

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

<b>NEPR</b>  <b>Received:</b>  <b>Sep 20, 2021</b>  <b>7:30 PM</b>
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**IN RE:**

IN RE: PUERTO RICO ELECTRIC POWER  
AUTHORITY PERMANENT RATE

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

**SUBJECT: Compliance with September 17<sup>th</sup> Resolution  
and Order.**

**MOTION IN COMPLIANCE WITH SEPTEMBER 17<sup>TH</sup> RESOLUTION AND ORDER  
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”), and respectfully state and request the following:

**I. Submission in Compliance with September 17<sup>th</sup> 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, on September 16, 2021, LUMA filed with this Puerto Rico Energy Bureau (“Energy Bureau”) the quarterly reconciliations for the months of June, July, and August, 2021, and the proposed factors for the FCA, PPCA and FOS riders to be applied from October 1, 2021 until December 31, 2021 (“September 16<sup>th</sup> Submission”). As Exhibit 1, LUMA submitted a Summary of Revisions that LUMA made to the June and July reconciliations as requested in the August 30<sup>th</sup> Order. As Exhibit 2, LUMA filed an explanation on retail sales forecasts entitled *Retail Sales*

*Forecast*. Finally, as Exhibit 3, LUMA submitted a variance analysis memorandum and a presentation with its variance analysis.

At 6:24 pm, on Friday, September 17, 2021, LUMA received a Resolution and Order issued by the Energy Bureau, directing that on or before noon of Monday, September 20, 2021, LUMA shall submit additional information and clarifications on five items identified by the Energy Bureau (“September 17<sup>th</sup> Order”). The Energy Bureau’s September 17<sup>th</sup> Order afforded LUMA half of a business day to provide explanations, additional information and clarifications on: (1) data on non-billed sales during the period of June through August 2021 and the calculations for fuel costs and purchased power costs that were not billed for the same period as stated in the file entitled OCTOBER-DECEMBER 2021 *Factors v2*; (2) conduct a reconciliation in cell K80 of the file “QUARTER RECONCILIATION FILE JUNE-JUL-AUG 2021 xls, TAB “FUEL-JUN-21-REPORT”, involving the difference between the initial fuel inventory for the month of June 2021 in the Aguirre plant and the fuel inventory for the month of May 2021 stated in the file “QUARTER RECONCILIATION FILE MAR-APRIL-MAY 2021 xls, TAB “FUEL-MAY-21-REPORT,” cell K93; (3) regarding the file “*Comportamiento de generación*”, explain data in column M entitled “LF”, and certain information on estimated generation and actual and estimated consumption; (4) regarding the file “ *Precio Ponderado Analisis.xlsx*, Tab “Summary”, explain the data presented in line 13 on CORCO fuel inventory; and (5) clarify or submit information on incremental costs of use of the peaking units as stated in the Resolution and Order of September 10, 2021 (“September 10<sup>th</sup> Order”). See September 17<sup>th</sup> Order at pages 2-3.

During the morning of September 20, 2021, LUMA requested a brief extension of time until 7:00 pm of even date to comply with the September 17<sup>th</sup> Order. As of the filing of this Motion, the Energy Bureau has not ruled on that request for a brief extension of time.

In compliance with the September 17<sup>th</sup> Order LUMA hereby submits the following documents:

- a. LUMA's written responses to the requests included in the September 17<sup>th</sup> Order, Exhibit 1 in pdf format;
- b. Revised Exhibit 3 to the September 16<sup>th</sup> Submission (presentation in pdf format);
- c. Exhibit A – Confidential including the following files:
  - Comportamiento generacion.xlsx
  - Incremental Cost Analysis Jun, Jul and Aug 2021\_v2.xls, which is responsive to the Energy Bureau's request for data on incremental costs of the peaker units for the months of June through August 2021 as explained in Exhibit 1 at page 6
  - OCTOBER-DECEMBER 2021 Factors\_v3.xls
  - QUARTER RECONCILIATION FILE MAR-APR-MAY21\_v2 (Corrected).xls
- d. Exhibit A – Public
  - Comportamiento generacion\_Values.xlsx
  - Incremental Cost Analysis Jun, Jul and Aug 2021\_v2\_Values.xls
  - OCTOBER-DECEMBER 2021 Factors\_v3\_Values.xls
  - QUARTER RECONCILIATION FILE MAR-APR-MAY21\_v2 (Corrected)\_values.xls
  - YEAR END INVENTORY 2020 TOTALS FOR PREPA\_Values.xls

- FCA and PPCA Not Billed Estimation.xlsx, which is responsive to item 1 of the September 17<sup>th</sup> Order as explained in Exhibit 1 at page 1.

It is respectfully informed that the responses being filed with this Motion did not require a revision to the proposed FCA and PPCA factors that were filed on September 16, 2021. A minor revision of \$0.1 million was made regarding the actual fuel costs on page 4 and page 14 of the presentation.

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

The confidential excel files mentioned in Section VII A of this Motion *supra*, that are being submitted with this Motion, include excel spreadsheets submitted in native format (.xls) and with formulae intact. *See Exhibit A Confidential*. 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.

### **i. 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).

**ii. 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>1</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)).

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<sup>1</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.*

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 in the file entitled *Exhibit A 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 FCA, PPCA and FOS 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 in the file entitled *Exhibit A Confidential*, be received, kept and maintained confidentially by this Energy Bureau.

The confidential spreadsheets included in the file entitled *Exhibit A 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 the spreadsheets included in the filed entitled *Exhibit A 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; **deem** that LUMA complied with the September 17<sup>th</sup> Order; and grant confidential treatment to the file entitled *Exhibit A Confidential*.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 20<sup>th</sup> day of September 2021.

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



**DLA Piper (Puerto Rico) LLC**  
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*Exhibit 1*  
Responses

# Permanent Rate, Docket NERP-MI-2020-0001

## Responses to September 17, 2021 Requests

### Request 1:

Refer to the file OCTOBER-DECEMBER 2021 Factors\_v2.xlsx, Tab “Attachment 7”, explain (i) the origin of the data on unbilled consumption during the period from June to August 2021; y (ii) the calculation used to determine the Fuel and Purchased Power not billed for the referred period (i.e., Tab “Attachment 7” columns D, E, I, J, N, O.). It should be noted that the fuel and energy purchase costs related to unbilled consumption that LUMA reported in the aforementioned Tab “Attachment 7” are not consistent with the factors of the FCA and PPCA clauses for the months of June, July and August 2021.

### Response 1(i):

Due to issues with the billing process during the months of June, July and August, LUMA has not been able to provide bills to a portion of customers, including certain commercial and industrial customers. This issue is not typical and LUMA is working hard to address the key issues and LUMA anticipates being able to resolve these issues during the second quarter of FY2022 and therefore anticipates billing for FCA and PPCA costs incurred during the first quarter of FY2022.

As LUMA anticipates billing for these amounts in the second quarter of FY2022, LUMA did not want to include those amounts in the reconciliation to be applied to the FCA and PPCA riders in the second quarter of FY2022 as that could result in double collecting for those ‘abnormal’ unbilled amounts.

The data used as a basis for our calculations is the Customer Car and Billing database and the approved FCA and PPCA factors.

### Response 1(ii):

Please refer to FCA and PPCA Not Billed Estimation.xls for the calculations used to determine the FCA and PPCA not billed. LUMA filtered for customers that had been billed in the recent past (within calendar year 2021), and for those customers that:

- 1) in the case of June, had not been billed for June, July and August;
- 2) in the case of July, had not been billed for July and August; and,
- 3) in the case of August, had not been billed.

LUMA took the last billed amount in kWh for each customer and multiplied it by the FCA and PPCA factors for each month the customer was unbilled. LUMA understands this is an estimation of what LUMA expects to bill in the second quarter of FY2022. LUMA will reconcile this amount as customers are billed and will report during the December 2021 filing.

While preparing FCA and PPCA Not Billed Estimation.xls, LUMA noted that the kWhs initially reported in Attachment 7 of OCTOBER-DECEMBER 2021 Factors\_v2.xls were incorrect due to an inadvertent error and included more customers than intended. LUMA has revised these values and submit them within OCTOBER-DECEMBER 2021 Factors\_v3.xls.

## Request 2:

Refer to the file QUARTER RECONCILIATION FILE JUN-JUL-AUG 2021.xlsx, Tab "FUEL-JUN21-REPORTE", cell K80, reconcile the difference between the fuel beginning balance for June 2021 from Planta de Aguirre and the ending balance submitted in the file QUARTER RECONCILIATION FILE MAR-APRMAY21\_v2.xlsx, Tab "FUEL REP MAY 21 REPORTE", Cell K93.

## Response 2:

The May ending balance for Aguirre was incorrect as it did not consider a transfer that occurred in April 2021 but was missing from the fuel report summary column. In the tab FUEL REP MAY 21 REPORTE, the total column K, rows 80 to 93 from Aguirre Plant did not consider the adjustment done due a missing Transfer from Apr 2021 for \$57,383.17 (please refer to cell G89). This mistake in the summary column was corrected in the June beginning balance and does not affect the fuel cost used for the determination of the proposed factors for the first or second quarter of FY2022. The May amended report is included as reference QUARTER RECONCILIATION FILE MAR-APR-MAY21\_v2 (Corrected).

### Request 3:

Refer to file Comportamiento generación.xlsx, Tab “estimado factores Q2 2022”, explain the source of (i) data from column M, called “LF”, and (ii) the data from cells D16 to D34, E16 to E29, about actual and forecast generation; and cells D37 to D54, E37 to E49, about actual and forecast consumption.

### Response 3:

The LF is the load factor used for the determination of the peak demand for September to December 2021. The average of load factors from FY 2020 and FY 2021 were used. The updated of the file Comportamiento generación.xlsx was updated to includes the formulas, please refer to tab Load Factor.

The cells D16 to D34, show the generation forecast for the certified fiscal plans from FY2020 and FY2021 and cells E16 to E29 the actuals for FY2020 and FY2021, respectively. Equally, cells D37 to D54 show the forecasted consumption from the certified fiscal plans from FY2020 and FY2021 and E37 to E49 the actuals for FY2020 and FY2021, respectively. These are all used in our analysis.

### Request 4:

Refer to file Precio Ponderado Análisis.xlsx, Tab "Summary", explain the data in the line 13, about CORCO fuel inventory.

### Response 4:

The PRECIO PONDERADO DIRECTORADO DE GENERACION @ junio 30, 2021 file was provided to LUMA by PREPA's Fuel Office. The file does not include CORCO inventories in Costa Sur. The Fuel Report (tabs FUEL-JUL-21-REPORTE in the QUARTER RECONCILIATION FILE JUN-JUL-AUG 2021.xlsx, cell B56), LUMA included the CORCO fuel inventory.

The adjustments applied to the beginning balance in July require both the Precio Ponderado file provided by PREPA's Fuel Office and the Fuel Report. In order to compare apples to apples, the inventory at CORCO needs to be added to the Costa Sur data. As there were no transfers of Number 6 fuel oil from CORCO to Costa Sur in in FY2021, LUMA used the CORCO amount as reported and certified by the external laboratories in June 2020, according to the file submitted to PREB in the adjustment done in July 2020. Please refer to cell E16 within END OF YEAR INVENTORY 2020 TOTALS FOR PREPA.xlsx.

## Request 5:

LUMA indicates that the data requested in the Resolution from September 10, regarding the incremental cost incurred for the use of the rapid response units (peaking units) during the period from June to August 2021 is contained in slides 8, 9 and 14 from Exhibit 3 of the Motion from September 16. However, such incremental cost information does not follow from the information presented on the indicated pages. LUMA must clarify the above, or submit the information requested through the Resolution of September 10.

## Response 5:

LUMA defines incremental costs as the cost required of meeting the next incremental MWh of demand at any point in time, and LUMA does not fully understand the term incremental cost in this context.

LUMA understands that the Bureau intended to request more information regarding the variance between forecasted fuel costs and actual fuel costs. Within the timeframe allowed for this analysis, LUMA provides a breakdown of the variance between the forecasted fuel consumption costs and the actual fuel consumption costs into two categories, i) changes in fuel prices (per barrel changes) and ii) other variances, which include changes in dispatch due to plant availability and the variability in heat rates, among others.

Please refer to Incremental Cost Analysis Jun, Jul and Aug 2021\_v2.xls for the variance analysis described above.



Revised Exhibit 3 to September 16<sup>th</sup> Submission



# FCA – PPCA Variance Discussion

*September 17, 2021*

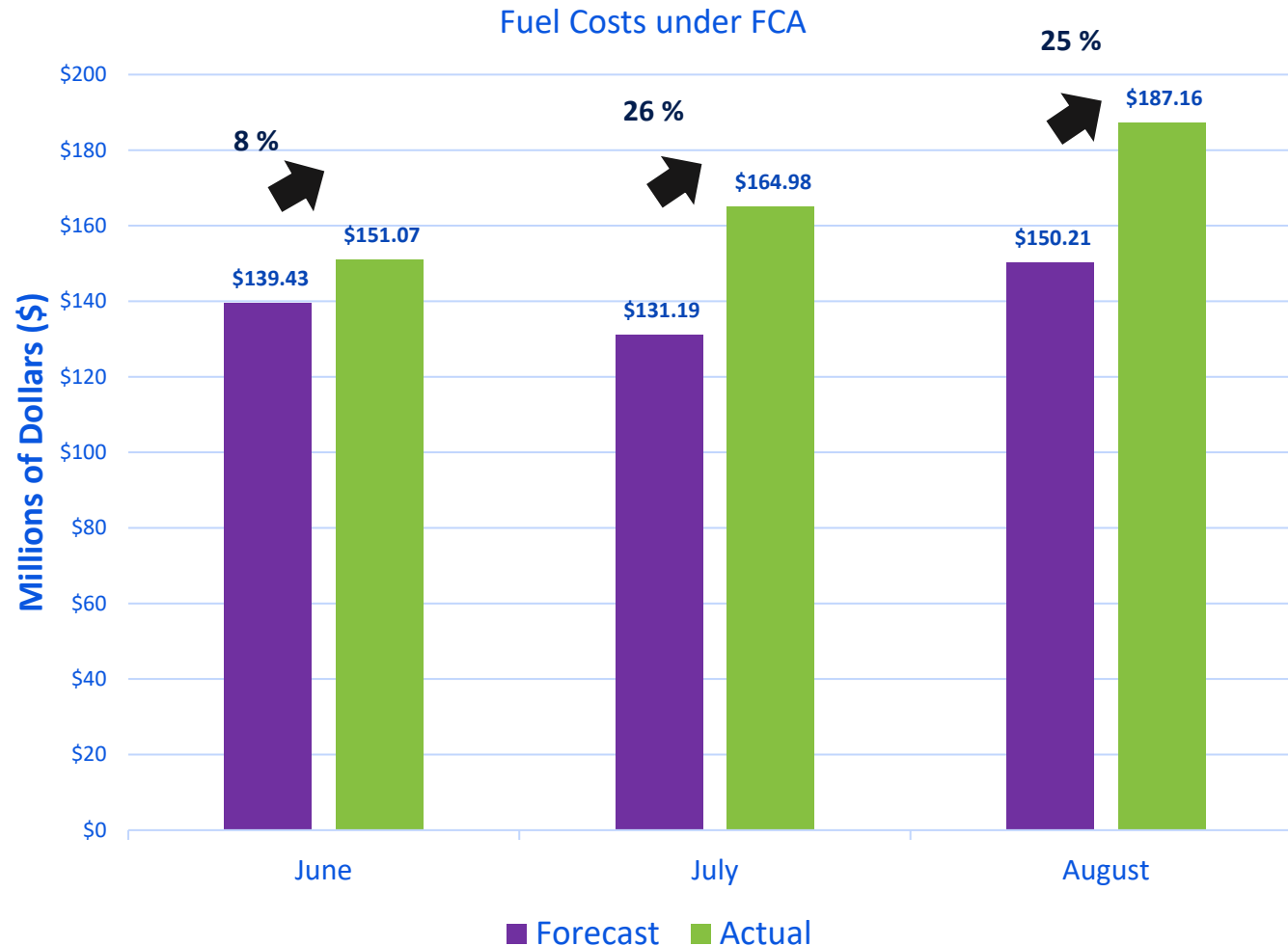


# Agenda

- I. Fuel Charge Adjustment Variance Analysis
- II. Purchased Power Charge Adjustment Variance Analysis
- III. Summary

# I. Fuel Charge Adjustment

# Actual fuel expenditures in Q1 FY22 were almost 20% higher than projected

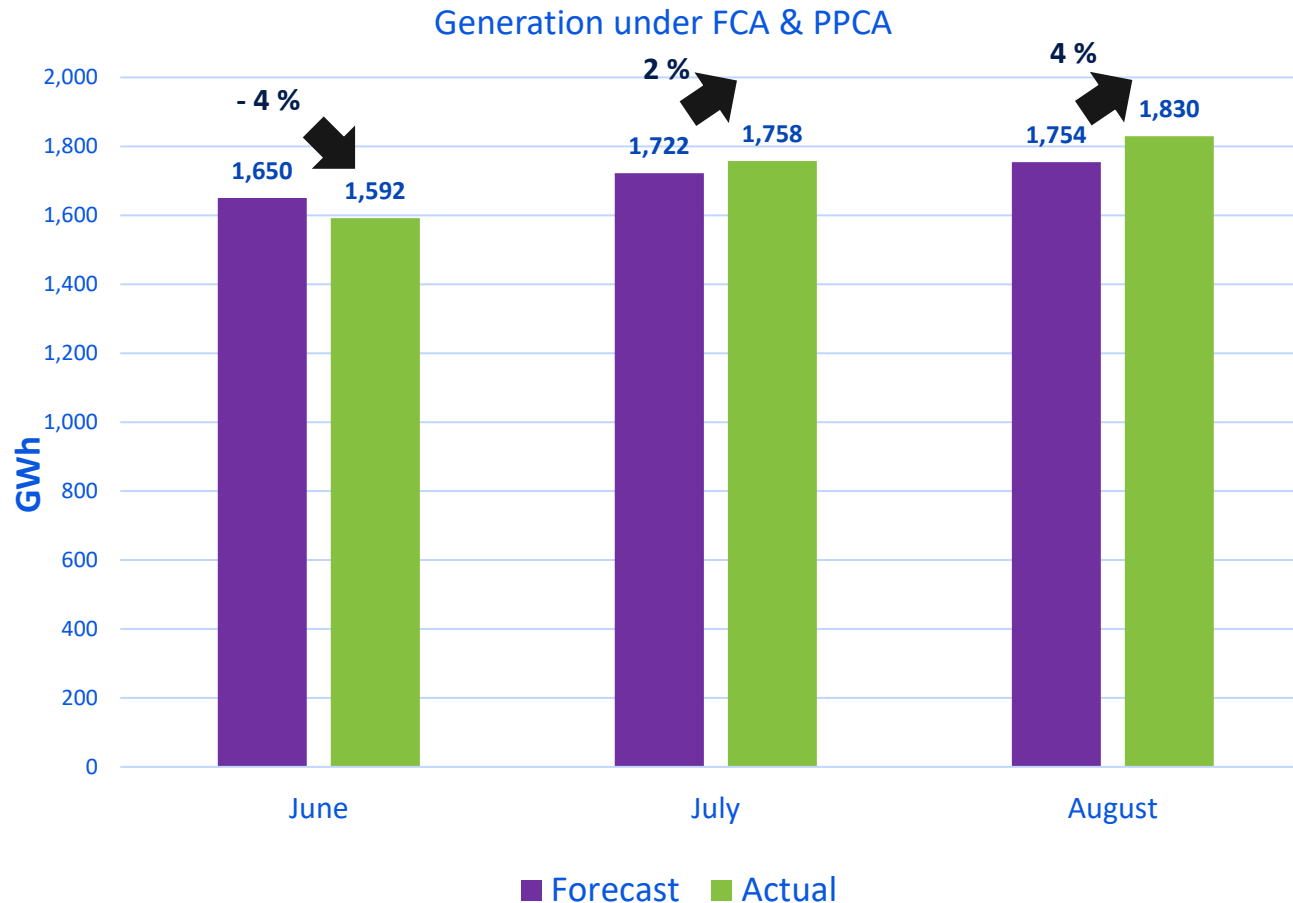


## 3-month Total Fuel Cost Comparison:

- Forecasted: \$ 420.83 Million
- Actual: \$ 503.21 Million
- Variance: \$82.38 Million (19.6%)



# Actual electric generation provided to all customers in Q1 FY22 was 1% higher than projected

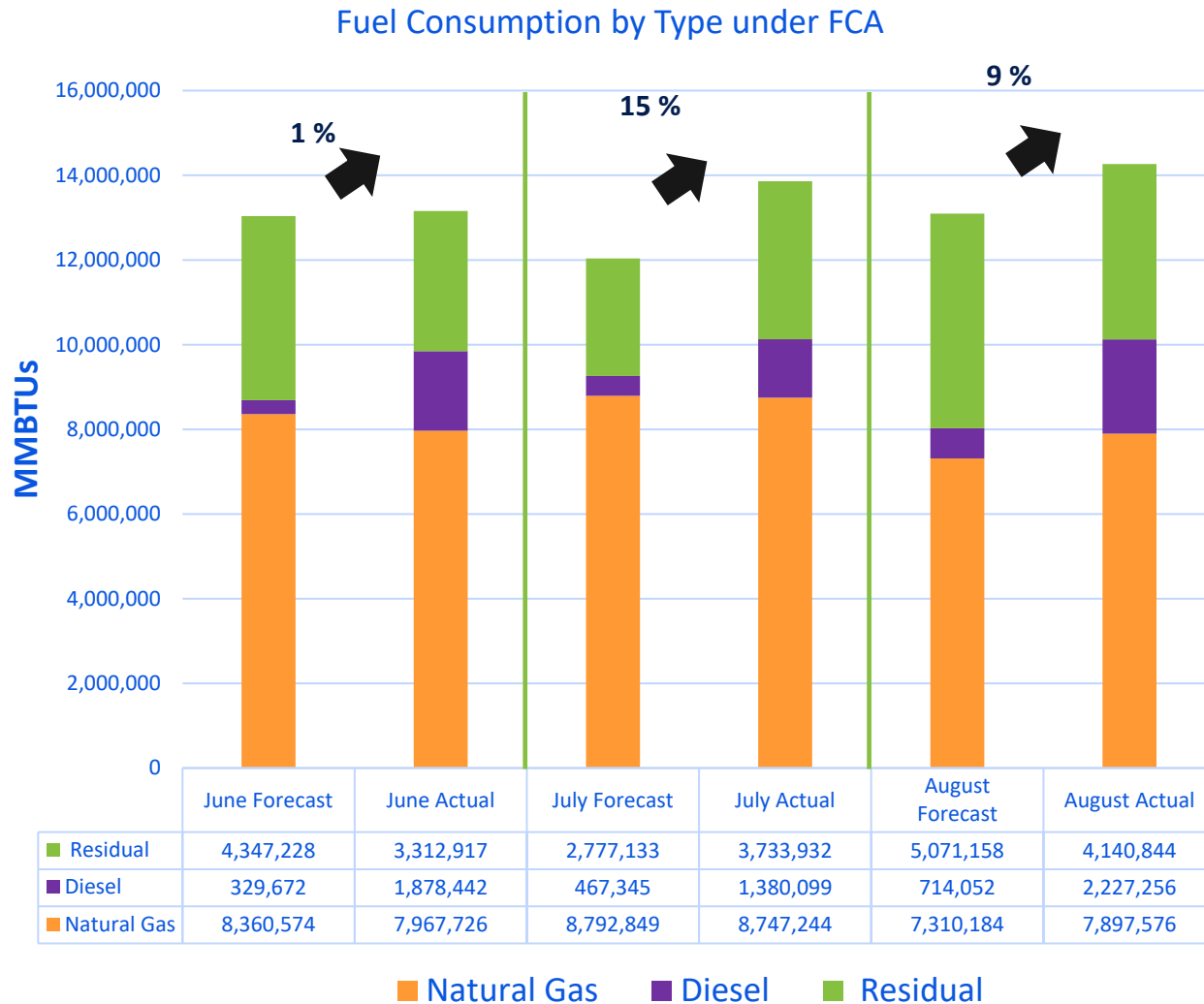


## 3-month Total Generation Comparison:

- Forecasted: 5,126.9 GWh
- Actual: 5,179.3 GWh
- Variance: 52.4 GWh (1%)



# Actual fuel procured in Q1 FY22 was 8% higher than forecasted, driven by a larger consumption of diesel fuel than projected



## 3-month Total Consumption Comparison:

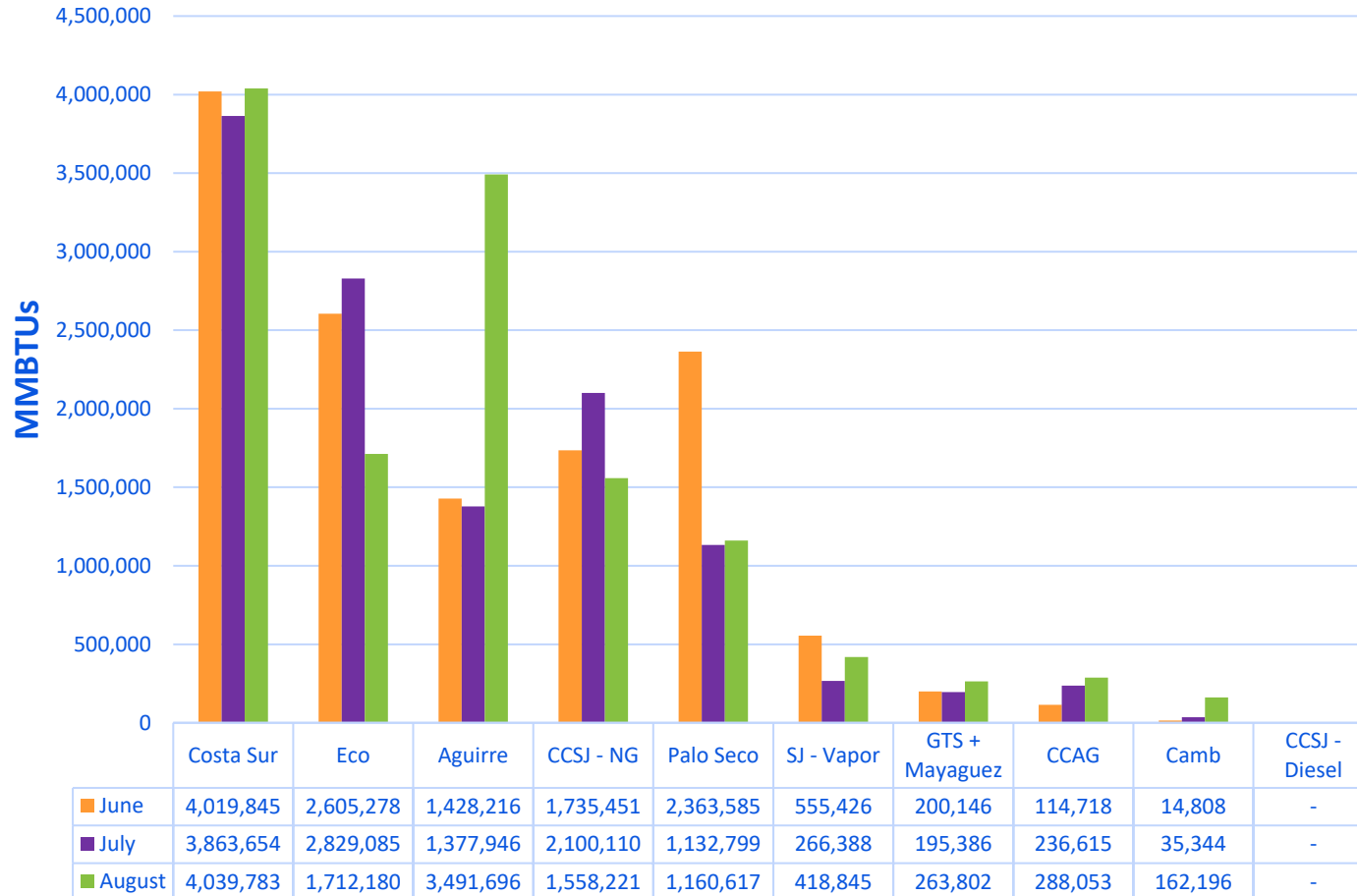
- Forecasted: 38,170,192 MMbtu
- Actual: 41,286,035 MMbtu
- Variance: 3,115,842 MMbtu (8%)

Fuel Type	Forecast	Actual	% Variance
Residual	12,195,518	11,187,692	-8%
Diesel	1,511,068	5,485,797	263%
Natural Gas	24,463,605	24,612,546	1%
<b>Total</b>	<b>38,170,192</b>	<b>41,286,035</b>	<b>8%</b>



# Fuel procurement forecast assumed high utilization of more efficient, base load generation sites

Forecasted Consumption by Plant under FCA



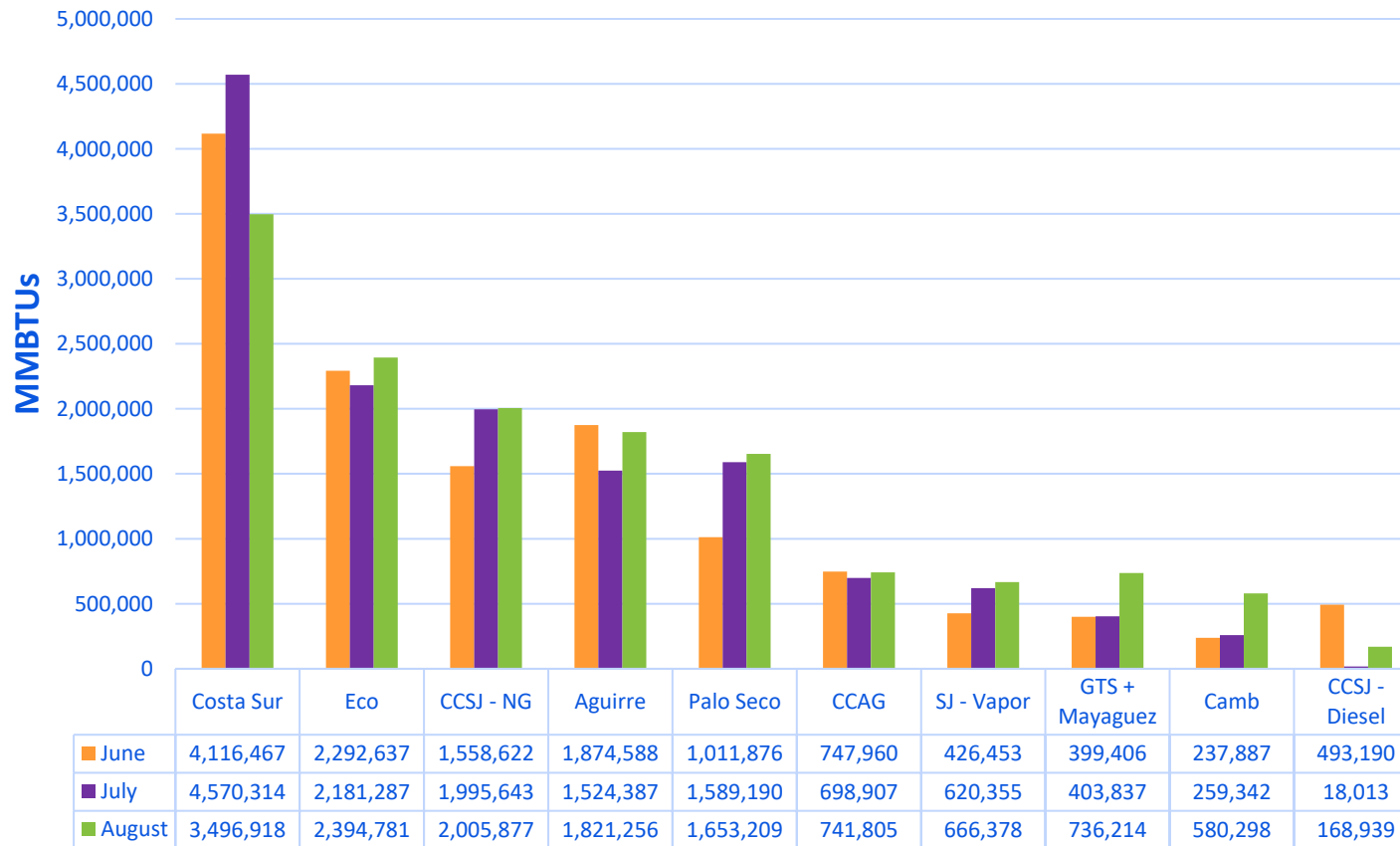
- PROMOD forecast optimizes expected plant utilization to determine least cost dispatch
- PROMOD maximizes production from lowest cost units first, then relies on less efficient units as needed to meet demand
- Forecasted production determined primarily by plant availability due to outage schedules
- Peaker units forecast to be used only on occasional hours as needed (high heat rate, high cost)





# Diesel fueled-peaker plants were utilized to meet customer demand and to minimize load shedding

Actual Consumption by Plant under FCA

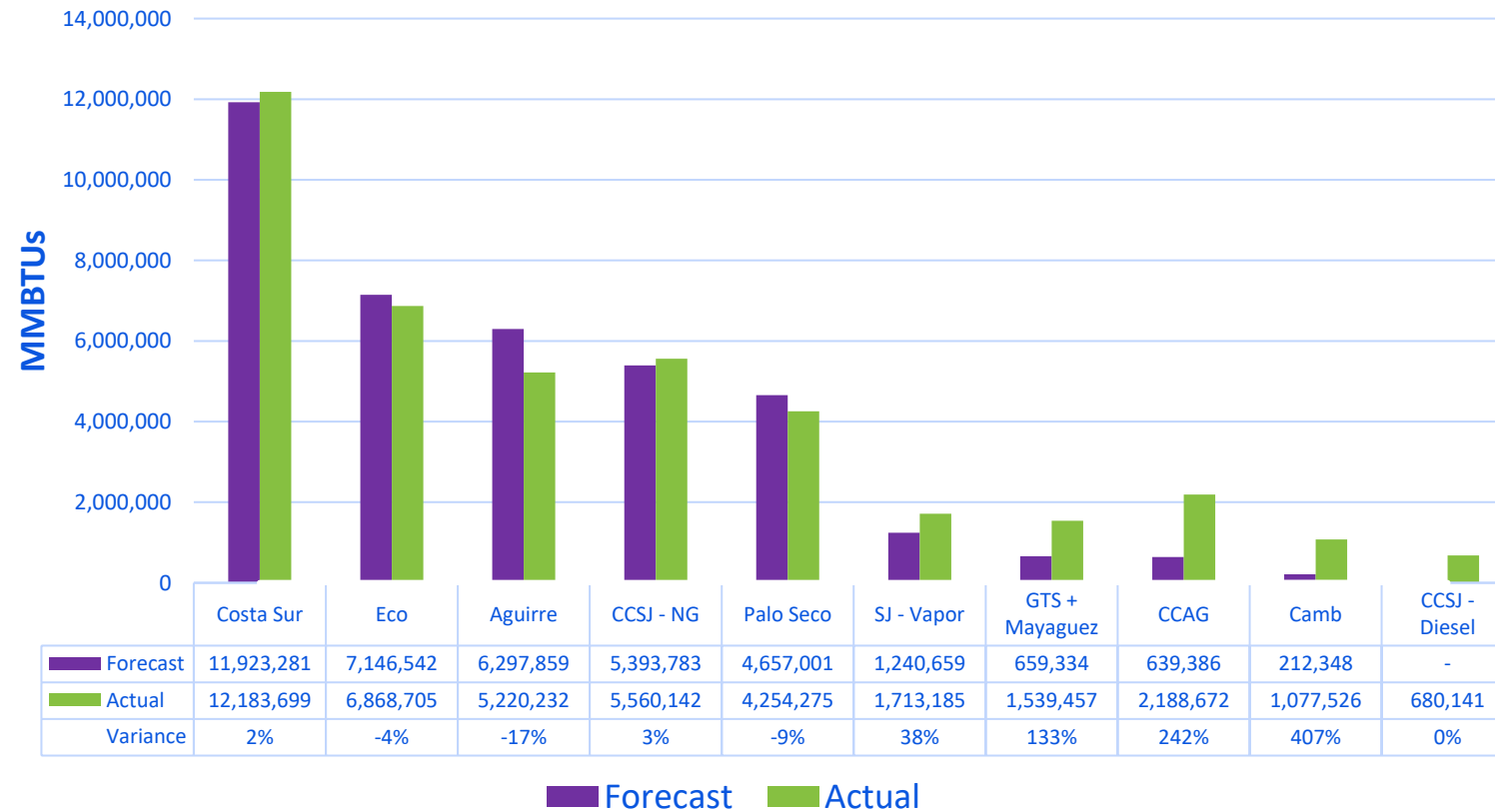


- Increased reliance on peaker plants in August



# Greater than expected use of diesel-fueled peaker plants was the largest variance driver in the quarter

Forecasted Consumption vs Actual under FCA (Jun-Aug 2021)

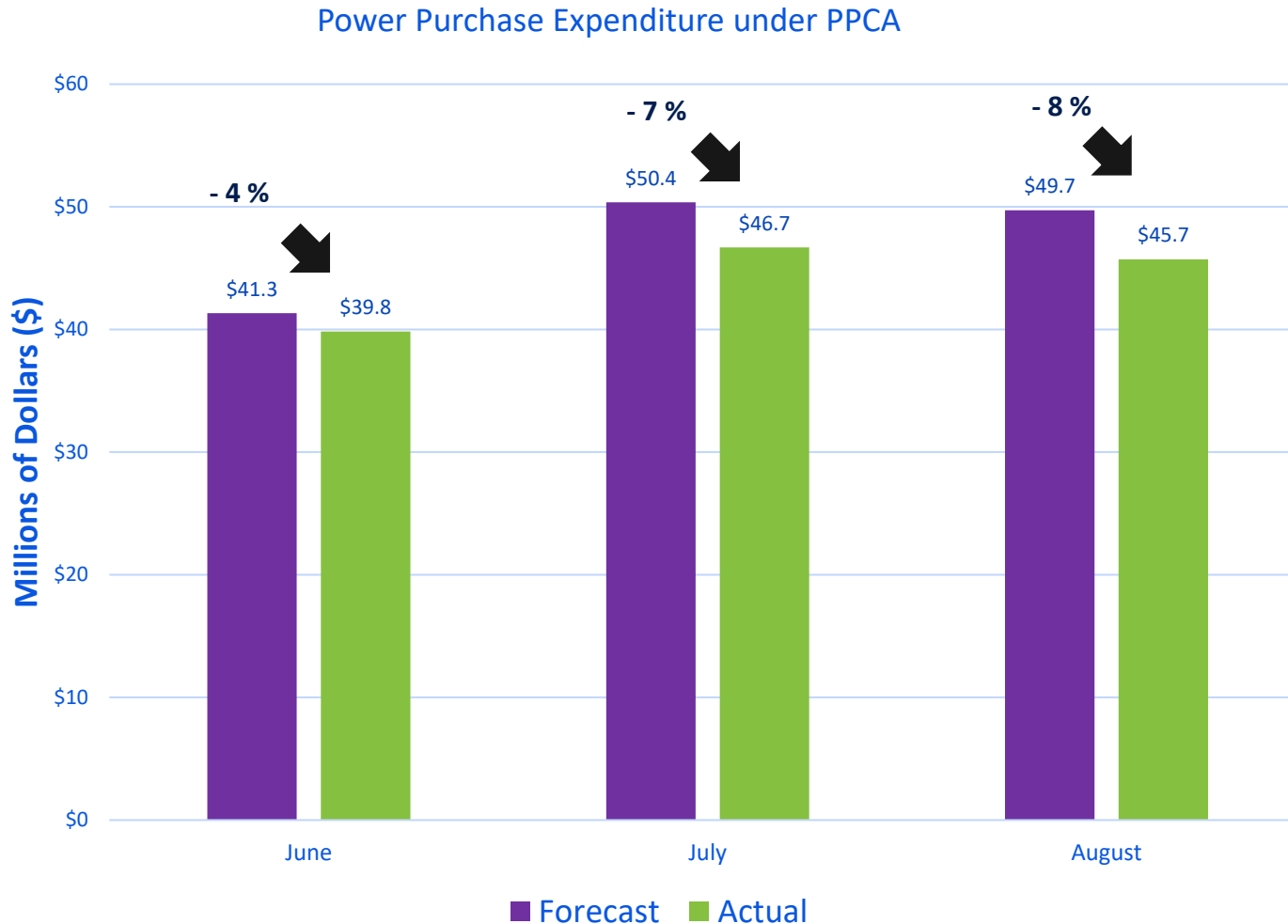


- Moderately higher utilization than forecast at Costa Sur, Ecoelectrica, and CCSJ
- Considerably less utilization than forecast at Aguirre and Palo Seco
- Significantly greater utilization than forecast at peaker plants



# II. Purchased Power Charge Adjustment

# Actual purchased power costs in Q1 FY22 were just ~7% lower than projected

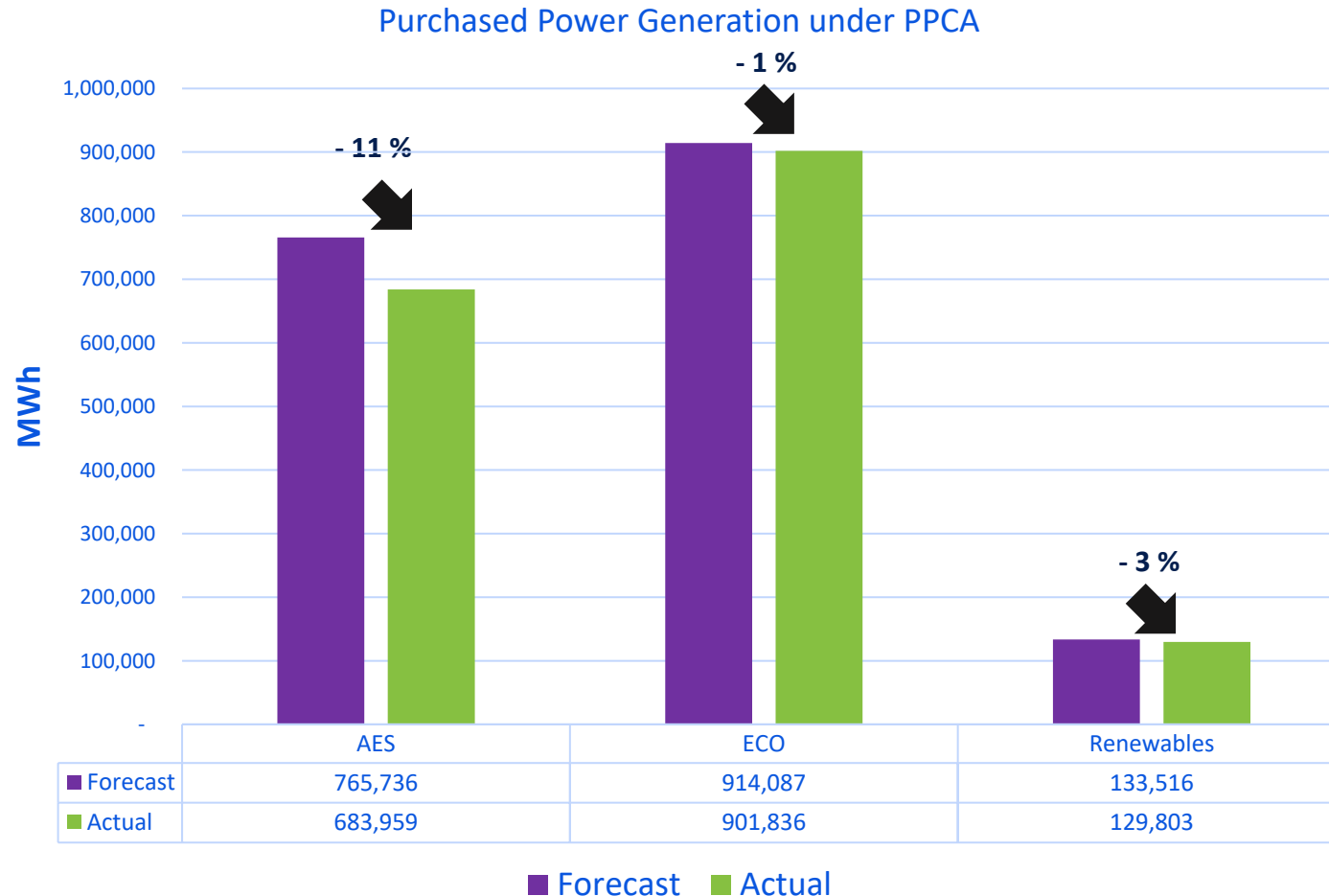


## 3-month Power Purchase Cost Comparison:

- Forecasted: \$ 141.4 Million
- Actual: \$ 132.2 Million
- Variance: -\$9.2 Million (-6.5%)



# Actual purchased power production in Q1 FY22 was just over 5% lower than projected



## 3-month Total Generation Comparison:

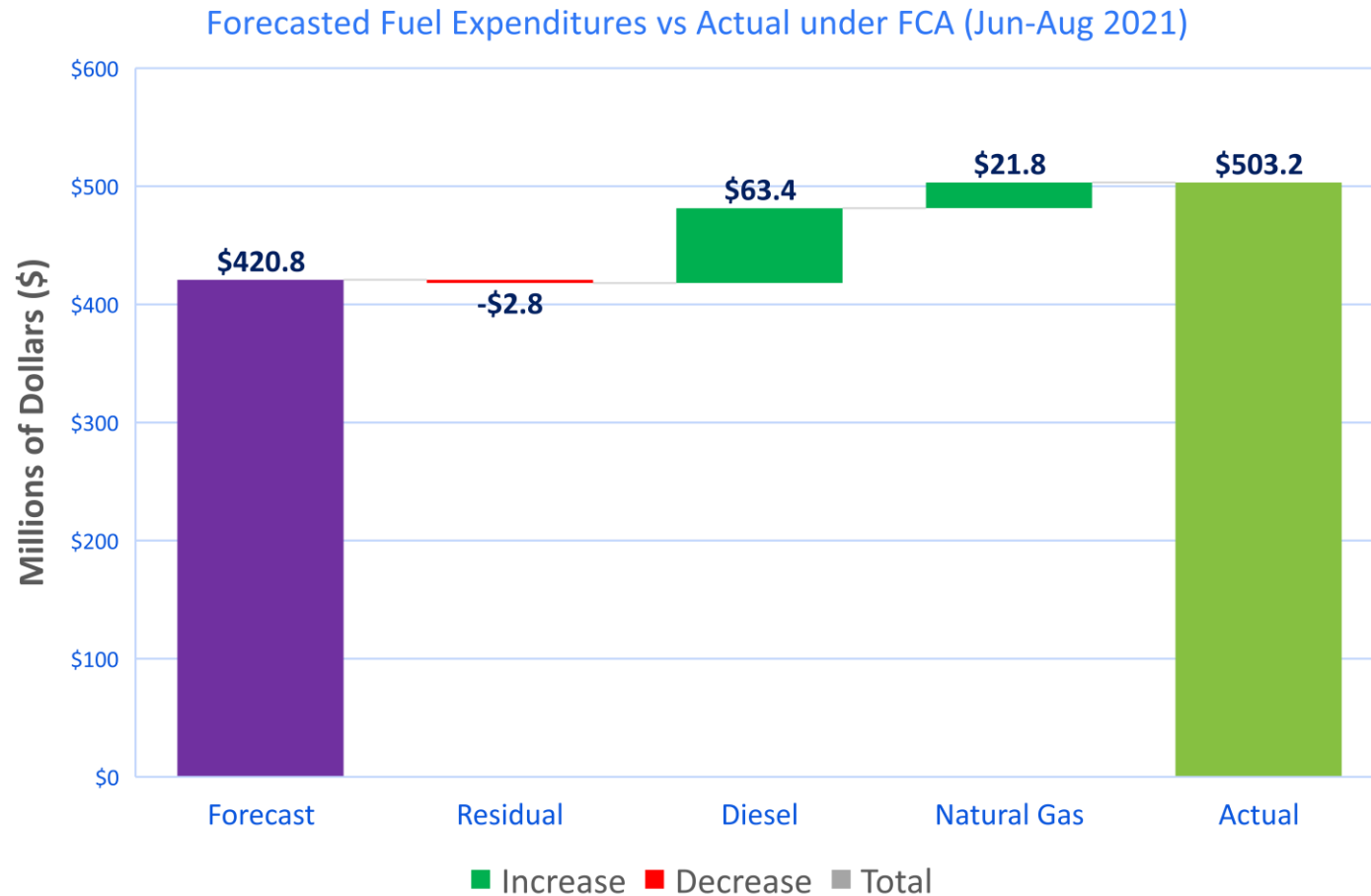
- Forecasted: 1,813,338 MWh
- Actual: 1,715,598 MWh
- Variance: -97,740 MWh (-5.4%)



# III. Summary



# The greatest source of variance was a reduction in lower cost residual fuel plants, which were replaced by diesel and some natural gas fuel plants



- Due to lack of resource adequacy, higher cost diesel-fueled peaker plants were relied upon to reduce load shed events
- Even with reliance on peakers, there was not enough capacity to meet customer demand for several periods and load shedding did occur