

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

**NEPR**

**Received:**

**Jan 28, 2022**

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**IN RE:**

THE UNBUNDLING OF THE ASSETS OF  
THE PUERTO RICO ELECTRIC POWER  
AUTHORITY

CASE NO.: NEPR-AP-2018-0004

**SUBJECT: Request for Confidential Treatment of  
limited portion of Response and Opposition submitted on  
January 5, 2022**

**REQUEST TO SEAL AND MEMORANDUM OF LAW IN SUPPORT OF  
CONFIDENTIAL TREATMENT OF A LIMITED PORTION OF LUMA'S JANUARY  
25, 2022 RESPONSE AND OPPOSITION TO RESOLUTION AND ORDER OF JANUARY  
5, 2022, ON TAKING OF ADMINISTRATIVE NOTICE AND SUBMISSION OF  
CLARIFICATIONS AND ADDITIONAL INFORMATION**

**TO THE PUERTO RICO ENERGY BUREAU:**

**COME NOW LUMA Energy, LLC** (“ManagementCo”), and **LUMA Energy ServCo, LLC** (“ServCo”), (jointly referred to as “LUMA”) and respectfully state and request the following:

**I. INTRODUCTION:**

On January 25, 2022, LUMA filed its *Response and Opposition to Resolution and Order of January 5, 2022, on Taking of Administrative Notice and Submission of Clarifications and Additional Information* in the captioned case (hereafter referred to as LUMA’s “Response and Opposition”). Upon further review of the *Response and Opposition*, LUMA noticed that a specific portion of the same contains commercially sensitive information that is confidential in nature and, accordingly, must be protected as per Article 6.15 of Law 57-2014, known as the Puerto Rico Energy Transformation and Relief Act and the Puerto Rico Energy Bureau’s (“Energy Bureau”) Policy on Confidential Information dated August 31, 2016, as amended on September 21, 2016 in Case No. CEPR-MI-2016-0009 (the “Policy”).

In light of the forgoing, for the reasons explained in more detail below, LUMA respectfully requests that this Honorable Energy Bureau grant confidential treatment to a specific portion of its Response and Opposition located at pages 21 and 22 and that, consequently, its Response and Opposition be removed from the record and that the version included as Exhibit I herewith be substituted as LUMA's Response and Opposition in the public docket of this proceeding. In compliance with Section A.5 of the Policy, LUMA also includes as Exhibit II of the present motion, an unredacted confidential version of the Response and Opposition.

## **II. REQUEST FOR CONFIDENTIAL TREATMENT:**

### **A. Applicable Laws and Regulation to a request for confidentiality before the PREB:**

Section 6.15 of Act 57-2014 regulates the management of confidential information filed before this Bureau. 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).

In connection with the duties of electric power service companies, Section 1.10 (i), (vii) and (viii) of Act 17-2019 further provide that electric power service companies shall provide information requested by customers, except for: (i) confidential information in accordance with the Rules of Evidence of Puerto Rico; [...] (vii) trade secrets of third parties; (viii) issues that should be maintained confidential in accordance with any confidentiality agreement, provided, that such agreement is not contrary to public interest;...”

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

The Energy 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 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 Energy 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 Policy 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, Energy 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 [Energy 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* Energy Bureau Regulation No. 9137 on *Performance Incentive Mechanisms*, Section 1.13 (addressing disclosure before the Energy 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. (Emphasis added).

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); *see also Next Step Medical Co. v. MCS Advantage Inc.*, 2016 WL 6520173, KLCE201601116 (P.R. Court of Appeals, September 13, 2016 at page 11 (holding that in Puerto Rico, what constitutes trade secrets is evaluated applying a broad definition). A trade secret includes **any and all information** from which a real or potential value or economic advantage may be derived; that is not common knowledge or accessible through other means; and as to which reasonable security measures have been adopted to keep the information confidential. *Ponce Adv. Medical*, 197 DPR at 906.

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 Ann. 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 last paragraph at page 21 of LUMA's Response and Opposition refers to the process or formula as per which PREPA prepares various fuel price projections and forecasts. Such information includes reference to the indexes and multipliers applied by PREPA in the internal process of making Fuel, Natural Gas and new Bunker C Oil price projections or forecasts. At page 22, the paragraph concludes by describing how PREPA makes its Diesel calculation. LUMA received this information confidentially from PREPA pursuant to Section 13.2 (a) of the T&D OMA.<sup>1</sup> Said Section 13.2 of the T&D OMA imposes duties on LUMA as the Operator to protect Owner Confidential Information.<sup>2</sup> Owner Confidential Information includes certain system information furnished or made available by PREPA (as Owner) to LUMA on a confidential basis in connection with the T&D OMA. *Id.*

Furthermore, the information is confidential in nature as it is based on the structure of the fuel contracts that PREPA has currently in place and that are kept confidential by the utility in order to protect the fairness and purity of bidding processes. LUMA has not made this information public and takes reasonable measures to protect it from public disclosure as the information could potentially provide an interested party an undue advantage in a potential future bidding process

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<sup>1</sup> The T&D OMA refers to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement executed among PREPA, LUMA, and the Puerto Rico Public Private Partnerships Authority dated as of June 22, 2020.

<sup>2</sup> Specifically, Section 13.2(a)(ii) of the OMA provides, in pertinent part, that subject to certain provisions, "each receiving Party shall, and shall cause its Representatives to, (A) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information of the disclosing Party, and (B) use all Confidential Information of the disclosing Party solely for the purposes of performing its obligations under the Transaction Documents and not for any other purpose [...]" The term "Confidential Information" includes "Owner Confidential Information." *See* OMA, Section 13.2(a)(ii).

conducted by PREPA for the provision of fuel and, therefore, constitutes a trade secret per Act 80-2011.

Taking the foregoing into consideration, the information found on the last paragraph of page 21 which closes at the top of page 22 of LUMA's Response and Opposition should be considered Confidential by this Energy Bureau pursuant to Section 6.15 of Law 57-2014 and, therefore, treated as Validated Trade Secret Information as per Section D.1 of the Policy. As such, it should be excluded from the public record and only shared with the Energy Bureau to avoid it providing an unfair advantage to an interested party in a bidding process before PREPA. To that end, it is respectfully requested that the Energy Bureau substitute the Response and Opposition currently on the public docket for Exhibit I which is a redacted version of the document. In compliance with Section A.6 of the Policy, LUMA includes as Exhibit II, an unredacted version of the motion. It is expressly certified that no other changes have been made to LUMA's Response and Opposition except for the redaction at the bottom of page 21 and top of page 22.

Finally, LUMA respectfully requests that the Energy Bureau issue an order directing that intervenors shall destroy the copies of LUMA's Response and Opposition and shall hereinafter use and refer to the redacted version of LUMA's Response and Opposition that is filed as Exhibit I to this Motion.

### **III. Identification of Confidential Information:**

In compliance with the Bureau's Policy on Management of Confidential Information, below please find a table summarizing the request for confidentiality:

	<b>Document or file</b>	<b>Pages in which Confidential Information is Found, if applicable</b>	<b>Summary of Legal Basis for Confidentiality Protection, if applicable</b>	<b>Date Filed</b>
1	Response and Opposition to Resolution and Order of January 5, 2022, on Taking of Administrative Notice and Submission of Clarifications and Additional Information.	Last paragraph at page 21 which closes at top of page 22 of the motion.	The information constitutes a trade secret pursuant to Law 80-2011. 10 LPRA §§ 4131-4144 and is protected by Section 6.15 of Law 57-2014	January 25, 2022

**WHEREFORE**, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned, **order** that the version of the Response in Opposition filed on January 25, 2022, be removed from the record and substituted by the redacted version of the Response and Opposition included as **Exhibit I**, and **order** that intervenors destroy the copies of LUMA’s Response and Opposition and shall hereinafter use and refer to the redacted version of LUMA’s Response and Opposition that is filed as **Exhibit II** to this Motion.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 28<sup>th</sup> day of January 2022.

I hereby certify that I filed this Motion using the electronic filing system of this Puerto Rico Energy Bureau. I hereby certify that I will send notice of this filing to intervenors: Cooperativa Hidroeléctrica de la Montaña, via Ramón Luis Nieves Esq, ramonluisnieves@rlnlegal.com; Office of the Independent Consumer Protection Office, hriviera@opic.pr.gov and [contratistas@oipc.pr.gov](mailto:contratistas@oipc.pr.gov); Puerto Rico Manufacturer’s Association via Manuel Fernández Mejías Esq.,, manuelgabrielfernandez@gmail.com; and Ecoeléctrica via Carlos Colón, Esq., [ccf@tcm.law](mailto:ccf@tcm.law). It is also certified that I will serve notice of this motion to counsel for the Puerto Electric Power Authority, Katuska Bolaños, [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law).





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**Exhibit I**  
Public Redacted Version of the Response in Opposition

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

**IN RE:**

IN RE: THE UNBUNDLING OF THE  
ASSETS OF THE PUERTO RICO  
ELECTRIC POWER AUTHORITY

**CASE NO. NEPR-AP-2018-0004**

**SUBJECT: LUMA’s Response and Opposition to  
Resolution and Order of January 5, 2022, on  
Taking of Administrative Notice and Submission  
of Clarifications and Additional Information**

**LUMA’S RESPONSE AND OPPOSITION TO RESOLUTION AND ORDER OF  
JANUARY 5, 2022, ON TAKING OF ADMINISTRATIVE NOTICE AND SUBMISSION OF  
CLARIFICATIONS AND ADDITIONAL INFORMATION**

**TO THE HONORABLE PUERTO RICO ENERGY BUREAU:**

COME now **LUMA Energy, LLC** (“ManagementCo”), and **LUMA Energy ServCo, LLC** (“ServCo”), (jointly referred to as “LUMA”), and respectfully state and request the following:

**I. Introduction.**

Pending adjudication by this Puerto Rico Energy Bureau (“Energy Bureau”) are proposals filed by the Puerto Rico Electric Power Authority (“PREPA”) and LUMA to unbundle the tariffs paid by customer classes for electric power services in a fair and equitable manner that avoids cost-shifting and enables provision of wheeling services and the establishment of a competitive market for wheeling. An evidentiary hearing was held from July 19<sup>th</sup> to July 20<sup>th</sup>, 2021. Final briefs were filed on August 10, 2021 and replies on August 20, 2021. Thereafter, a Cost of Service Study (“COSS”), a proposed framework to unbundle tariffs and a proposed Uniform Services Agreement were submitted for adjudication by the Energy Bureau.

On January 5, 2022, the Energy Bureau issued a Resolution and Order (“January 5<sup>th</sup> Resolution and Order on Administrative Notice”) with the subject matter “Administrative Notice,”

whereby this Energy Bureau, *motu proprio*, and without granting LUMA or the parties in this proceeding prior notice and opportunity to be heard, took administrative notice of twelve (12) resolutions and orders and supporting data issued in separate and independent proceedings that do not involve all of the parties to this proceeding, CEPR-AP-2015-0001, NEPR-AP-2018-0003 and NEPR-MI-2020-001, where the Energy Bureau issued determinations on quarterly Permanent Rates Fuel Charge Adjustment (“FCA”) and Purchased Power Cost Adjustment (“PPCA”) Rider Factors for the periods of October-December 2019; January-March 2020; April-June 2020; June 2020; July-September 2020; October-December 2020; January-March 2021; April-June 2021; July-September 2021; and October-December 2021; and Determinations on the Permanent Rates Yearly Rider Factors for July 2019-June 2020; and July 2020- June 2021; and June 2021-July 2022. *See* January 5<sup>th</sup> Resolution and Order on Administrative Notice at pages 3-4.

In the January 5<sup>th</sup> Resolution and Order on Administrative Notice, the Energy Bureau also took administrative notice of the contents of the Approved Integrated Resources Plan (IRP), as found in a final Resolution and Order and issued in a separate an independent proceeding before this Energy Bureau, Case NEPR-AP-2018-0001. Furthermore, the Energy Bureau took administrative notice of a portion of a filing by PREPA of March 16, 2021 in Case NEPR-MI-2020-0001, particularly, Attachment 3 “Projected Fuel and Purchased Power Expenses” of the *Solicitud de Aprobacion de Reconciliacion de Diciembre 2020, Enero y Febrero 2021; Presentacion de Factores para el Periodo de Abril a Junio 2021; Solicitud de Determinación de Confidencialidad*. Finally, the Energy Bureau took administrative notice of the historic wholesale fuel price data on residual fuel oil and No. 2 fuel oil published by the United States Energy

Information Administration. *See* January 5<sup>th</sup> Resolution and Order on Administrative Notice at pages 4-5.

As explained in this Motion, LUMA hereby respectfully raises procedural objections to the Energy Bureau's determination to take administrative notice and invokes its procedural right to submit its position regarding the Energy Bureau's determination to take administrative notice of documents that were not submitted as evidence in the evidentiary hearing held in this proceeding.

Furthermore, LUMA opposes the determination to take administrative notice of the twelve (12) Resolutions and Orders of this Energy Bureau in Case NEPR-MI-2020-0001 setting quarterly and yearly FCA, PPCA and Fuel Oil Subsidy Rider Factors and "Attachment 3 –Projected Fuel and Purchased Power Expenses," and submits additional information and clarifications. LUMA also opposes the decision to consider *via* taking of administrative knowledge the full contents of the Resolution and Order approving the IRP and requests that the Energy Bureau restrict the scope of the determination to take administrative knowledge of the approved IRP. Finally, LUMA opposes the Energy Bureau's determination to take administrative notice of fuel prices based on publications that are subject to debate regarding their accuracy particularly as applied to fuel prices paid by PREPA and that are not used by PREPA to prepare forecasts on fuel prices.

## **II. Background.**

On December 23, 2020, the Energy Bureau issued a Resolution and Order ("December 23<sup>rd</sup> Resolution and Order"), on the procedure that it intended to follow in the proceeding for unbundling PREPA's rates. Specifically, the Energy Bureau directed that:

it is in the public interest to proceed to the unbundling of PREPA's rates as expeditiously as possible so that eligible wheeling customers can purchase their power from a certified EPSC or other eligible independent power producers. Therefore, the Energy Bureau is ordering PREPA to file, no later than February 1,

2021, one or more proposals for an unbundled rate for wheeling, along with a uniform wheeling service agreement between PREPA and the independent power producer and any other pertinent policy details. Each proposal must include the rate that wheeling customers should continue to pay PREPA for transmission, distribution, billing, and any other relevant costs, such as stranded costs. The rate should also include the credit that the PREPA customer who engages in wheeling will have deducted from their otherwise applicable rate.

*Id.* at page 3.

In the December 23<sup>rd</sup> Resolution and Order, this Energy Bureau directed that it would hold and evidentiary proceedings and requested that PREPA file the following:

- A. A fully unbundled cost of service study based upon the general techniques the Unbundling Report, with updated data as feasible and an explanation of any different methodologies used. This study shall allocate revenues among classes, and within each class, allocate revenues among at least the following three categories:
  - 1. All non-generation costs, not subject to competition from wheeling;
  - 2. Generation costs avoidable by wheeling-related reduction in PREPA generation requirements;
  - 3. All other generation costs that will be stranded by reduction in sales;
- B. A proposed unbundled tariff and structure consistent with the default unbundling tariff and structure, as originally set forth in Appendix A of the Energy Bureau's October 14 Resolution and further modified below; and
- C. Any other proposed unbundling tariffs and structures, containing unbundled rates based on the cost of service study.

*Id.* at pages 4-5.

With respect to the proposed unbundling tariffs and structures, the Energy Bureau directed that PREPA may file one or more additional proposals. *Id.* at page 4. The Energy Bureau informed that “it is likely that the unbundled credit for customers engaged in wheeling will be no less than the sum of the FCA and the PPCA,” with some modifications and clarifications outlined in the December 23<sup>rd</sup> Resolution and Order. *Id.* at pages 5-8.

On January 5, 2021, the Energy Bureau issued a Resolution and Order that set a procedural calendar for this adjudicative proceeding. An amended procedural calendar was issued by the Energy Bureau in a Resolution and Order of February 5, 2021 (“February 5<sup>th</sup> Procedural Calendar”).

On January 20, 2021, the Energy Bureau granted a request for intervention filed by the Independent Consumer Protection Office (“ICPO”). Then, on February 25, 2021, the Energy Bureau issued a Resolution and Order that granted petitions for intervention that had been filed separately by EcoEléctrica and the Puerto Rico Manufacturer’s Association (“PRMA”). In a Resolution and Order of February 26, 2021, the Energy Bureau granted a request by Cooperativa Hidroeléctrica de la Montaña (“Cooperativa”), to intervene in this proceeding.

Technical conferences were held on March 15 and April 15, 2021. For both technical conferences, PREPA filed copies of the presentations offered by Guidehouse, Inc. (“Guidehouse”). *See* Motions of March 12, 2021 and April 13, 2021.

On May 10, 2021, PREPA filed the following: (1) 2021 Cost of Service Study dated May 10, 2021; (2) Proposal for Unbundled Tariffs Report dated May 10, 2021; (3) Proposal for Uniform Services Agreement Report dated May 20, 2021; and (4) PREPA Unbundling Rate Filing Working Papers. *See Motion in Compliance with Resolution and Ordered Entered on February 5, 2021*, filed by PREPA on May 10, 2021 (“May 10<sup>th</sup> Filing”). Then, on May 17, 2021, PREPA filed the Direct Testimony of Mrs. Margot Everett, Director for Guidehouse and a revised Table 2-4 to the Proposal for Unbundled Tariff Report. *See Motion in Compliance with Resolution and Order Entered on May 13, 2021*. Included in this testimony were six exhibits:

- Exhibit A: Resume for Witness Everett,

- Exhibit B: 2021 Cost of Service Study, dated May 10, 2021,
- Exhibit C: Proposals for Unbundled Tariffs Report dated May 10, 2021,
- Exhibit D: Proposal for Uniform Services Agreement Report dated May 10, 2021,
- Exhibit E: PREPA UnbundlinRate\_Filing\_Working\_Papers.xlsx, and
- Exhibit F: Revised Default Unbundled Tariff Sheet.

An Initial Technical Hearing was held on May 18, 2021, where Guidehouse offered a presentation on the May 10<sup>th</sup> filing. *See Motion to Submit Presentation Projected During the May 18, 2021 Initial Technical Hearing.* On May 28, 2021, PREPA filed a *Motion in Compliance with Bench Order Entered During the May 18<sup>th</sup> Technical Hearing*, submitting clarifications on marginal energy costs, algorithm of charges to Imbalance Costs, and recommendations on matters to be discussed in workshops prior to implementation of the Uniform Services Agreement.

Per the February 5<sup>th</sup> Procedural Calendar, as amended by a Resolution and Order issued on June 22, 2021, discovery was conducted between May 10, 2021 and June 30, 2021 (“June 22<sup>nd</sup> Resolution and Order”). LUMA answered three sets of the Requirements for Information issued by the Energy Bureau (1<sup>st</sup> Requirement of Information of June 10, 2021, answered on June 21, 2021; 2<sup>nd</sup> Requirement of Information of June 11, 2021, answered on June 24, 2021; and 3<sup>rd</sup> Requirement of Information, answered on June 28, 2021), and one Requirement of Information issued on June 10, 2021 by the ICPO, answered on June 21, 2021.

As set forth in the June 22<sup>nd</sup> Resolution and Order, intervenors ICPO and PRMA submitted pre-filed testimonies on July 9, 2021; after discovery closed. *See June 22<sup>nd</sup> Resolution and Order* at page 2.



On July 15, 2021, the Energy Bureau issued Guidelines and an Agenda for the evidentiary hearing that was scheduled for July 19<sup>th</sup> and 20<sup>th</sup>, 2021. On July 17, 2021, the Energy Bureau issued an amended agenda for the evidentiary hearing.

The first day of the evidentiary hearing, on July 19, 2021, Mrs. Margot Everett appeared for cross examination by Energy Bureau consultants, Mr. Mark, Lebel and Mr. Paul Chernick, as well as by counsels for intervenors ICPO and Cooperativa. Mr. Dennis Seilhamer conducted proceedings as the Hearing Examiner.

During the evidentiary hearing of July 19, 2021, upon a request by LUMA, the Energy Bureau admitted into evidence three exhibits.<sup>1</sup> No other exhibits were submitted as evidence by the Energy Bureau, Energy Bureau consultants or intervenors during the evidentiary hearing.

On July 21, 2021, LUMA respectfully submitted a copy of the Exhibits A, B, and C, that were admitted and marked as evidence in this proceeding on July 19, 2021.

During the evidentiary hearing of July 19, 2021, LUMA also requested and was granted leave to file amended versions of tables E-1, E-2, and E-3, of the Summary of the 2021 Cost of Service Study that was submitted on May 17, 2021 as Exhibit B of the Direct Testimony of Mrs. Margot Everett. Tables E-1, E-2, and E-3 are found at pages iv and v of the 2021 Cost of Service

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<sup>1</sup> The three exhibits are:

Exhibit A- LUMA's Response to question 7 (AP-2018-0004-PREB-LUMA-ROI-SET03-2021-06-24-07) of the Energy Bureau's Second Requirement of information, at pages 9 through 12;

b. Exhibit B- Revised Figure 2-4 Supply Stack by Type, included at page 3 of LUMA's Response to question 1 (AP-2018-0004-ICPO-LUMA-ROI-SET02-2021-06-21-01) of the First Requirement of Information issued by the Independent Consumer Protection Office; and

c. Exhibit C- Amended workpapers filed with LUMA's Response to question 17 (AP-2018-0004-PREB-LUMA-ROI-SET03-2021-06-24-13) of the Third Requirement of Information issued by the Energy Bureau, (pdf text of Response 17 and excel table with revised workpapers).

Study. As authorized by the Energy Bureau, on July 21, 2021, LUMA submitted revised versions of Tables E-1, E-2, and E-3, of the Summary of the 2021 Cost of Service Study.

The second session of the evidentiary hearing was held on July 20, 2021 and scheduled for cross-examinations of intervenors ICPO and the PRMA. Mr. Gerardo Cosme for the OIPC and Mrs. Y. Pérez of the PRMA were cross-examined and answered questions on their pre-filed testimonies. Upon conclusion of the testimonies, closing arguments were presented by LUMA and the PRMA. *Id.* page 115 lines 16-25, page 116 and page 117 lines 1-22.

On August 10, 2021, LUMA submitted its final brief with legal argumentation supported by a transcript of the evidentiary hearing. ICPO filed its final brief on the same date. Finally, on August 20, 2021, LUMA filed a reply brief to ICPO's final brief. As set forth in the June 22<sup>nd</sup> Resolution and Order, the last procedural event in this case was August 20, 2021, when public comments and reply briefs were due.

More than four (4) months after the record of the evidentiary hearing closed and final briefs were filed, the Energy Bureau issued the January 5<sup>th</sup> Resolution and Order on Administrative Notice. In said Resolution and Order, the Energy Bureau took judicial knowledge of the following:

1. The rider factors approved for the Fuel Charge Adjustment and Purchased Power Cost Adjustment in the twelve (12) orders issued by the Energy Bureau, as well as the associated reconciliation cost data in each order, as listed in Part III of th[e] Resolution;
2. The contents of the Approved IRP in the form of the final Resolution and Order of August 24, 2020, approving the IRP;
3. The data contained within the two-page excerpt titled "Attachment 3 –Projected Fuel and Purchased Power Expenses" of the March 16 Motion; and

4. The historic wholesale / Resale Price by Refiners fuel price data on residual fuel oil and No. 2 fuel oil published by the United States Energy Information Administration, as described in Part III of th[e] Resolution.

### **III. Applicable Standard to Taking Administrative Knowledge.**

Courts and administrative agencies in Puerto Rico may take judicial or administrative notice of an adjudicative fact without the need to present formal evidence to establish the fact's truthfulness. *See UPR v. Laborde*, 180 DPR 253, 276-277 (2010); *Jordi v. San Geronimo Caribe Project, Inc.*, KLRA201000101, 2010 WL 4628914 at \*12-13 (TCA Jul. 16, 2010). The Puerto Rico Administrative Procedure Act ("LPAU," by its Spanish acronym) regulates this mechanism in Puerto Rico agencies. Specifically, the LPAU allows an administrative law judge to take official notice of all the facts that can be admitted by judicial notice in the Puerto Rico Courts. Section 3.13, LPAU, 32 LPRR § 9653(d). Thus, the referenced text of the LPAU subordinates its official notice disposition to that of the Puerto Rico Rules of Evidence. *Comisionado de Seguros de Puerto Rico v. Integrand Assurance Co.*, KLRA0300307, 2003 WL 23317682 at \*2 (TCA Oct. 8, 2003). This subordination means that for an agency to take administrative notice of a fact, it shall consider Rule 201 of the Puerto Rico Rules of Evidence ("Rule 201") and its interpretative jurisprudence. 32 LPRR Ap. VI, R. 201.

Rule 201 allows courts to take judicial notice of an adjudicative fact. The Supreme Court has defined an adjudicative fact as a disputed fact by the parties and the applicable law of the case. *Asoc. de Periodistas v. González*, 127 DPR 704, 713 (1991). Rule 201 establishes two criteria that shall be met for a court to take judicial notice of an adjudicative fact that is not subject to reasonable dispute. 32 LPRR Ap. VI, R. 201. The first criteria is that the fact shall be generally known within

the court's territorial jurisdiction. *Id.* The second criteria requires that the fact can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned. *Id.* Per this second criteria, the fact's notoriety is irrelevant. *UPR*, 180 DPR at 277-278. When judicial or administrative notice is proper, the moving party is relieved from presenting evidence on the adjudicative fact. *Id.* That is so, because it is presumed that that the fact will not be disputed. *Id.* at 278.

The Puerto Rico Supreme Court has held that an agency can take administrative notice of its own official records as long as they are related to previous litigation by the same parties. *López y otros v. Asoc. de Taxis de Cayey*, 142 DPR 109 at \*2 (1996) (citing *J.R.T. v. Club Náutico*, 97 DPR 386, 391 (1969)).

Additionally, an adjudicative fact must be pertinent and admissible evidence. *UPR*, 180 DPR at 278. In other words, court and parties cannot use the judicial notice mechanism to admit into evidence a fact that otherwise would be subject to a rule of exclusion or fact that could not have been proven with admissible evidence. *Id.* According to Rule 201, a court may take judicial notice upon a party's request or on its own. 32 LPRA Ap. VI, R. 201.

The mechanism of taking administrative notice is an exception to the bedrock rule in administrative procedure that the decision of an administrative agency must be supported on the administrative record. *Asoc. de Taxis de Cayey*, 142 DPR 109 at \*2. This mechanism, however, does not substitute the process of presentation of evidence in an evidentiary hearing, and thus, its use is not unrestricted. *Sabol v. Departamento de Desarrollo Económico y Comercio*, KLRA201900583, 2020 WL 5411593 at \*7 (TCA Jun. 29, 2020).

The power to take administrative notice is limited and the agencies must: (1) specify the fact and provide the source from which it took the information; and (2) provide an affected party an opportunity to oppose or provide additional information of the fact that was admitted by judicial notice. *Id.* (quoting Demetrio Fernández Quiñónez, *Derecho Administrativo y Ley de Procedimiento Administrativo Uniforme*, at pages 170-71); *see also* *Oficina de Seguridad v. Puerto Rico Telephone Company, Inc.*, KLRA200300597, KLRA200300719, 2004 WL 2419142 at \*9 (TCA Sept. 20, 2004) (holding that Administrative Law Judge abused its discretion by failing to provide the affected party an opportunity to oppose the administrative notice and by not citing to the source of information).

Importantly, Rule 201 entitles the parties to be heard on the propriety of taking judicial notice. 32 LPRA Ap. VI, R. 201; *see UPR*, 180 DPR at 277 (stating that an affected party may offer evidence to oppose judicial notice). Rule 201 also entitles the affected party to be heard after taking judicial notice. 32 LPRA Ap. VI, R. 201.

Section 9.03 of the Puerto Rico Energy Bureau Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures governs the administrative notice mechanism in the Energy Bureau, Regulation 8543 (“Regulation 8543”). Specifically, Section 9.03 of Regulation 8543 allows the Energy Bureau to *sua sponte* or upon a party’s request, take administrative notice of “those facts and circumstances of public interest that are generally known, or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” *Id.* Section 2.01 of Regulation No. 8543 states that, in adversary proceedings, the Rules of Evidence may apply to supplement the dispositions of Regulation 8543 per the Energy Bureau’s discretion.

#### **IV. Threshold Procedural Due Process Objections.**

As a threshold matter, LUMA respectfully takes issue with the determination by the Energy Bureau to take administrative notice of adjudicative facts in the form of resolutions and order issued in other proceedings before this Energy Bureau; data and filings made by PREPA in a separate and independent regulatory proceeding; and of publications of fuel prices that are not used by PREPA to forecast fuel prices and absent information or evidence that the prices found in the publications were or are attainable for PREPA.

First, the notice of taking of administrative notice is belated, as it was issued more than five (5) months after the evidentiary record in this proceeding closed upon conclusion of the evidentiary hearing and more than four (4) months after LUMA and intervenors filed final and reply briefs and the public submitted written comments. The January 5<sup>th</sup> Resolution and Order on Administrative Notice is a procedurally inequitable ruling, given that the Energy Bureau has introduced new information for the record but LUMA and intervenors were not provided proper notice throughout the proceedings that the Energy Bureau understood that additional data was needed to issue a final determination nor afforded a timely opportunity to be heard. Even if a final decision has not been issued on the merits, the timing of the January 5<sup>th</sup> Resolution and Order on Administrative Notice places LUMA —and intervenors— at a procedural disadvantage. Prior to the close of the evidentiary hearing or upon filing its final brief, LUMA did not have notice that the Energy Bureau was looking for additional information or even argumentation on information related to FCA and PPCA rider factors; the incremental or marginal cost of supplying or delivering energy to a customer that are inputs to the IRP which, in turn, are inputs to the COSS filed by PREPA in this proceeding; and the costs of fuel. As a party to this adjudicative proceeding, LUMA

was not afforded an opportunity to submit evidence on the facts and matters as to which the Energy Bureau took administrative notice.

Relatedly, in the January 5<sup>th</sup> Resolution and Order on Administrative Notice, the Energy Bureau did not afford LUMA or intervenors a meaningful opportunity to be heard on the propriety of taking administrative notice nor to submit evidence or additional information regarding the taking of administrative notice, as required by Rule 201, which applies to adjudicative proceedings pursuant to Section 3.13 of the LPAU and Sections 2.01 and 9.03 of Regulation 8543. Importantly, contrary to the clear language of Puerto Rico Rule of Evidence 201, which applies to taking of administrative notice per Section 3.13 of the LPAU and its interpretative jurisprudence and per Sections 2.01 and 9.03 of Regulation 8543<sup>2</sup>, the Energy Bureau did not afford the parties to this proceeding an opportunity to be heard or to present additional information on the facts as to which the Energy Bureau took administrative notice. To the contrary, the January 5<sup>th</sup> Resolution and Order on Administrative Notice is worded as a final determination and the parties were not advised in writing of their rights to be heard and submit evidence or information.

Under Puerto Rico law, administrative adjudicative proceedings shall observe the guarantees of due process according to the nature of the proceedings, which ultimately must be fair and equal. *Báez Díaz, ELA*, 179 DPR 605, 623 (2010). Administrative adjudicative proceedings must observe the following minimum guarantees: (1) adequate notice of the proceeding; (2) proceedings before an impartial judge; (3) **opportunity to be heard**; (4) right to

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<sup>2</sup> On page 2 of the January 5<sup>th</sup> Resolution and Order on Administrative Notice, the Energy Bureau quoted Section 13.2 of the LPAU and a precedent by the Puerto Rico Supreme Court on taking of judicial notice per Rule 201. Thus, the Energy Bureau acknowledged the applicability to this proceeding of Rule 201 and its interpretative jurisprudence.

cross-examine witnesses and **examine the evidence presented**; (5) have the assistance of counsel; and (6) **a decision based on the record**. *Román Ortiz v. Oficina de Gerencia de Permisos*, 203 DPR 947, 954 (2020) (emphasis in bold provided). Given that the taking of administrative notice relieved the Energy Bureau from the duty to present evidence in the evidentiary hearing, the Energy Bureau's determination to take administrative notice in this proceeding runs counter to three bedrock procedural due process guarantees: timely opportunity to be heard on evidence that will be considered by an adjudicator, present or submit evidence, and have an administrative agency issue a final decision that is based on the administrative record.

Secondly, the determinations to take administrative notice of official records in the form of twelve (12) resolutions and orders of the Energy Bureau issued in proceedings CEPR-AP-2015-0001, NEPR-AP-2018-0003 and NEPR-MI-2020-001, regarding PREPA's permanent rate whereby the Energy Bureau issued determinations on the Permanent Rates FCA and PPCA Rider Factors; (2) an Exhibit to a filing by PREPA in Case NEPR-MI-2020-001 on FCA and PPCA; and (3) the Resolution and Order on the Approved IRP, Case CEPR-AP-2019-0001, are not supported by applicable jurisprudence on taking of administrative notice whereby administrative agencies may take administrative notice of their official records as long as they are related to previous litigation by the same parties. *López y otros v. Asoc. de Taxis de Cayey*, 142 DPR 109 at \*2. Those resolutions and orders and PREPA's submission in Case NEPR-MI-2020-0001, are part and parcel of independent Energy Bureau regulatory proceeding in which intervenors to this proceeding were not accumulated as parties or did not intervene as parties. Although LUMA has participated in Case NEPR-MI-2020-0001 since June 1, 2021, it did not participate in the filings and proceedings whereby the Energy Bureau set rider factors from 2019 through June 2021 nor in the



submissions regarding the Approved IRP given that LUMA was not a party to the IRP proceeding. Thus, it is respectfully submitted that it was not procedurally proper to take notice of the aforementioned records, particularly because the parties to this proceeding were not granted the opportunity to be heard.

In sum, LUMA respectfully submits that the January 5<sup>th</sup> Resolution and Order on Administrative Notice did not comply with the procedural requirements for taking of administrative notice under applicable by law and regulations. LUMA —and intervenors— were not afforded an opportunity to be heard and submit evidence or information prior to issuance of the determination of administrative notice nor did the Energy Bureau afford or guarantee LUMA —and intervenors—the right to be heard after the Energy Bureau decided to take administrative knowledge. Without waving its right to challenge the January 5<sup>th</sup> Resolution and Order on Administrative Notice through the mechanism of administrative or judicial review or to challenge the final resolution and order that his Energy Bureau will issue in this proceeding, LUMA hereby exercises the right to present arguments, clarifications and opposition to the January 5<sup>th</sup> Resolution and Order on Administrative Notice.

**V. Requests for Remedies regarding the January 5<sup>th</sup> Resolution and Order on Administrative Notice.**

**A. Objections and Clarifications on Historical Resolutions and Orders setting FCA and PPCA factors.**

The first item as to which the Energy Bureau took administrative notice involves resolutions and orders issued in a separate an independent regulatory proceeding. It is a regulatory proceeding on implementation of PREPA’s Permanent Rate, NEPR-MI-2010-0001. Specifically, in the January 5<sup>th</sup> Resolution and Order on Administrative Notice, the Energy Bureau took notice

of twelve (12) resolution and orders issued by the Energy Bureau setting FCA and PPCA rider factors from 2019 through 2021, and of the associated reconciliation cost data in each order.

Each of the twelve (12) resolutions and orders that the Energy Bureau introduced in this record are lengthy, ranging between fourteen (14) to thirty-eight (38) pages and include individualized fact-specific determinations on setting of FCA and PPCA rider factors and comments on matters related to the supporting data submitted by PREPA or LUMA. The January 5<sup>th</sup> Resolution and Order on Administrative Notice, however, did not identify the facts and supporting data that the Energy Bureau will consider in issuing a final determination in this proceeding. Instead, the January 5<sup>th</sup> Resolution and Order on Administrative Notice broadly references that these resolutions and orders and supporting data will be considered in this proceeding “to determine the appropriate structure of the supply credit as well as any modifications related to the reconciliation of costs across periods.” *See* January 5<sup>th</sup> Resolution and Order on Administrative Notice at page 3. Thus, the Energy Bureau did not comply with one of the requirements of taking administrative notice which is to specify the fact or facts that will be considered through the mechanism of taking administrative notice. In these circumstances, LUMA lacks the information and tools to properly raise objections to each of the facts to be considered or to identify the additional evidence that it may offer in response to the Energy Bureau’s determination to use the mechanism of taking administrative notice as a substitute to formal presentation of evidence in an evidentiary hearing. The Energy Bureau’s determination deprived LUMA of its procedural due process rights that are also guaranteed by the LPAU and Rule 201 which afford the right to be heard on the matter of taking of administrative notice, to confront the evidence to be used in a final determination and to present evidence for the record.

Without waving the aforementioned objection and as a non-exclusive example of the clarifications and additional information that the Energy Bureau should consider before taking administrative notice of resolutions and orders and data filed in another proceeding on FCA and PPCA riders factors, this Energy Bureau should consider and clarify that the FCA and PPCA factors set in the Energy Bureau's resolutions and orders **do not** reflect actual fuel and purchase power costs for each of the quarters because several of the resolutions and orders included deferments to recover the incremental costs of fuel after the January 6 and 7, 2020 earthquakes. *See* Determination on the Permanent Rates Rider Factors for the period of April-June 2020, Case No. NEPR-MI-2020-0001, issued on March 27, 2020 at pages 7-8; Determination on the Permanent Rates Rider Factors for the period of June 2020, Case No. NEPR-MI-2020-0001, issued on May 30, 2020 at pages 12-14; Determination of the Quarterly Permanent Rate Rider Factors for the Period of January to March 2021, Case No. NEPR-MI-2020-0001, issued on December 31, 2020 at pages 14-15; and Determination of the Quarterly Permanent Rate Rider Factors for the Period of April to June 2021, Case No. NEPR-MI-2020-0001, issued on March 31, 2021 at pages 18-20.

**B. Opposition to Taking of Administrative Notice of the Contents of the Final Resolution and Order on the Approved IRP.**

LUMA respectfully opposes the determination to take administrative notice in this proceeding of the Final Resolution and Order of August 24, 2020, Case CEPR-AP-2018-0001 (“August 24<sup>th</sup> IRP Resolution and Order”) on PREPA’s IRP. It bears noting that although the January 5<sup>th</sup> Resolution and Order on Administrative Notice employed the term “Approved IRP,” the Energy Bureau took notice of its final Resolution and Order approving the IRP. The full contents of the final IRP have not been made public and some portions are confidential.

As the record of this proceeding shows, the COSS filed by PREPA and supported by LUMA, **does not** incorporate the full contents of the August 24<sup>th</sup> IRP Resolution and Order. Rather, the only data used in the COSS that was directly pulled from the IRP is the class load and coincidence factors. Said data is found Exhibit 3-23 in PREPA's IRP and a copy of the exhibit was included in the COSS workpapers. These factors were applied to PREPA's annual load forecasts by class in the COSS because the hourly load data by class was not available. Importantly, the COSS considered data on the IRP itself; not the August 24<sup>th</sup> IRP Resolution and Order, which was linked in footnote 27 of the January 5<sup>th</sup> Resolution and Order on Administrative Notice.

LUMA objects to the broad determination by this Energy Bureau to consider the full contents of the IRP. The August 24<sup>th</sup> IRP Resolution and Order spans 300 pages and includes three appendices. In taking administrative notice of said Resolution and Order, however, the January 5<sup>th</sup> Resolution and Order on Administrative Notice **does not identify the specific facts withing the approved IRP** that are relevant to this proceeding or admissible via taking of administrative notice as an exception to the requirements to submit evidence for the record during an evidentiary hearing and to base the determination on the administrative record of the current proceeding. Importantly, the January 5<sup>th</sup> Resolution and Order on Administrative Notice does not explain why all of the provisions of the August 24<sup>th</sup> IRP Resolution and Order or Approved IRP are relevant and thus, admissible in this proceeding.

The underlying analyses of the IRP were conducted in 2020 or prior to 2020 and do not reflect the most recent data for electric system. Furthermore, the IRP was developed and prepared between 2018 and 2020. Therefore, data and facts relevant and accurate at the time, may not be accurate in 2021 and 2022. Some examples of areas where the Approved IRP data may no longer

be accurate include load forecast, fuel price forecasts, and the timing of replacement resources. Thus, not all the data and facts of the Approved IRP may be considered facts that are exempt from dispute for the purposes of taking administrative notice.

In sum, LUMA respectfully submits, that the Energy Bureau did not comply with applicable legal requirements to take administrative notice of the Approved IRP and/or the August 24<sup>th</sup> IRP Resolution and Order.

Without waving the aforementioned objections, LUMA requests that the Energy Bureau limit the taking of administrative notice to the data found Exhibit 3-23 of the IRP and supporting workpapers that PREPA and LUMA submitted in this proceeding as part of the discovery process.

### **C. Clarification on Attachment 3 to the PREPA Motion of March 16, 2021.**

In the January 5<sup>th</sup> Resolution and Order on Administrative Notice the Energy Bureau took notice of the data contained in a two-page excerpt entitled “Attachment 3 –Projected Fuel and Purchased Power Expenses,” contained in a Motion filed by PREPA on March 16, 2021 in Case NEPR-MI-2020-0001.

Without waving the procedural objections raised in Section IV of this Motion, LUMA hereby requests that the Energy Bureau consider the explanations provided in Exhibit 1 to this Motion on the information and data presented in the line items of said Attachment 3 submitted by PREPA which is the PROMOD output spreadsheet submitted each quarter in connection with the FCA and PPCA reconciliations and setting of the FCA and PPCA riders factors. It is important to note that the January 5<sup>th</sup> Resolution and Order on Administrative Notice does not explain the determination to take notice of PROMOD output spreadsheet submitted by PREPA in March,

2021, rather than more recent PROMO output spreadsheets filed by LUMA, like for example, the filing of December 16, 2021.

LUMA respectfully submits that the information and clarifications offered in Exhibit 1 to this Motion are key for the Energy Bureau to correctly and properly take administrative notice of the PROMOD output spreadsheet given that the document as to which the Energy Bureau took administrative notice, does not include a description for each line item. The additional information submitted herewith is key for the Energy Bureau to correctly consider the nature of the costs built into the FCA and PPCA factors.

Furthermore, it is important to clarify that, contrary to what the Energy Bureau stated at page 5 of the January 5<sup>th</sup> Resolution and Order on Administrative Notice, “Attachment 3 –Projected Fuel and Purchased Power Expenses,” does not include estimates of unit-specific energy generation costs, nor does it provide a good comparison of costs across units as it does not reflect operation and maintenance costs associated with each unit. This information and clarifications are therefore necessary for the Energy Bureau to take notice of “Attachment 3 –Projected Fuel and Purchased Power Expenses.”

**D. Opposition to Taking Administrative Notice of Historical Values for No. 2 and 6 Fuel Oils.**

At page 5 of the January 5<sup>th</sup> Resolution and Order on Administrative Notice, the Energy Bureau took administrative notice of two graphical charts of historic fuel prices trajectories published by the United States Energy Information Administration (EIA) on the U.S. No. 2 Fuel Oil Wholesale Price and the U.S. Residual Fuel Oil Wholesale Price. The Energy Bureau explained that “[t]his historic fuel price data is necessary to have a reasonable understanding of

how fuel prices may impact the FCA and PPCA going forward.” *See* January 5<sup>th</sup> Resolution and Order on Administrative Notice at page 5. LUMA respectfully opposes this determination.

EIA data represents a compilation of data from multiple sources. It is useful to assess broad averages but, in LUMA’s experience, is generally not used by utilities to support price projections or detailed analysis of historical prices. In LUMA’s experience, utilities generally obtain their own third-party forecast and delivery data that more accurately reflects company-specific factors such as delivery points, handling charges, and contract pricing terms and specifications. Without adjusting for these factors, reliance on a high level data reporting source such as EIA will lead to imprecise or potentially wrong conclusions. Thus, LUMA understands that the EIA publications consisting of a compilation of data from multiple sources, cannot be considered a source whose accuracy is beyond reasonable disputes for fuel price projections such as those done by PREPA. Also, there is significant debate regarding the relevancy of these prices versus the prices that electric utilities pay for the commodity. In particular, the commodity quoted is the resale price by refiners, and does not reflect the location specific prices realized by PREPA when purchasing such fuels.

**Redacted**

# Redacted

In the January 5<sup>th</sup> Resolution and Order on Administrative Notice, the Energy Bureau did not provide any support for the proposition that the historic fuel price data published by the EIA provides a reasonable understanding of how fuel prices may impact the FCA and PPCA going forward. The fact that the EIA publications are readily available and published by a federal administrative agency does not render the publications, as applied to fuel prices paid by PREPA and to the FCA and PPCA, facts that are not subject to reasonable disputes. Particularly, because the Energy Bureau did not explain the applicability of the EIA publications to fuel prices paid in Puerto Rico by PREPA and inexplicably omitted consideration of historical data of the prices paid by PREPA for fuel purchases that is recorded and available to the Energy Bureau. Furthermore, the January 5<sup>th</sup> Resolution and Order on Administrative Notice does not provide any information to support the determination to use the specific compilation based indexes for historical correlation. LUMA objects to the determination to consider the EIA publications as indicators of fuel prices that may affect the FCA and PPCA riders in the future. The accuracy of the EIA publications to establish a contested fact on how fuel prices may affect the FCA and PPCA is reasonably questioned and should not be used as a substitute for the historical data on fuel prices paid by PREPA.



**WHEREFORE**, LUMA respectfully requests that the Energy Bureau **grant** LUMA's Objections and Opposition to the January 5<sup>th</sup> Resolution and Order on Administrative Notice stated in this Motion and **take notice** and **accept** LUMA's clarifications and submittal of additional information.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 25<sup>th</sup> day of January 2022.

I hereby certify that I filed this Motion using the electronic filing system of this Puerto Rico Energy Bureau. I hereby certify that I will send notice of this filing to intervenors: Cooperativa Hidroeléctrica de la Montaña, via Ramón Luis Nieves Esq, [ramonluisnieves@rlnlegal.com](mailto:ramonluisnieves@rlnlegal.com); Office of the Independent Consumer Protection Office, [hrivera@opic.pr.gov](mailto:hrivera@opic.pr.gov) and [contratistas@oipc.pr.gov](mailto:contratistas@oipc.pr.gov); Puerto Rico Manufacturer's Association via Manuel Fernández Mejías Esq., [manuelgabrielfernandez@gmail.com](mailto:manuelgabrielfernandez@gmail.com); and Ecoeléctrica via Carlos Colón, Esq., [ccf@tcm.law](mailto:ccf@tcm.law). It is also certified that I will serve notice of this motion to counsel for the Puerto Electric Power Authority, Katuska Bolaños, [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law).



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*Exhibit 1*

## FCA & PPCA

The purpose of this document is to provide a legend for the the data included in the PROMOD output spreadsheet (shown below) that is presented to the PREB as attachment 3 for the FCA-PPCA process.

Attachment 3  
Puerto Rico Electric Power Authority  
Projected Fuel and Purchased Power Expenses for the Month  
For the Months of April 2021 to June 2021

Line No.			April 2021	May 2021	June 2021	
1	AGUIRRE	Residual	BBLX 1000	400	220	227
2			MBTUX 1000	2,571	1,395	1,429
3			\$000	34,299	18,343	18,800
4			ACARREO	163	88	91
5			\$000 TOTAL	34,462	18,431	18,891
6			\$/BBL	84.46	83.85	83.33
7			\$/MBTU	13.41	13.31	13.23
8			GWHR	256	140	145
9	COSTA SUR	Gas Natural	MCF	2,396,401	3,639,659	3,628,424
10			MBTUX 1000	2,518	3,822	4,020
11			BBLX 1000 equivalente	400	607	638
12			\$000 TOTAL	22,207	33,624	35,625
13			\$/BBL	56.56	56.76	56.15
14			\$/MBTU	8.82	8.85	8.91
15			GWHR	256	369	410
16			PALO SECO	Residual	BBLX 1000	314
17	MBTUX 1000	1,975			2,339	2,364
18	\$000	25,725			30,240	30,363
19	ACARREO	125			148	150
20	\$000 TOTAL	25,851			30,389	30,513
21	\$/BBL	82.45			81.86	81.33
22	\$/MBTU	13.09			12.99	12.91
23	GWHR	193			231	236
24	SAN JUAN	Residual	BBLX 1000	77	85	86
25			MBTUX 1000	482	410	565
26			\$000	6,276	5,297	7,135
27			ACARREO	31	26	25
28			\$000 TOTAL	6,306	5,323	7,170
29			\$/BBL	82.41	81.86	81.33
30			\$/MBTU	13.08	12.99	12.91
31			GWHR	46	39	52
32	CICLO COMBINADO AGUIRRE	Destilado	BBLX 1000	2	12	20
33			MBTUX 1000	12	70	115
34			\$000	196	1,103	1,808
35			ACARREO	1	5	8
36			\$000 TOTAL	197	1,108	1,816
37			\$/BBL	92.03	91.98	91.86
38			\$/MBTU	15.80	15.85	15.83
39			GWHR	1	6	10
40	TURBINAS DE COMBUSTION & MAYAGUEZ	Destilado	BBLX 1000	5	19	34
41			MBTUX 1000	31	112	200
42			\$000	489	1,796	3,155
43			ACARREO	2	8	14
44			\$000 TOTAL	490	1,774	3,168
45			\$/BBL	92.06	91.98	91.86
46			\$/MBTU	15.86	15.85	15.83
47			GWHR	3	11	19
48	CAMBALACHE	Destilado	BBLX 1000	1	0	3
49			MBTUX 1000	5	0	15
50			\$000	75	0	233
51			ACARREO	0	0	1
52			\$000 TOTAL	75	0	234
53			\$/BBL	92.10	0.00	91.86
54			\$/MBTU	15.87	0.00	15.83
55			GWHR	0	0	1
56	REPOWERING 3,5&6	Destilado	BBLX 1000	0	0	0
57			MBTUX 1000	0	0	0
58			\$000	0	0	0
59			ACARREO	0	0	0
60			\$000 TOTAL	0	0	0
61			\$/BBL	0.00	0.00	0.00
62			\$/MBTU	0.00	0.00	0.00

Attachment 3  
Puerto Rico Electric Power Authority  
Projected Fuel and Purchased Power Expenses for the Month  
For the Months of April 2021 to June 2021

Line No.			April 2021	May 2021	June 2021	
63		MCF	779,377	807,557	1,652,811	
64		MBTUX 1000	818	848	1,735	
65		BBLX 1000Equivalente	130	135	275	
66		Gas Natural	\$000 TOTAL	8,685	9,032	18,590
67		\$/BBL	66.86	67.11	67.49	
68		\$/MBTU	10.61	10.65	10.71	
69		GWHR	124	126	245	
70		MCF	2,281,081	2,365,919	2,481,217	
71		MBTUX 1000	2,395	2,484	2,605	
72		BBLX 1000Equivalente	380	394	414	
73	ECOELECTRICA	Gas Natural	\$000 TOTAL	21,111	21,991	23,218
74		\$/BBL	55.53	55.77	56.15	
75		\$/MBTU	8.81	8.85	8.91	
76		GWHR	306	316	335	
77		SUB-TOTAL \$000	119,384	121,871	139,426	
78		TOTAL \$000	119,384	121,871	139,426	
79		BBLX 1000Equivalente	1,716	1,823	2,074	
80		MBTUX 1000	10,808	11,469	13,037	
81		\$/BBLEquivalente	69.56	66.86	67.23	
82		\$/MBTU	11.05	10.63	10.69	
83		GWHR (unidades AEE)	880	942	1,117	
84		HIDRO	2	5	6	
85		TOTAL (Unidades AEE)	882	947	1,122	
86		\$000	15,744	15,309	15,698	
87		EcoEléctrica	\$/MWH	51.39	48.42	46.90
88		GWHR	306	316	335	
89		\$000	26,002	27,339	18,315	
90		AES	\$/MWH	84.39	81.98	119.67
91		GWHR	308	333	153	
92		\$000	41,746	42,648	34,013	
93		Total Cogeneradores	\$/MWH	67.94	65.65	69.74
94		GWHR	614	650	488	
95		\$000	5,201	4,601	4,924	
96		Solar	\$/MWH	193.57	193.58	193.47
97		GWHR	27	24	25	
98		\$000	1,963	1,116	2,219	
99		Viento	\$/MWH	168.97	168.97	168.97
100		GWHR	12	7	13	
101		\$000	173	179	173	
102		LFG	\$/MWH	100.00	100.00	100.00
103		GWHR	2	2	2	
104		\$000	7,337	5,896	7,316	
105		Total Renovables	\$/MWH	182.44	183.33	181.48
106		GWHR	40	32	40	
108		Total Sistema	GWHR	1,537	1,629	1,650

\* En el caso de gas natural el costo por acarreo de combustible está incluido en el precio del combustible.

\* La generación de las cogeneradoras y de los proyectos de energía renovable se presenta en valores netos.

The previous image: Attachment 3, includes all the projected fuel and purchased power expenses used to calculate the factors for the FCA-PPCA process in a quarterly basis, please note that the information data in the spreadsheet is presented per month but does not include the operating and maintenance costs associated with each unit.



**FCA:**

The projected fuel cost information used for the FCA process is included from line No. 1 thru line No. 83 of the Attachment 3. The information is presented per plant, all PREPA generation fleet is included in this section. Note that since the most recent amendment to the contract with PREPA and EcoElectrica, PREPA is responsible to pay for the fuel used in EcoElectrica plant, the EcoElectrica fuel costs are included in lines 1 through 83. These fuel costs are separate and in addition to EcoElectrica's purchase power costs on lines 86, 87 and 88.

The information is presented in the following order for each generation plant, this applies for the residual and diesel fuels:

1. Plant name
2. Fuel type
3. Time period
4. Amount of barrels consumed, in thousands
5. MMBTU burned during month, in thousands
6. Fuel cost in thousands of dollars
7. Shipping cost (0.40 per barrel), which is applied to Residual and Diesel fuel oil
8. Total fuel cost = Fuel cost + shipping cost
9. Dollars per barrel for Total Fuel Cost (item 8 divided by item 4)
10. Dollars per MMBTU for Total Fuel Cost (item 8 divided by item 5)
11. Generation of the plant in GWHR

In case of the generation plants burning natural gas the configuration is different in two lines:

12. Millions of cubic feet of natural gas
13. Equivalent barrels of natural gas

The FCA section summary is located between lines 77 and 83 and shows the values per plant added together.

Line 84 of the spreadsheet includes the generation from the hydroelectric units, not affecting the FCA process.

Miscellaneous services and inspection fees are not included in the PROMOD simulation.

**PPCA:**

The purchased power expenses that affect the PPCA process are included between lines 86 and 106. In this section the information is split between cogenerators (lines 86-94) and renewable projects (lines 95-106). The EcoElectrica plant expenses presented in this section (lines 86-88) includes only the capacity portion of the contract because the fuel cost portion is covered in the FCA section (lines 70-76) as per the latest amendment of the contact with PREPA. Lines 92 to 94 summarizes the cogenerators expenses (AES & EcoElectrica) including the following data:

14. Purchased power cost in thousands of dollars
15. Dollars per MWH (this is not a variable cost, rather just item 14 divided by 16)



## 16. Generation of the plant in GWHR

The above format is used for all the purchased power projects of the PPCA section of the spreadsheet.

The renewable project expenses are covered in lines 95 thru 103 and is divided by renewable technology (Solar, wind, or landfill gas). Finally, lines 104-106 summarizes the total expenses for all renewable technologies in operation.

### **PROMOD Input assumptions:**

The following input assumptions are reviewed and / or updated each time a simulation must be performed. The main variables that are updated are the following:

- Load forecast – as filed within the FCA and PPCA filings
- Fuel price forecast – unit price for each fuel provided by PREPA
- Unit maintenance and outage schedule – provided by LUMA Operations team
- Other variables like forced outage schedule, unit limitations, purchased power costs, among others

### **Typical quarterly issues (between forecasted and actual values):**

- Fuel cost variance
- Re-dispatch of generation units
- Load variance
- Outage schedule variance

**Exhibit II**

Confidential Response in Opposition filed separately under seal of confidentiality