

**GOBIERNO DE PUERTO RICO
JUNTA REGULADORA DE SERVICIOS PÚBLICOS DE PUERTO RICO
NEGOCIADO DE ENERGÍA DE PUERTO RICO**

IN RE: PRÁCTICA DE ESTIMACIONES DE CONSUMO Y POSTERIORES CORRECCIONES DE FACTURAS EN CUENTAS COMERCIALES EMPLEADA POR LUMA

CASO NÚM. NEPR-IN-2023-0003

ASUNTO: Moción en Cumplimiento con Orden del 22 de febrero de 2024

NEPR

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MOCIÓN EN CUMPLIMIENTO CON ORDEN DEL 22 DE FEBRERO DE 2024

AL NEGOCIADO DE ENERGÍA DE PUERTO RICO:

COMPARECEN, LUMA ENERGY, LLC y LUMA ENERGY SERVCO, LLC (en conjunto, “LUMA”) al amparo de sus responsabilidades bajo el Acuerdo de Operación y Mantenimiento del Sistema de Transmisión y Distribución de Puerto Rico del 22 de junio de 2020 (“T&D OMA”), por conducto de la representación legal que suscribe, y muy respetuosamente exponen y solicitan:

1. El 1 de febrero de 2024, LUMA presentó un documento titulado *Moción en Cumplimiento de Orden del 2 de enero de 2024 sometiendo Respuestas a Requerimiento de Información* (“Moción del 1 de febrero”). Junto con la Moción del 1 de febrero LUMA incluyó un documento confidencial sobre procesos internos titulado “Investigar una Cuenta Estimada en Oracle CC&B.” Véase Moción del 1 de febrero, Exhibit 1, Anejo A (en adelante, “Anejo A de la Moción del 1ero de febrero”).

2. El 12 de febrero de 2024, LUMA presentó un *Memorando de Derecho en Apoyo a la Solicitud de Determinación de Confidencialidad del Anejo A Presentado Junto a la Moción del 1 de Febrero de 2024 y Respuesta a Solicitud de Orden de la OIPC*, en el cual expuso las bases legales que sustentan su solicitud de trato confidencial del Anejo A de la Moción del 1ero de febrero y para que dicho documento permanezca bajo sello de confidencialidad durante este proceso de investigación y una vez el informe de la investigación sea notificado a las partes y se cierre el caso.

3. El 22 de febrero de 2024, el Oficial Examinador designado por el Honorable Negociado de Energía de Puerto Rico (“Negociado de Energía”) emitió una Resolución y Orden en la que declaró con lugar la solicitud de confidencialidad del Anejo A de la Moción del 1ero de febrero y dispuso que dicho documento debe permanecer confidencial luego de que culmine esta

investigación (“Orden del 22 de febrero”). El Oficial Examinador también le ordenó a LUMA a proveer a la Oficina Independiente de Protección al Consumidor (“OIPC”) acceso al Anejo A de la Moción del 1ero de febrero, sujeto a que la OIPC observe la *Política de Confidencialidad* del Negociado de Energía y a que se firme un Acuerdo de No Divulgación.

4. El Oficial Examinador le ordenó a LUMA a presentar en un término de cinco (5) días, un borrador de Acuerdo de No Divulgación, para su aprobación.

5. En cumplimiento con la Orden del 22 de febrero, LUMA somete para aprobación un borrador de Acuerdo de No Divulgación. Véase *Anejo 1* de esta Moción. El *Acuerdo de No Divulgación* incorpora ciertas disposiciones del Acuerdo de No Divulgación publicado por el Negociado de Energía junto con la *Política sobre Manejo de Información Confidencial en los Procedimientos Ante la Comisión* del 31 de agosto de 2016, Caso Núm. CEPR-2016-0009, y lo actualiza conforme a la ley aplicable, a la Orden del 22 de febrero y a las características del Anejo A de la Moción del 1ero de febrero que fue designado como documento confidencial por el Oficial Examinador.

POR TODO LO CUAL, LUMA solicita respetuosamente que se **tome conocimiento** de lo anterior, **de por cumplida** la Orden del 22 de febrero y **apruebe** el borrador del Acuerdo de No Divulgación presentado como *Anejo 1* de esta Moción.

RESPETUOSAMENTE SOMETIDO.

En San Juan, Puerto Rico, a 27 de febrero de 2024.

Por la presente certificamos que hemos presentado esta Moción utilizando el sistema de presentación electrónica del Negociado de Energía. Enviaremos una copia electrónica de esta Moción a la Oficina de Protección al Consumidor Independiente, Lcda. Hannia Rivera Díaz, hrivera@jrsp.pr.gov.



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Anejo 1

Acuerdo de No Divulgación

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“Agreement”) is executed between LUMA Energy, LLC, a Puerto Rico limited liability company (“LUMA Energy”), and LUMA Energy ServCo, LLC (“LUMA ServCo” and together with LUMA Energy, “LUMA”), a Puerto Rico limited liability company, appearing herein as Disclosing Parties (as defined herein below), the Independent Consumer Protection Office, an instrumentality of the government of Puerto Rico (“ICPO”), appearing herein as a Receiving Party pursuant to the powers conferred to it by Article 6.42 of Act 57-2014, as amended, known as the *Puerto Rico Energy Transformation and RELIEF Act*, (Act 57-2014) and the Puerto Rico Energy Bureau an instrumentality of the government of Puerto Rico, appearing herein pursuant to its authority under Act 57-2014, (“Energy Bureau” or “PREB”). LUMA, ICPO and PREB shall hereinafter be referred to individually as a “Party” and collectively as the “Parties.”

I. Scope

1. Article 6.15 of Act 57-2014, as amended, provides 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 [PREB] to treat such information as such,” and that any information treated by the [Energy Bureau] as confidential or privileged shall be afforded “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.”
2. Section 1.15 of Regulation No. 8543, known as the *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures* states that if “in compliance with the provisions of this Regulation or any of the [Energy Bureau’s] orders, a person has the duty to disclose information to the [Energy Bureau] considered to be privileged, pursuant to the Rules of Evidence, said person shall identify the allegedly privileged information, request the [Energy Bureau] the protection of said information, and support, in writing, its arguments of the privileged nature of the information. The [Energy Bureau] shall evaluate the petition and, if it understands the material merits protection, proceed according to what is set forth in Article 6.15 of Act 57-2014, as amended.”
3. The purpose of this Agreement is to ensure the adequate protection of the confidential information included in LUMA’s internal policy titled “*Investigar una Cuenta Estimada en Oracle CC&B*” (the “Internal Policy”), filed as “*Anejo A*” of the motion entitled “*Moción en Cumplimiento de Orden del 2 de enero de 2024, Sometiendo Respuestas a Requerimiento de Información*,” filed with the PREB under Case No. NEPR-IN-2023-0003 on February 1, 2024. The Internal Policy was filed under seal because it garners protection under applicable law as sensitive commercial document and containing trade secrets on LUMA’s internal commercial protocols and methods for investigation invoices with estimated readings. In a

Resolution and Order dated February 22, 2024, the Energy Bureau granted confidential treatment to the Internal Policy and thus designated the Internal Policy as Confidential Information (as defined herein below), and pursuant to Act 57-2014, Regulation 8543, and the applicable jurisprudence.

II. Definitions

1. “Administrative Proceeding” means any proceeding before the Energy Bureau, such as an adjudication, investigation, review of rates, integrated resource plan, and any other proceeding carried out before the Energy Bureau.
2. “Agreement” means this Non-Disclosure Agreement, including the Certificate of Non-Disclosure.
3. “Energy Bureau” or “PREB” means the Puerto Rico Energy Bureau.
4. “Confidential Information” refers to the following information:
 - a) the Internal Policy, as may be amended from time to time;
 - b) Any information marked by Puerto Rico Electric Power Authority (“PREPA”), LUMA or any other party as “confidential” or “privileged” in the matter, unless and until the Energy Bureau or a court of law decides otherwise;
 - b) Any information the Energy Bureau or a court of law marks or treats as “confidential” or “privileged”; and
 - c) Any document filed by a party in an Administrative Proceeding in relation to information described in (a) and (b) above.
5. “Information” includes, in whole or in part, data, documents, graphs, maps, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information disclosed or submitted, orally, in writing, or by any other media.
6. “Proceeding” or “Administrative Proceeding” means Case No. NEPR-IN 2023-0003, *In re: Práctica de Estimaciones de Consumo y Posteriores Correcciones de Facturas en Cuentas Comerciales Empleada por LUMA*.
7. “Producing Party” means LUMA, the party in the Administrative Proceeding who originally made the claim of confidentiality and was subsequently granted protections for such claim.
8. “Receiving Party” means the ICPO, who, pursuant to this Agreement and the rules set forth by the Energy Bureau through the Order of February 22, 2024 issued in Case No. NEPR-IN 2023-0003, was granted the right to the Internal Policy that was designated as Confidential Information by the Energy Bureau.

9. “Representatives” means and includes a Receiving Party’s, and its affiliates’, respective directors, officers, shareholders, members managers, employees, consultants, representatives (including financial advisors, legal counsel, consultants and accountants) and agents.

III. Receiving Party’s Obligations

1. The Receiving Party, shall protect, maintain secure, nor disclose, share, discuss or allow access of any Confidential Information, as defined in Part II (4) above, including, but not limited to, the Internal Policy, to any person who has not been identified as an authorized representative and who has signed this Agreement.
2. The Receiving Party must send to the Producing Party and the Energy Bureau, via email, a copy of this Agreement executed by its authorized representative, as well as a copy of the Certificate of Non-Disclosure executed by each of its representative to whom it wishes to allow access to Confidential Information.
3. Once the Receiving Party obtains the Confidential Information, the Receiving Party shall:
 - a. Maintain only one copy in a secure device and include the word “CONFIDENTIAL” in the file name. Under no circumstance will the Receiving Party store the Confidential Information in an unsecured, publicly accessible cloud environment, or store Confidential Information in devices which may be accessed by persons other than those who have executed this Agreement;
 - b. The Receiving Party shall conspicuously note the confidentiality of any Confidential Information in the Receiving Party’s possession. For example, by marking the header of a document or labeling a CD-ROM or USB pen drive with the word “CONFIDENTIAL”.
 - c. To the extent the Receiving Party deems it necessary to extract, summarize, or describe the Confidential Information, the Receiving Party shall keep a record of such extracts, summaries, or descriptions, and shall maintain them confidential as set forth in sub-sections (a) and (b) above;
 - d. If Confidential Information is or could have been accidentally or otherwise disclosed in violation of this Agreement (for example, and without exhausting the possibilities, if the Receiving Party loses a USB pen drive with an electronic copy of the Confidential Information), the Receiving Party shall immediately notify the Energy Bureau and the Producing Party and take whatever steps the Receiving Party and/or the Energy Bureau deem necessary and desirable to protect the Confidential Information;
 - e. The Receiving Party shall at all times and forever safeguard and protect all of the Confidential Information to prevent it being exposed to, or taken by,

unauthorized persons, and when entrusted to the Receiving Party, it will exercise its best efforts to assure its safekeeping. Whenever the Receiving Party needs to furnish Confidential Information to its Representatives, solely as permitted under the Proceeding, the Receiving Party shall require its Representative execute a certificate acknowledging the confidential nature of such information and the terms of this Agreement in a form substantially similar to that attached hereto as Appendix A. The Receiving Party agrees, at its sole expense, to take all reasonable measures, legal or otherwise (including, but not limited to, court proceedings), necessary to prevent or halt its Representatives from causing or continuing a breach of this Agreement; and

- f. The Receiving Party shall apply and observe the obligations stated in this Part III (3) with regards to any and all information identified by the Energy Bureau or by a court as Confidential Information, pursuant to the laws and regulations of the Commonwealth of Puerto Rico and to the laws and regulations of the United States of America.
4. The Receiving Party shall use Confidential Information only to the extent necessary for its participation in the Proceeding.
5. The Receiving Party will not use Confidential Information for any purpose unrelated to its participation in the Proceeding.
6. The Energy Bureau may periodically determine that certain Confidential Information shall be subject to additional protection so as to ensure its confidentiality. The Receiving Party agrees to abide by the particular confidentiality rules that the Energy Bureau sets forth in addition to or in lieu of these terms and conditions, as the Energy Bureau may deem necessary.
7. Within thirty (30) days of the Energy Bureau's final decision on the Administrative Proceeding becoming final and firm, or of the conclusion of the Receiving Party's participation as a Party in the Proceeding, whichever occurs first, the Receiving Party shall return to the Producing Party all Confidential Information, including any reproduction, extracts, summaries or descriptions containing Confidential Information. The Receiving Party and the Producing Party may agree in writing to forego the return of Confidential Information and, instead, have the Receiving Party destroy all Confidential Information. The Receiving Party must certify its compliance with the above to the Energy Bureau and the Producing Party within said term of thirty (30) days.

In any event, at the conclusion of the thirty (30) day period following the final determination by the Energy Bureau in the Proceeding becoming final and firm, or of the conclusion of the Receiving Party's participation as a Party in the Proceeding, **the Receiving Party shall destroy all tangible and intangible Confidential Information in its possession** including, without limitation, information included in USB devices, emails, files in a cloud environment, and documents stored in a

back-up system, to ensure that no part of the Confidential Information remains available.

8. In the event that the Receiving Party is served with a judicial order or any judicial or legal subpoena or citation demanding the production or disclosure of Confidential Information, or any document, file or device containing or referencing Confidential Information, the Receiving Party shall immediately: (a) notify the entity requesting the production of said Confidential Information that the same has been designated as such in the Proceeding; (b) provide within two business (2) days a copy of said order, subpoena or citation to the Energy Bureau and the Producing Party; (c) to the extent possible, allow and wait for the Producing Party to intervene in the process so as to protect the Confidential Information before disclosing it; and (d) use all reasonable efforts to ensure that the Confidential Information at issue is treated consistently with this Agreement.
9. The Receiving Party has no obligation to safeguard information which is or becomes publicly available without the Receiving Party's breach of this Agreement; which the Receiving Party rightfully receives without obligations of confidentiality; or which the Receiving Party develops without breaching of this Agreement. Upon the energy Bureau's request, the Receiving Party must show the information is publicly available.

IV. Producing Party's Obligations

In making any confidentiality claim and filing said Confidential Information, the Producing Party must observe the rules established by the Energy Bureau through Order or Resolution. Neither the Energy Bureau or any Receiving Party will be responsible for the disclosure of information that the Producing Party has not claimed as confidential, for which the Producing Party has not complied completely with what is established by the Energy Bureau, or which is otherwise not defined as Confidential Information in this Agreement.

V. Energy Bureau's Powers

1. When appropriate, the Energy Bureau may give the Receiving Party an encrypted copy of the Confidential Information.
2. The Energy Bureau will retain copies of all Confidential Information that is part of the administrative record, in accordance with the Energy Bureau's record retention policies. The Energy Bureau will follow the internal rules adopted for handling confidential information such as the Confidential Information.
3. The Energy Bureau is entitled to review, monitor and audit the Receiving Party's compliance with the terms of this Agreement. However, the Energy Bureau is not responsible for the Receiving Party's inadvertent or intentional disclosure of Confidential Information.
4. In the event of any breach by the Receiving Party, the Energy Bureau will impose a penalty to the Receiving Party pursuant to Article 6.36 of Act 57-2014. Part VI of this Agreement does not limit the remedies a Producing Party is entitled to seek before any court as a result of the Receiving Party's noncompliance.

VI. Remedies

In the event of any breach or possible breach by the Receiving Party, the Energy Bureau and/or the Producing Party may obtain such equitable relief or any other legal remedy to which it is entitled.

VII. Non-waiver of Rights

The Energy Bureau's or any Party's failure to enforce strict compliance with this Agreement, or any part thereof, shall not be construed as a waiver of the Energy Bureau or any Party to require strict compliance with this Agreement.

VIII. Saving Clause

If any clause of this Agreement is held to be invalid, the remainder of the Agreement will remain in full force and effect. The obligations under this Agreement shall survive the Administrative Proceeding and shall remain in full force and in effect prospectively so that Confidential Information is protected unless the Parties agree in writing to set the Agreement aside, or a court of competent jurisdiction finds that the information does not qualify as Confidential Information.

IX. Applicable Law and Forum

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Puerto Rico. The Parties consent to the exclusive jurisdiction of

the Puerto Rico state courts, and to the exclusive primary jurisdiction of the Court of First Instance, San Juan Section, for any dispute arising out of this Agreement.

X. Interpretation and Applicability

Any interpretation and any controversy regarding this Agreement shall be construed so as to protect the confidentiality of the information in accordance with the laws and regulations of the Commonwealth of Puerto Rico and the laws and regulations of the United States of America.

The Parties agree and recognize that the fact that the present Agreement is executed individually by a Receiving Party does not limit the ability of another Party, and in particular, a Producing Party, to enforce its rights under this Agreement, as long as the Party that claims a right has executed this Agreement.

XI. Amendment

This Agreement may not be modified except in writing. Any amendment must be agreed and executed by all of the Parties and will apply equally to all of the Parties.

XII. Notice

Any notice required by this Agreement or given in connection with it, shall be made in writing and shall be forwarded by electronic mail and by certified mail, postage prepaid, or recognized overnight delivery services.

[signatures in the next page]

The Parties have executed this Agreement, which is made effective as of _____
_____, 2024.

PUERTO RICO ENERGY BUREAU

INDEPENDENT F CONSUMER
PROTECTION OFFICE

By: _____
Name: Gerardo Flores
Title: Hearing Examiner

By: _____
Name:
Title

LUMA ENERGY SERVCO LLC

LUMA ENERGY, LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

LUMA ENERGY SERVCO LLC

By: _____
Name:
Title:

APPENDIX A

FORM OF

CERTIFICATE OF NON-DISCLOSURE

I understand that Confidential Information is being provided to me pursuant to the terms and restrictions of the Non-Disclosure Agreement (“Agreement”) dated _____ in the matter *In re: Práctica de Estimaciones de Consumo y Posteriores Correcciones de Facturas en Cuentas Comerciales Empleada por LUMA*, Case No. NEPR-IN-2023-0003, before the Puerto Rico Energy Bureau. I also certify that I have been given a copy of the Agreement, have read its terms and conditions, and agree to be bound by them. I understand that the contents of the Confidential Information, as defined in the Agreement, and any work product, notes, memoranda, summaries, abstracts, studies, computer software, software information or other documentation derived from Confidential Information, shall not be disclosed to anyone other than in accordance with the Agreement, shall be used only for the purpose of the aforementioned proceeding and shall be returned to the Producing Party or destroyed pursuant to the terms and conditions provided in the Agreement.

I further acknowledge that, in the event that I cease to be engaged in said proceeding, I shall continue to be bound by the terms and conditions of the Agreement.

By: _____

Authorized Representative of Independent Office of Consumer Protection (“ICPO”)

Date: _____

Signature: _____