

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

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IN RE:
IN RE: PUERTO RICO ELECTRIC POWER
AUTHORITY PERMANENT RATE

CASE NO. NEPR-MI-2020-0001

**SUBJECT: CONFIDENTIAL Submission of FCA and
PPCA Reconciliations and Request for Confidential
Treatment.**

**CONFIDENTIAL SUBMISSION OF FCA AND PPCA RECONCILIATIONS 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

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

In a Resolution and Order issued on June 29, 2021, this Energy Bureau set the FCA, PPCA and FOS factors to be applicable from July 1, 2021 until September 30, 2021 (“June 29th Order”).

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 compared the re-estimated recovery of fuel purchased and purchased power for the quarterly period.

As LUMA submits in its variance analysis summary, upon performing a reconciliation for the month of June 2021, LUMA calculated a variance between fuel expenses and billed sales for FCA of \$26.7M and a variance between purchase power costs and billed sales for PPCA of - \$6.1M. The net amount between FCA and PPCA reconciliations is \$20.6 million. The fuel reconciliation for June 2021 considers a prior period adjustment of \$2.7M.

LUMA respectfully submits this information confidentially for consideration by the Energy Bureau. LUMA is available to participate in additional processes with the Energy Bureau regarding this submission within the discretion of the Energy Bureau.

This confidential submission includes four confidential excel spreadsheets and a Confidential Exhibit 1 with variance analysis that are being submitting via email. As explained in Section VII *infra*, it is hereby respectfully requested that the Bureau accept and maintain this Motion and its exhibit, Exhibit A-Confidential, under seal of confidentiality.

II. Energy Bureau Authority

This submission 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 Energy 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).

III. Regulatory Formulas for Proposed 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 to 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 cost of fuel purchased for all PREPA generating facilities 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 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 purchased power consumed in PREPA's generating units on a quarterly basis. *See* PREPA Book of Tariffs at page 51. The PPCA applies to all the PREPA tariffs, except to 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 cost of purchased resources of 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 sale of energy to all customer classes, include 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 will go into effect the first month of the following quarter.

For both the FCA and the PPCA, the following provision for accelerated adjustment applies:

Each month after final Fuel Purchase Expense and Purchased Power Expense are available to PREPA, the company shall prepare a re-estimate comparing the re-estimated recovery of fuel purchased and purchased power for the quarterly period. If the re-estimated fuel purchase and purchased power expenses deviated from the estimates by more than \$20

million, PREPA shall re-estimate the Fuel and Purchased Power Charge Adjustment factors to provide an expected value of zero for the quarterly time period.

IV. Factors Fixed by PREB for July 1 through September 30, 2021

In the June 29th Resolution and Order, this honorable Energy Bureau, set the following factors to apply from April 1, 2021 through June 30, 2021:

Adjustment Clause	Factor(\$/kwh)
FCA	0.106237
PPCA	0.034029

V. Reconciliation of FCA and PPCA Rider Factors

In June 2021, fuel costs amounted to \$154,574,490.39 and total revenues were \$127,847,129.95. *See Spreadsheet entitled Reconciliation File June 2021*, tab Jun 2021 Reconciliation. This yields a revenue insufficiency of \$26,727,360.54 which LUMA/PREPA shall recover. Additionally, the cost of purchased power was \$33,484,869.52 and total revenues were \$39,633,322.90. *Id.* There is an excess revenue of \$6,148,453.38 to reimbursable to rate payers.

The net total between FCA and PPCA was \$20,578,907.16. Because the re-estimated fuel purchase and purchased power expenses deviated from the estimates by more than \$20 million, LUMA re-estimated the FCA and PPCA factors for August and September 2021. The proposed factors are submitted with this Motion. *See Spreadsheet entitled August-September 2021 Factors.*

The recalculated FCA for August and September 2021 showed an increment of .90¢/kWh or 8.46% when compared with the factor approved by the Energy Bureau for the quarter of July through September 2021. The PPCA decreased by 0.21¢/kWh or -6.08% when compared to the factor approved by the Energy Bureau for the current trimester.

The updated FCA factor for August and September 2021, is \$0.115226. *See Spreadsheet entitled August-September 2021 Factors*, Attachment 1. And the updated PPCA factor for August and September 2021, is \$0.031912. *Id.* Attachment 2.

The net result for both the FCA and PPCA is an increment of 0.69¢/kWh or 4.93%. The impact on customer classes is as follows:

1. GRS residential with consumption of 400 kWh - \$3
2. GSS commercial and industrial with consumption of 1200 kWh - \$8
3. GSP commercial and industrial with 91,800 kWh and 250 kVA - \$635
4. GST commercial and industrial with 550,800 kWh y 1,500 kVA - \$3,813

See Spreadsheet entitled August-September 2021 Factors, Attachment 6.

VI. List of Confidential Supporting Documents Filed with this Motion

Exhibit A Confidential
Reconciliation File June 2021
July-September Consumption
August-September 2021 Fuel Factors
Quarter Reconciliation File March-April-May 2021
Variance Analysis Summary

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

This Motion references confidential information an analysis on the June 2021 variance. Given that the Motion includes LUMA’s original and confidential analysis on the June 2021 variance on fuel, generation and purchase power costs, LUMA respectfully submits the Motion under seal of confidentiality. It is respectfully submitted that confidentiality is the proper course of action at this time to protect trade secrets and sensitive information. This will also allow the

Energy Bureau to make discretionary determinations on the subject matter of LUMA's variance analysis and the accelerated adjustments of FCA and PPCA rider factors.

The confidential files mentioned in Section VI of this Motion are also being submitted with this Motion, are excel spreadsheets submitted in native format (.xls) and with formulae intact. *See Exhibit A-Confidential* (four excel files and one pdf file). Exhibit A-Confidential includes original calculations and analysis by LUMA and the spreadsheets included within Exhibit A-Confidential have formulae and original calculations made by LUMA personnel. Those documents 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 LPRA §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. 80-2011.¹ 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 contents of this Motion, particularly the analysis and information included in Sections I and III of this Motion, as well as Exhibit A-Confidential have and constitute protected trade

¹ 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.*

secrets. They have commercial value to LUMA and PREPA as they reveal confidential processes and analysis to produce calculations in support of the June 2021 reconciliations on FCA and PPCA factors. LUMA has kept and maintained this information confidentially and have not disclosed it to the public nor to unauthorized third parties.

This Motion and Exhibit A-Confidential include LUMA's original and internal analysis on the June 2021 variance that is informed to the Energy Bureau in this filing. Said analysis has not been shared with third parties and is submitted to the Energy Bureau for its consideration. The analysis itself is protected within the broad legal definition of trade secrets.

LUMA appreciates the importance of placing the Energy Bureau in the position of reviewing the reconciliations. 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 files submitted today as Exhibit A Confidential to this Motion, be received, kept and maintained confidentially by this Energy Bureau.

This Motion and files included as Exhibit A-Confidential: (1) information 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. They show processes, methods and mechanisms that garner protection under Act 80-2011. These original documents and data 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 information, data and files from disclosure and avoid unauthorized access by third parties that could seek to gain commercial advantages.

It is respectfully submitted that this Motion and Exhibit A-Confidential to this Motion, are or include trade secrets protected from public disclosure by Act 80-2011. It is submitted that at this juncture, the balance of interests weighs in favor of keeping this submission confidential within the discretion of the Energy Bureau and pending a determination of the Energy Bureau on this subject matter.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned and **grant** the request to **file** this Motion confidentially and **keep** confidential Exhibit A-Confidential to this Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 24th day of July 2021.



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