

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

NEPR Received: Mar 30, 2023 12:56 PM

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

CASE NO. NEPR-MI-2020-0001

**SUBJECT: Motion Submitting Revised FCA,
PPCA, and FOS Factors, and Request for
Confidential Treatment**

**MOTION SUBMITTING REVISED 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 and Relevant Background

In a Resolution and Order issued in this proceeding on December 29, 2022, this Energy Bureau set the Fuel Charge Adjustment (“FCA”), Purchased Power Charge Adjustment (“PPCA”), and Fuel Oil Subsidy (“FOS”) factors to be applied from January 1, 2023, until March 31, 2023 (“December 29 Order”). The December 29 Order maintained the same factors set in the Resolution and Order of September 29, 2022 (“September 29 Order”) for the period of October 1, 2022, until December 31, 2022. Furthermore, in the December 29 Order, the Energy Bureau directed that on or before March 15, 2023, at noon, LUMA shall file the FCA, PPCA, and FOS reconciliations for September 2022, October 2022, November 2022, December 2022, January 2023, and February 2023, as well as the calculated factors to be applied for the quarter period beginning on April 1, 2023.

On March 15, 2023, LUMA filed before the Energy Bureau a *Submission of Reconciliations for December 2022 and, January and February 2023, and FCA, PPCA and FOS Calculated Factors and Request for Confidential Treatment* (“March 15th Submission”). LUMA submitted the quarterly reconciliations for the FCA and PPCA riders for September 2022 through February 2023 and the proposed factors for the FCA, PPCA, and FOS riders to be in effect for the period from April 1 until June 30, 2023. As part of the filing, LUMA included Excel spreadsheets filed publicly and confidential Excel spreadsheets with formulae intact.

On March 23, 2023, the Energy Bureau issued a Resolution and Order (“March 23 Order”) instructing the Puerto Rico Electric Power Authority (“PREPA”), through LUMA, to submit on or before March 28, 2023, at 3 p.m., a report of the status of the claims made to the Federal Emergency Management Agency (“FEMA”) and/or insurance companies due to the damages sustained as a consequence of Hurricane Fiona. Further, the Energy Bureau ordered PREPA, through LUMA, to present the necessary information to validate the amount of \$5,977,764.63 for alleged excess natural gas nominations and the corresponding credits to July and August 2022. Lastly, the Energy Bureau scheduled a Technical Conference to discuss the March 15th Submission for March 29, 2023, at 10 a.m.

On March 28, 2023, LUMA filed a *Motion in Compliance with Resolution and Order of March 23, 2023*. Therein, LUMA submitted to the Energy Bureau the information requested to PREPA in the March 23 Order. The information provided included a status report of the claims made due to the damages sustained as a consequence of Hurricane Fiona and information to validate the amount of \$5,977,764.63 for alleged excess natural gas nominations and the corresponding credits to July and August 2022.

On the afternoon of March 28, 2023, PREPA informed LUMA of some revisions performed to the fuel reports for June and July 2022. PREPA explained that the revised data could impact the FCA values previously submitted to the Energy Bureau in the March 15th Submission.

On March 29, 2023, the Technical Conference in this instant proceeding was held. During the hearing, the Energy Bureau requested LUMA and PREPA to submit the revisions PREPA made to the fuel reports for June and July 2022 and for LUMA to submit any revisions to the proposed reconciliations on or before March 30, 2023, at 1 p.m (“March 29 Bench Order”).

In compliance with the March 29 Bench Order, LUMA hereby submits revised calculated factors for the FCA, PPCA, and FOS riders. LUMA’s role in preparing this submission is to calculate the reconciliations and FCA, PPCA, and FOS riders; it does not own or operate generation facilities, nor does it purchase any fuel for generation.¹

LUMA’s submission of the revised calculated FCA, PPCA, and FOS riders factors includes Excel spreadsheets being filed publicly via email in a file entitled *Values* submitted with this Motion. With this Motion, LUMA is also submitting via email confidential Excel spreadsheets with formulae intact submitted in a file entitled *Confidential*. As explained in Section V *infra*, it is hereby respectfully requested that the Energy Bureau accept and maintain the files and spreadsheets submitted in the file, *Confidential*, under seal of confidentiality.

II. 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 on a quarterly basis. *See* PREPA Book of Tariff on page 49. The FCA

¹ LUMA’s costs of operations are not included in the FCA, PPCA and FOS riders. The Final Rate Order and the PREPA tariff book require the calculation of the FCA, PPCA and FOS riders to assure the pass-through of fuel used by PREPA and others in generation of electricity and the power purchased from private generators by PREPA, without any markup, profit or additional charges that would benefit PREPA (or LUMA).

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:

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

Id.

The total cost of fuel is the cost of fuel purchased for all PREPA generating facilities for the three forecasted months in the quarterly time period. *Id.* The prior period reconciliations 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 estimates of the reconciling balance with each proposed quarterly filing of the FCA. *Id.* Finally, the applicable net retail kWh sales include the sale of energy to all customer classes, including the net metering clients. *Id.*

The quarterly filing of reconciliations and 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 on a quarterly basis. *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:

PPCA=Total Costs Purchased Power + Prior Period

Reconciliation

Total Applicable Net Retail kWh Sales

Id.

The total cost of purchased power is the cost of purchased resources of energy and capacity for the three forecasted months in the quarterly time period. *Id.* The prior period reconciliations 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 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 next quarter.

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

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

C. FOS

The FOS applies to certain 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 a consumption of 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.*

III. Revised Reconciliations for FCA and PCA Riders

The revised quarterly reconciliations for the FCA and PPCA riders submitted with this Motion in the file entitled "Updated April-June 2023 Factors.xlsx" include calculations for the reconciliation of the FCA and PPCA riders (costs versus revenues) and the amounts to be recovered or returned for each of these riders for October 2022 through February 2023.

The quarter total of Fuel Costs, and prior period adjustments, for September through November 2022 were \$755,530,284.62. The revenues totaled \$682,287,812.50. There was a total of \$3,792,558.46 in excess nominations. This totaled a revenue insufficiency of \$69,449,913.65.

The quarter total of Purchased Power Costs and the prior period adjustments for September through November 2022 was \$119,053,328.73. The revenues totaled \$118,785,591.90. There was a revenue insufficiency of \$267,736.83.

The quarter total of Fuel Costs, and prior period adjustments, for December 2022, January 2023, and February 2023, were \$537,736,978.98. The revenues totaled \$603,953,225.98. Additionally, there was a total of \$8,436,739.35 in excess nominations and a credit of \$1,870,225.55 pertaining to the updated June and July 2022 amounts, resulting in a

reduced total of \$6,566,513.80 in excess nominations. This totaled an excess revenue of \$59,649,733.20.

The quarter total of Purchased Power Costs, and the prior period adjustments for December 2022, January 2023, and February 2023, were \$120,866,266.32. The revenues totaled \$107,269,298.32. There was a revenue insufficiency of \$13,596,967.99.

IV. Revised Calculated FCA, PPCA, and FOS Factors

Considering the March 29 Bench Order, LUMA calculated the FCA and PPCA factors for the next quarter (April 1, 2023, to June 30, 2023) as follows:

1. This calculation includes the excess nominations, including the credit of \$1,870,225.55 pertaining to the June and July 2022 updates, as informed by PREPA during the Technical Conference held on March 29, 2023.

Under this scenario, the following revised factors are applicable for the next quarter from April 1, 2023, to June 30, 2023:

Adjustment Clause	Factor (\$/kWh)
FCA	\$0.136252
PPCA	\$0.035997
FOS	\$0.026671

2. **Alternate Scenario:** Given the discussion during the technical conference and PREPA's submission dated March 28, 2023, LUMA also calculated a scenario considering the excess nominations **and** the \$34,550,469.97 associated with the New Fortress Energy claims that are currently deferred.

Under this alternate scenario, the following revised factors are applicable for the next quarter from April 1, 2023, to June 30, 2023:

Adjustment Clause	Factor (\$/kWh)
FCA	\$0.144671
PPCA	\$0.035997
FOS	\$0.026671

V. Documents Filed in Support of the Revised Proposed FCA, PPCA, and FOS Factors.

A. Confidential Folder

Updated April-June 2023 Factors_Confidential.xlsx
QUARTERLY FAC-PPAC RECONCILIATION DEC22-JAN-FEB23_Confidential

B. Public Files

Updated April-June 2023 Factors_Values.xlsx

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

The confidential Excel files mentioned in Section IVA of this Motion *supra*, submitted with this Motion, 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 include sensitive commercial information belonging to LUMA and/or PREPA and that are thus protected by law from disclosure that should not be disclosed in its native form.

A. Applicable Laws and Regulations to submit confidential information 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 L.P.R.A. §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 company shall provide information requested by customers, except for confidential information in accordance with the Rules of Evidence of Puerto Rico.”

Access to the confidential information shall be provided “only to the lawyers and external consultants involved in the administrative process after the execution of a confidentiality agreement.” *Id.*, Section 6.15(b). Finally, Act 57-2014 provides that this Energy Bureau “shall keep the documents submitted for its consideration out of public reach only in exceptional cases. In these cases, the information shall be duly safeguarded and delivered exclusively to the personnel of the [Bureau] who needs to know such information under nondisclosure agreements. However, the [Bureau] shall direct that a non-confidential copy be furnished for public review”. *Id.*, Section 6.15 (c).

The 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 the 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.* 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 regard 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 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

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, provide that these actions do not tend to conceal fraudulent actions or lead to an injustice. 32 P.R. Laws Annot. Ap. VI, R 513. If a court of law mandates disclosure of a trade secret, precautionary measures should be adopted to protect the interests of the owner of the trade secret. *Id.*

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 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 analysis to produce calculations in support of the public filings of the revised proposed FCA, PPCA, and FOS factors. LUMA and PREPA keep and maintain these native files confidentially and do not disclose them to the public or unauthorized third parties.

LUMA appreciates the importance of placing the Energy Bureau in the position of reviewing the reconciliations and fixing the annual factors. However, to avoid future competitive harms that could ensue if original format spreadsheets with formulae and calculations are publicly disclosed, LUMA respectfully requests that the excel files submitted today in the file entitled *Confidential* to 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 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 revised proposed calculated factors for April 1, 2023 to June 30, 2023; 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, this 30th day of March 2023.

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



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