

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

<b>NEPR</b>  <b>Received:</b>  <b>Jun 16, 2021</b>  <b>11:54 AM</b>
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**IN RE:**  
IN RE: PUERTO RICO ELECTRIC POWER  
AUTHORITY PERMANENT RATE

**CASE NO. NEPR-MI-2020-0001**

**SUBJECT: Submission of FCA, PPCA and FOS Quarterly Reconciliations and Proposed Factors, Submission of Revised CILTA, SUBA-NHH and SUBA-HH Annual Reconciliations and Proposed Factors, and Request for Confidential Treatment.**

**MOTION SUBMITTING FCA, PPCA AND FOS QUARTERLY RECONCILIATIONS AND PROPOSED FACTORS, MOTION SUBMITTING REVISED ANNUAL RECONCILIATIONS AND PROPOSED CILTA, SUBA-NHH AND SUBA HH FACTORS, 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 the “Operator” or “LUMA”), through the undersigned counsel, and respectfully state and request the following:

**I. Introduction**

This honorable Energy Bureau’s approval of reconciliations and factors associated with several riders including, contributions in lieu of taxes cost adjustment (CILTA), help to human subsidies (SUBA-HH), non-help to human subsidies (SUBA-NHH), Fuel Charge Adjustment (FCA), the Purchased Power Charge Adjustment (PPCA), and the Fuel Oil Subsidy (FOS), arise under a Resolution and Order dated April 23, 2019 issued in Case No. CEPR-AP-2015-0001 and NEPR-AP-2018-0003. The reconciliations and FCA, PPCA and FOS proposed factors are filed quarterly with this honorable Energy Bureau.

In a Resolution and Order issued on March 31, 2021, this Energy Bureau set the FCA, PPCA and FOS factors to be applicable from April 1, 2021 until June 30, 2021 (“March 31<sup>st</sup>”).

Order”). In the March 31<sup>st</sup> Order, the Energy Bureau also directed that on or before June 15, 2021 at noon, LUMA shall file the FCA, PPC and FOS reconciliations for the months of March, April and May, 2021, and the proposed factors to be applied from July 1, 2021 until September 30, 2021.

Exercising its role and duties over system regulatory matters pursuant to Section 5.6 of the Puerto Rico Transmission and Distribution Operation and Maintenance Agreement (“OMA”) as supplemented by the Puerto Rico Transmission and Distribution System Supplemental Terms Agreement, LUMA prepared the quarterly reconciliations for the months of March, April and May, 2021, and the proposed factors for the FCA, PPCA and FOS riders to be applied from July 1, 2021 until September 30, 2021.

This submission of the quarterly reconciliations for the months of March, April and May, 2021 and the proposed factors for the FCA, PPCA and FOS riders includes six excel spreadsheets that are being filed publicly via email as Exhibit B-Values to this Motion. With this Motion, LUMA is also submitting via email six confidential excel spreadsheets Exhibit B-Confidential with formulae intact. As explained in Section IX *infra*, it is hereby respectfully requested that the Bureau accept and maintain Exhibit B-Confidential under seal of confidentiality.

Additionally, LUMA hereby files a revised submittal on CILTA, SUBA-HH and SUBA-NHH reconciliations and proposed factors. The initial filing on CILTA, SUBA-HH and SUBA-NHH reconciliations and proposed factors was made on June 10, 2021. A revised submission was filed on June 11, 2021. LUMA respectfully informs that in the course of finalizing preparation of the quarterly reconciliation of FCA, PPCA and FOS riders and proposed factors to be applied from July 1, 2021 through September 30, 2021, LUMA revised the annual reconciliations to correct the prior period adjustment. The prior period adjustment that was filed with this Bureau on June 10<sup>th</sup>

and June 11<sup>th</sup>, 2021, was made on a monthly basis. The filing submitted today includes a prior period adjustment on an annual basis. Specifically, rows, 12, 25, and 38 of the excel spreadsheet entitled “Annual Reconciliation”, in the tab entitled, “Reconciliation Summary,” include adjustments for the total year. LUMA respectfully hereby submits revised public and private versions of the eleven excel spreadsheets that support the filing on CILTA, SUBA-HH and SUBA-NHH reconciliations and proposed factors. *See* Exhibit A-Values and Exhibit A-Confidential.<sup>1</sup>

## **II. Energy Bureau Authority**

This submission of the quarterly reconciliations and proposed FCA, PPCA, and FOS factors involves the Energy Bureau’s authority under Act 57-2104, as amended by Act 17-2019, to “[r]eview and approve and, if applicable, modify the rates or fees charged by electric power service companies in Puerto Rico or the contractor of the transmission and distribution system of Puerto Rico in connection with any matter directly or indirectly related to the provision of electric power services.” *See* Act 17-2014, Section 6.3 (n), 22 LPRA §1054(n) (Spanish language). Also relevant is the Bureau’s authority to “formulate and implement strategies to achieve the objectives of this Act including, but not limited to, attaining the goal of reducing and stabilizing energy costs . . . .” *See Id.*, Section 6.3 (f).

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<sup>1</sup> The files that are being submitted today are:

1. Annual Reconciliation – CILT + SUB RIDERS – MAY2020TOAPRIL2021,
2. Año Base Subsidios,
3. Attachment 5-CILT and SUBSIDIESRECONCILIATION-FilingJune2021,
4. Calculo Costo del CELI 2021 (PROMOD),
5. Distribución Mensual 2022 Updated April 2021 FOMB Macros,
6. Ingresos Mensuales 2022 (PROMOD),
7. Proyección de Consumo, Generación y Demanda Máxima 2021-50 (May 5, 2021 updated),
8. Proyecciones x Clase (May 5 2021 updated),
9. Simulación PROMOD – FY2022,
10. Subsidies Rider Cost Budget Forecast 2022 (PROMOD), and
11. Subsidios 2022 (PROMOD).

### **III. Regulatory Formulas for FCA, PPCA and FOS Factors**

#### **A. FCA**

The FCA is a reconciling tariff mechanism which recovers the costs of fuel consumed in PREPA's generating units on a quarterly basis. *See* PREPA Book of Tariffs at page 49. The FCA applies to all the PREPA tariffs, except the RHR tariff (RFR by its Spanish acronym, applicable to residents of public complexes owned by the Public Housing Administration). The formula to calculate the FCA factor is:

$$\text{FCA} = \frac{\text{Total Cost of Fuel} + \text{Prior Period Reconciliation}}{\text{Total Applicable Net Retail kWh Sales}}$$

*Id.*

The total cost of fuel is the forecasted cost of fuel to be consumed for all generating facilities of the Puerto Rico Electric Power Authority ("PREPA") for the three forecasted months in the quarterly time-period. *Id.* The prior period reconciliations is the under- or over recovered funds for the first two months of the current quarter and the last month of the prior quarter. *Id.* LUMA shall provide the estimates of the reconciling balance with each proposed quarterly filing of the FCA. *Id.* Finally, the applicable net retail kWh sales include the forecasted sale of energy to all customer classes, including the net metering clients. *Id.*

The quarterly filing of reconciliations and proposed factors is due the second week of the third month of each quarter and the proposed factors go into effect the first month of the following quarter.

#### **B. PPCA**

The PPCA is a reconciling tariff mechanism which recovers the costs of power purchased by PREPA on a quarterly basis. *See* PREPA Book of Tariffs at page 51. The PPCA applies to all

the PREPA tariffs, except the RHR tariff (RFR by its Spanish language acronym) (applicable to residents of public complexes owned by the Public Housing Administration). The formula to calculate the PPCA factor is:

$$\text{PPCA} = \frac{\text{Total Costs Purchased Power} + \text{Prior Period Reconciliation}}{\text{Total Applicable Net Retail kWh Sales}}$$

*Id.*

The total cost of purchased power is the forecasted cost to purchase energy and capacity for the three forecasted months in the quarterly time-period. *Id.* The prior period reconciliations is the under- or over recovered funds for the first two months of the current quarter and the last month of the prior quarter. *Id.* LUMA shall provide the estimates of the reconciling balance with each proposed quarterly filing of the PPCA. *Id.* Finally, the applicable net retail kWh sales include the forecasted sale of energy to all customer classes, include the net metering clients for the quarterly time-period. *Id.*

The quarterly filing of reconciliations and proposed factors is due the second week of the third month of each quarter and the proposed will go into effect the first month of the following quarter.

### **C. FOS**

The FOS applies to certain general residential services tariffs (GRS by its English-language acronym), including disabled persons, elderly persons and university students, tariffs for special residential services (LRS by its English-Language acronym) and residential services for public projects (RH3 by its English-Language acronym). *Id.* at page 53. This fuel subsidy applies to monthly consumption that does not exceed 500 kWh. It is calculated on a quarterly basis.

For the first \$30 per barrel of fuel, excluding natural gas, clients will receive a credit equivalent to the subsidy factor multiplied by the customer’s monthly consumption up to a consumption of 400 kWh. *Id.* Customers that consume between 401 and 425 kWh will receive a credit equivalent to a consumption of 400 kWh. *Id.* Finally, for customers that consume between 426 and 500 kWh the credit will be progressively reduced to 425 kWh to reach 0 or 500 kWh. *Id.*

**IV. Factors Fixed by PREB for April 1 through June 30, 2021**

In the March 31<sup>st</sup> Order, this honorable Energy Bureau set the following factors to apply from April 1, 2021 through June 30, 2021:

<b>Adjustment Clause</b>	<b>Factor (\$/kWh)</b>
FCA	\$0.095456
PPCA	\$0.029607
FOS	(\$0.016511)

**V. Reconciliations for FCA and PPCA Riders**

The quarterly reconciliations for the FCA and PPCA riders that are being submitting to this honorable Energy Bureau in the file entitled “Quarter Reconciliation File March-Apr-May,” include the calculations for the reconciliations of the FCA and PPCA riders (costs versus revenues) and the amounts to be recovered or returned for each of these riders.

The difference between realized costs and the recovered funds from March to May 2021 are considered in calculating the proposed rider factors for the next quarter that are outlined in Section VII *infra*. The total costs to be recovered are \$48,828,080.24 for fuel costs and \$356,728.80 for purchased power costs.

Recoveries are predominantly due to under recovered fuel costs during March and May 2021. These under recoveries are a result of higher realized fuel prices than forecasted, a different

generation mix than forecasted and the end of deferrals related to FEMA and insurance recoveries from the earthquakes in January 2020.

## **VI. Fuel Cost Deferment**

In preparing the proposed factors, LUMA considered Fuel Cost Deferments Applied to Fuel Costs for the 2020 earthquakes (peakers) that have been authorized by this Energy Bureau in prior periods starting in January 2020. *See* March 31<sup>st</sup> Order, Sections III and IV. The excel spreadsheet entitled “Fuel Cost Deferments,” provides the breakdown of the fuel costs deferments. No “possible FEMA / Insurance reimbursements” have been applied for July through September 2021.

## **VII. Proposed Factors**

The excel spreadsheet entitled “July-September 2021 Factors” includes the calculations for the proposed FCA, PPCA and FOS factors. FCA and FOS are presented in Attachment 1 and the PPCA factor is presented in Attachment 2. The calculations for the proposed factors are supported by the following data submitted to support each of the elements of the formulae to calculate the FCA, PPCA and FOS factors, Attachments 3 – 5 of “July-September 2021 Factors” and the following spreadsheets:

- QUARTER RECONCILIATION FILE MAR-APR-MAY21 6-15-2021
- JUL-SEP 2021 Consumption
- Proyección de consumo, generación y demanda máxima 2021-50 (May 5 2021)
- Proyecciones x clase (May 5 2021 updated)

LUMA respectfully requests that the Energy Bureau approve the following factors to apply for the next quarter from July 1, 2021 until September 30, 2021:

**FCA- \$0.106135**

**PPCA- \$0.034022**

**FOS- \$0.015471**

Attachment 6 to the excel spreadsheet entitled “July-September 2021 Factors,” includes the impact on bills to customers for the months of July, August and September 2021 for the main tariffs for customer classes: GRS –Residential; GSS -Secondary Small Commercial, Industrial; GSP –Primary Medium Commercial, Industrial 250 kVA; and ST –Transmission Large Commercial, Industrial 1,500 kVA.

**VIII. List of Documents Filed in Support of Quarterly Reconciliations and Proposed FCA, PPCA and FOS Factors.**

<b>Exhibit B</b>
Fuel Cost Deferments
JUL-SEPT 2021 Consumption
July-September 2021 Factors
Proyección de Consumo, generación y demanda máxima2021
Proyecciones x clase
Quarter Reconciliation File March-April-May21

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

The confidential excel files mentioned in Section I of this Motion *supra*, and that are being submitted with this Motion, are excel spreadsheets submitted in native format (.xls) and with formulae intact. *See* Exhibit A-Confidential (eleven excel files on CILTA, SUBA-HH and SUBA-NHH Reconciliations and Proposed Factors) and Exhibit B-Confidential (six excel files on quarterly reconciliations and proposed FCA, PPCA and FOS factors). They include formulae and



original calculations made by LUMA personnel that reveal confidential procedures and include sensitive commercial information belonging to LUMA and/or the Puerto Rico Electric Power Authority (“PREPA”), and that are thus protected by law from disclosure and that should not be disclosed in native form.

**A. Applicable Laws and Regulation to submit information confidentially before the Bureau.**

The bedrock provision on management of confidential information that is 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: “[i]f any person who is required to submit information to the Energy Commission believes that the information to be submitted has any confidentiality privilege, such person may request the Commission to treat such information as such . . . .” 22 LPRC §1054n. If the Bureau determines, after appropriate evaluation, that the information should be protected, “it shall grant such protection in a manner that least affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted.” *Id.*, Section 6.15 (a).

Relatedly, in connection with the duties of electric power service companies, Section 1.10 (i) of Act 17-2019 provides that electric power service company shall provide information requested by customers, except for confidential information in accordance with the Rules of Evidence of Puerto Rico.”

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

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

The aforementioned Bureau policy on management of confidential information in procedures states the following with regards 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).

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

### **B. Grounds for Confidentiality**

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

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

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

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

The excel spreadsheets that have been submitted today in native form and with formulae intact as Exhibit A-Confidential and Exhibit B-Confidential are protected as trade secrets. They have commercial value to LUMA and PREPA as they reveal confidential processes and analysis to produce calculations in support of the public filings of the proposed factors for the CILTA, SUBA-NHH and SUBA-HH riders and the quarterly reconciliations and proposed FCA, PPCA and FOS

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<sup>2</sup> 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, provided 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.*

factors. LUMA and PREPA keep and maintain these native files confidentially and do not disclose them to the public nor to unauthorized third parties.

LUMA appreciates the importance of placing the Energy Bureau in the position of reviewing the reconciliations and fixing the annual factors. However, to avoid future competitive harms that could ensue if original format spreadsheets with formulae and calculations are publicly disclosed, LUMA respectfully requests that the excel files submitted today as Exhibit A Confidential and Exhibit B Confidential, be received, kept and maintained confidentially by this Energy Bureau.

The confidential spreadsheets included as Exhibit A-Confidential and Exhibit B-Confidential are: (1) documents with commercial and financial value, and (2) involve data that **is not common knowledge or readily accessible** by third parties who may seek to profit from the data or gain commercial advantages. The spreadsheets are business documents showing processes, methods and mechanisms, that garner protection under Act 80-2011. They are original documents that have not been disclosed to the third parties and whose disclosure would reveal sensitive and private commercial processes employed by LUMA and PREPA. The disclosure of this sensitive commercial information would place LUMA and PREPA in vulnerable and disadvantageous commercial positions that could affect LUMA customers and impact rates. Reasonable measures have been taken to protect the files from disclosure and avoid unauthorized access by third parties that could seek to gain commercial advantages. It is respectfully submitted that Exhibit A-Confidential and Exhibit B-Confidential are trade secrets protected from public disclosure by Act 80-2011.

**WHEREFORE**, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned; **accept** the filing of the FCA, PPCA, and FOS reconciliations for the months of March, April and May 2021 and the proposed factors to be applied from July 1, 2021 until September 30, 2021; **accept** the revised filing on annual reconciliations and proposed CILTA, SUBA-NHH and SUBA-HH factors; and **grant** the request to keep confidentially the spreadsheets that have been filed in excel format and with formulae intact as Exhibit A-Confidential and Exhibit-B Confidential to this Motion.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 16<sup>th</sup> day of June 2021.

I hereby certify that I filed this Motion using the electronic filing system of this Energy Bureau.



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