

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

NEPR Received: Aug 26, 2021 7:16 AM
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IN RE:
IN RE: PUERTO RICO ELECTRIC POWER
AUTHORITY PERMANENT RATE

CASE NO. NEPR-MI-2020-0001

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

**REVISED 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”).

On August 13, 2021, LUMA filed a submission styled *Submission of FCA and PPCA Reconciliations and Request for Confidential Treatment* of August 13, 2021, involving FCA and PPCA reconciliations for the month of July, 2021 (“August 13th Submission”). The Energy Bureau scheduled a technical conference in this proceeding for August 26, 2021, to discuss said submission and a prior filing made by LUMA on July 24, 2021, styled *Submission of FCA and PPCA Reconciliations and Request for Confidential Treatment*, involving proposed FCA and PPCA reconciliations for the month of June 2021. *See* Resolution and Order of August 20, 2021.

LUMA hereby respectfully submits minor corrections to the August 13th Submission. The following errors were corrected: San Juan Propane barrels were missing, Cambalache inspection fees were missing, and the Daguao received fuel was incorrect. All three errors were updated and corrected.

This submission includes five excel spreadsheets with formulae intact, submitted under seal of confidentiality in a zip file entitled “September 2021-Factor Files-Confidential” and those same five excel spreadsheets in public format, in a file entitled “RECONCILIATION FILE September 2021-Factor Files Updated 8-25-2021-Values.” LUMA respectfully submits that it will endeavor to update Exhibit 1 from the August 13th filing and submit after the Technical Conference on August 26, 2021. As explained in Section VII *infra*, it is hereby respectfully requested that the Energy Bureau accept and maintain the file entitled “September 2021-Factor Files-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 July 1, 2021 through September 30, 2021:

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

V. Reconciliation of FCA and PPCA Rider Factors

For the month of June 2021, the Fuel Cost was \$154,574,490.39 (including prior period reconciliation) and revenues totaled \$127,847,129.95. There was a revenue insufficiency of \$26,727,360.54 to recover from customers. On the other hand, the Purchased Power Cost was \$33,484,869.52 (including prior period reconciliation) and revenues totaled \$39,633,322.90, there was an excess revenue of \$6,148,453.38 to refund from customers. The net total between FCA and PPCA was \$20,578,907.16.

For the month of July 2021, the Fuel Cost was \$180,970,075.52 (including prior period reconciliation) and revenues totaled \$149,666,218.26. There was a revenue insufficiency of \$31,303,857.27 to recover from customers. *See Reconciliation File July 2021, tab entitled July-Reconciliation.* The Purchased Power Cost was \$48,123,502.21 (including prior period

reconciliation) and revenues totaled \$47,962,549.11. There was a revenue insufficiency of \$160,953.10 to recover from customers. *Id.*

The net total between FCA and PPCA was \$31,464,810.37. *See id.* 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 September 2021 which are submitted with this Motion. *See Spreadsheet entitled September 2021 Factors.*

Regarding Purchased Power, the amount applied for June and July was (\$6,294,358.53) and \$1,510,975.61, for a net amount of (\$4,783,382.92). This reduced the total PPCA cost in both months.

The recalculated FCA for September 2021 shows an increase of 4.01¢/kWh or 37.77% when compared to the FCA approved by the Energy Bureau on June 29, 2021 for the July to September 2021 quarter. The PPCA decreased 0.41¢/kWh or 12.17% when compared to the one approved by the Energy Bureau for the current quarter. The net result when totaling both was an increase of 3.60¢/kWh or 25.62%. The increase to customers according to their typical consumption is as follows:

1. Residential GRS with 400 kWh of consumption - \$14
2. Commercial and industrial GSS with 1,200 kWh consumption - \$43
3. Commercial and industrial GSP with 91,800 kWh and 250 kVA - \$3,303
4. Commercial and industrial GST with 550,800 kWh and 1,500 kVA - \$19,819.

See Spreadsheet entitled September 2021 Factors, Attachment 6.

VI. List of Supporting Documents Filed with this Motion
A. Revised Confidential Files

September 2021-Factor Files-Confidential
Reconciliation File July 2021
Reconciliation File June 2021
July-September Consumption
September 2021 Fuel Factors
Quarter Reconciliation File March-April-May 2021

B. Revised Public Files

“RECONCILIATION FILE September 2021-Factor Files Updated 8-25-2021-Values.
Reconciliation File July 2021
Reconciliation File June 2021
July-September Consumption
September 2021 Fuel Factors
Quarter Reconciliation File March-April-May 2021

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

With this motion, confidential files are being submitted which are mentioned in Section VI(A) of this Motion. These include five excel spreadsheets submitted in native format (.xls) with formulae intact and a document with a confidential variance analysis. *See* September 2021-Factor Files-Confidential (five excel files). The file entitled September 2021-Factor Files-Confidential includes original calculations and analysis by LUMA and the spreadsheets included in said file 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*

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.*

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 spreadsheets included in the file entitled “September 2021-Factor Files-Confidential” have and constitute protected trade secrets. They have commercial value to LUMA and PREPA as they reveal confidential processes and analysis to produce calculations in support of the July 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.

The spreadsheets submitted in the file entitled “September 2021-Factor Files-Confidential” include LUMA’s original and internal analysis on the July 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 file submitted today entitled “September 2021-Factor Files-Confidential”, be received, kept and maintained confidentially by this Energy Bureau.

The spreadsheets submitted in the file entitled “September 2021-Factor Files-Confidential” include: (1) information with commercial and financial value, and (2) 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 the spreadsheets submitted in the file entitled “September 2021-Factor Files-Confidential” 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 **keep** confidential the file entitled “September 2021-Factor Files-Confidential.”

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 26th day of August 2021.



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