

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

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

CASE NO. NEPR-MI-2020-0001

**SUBJECT: Submission of Reconciliations and
FCA, PPCA and FOS Calculated Factors and
Request for Confidential Treatment**

**MOTION SUBMITTING QUARTERLY RECONCILIATIONS AND FCA, PPCA, AND
FOS CALCULATED FACTORS AND REQUEST FOR CONFIDENTIAL TREATMENT**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

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

I. Introduction

Pursuant to a Resolution and Order dated January 17, 2020, this Honorable Puerto Rico Energy Bureau (“Energy Bureau”) has conducted approval and revisions of the factors associated with several riders, including contributions in lieu of taxes cost adjustment (CILTA), help to human subsidies (SUBA-HH), non-help to human subsidies (SUBA-NHH), Fuel Charge Adjustment (FCA), the Purchased Power Charge Adjustment (PPCA), and the Fuel Oil Subsidy (FOS), and their reconciliations, in this proceeding, NEPR-MI-2020-0001. The reconciliations and FCA, PPCA, and FOS calculated factors are filed quarterly with this Energy Bureau according to the Final Rate Order issued on January 10, 2017, Case CEPR-AP-2015-0001, as amended (“Final Rate Order”).

LUMA does not own or operate generation facilities nor purchase any fuel for generation. LUMA's operations costs are not included in the FCA, PPCA, and FOS riders. The Final Rate Order and the Puerto Rico Electric Power Authority's ("PREPA") tariff book requires the calculation of the FCA, PPCA, and FOS riders to assure the pass-through of fuel used in generation by PREPA and the power purchased from private generators, without any markup, profit or additional charges that would benefit PREPA. As Operator of the Transmission and Distribution System, and in furtherance of its duties over system regulatory matters under Section 5.6 of the Puerto Rico Transmission and Distribution Operation and Maintenance Agreement ("T&D OMA"), supplemented by the Puerto Rico Transmission and Distribution System Supplemental Terms Agreement, LUMA is tasked with the preparation of the required quarterly reconciliations and factors for the FCA, PPCA and FOS riders.

In a Resolution and Order issued on March 31, 2022, this Energy Bureau set the FCA, PPCA, and FOS factors to be applicable from July 1, 2022, until September 30, 2022 ("March 31st Order"). In the September 30th Order, the Energy Bureau also directed that on or before June 15, 2022, at noon, LUMA shall file the FCA, PPCA, and FOS reconciliations for March through May 2022, as well as the calculated factors to be applied to start on July 1, 2022.

LUMA has calculated the quarterly reconciliations for the FCA and PPCA riders and the factors for the FCA, PPCA, and FOS riders for the period from July 1 until September 30, 2022, consistent with the approved and currently existing PREPA tariff book and the Final Rate Order. LUMA's submission of the quarterly reconciliations for March through May 2022 and the calculated FCA, PPCA, and FOS rider factors include excel spreadsheets that are being filed publicly via email in a file entitled *Values* submitted with this Motion. Alongside this Motion, LUMA is also submitting via email confidential excel spreadsheets with formulae intact submitted

in a file entitled *Confidential*. As explained in Section IX *infra*, it is hereby respectfully requested that the Bureau accept and maintain the files and spreadsheets submitted in the file, *Confidential*, under seal of confidentiality.

II. Energy Bureau Authority

This submission of the quarterly reconciliations and proposed FCA, PPCA, and FOS factors involve the Energy Bureau’s authority under Act 57-2104, as amended by Act 17-2019, to “review and approve and, if applicable, modify the rates or fees charged by electric power service companies in Puerto Rico or the contractor of the transmission and distribution system of Puerto Rico in connection with any matter directly or indirectly related to the provision of electric power services.” *See* Act 17-2014, Section 6.3 (n), 22 LPRA §1054(n) (Spanish language) (2021).

Also relevant is the Energy Bureau’s authority to “formulate and implement strategies to achieve the objectives of this Act including, but not limited to, attaining the goal of reducing and stabilizing energy costs....” *See Id.*, Section 6.3 (f).

III. Regulatory Formulas for Calculated FCA, PPCA, and FOS Factors

A. FCA

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

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

Id.

The total cost of fuel is the cost of fuel purchased for all PREPA generating facilities and EcoElectrica for the three forecasted quarterly months. *Id.* The prior period reconciliations are the under or over recovered funds for the first two months of the current quarter and the last month of the preceding quarter. *Id.* LUMA, on behalf of PREPA, shall provide the reconciling balance calculations with each proposed FCA quarterly filing. *Id.* Finally, the applicable net retail kWh sales include the sale of energy to all customer classes, including the net metering clients. *Id.*

The quarterly filing of reconciliations and calculated factors is due the second week of the third month of each quarter, and the calculated factors, approved by this Energy Bureau, go into effect the first month of the next quarter.

B. PPCA

The PPCA is a reconciling tariff mechanism that recovers the costs of purchased power consumed in PREPA's generating units every quarter. *See* PREPA Book of Tariffs on page 51. The PPCA applies to all the PREPA tariffs, except to the RHR tariff (RFR by its Spanish language acronym) (applicable to residents of public complexes owned by the Public Housing Administration). The formula to calculate the PPCA factor is:

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

Id.

The total cost of purchased power is the cost of purchased energy and capacity resources for the three forecasted quarterly months. *Id.* The prior period reconciliations are the under or over recovered funds for the first two months of the current quarter and the last month of the prior quarter. *Id.* LUMA shall provide the estimated reconciling balance with each proposed quarterly

filing of the PPCA. *Id.* Finally, the applicable net retail kWh sales include the sale of energy to all customer classes, including the net metering clients. *Id.*

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

C. FOS

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

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

IV. Factors Fixed by PREB for January 1st through March 31st, 2022

In the March 31st Resolution and Order, this Energy Bureau set the following factors to apply from April 1st through June 30th, 2022:

Adjustment Clause	Factor (\$/kWh)
FCA	0.185263
PPCA	0.031504
FOS	—0.030158

V. Reconciliations for FCA and PPCA Riders

The quarterly reconciliations for the FCA and PPCA riders submitted in the file entitled “Quarter Reconciliation File Mar-Apr-May 2022_Values” include the calculations for the reconciliations of the FCA and PPCA riders (costs versus revenues) and the amounts to be recovered or returned for each of these riders. Although the fuel consumption data provided by PREPA for March 2022 was certified as final, the fuel consumption data provided by PREPA for April and May 2022 was certified only as preliminary and, thus, subject to change.¹

For March 2022, the Fuel Costs and the prior period adjustments were \$229,322,895.36, and revenues totaled \$159,994,164.24. There was a revenue insufficiency of \$69,328,731.12. The Purchased Power Cost and the prior adjustments were \$47,268,879.21, and revenues totaled \$38,347,999.15. There was a revenue insufficiency of \$8,920,880.06.

For April 2022, the Fuel Costs and prior period adjustments were \$210,413,155.71, and revenues total \$227,670,213.77. There was an excess revenue of \$17,257,058.06. The Purchased Power Costs and prior period adjustment were \$41,353,648.30, and revenues totaled \$38,729,244.07. There was a revenue insufficiency of \$2,624,404.22.

Lastly, for May 2022, the Fuel Costs and prior period adjustments were \$280,837,135.42, and revenues total \$250,572,297.98. There was a revenue insufficiency of \$30,264,837.44. The Purchased Power Costs and the prior period adjustments were \$43,618,920.58, and revenues totaled \$44,730,257.34. There was an excess revenue of \$1,111,336.76.

¹ PREPA sent the final data for April and May 2022 today morning. Since the data was not certified on time for this filing, the calculations included herein are based on the preliminary certified data, as LUMA did not have sufficient time to revise the final uncertified numbers. As soon as PREPA certifies the final data for April and May 2022 and LUMA re-calculates the data provided, LUMA will submit an amended version of this filing.

The quarter total of Fuel Costs, and prior period adjustments (FCA), for March, April, and May 2022 were \$720,573,186.49, and revenues totaled \$638,236,675.99. There was a revenue insufficiency of \$82,336,510.50.

The quarter total of Purchased Power Costs, and the prior period adjustments (PPCA), for March, April, and May 2022 were \$132,241,448.09, and revenues totaled \$121,807,500.57. There was a revenue insufficiency of \$10,433,947.52.

VI. Calculated Factors

The excel spreadsheet entitled “July-September 2022 Factors” includes the calculations for the subject period for the FCA, PPCA, and FOS factors.

LUMA respectfully requests that the Energy Bureau review the following calculated factors, applicable for the next quarter from July 1st, 2022, until September 30th, 2022:

FCA -\$0.225351

PPCA -\$0.032501

FOS -\$0.028901

See “July-September 2022 Factors”, Attachments 1 and 2.

The impact on customer bills is as follows:

		March 2022 – May 2022		July 2022 – September 2022		Variance		
Rate and Voltage Level	Energy Consumption (kWh)	Bill \$	\$/kWh	Bill \$	\$/kWh	Bill (\$)	\$/kWh	%
GRS Residential	- 400	\$116.14	\$0.2904	\$135.96	\$0.33990	\$19.82	\$0.04955	17.1%
GSS Secondary Small Commercial, Industrial	- 1,200	\$383.46	\$0.3196	\$442.92	\$0.36910	\$59.46	\$0.04955	15.5%

GSP - Primary Medium Commercial, Industrial 250 kVA	91,800	\$27,505.62	\$0.2996	\$32,053.89	\$0.34917	\$4,548.27	\$0.04955	16.5%
GST - Transmission Large Commercial, Industrial 1,500 kVA	550,800	\$158,606.51	\$0.2880	\$185,896.15	\$0.33750	\$27,289.64	\$0.04955	17.2%

See *id.* Attachment 8.

LUMA is deeply concerned with the impact that rising fuel costs and the factors noted above will have on customer rates and respectfully urges the Energy Bureau to consider any and all options that would help mitigate the significant increase in customers’ energy bills.

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

A. Confidential Folder

Load Forecast FY 2023
Quarter Reconciliation File Mar-Apr-May 2022
July-September 2022 Factors_
<p>Fuel Inventory Folder: Inventory (Fuel) - February 28, 2022</p> <ul style="list-style-type: none"> • PRECIO PONDERADO DIRECTORADO DE GENERACION @ febrero 28, 2022 • Precio Ponderado Analisis _ 2022.02.28-revised on 3.22.22 <p>Fuel Inventory Folder: Folder: Inventory (Fuel) - May 31, 2022</p> <ul style="list-style-type: none"> • PRECIO PONDERADO DIRECTORADO DE GENERACION @ mayo 31, 2022 • Precio Ponderado Analisis _ 2022.05.31

B. Public Files in Values Folder

Load Forecast FY 2023_Values
Quarter Reconciliation File Mar-Apr-May 2022_Values
July-September 2022 Factors_Values

Fuel Inventory Folder: Inventory (Fuel) - February 28, 2022

- PRECIO PONDERADO DIRECTORADO DE GENERACION @ febrero 28, 2022_Values
- Precio Ponderado Analisis _ 2022.02.28-revised on 3.22.22_Values
- GA022170 PREPA YABUCOA TANK INVENTORY (Feb 28, 2022)
- GA022166 PREPA Aguirre Tank Inventory (Feb 28, 2022)
- GA022161 PREPA CENTRAL SJ TANK TRUCK INVENTORY (Feb. 28, 2022)
- Full Report 1310100016548 - PUERTO RICO ELECTRIC (BR) POWER AUTHORITY, M...
- Full Report 1310100016547 - PUERTO RICO ELECTRIC (BR) POWER AUTHORITY, M...
- Full Report 1310100016546 - PUERTO RICO ELECTRIC (BR) POWER AUTHORITY, M...
- Full Report 1310100016545 - PUERTO RICO ELECTRIC (BR) POWER AUTHORITY M. Rios (003)-CAM INV revised 3.22.22 (1)
- 22-00059 FINAL REPORT END OF MONTH INVENTORY 28FEBRUARY2022 NO. 2 FUEL O...
- 22-00058 FINAL REPORT END OF MONTH INVENTORY 28FEBRUARY2022 NO. 2 FUEL O...
- 22-00057 FINAL REPORT END OF MONTH INVENTORY 28FEBRUARY2022 NO. 2 FUEL O...

Fuel Inventory Folder: Folder: Inventory (Fuel) - May 31, 2022

- PRECIO PONDERADO DIRECTORADO DE GENERACION @ mayo 31, 2022_Values
- Precio Ponderado Analisis _ 2022.05.31_Values
- GA022385 PREPA JB TANK INVENTORY (May 31, 2022)
- GA022384 PREPA DG TANK INVENTORY Figures (May 31 2022)
- GA022380 PREPA PS TANK INVENTORY (May 31, 2022)
- Full Report 1310100016648 - YABUCOA
- Full Report 1310100016647 - AGUIRRE
- Full Report 1310100016646 - SAN JUAN
- 22-00120 FINAL REPORT END OF MONTH INVENTORY 31MAY2022 NO. 2 FUEL OIL VEGA BAJA
- 22-00119 END OF MONTH INVENTORY 31MAY2022 NO. 2 FUEL OIL MAYAGUEZ
- 22-00118 END OF MONTH INVENTORY 31MAY2022 NO. 2 FUEL OIL & NO. 6 FUEL COSTA SUR
- 22-00117 END OF MONTH INVENTORY 31MAY2022 NO. 2 FUEL OIL CAMBALACHE

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

The confidential excel files mentioned in Section VII of this Motion submitted herein include excel spreadsheets submitted in native format (.xls) and with formulae intact. They include formulae and original calculations made by LUMA personnel that reveal confidential procedures and have sensitive commercial information belonging to LUMA and/or PREPA and that are thus protected by law, which should not be disclosed in native form.

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

The bedrock provision on the management of confidential information 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: “if any person who is required to submit information to the Energy [Bureau] believes that the information to be submitted has any confidentiality privilege, such person may request the Commission to treat such information as such” 22 LPRR § 1054n. If the Energy 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 companies shall provide the 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 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 referenced Policy requires identification of the confidential information and the ... filing 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 the reasons why each claim or designation conforms to the applicable legal basis of confidentiality. *Id.* paragraphs 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 Energy Bureau policy on the 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 information, request the [Bureau] the protection of said information, and provide supportive arguments, in writing, for a claim of information of privileged nature. The [Energy 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 Mechanism*, Section 1.13 (addressing disclosure before the Bureau of Confidential Information and directing compliance with Resolution CEPR-MI-2016-0009).

B. Grounds for Confidentiality

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

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

Id. §4131, Section 3 Act. 80-2011.² Trade secrets include, but are not limited to, processes, methods, mechanisms, manufacturing processes, formulas, projects or patterns to develop machinery, and lists of specialized clients that may afford an advantage to a competitor. *See* Statement of Motives, Act 80-2011. As explained in the Statement of Motives of Act 80-2011, protected trade secrets include any information bearing commercial or industrial value that the owner reasonably protects from disclosure. *Id.* *See also* Article 4 of Puerto Rico’s Open Data Law, Act 122-2019 (exempting the following from public disclosure: (1) commercial or financial information whose disclosure will cause competitive harm; (2) trade secrets protected by a contract, statute or judicial decision (3) private information of third parties). *See* Act 122-2019, Articles 4 (ix) and (x) and (xi)).

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

The excel spreadsheets that have been submitted today in native form and with formulae intact in the file entitled *Confidential* are protected as trade secrets. They have commercial value to LUMA and PREPA as they reveal confidential processes and analyses to produce calculations supporting 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.

² 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, providing 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 the disclosure of a trade secret, precautionary measures should be adopted to protect the interests of the trade secret owner. *Id.*

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 *Confidential*, be received, kept, and maintained confidentially by this Energy Bureau.

The confidential spreadsheets included in the file entitled *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 file entitled *Confidential* are trade secrets protected from public disclosure by Act 80-2011.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned, **accept** the filing of the FCA, PPCA, and FOS reconciliations for March through May 2022, and the calculated factors for the quarter starting on July 1, 2022; and **grant** the request to keep confidentially the spreadsheets that have been filed in excel format and with formulae in the file entitled *Confidential* that is submitted with this Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on this 15th day of June 2022.

I hereby certify that I filed this Motion using the electronic filing system of this Energy Bureau. I will send an electronic copy of this Motion to counsel for PREPA Katuska Bolaños-Lugo, kbolanos@diazvaz.law, and to the Independent Consumer Protection Office, through Director Hannia Rivera, hrivera@oipc.pr.com.



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