordered LUMA to file “within two weeks of its filing proof of customer enrollment, documentation showing that LUMA has the capacity to call Emergency DR events. LUMA’s ability to meet certain milestones as set forth by the Energy Bureau, is contingent on additional factors outside LUMA’s control.

In this regard, once the Energy Bureau has approved the BEDRP cost provided above, LUMA will publish the BEDR Program Terms as part of the procurement process that will be issued on Power Advocate (see Table 2). LUMA will issue a Request for Acquisition, notify potential DR Aggregators about the opportunity, and gather qualifications to identify eligible DR Aggregators. All DR Aggregators determined to be eligible through this process will then be invited to execute a Master Aggregator Agreement, which should be complete by mid-September. It should be noted that DR Aggregators will be able to enroll in the program on a rolling basis, even after the process has closed. Once the Agreement is executed, DR Aggregators may begin recruiting and enrolling customers. Shortly after customer enrollment begins, LUMA expects that DR Aggregators will be able to conduct a test event dispatch to confirm their ability to respond to LUMA’s request for additional energy.

Taking into account the steps described above, in Table 2. below, LUMA proposes a timeline to meeting the milestones as established in the August 11 Order.

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Table 2. BEDRP Timeline

Task	Description	Aug	Sept	Oct
1	LUMA PPCA Cost Filing			
2	Energy Bureau Approval of PPCA Costs			
3	LUMA Publication of BEDR Program Terms and Request for Acquisition			
4	LUMA Determination on Qualified DR Aggregators			
6	LUMA and Aggregators Execute Master Aggregation Agreements			
7	DR Aggregators Begin Recruiting and Enrolling Customers			
8	DR Aggregators Dispatch Test Event to Provide Proof for Energy Bureau			
9	LUMA Files Proof DR Aggregators Have Enrolled Customers and Conducted Test Event			

The time estimates made by LUMA are based on the assumptions discussed above. Some of the milestones in the August 11 Order may not be reached by the timeframes established by the Energy Bureau and are contingent on additional factors outside LUMA's control. LUMA will timely inform the Energy Bureau of any potential delays LUMA becomes aware of.