

**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 for
May and June 2023, Submission of FCA,
PPCA, PPCA, and FOS Calculated Factors,
and Request for Confidential Treatment**

**MOTION SUBMITTING RECONCILIATIONS FOR MAY AND JUNE 2023,
SUBMISSION OF 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 Background

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, Case No. NEPR-MI-2020-0001. The reconciliations and FCA, PPCA, and FOS calculated factors are filed quarterly with this Honorable Energy Bureau pursuant 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 of 2017 and the Puerto Rico Electric Power Authority's ("PREPA") tariff book require the calculation of the FCA, PPCA, and FOS riders to ensure 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 PREPA's 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 quarterly reconciliations and calculated factors for the FCA, PPCA, and FOS riders.

In a Resolution and Order issued in this proceeding on March 31, 2023, this Energy Bureau set the FCA, PPCA, and FOS factors to be applied from April 1, 2023, until June 30, 2023 ("March 31st Order"). Furthermore, in the March 31st Order, the Energy Bureau directed that on or before June 15th, 2023, at noon, LUMA shall file the FCA, PPCA, and FOS reconciliations for March through May 2023, as well as the calculated factors to be applied for the quarter period beginning on July 1, 2023.

On May 18, 2023, LUMA filed an accelerated reconciliation for the FCA and PPCA riders for the months of March and April 2023, and revised calculated FCA, and PPCA factors that this Energy Bureau could determine to apply during the month of June 2023. *See Motion Submitting Accelerated Reconciliation, Submission of FCA and PPCA Calculated Factors and Request for Confidential Treatment* ("May 18th Motion"). On May 24, 2023, this Energy Bureau approved the factors proposed in LUMA's May 18th Motion and thus set the following factors to be implemented

from June 1st through June 31st, 2023: FCA: 0.087978 \$kw/h and PPCA: 0.039353 \$kw/h. *See* Resolution and Order of May 24, 2023 (“May 24th Order”). This Energy Bureau also required that the reconciliation to be filed in June 2023 for the month of May, 2023 shall include the amount of \$61,379,713 that the Puerto Rico Electric Power Authority (“PREPA”) informed on April 4, 2023, was recovered from the Federal Emergency Management Agency (“FEMA”) as reimbursement for fuel costs associated with Hurricane Fiona. *See* May 24th Order, page 3.

On June 20, 2023, LUMA filed *Motion Submitting Reconciliations for May through June 2023, and Submission of FCA, PPCA, PPCA, and FOS Calculated Factors and Request for Confidential Treatment*, whereby LUMA submitted the FCA, PPCA and FOS reconciliations for May 2023 and the calculated factors that this Energy Bureau could implement starting July 1st (“Submission of May Reconciliations and Calculated Factors” and/or “June 20th Submission”). On June 28, 2023, LUMA filed a response in compliance with a Request for Information issued by this Energy Bureau on June 22nd. *See Motion in Compliance with Order of June 22, 2023*.

In a Resolution and Order dated June 30, 2023, this Energy Bureau approved the annual factors for the CILTA, SUBA-HH, and SUBA-NHH riders and determined to maintain FOS factor set in the March 30th Order and the FCA and PPCA factors set in May 24th Order, instead of the FCA PPCA Factors proposed in the June 20th Submission. *See* June 30th Order, pages 6-12. This Energy Bureau determined that there was uncertainty in fuel costs projections for July through September 2023. The basis for that conclusion was that LUMA had not received Genera PR LLC’s (Genera) Fuel Savings Plan and thus, LUMA’s fuel costs projections did not consider Genera’s Fuel Savings Plan. This Energy Bureau also referenced that the calculated factors presented with the Submission of May Reconciliations and Calculated Factors did not consider the temporary generation at Palo Seco and San Juan.

In the June 30th Order, this Energy Bureau directed that Genera should file its Fuel Savings Plan by July 10th and that LUMA shall submit on or before July 17th at 12:00 pm, the calculated FCA, PPCA and FOS factors to be implemented from August 1st through September 30th, taking into consideration the temporary generation at Palo Seco and San Juan, as well as the \$61,379,713 that PREPA received as reimbursement from FEMA related to Hurricane Fiona. *See* June 30th Order, pages 13-14. Finally, this Energy Bureau ordered that LUMA should submit the May 2023 FCA, PPCA and FOS reconciliations.

As stated in Genera's *Memorandum of Law in Support of Confidential Treatment of the Fuel Optimization Plan Draft Submitted by Genera in Compliance with the June 30, 2023, Order* filed on July 14, 2023 ("Genera's July 14th Memorandum"), on July 9, 2023, Genera submitted a proposed Fuel Optimization Plan to this Energy Bureau in draft form. *See* Genera's July 14th Memorandum, page 2. Genera shared the Fuel Optimization Plan with LUMA on July 10, 2023. *Id.* As per Genera's July 14th Memorandum, the Fuel Optimization Plan is pending revisions by the Puerto Rico Public Private Partnerships Authority ("P3 Authority") and approval by this Energy Bureau. *Id.*, pages 6. Consequently, as explained in Genera's July 14th Memorandum, the Fuel Optimization Report is subject to revisions and is a working document. *See id.*

LUMA has calculated the reconciliations for the FCA and PPCA riders for May 2023 and June 2023 and the factors for the FCA, PPCA, and FOS riders to be applied for the period from August 1st through September 30th, 2023, consistent with the approved and currently existing PREPA Tariff Book and the Final Rate Order. The projections used for the calculated factors consider all generation that is currently projected to be available for the period August 1 through September 30, 2023, including the temporary emergency generation at the Palo Seco and San Juan. It is respectfully informed that because Genera's Fuel Optimization Plan has not been approved

by this Energy Bureau, is not currently effective and is a “working document” with multiple estimates that are subject to revisions, the calculated factors do not consider Genera’s Fuel Optimization Plan.

LUMA’s submission includes Excel spreadsheets 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 IX *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. 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 LPRC §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

1. 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 Tariff Book page 49. The FCA applies

to all the PREPA tariffs, except to the RHR tariff (RFR by its Spanish acronym, applicable to residents of public complexes owned by the Public Housing Administration). The formula to calculate the FCA factor is:

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

Id.

The total cost of fuel is the cost of fuel purchased for all PREPA-generating facilities for the three forecasted months in the quarterly time period. *Id.* The prior period reconciliations 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, 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 following quarter.

The quarterly reconciliations also include, when applicable and as ordered by the Energy Bureau, any unreconciled amounts from the previous quarter if the factors were not adjusted during that period.

2. 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 Tariff Book page 51. The PPCA applies to all the PREPA tariffs, except to the RHR tariff (RFR by its Spanish language

acronym) (applicable to residents of public complexes owned by the Public Housing Administration). The formula to calculate the PPCA factor is:

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

Id.

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

3. 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 of up to 400 kWh. *Id.* Customers that consume between 401 kWh and 425 kWh will receive a credit equivalent to a consumption of 400 kWh. *Id.* Finally, for customers that consume between 426 kWh and 500 kWh, the credit will be progressively reduced to 425 kWh to reach 0 kWh or 500 kWh. *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. The quarterly reconciliations also include, when applicable and as ordered by the Energy Bureau, any unreconciled amounts from the previous quarter if the factors were not adjusted during that period.

IV. Factors Fixed by the Energy Bureau for April 1st through July 31st, 2023

In the March 31st Order, this honorable Energy Bureau set the following factors to apply from April 1st through June 31st, 2023:

Adjustment Clause	Factor \$ kWh	Effective Dates
FCA	0.146236	April 1, 2023 –June 30, 2023
PPCA	0.035997	April 1, 2023 –June 30, 2023
FOS	-0.026671	April 1, 2023 –June 30, 2023

Furthermore, in the May 24th Order, this Energy Bureau ordered that the following FCA and PPCA factors would apply from June 1st through June 30th, 2023:

Adjustment Clause	Factor \$ kWh	Effective Dates
FCA	0.087978	June 1, 2023 –June 30, 2023
PPCA	0.039353	June 1, 2023 –June 30, 2023

In the June 30th Order, this Energy Bureau maintained the prior FCA, PPCA and FOS factors for July 2023:

Adjustment Clause	Factor \$ kWh	Effective Dates
FCA	0.087978	July 1, 2023 –July 31, 2023
PPCA	0.039353	July 1, 2023 –July 31, 2023
FOS	-0.026671	July 1, 2023 –July 31, 2023

V. Reconciliations for FCA and PPCA Riders

The reconciliations for the FCA and PPCA riders submitted with this Motion in the files entitled “FAC-PPAC Reconciliation May-June 2023 _Values.xlsx” and August-September 2023 Proposed Factors_Values.xlsx,” include 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.

For the month of May 2023, the Fuel Costs and prior period adjustments (FCA) were \$184,081,445.87. Revenues totaled \$193,268,152.79. There was a credit pertaining to seller shortfalls from Naturgy of \$12,542,537.28. Additionally, there was a \$61,379,713.00 reimbursement from FEMA pertaining to fuel costs during Hurricane Fiona, resulting in an excess revenue of \$83,108,957.20.

For the month of May 2023, the Purchased Power Costs, and the prior adjustments (PPCA) were \$46,127,059.41 and revenues totaled \$47,515,948.15. There was an excess revenue of \$1,388,888.74.

For the month of June 2023, the Fuel Costs and prior period adjustments (FCA) were \$177,250,180.04 and revenues totaled \$128,833,348.87. There was a revenue insufficiency of \$48,416,831.17.

For the month of June 2023, the Purchased Power Costs, and the prior adjustments (PPCA) were \$45,552,665.58 and revenues totaled \$57,592,461.95. There was an excess revenue of \$12,039,796.37.

VI. Calculated Factors

The excel spreadsheet entitled “August-September 2023 Proposed Factors.xlsx” includes the calculations for the proposed FCA, PPCA, and FOS factors. FCA and FOS are presented in Attachment 1 and the PPCA factors are presented in Attachment 2.

LUMA is submitting two (2) possible scenarios to return to customers the \$61,379,713.00 million that PREPA received as reimbursement from FEMA related to Hurricane Fiona fuel costs. In the first scenario, the \$61,379,713 million would be returned to customers in the remainder of the current quarter (August and September 2023), as per the June 30th Order.

In the second scenario, the \$61,379,713 million would be returned to customers prorated through December 2023, at a rate of \$12,275,942.60 per month. LUMA respectfully submits that distributing the return to customers monthly until December 2023, is beneficial to customers as it shall spread out the impact of the reimbursement throughout the rest of the calendar year, as opposed to one significant reduction applicable to energy bills in August and September. As this Energy Bureau is aware, the FCA and PPCA factors are calculated quarterly based on projections of fuel and purchased power costs for the next quarter. Those calculations are subject to externalities and contingencies such as the volatility of fuel prices, limitations of fuel supply and availability of generation. LUMA understands that a prorated application of the \$61,379,713 million will help offset those externalities that could increase energy prices in the coming months. In sum, the second scenario would help to reduce volatility of total energy costs to customers over the remainder of 2023.

LUMA respectfully requests that the Energy Bureau review the following two (2) possible scenarios for calculated factors, applicable from August 1st, 2023, to September 30th, 2023:

Scenario 1:

Adjustment Clause	Factor (\$/kWh)
FCA	\$0.088437
PPCA	\$0.027931
FOS	\$0.014335

Scenario 2:

Adjustment Clause	Factor (\$/kWh)
FCA	\$0.101763
PPCA	\$0.027931
FOS	\$0.014335

See Id.

VII. Submittal of EE Rider Calculated Factor

On January 10, 2017, the Energy Bureau issued a Final Resolution and Order in Case No. CEPR-AP-2015-0001, *In Re: Puerto Rico Electric Power Authority Rate Review* (“January 10th Resolution and Order”) through which it approved PREPA’s revenue requirement for Fiscal Year 2017 and issued multiple directives regarding PREPA’s rates. Among others, it accepted the Energy Efficiency (“EE”) Rider (“EE Rider”) proposed by PREPA designed to recover the expenses related to the implementation of energy efficiency and demand-side management programs. Still, it indicated it would address the details of this rider once the Energy Bureau determined the EE programs, the provider, and budgets. *See* January 17th Resolution and Order on pages 132-133; *see also* Resolution and Order of September 27, 2019, in Case No. CEPR-AP-2015-0001, *In RE: Puerto Rico Electric Power Authority Rate Review* at page 1¹. In addition, the Energy Bureau directed that the Energy Efficiency Rider be adjusted and reconciled annually. *See* January 10th Resolution and Order on page 133.

On May 31, 2017, the Energy Bureau issued a Resolution and Order in Case No. CEPR-AP-2015-0001, *In Re: Puerto Rico Electric Power Authority Rate Review* approving the revised Tariff Book presented by PREPA in that same docket on May 19, 2022, which includes the EE

¹ Wherein the Energy Bureau cites the January 10th Resolution and Order in stating that it “approved several riders designed to recover costs associated to fuel, purchased power, Contribution in Lieu of Taxes (“CILT”) and other subsidies, as part of the [PREPA] Permanent Rate” and that these rates included the “Energy Efficiency Rider”.

Rider, and ordering PREPA to implement the Permanent Rate as detailed therein. On January 16, 2020, the Energy Bureau issued a Resolution and Order (the “January 16th Resolution and Order”) opening the instant docket “to evaluate PREPA’s future filings regarding the rider factors, including reconciliations” given that these are part of the implementation of the Permanent Rate.

On February 16, 2023, the Energy Bureau issued a Resolution and Order in Case No. NEPR-MI-2022-0001, *In Re: Energy Efficiency and Demand Response Transition Period Plan* (the “EE/DR TPP Case”), (this Resolution and Order, the “February 16th Resolution and Order”) in which it approved, with specified amendments, LUMA’s proposed Energy Efficiency and Demand Response (“DR”) Transition Period Plan (“TPP”) containing the EE and DR Programs to be implemented by LUMA during a transition period and associated budgets for Fiscal Years (“FY”) 2023 and 2024, among others. In the February 16th Resolution and Order, the Energy Bureau also ordered LUMA to fund the TPP for FY 2024 using the EE Rider, “except to the extent that LUMA (1) decides to apportion some of its base budget to support EE and DR programs, and files as such in its EE Rider filing for FY2024 [...], (2) carries over unspent funds from its FY2023 EE and DR budget, and/or (3) external funding is secured to displace EE Rider funds”. *See* February 16th Resolution and Order on page 27. The Energy Bureau also ordered LUMA to “file the EE Rider” on or before April 1, 2023, which:

- a. Addresses exhaustion of the FY2023 budget funding from its base budget before the end of the fiscal year (if this is anticipated to be an issue);
- b. Is designed to raise the necessary revenue to fund FY2024 programs, accounting for external or LUMA funds;
- c. Reflects LUMA’s best estimate of the total sales expected in FY2024, for use in calculating the EE Rider rate; and
- d. Reflects any changes that LUMA requests regarding the FY2024 budget (for example, with regards to changes to its DR programs).

See id. at pages 27 and 30.

On April 3, 2023, the Energy Bureau issued a Resolution and Order in the EE/DR TPP Case (“April 3rd Resolution and Order”) ordering LUMA to file the EE Rider petition on or before April 11, 2023 including the following information:

- The FY24 EE and DR budget to be funded by the rider, including program summaries and budgets in accordance with the approved TPP[.]
- Details of any external funding sources secured[.]
- The first-year energy efficiency savings expected to be achieved during FY24. Section 2.02(A)(2) of the EE Regulation requires LUMA to design programs and budgets to achieve at least 0.25 percent of annual sales this year.
- The expected sales over which the EE Rider will be allocated.
- A calculation of the EE Rider rate, in \$/kwh.
- Any and all other information LUMA believes the Energy Bureau needs in the administrative record in order to approve the EE Rider.

See April 3rd Resolution and Order on page 5.

In compliance with the February 16th Resolution and Order and the April 3rd Resolution and Order, on April 11, 2023 LUMA filed the calculated factor for the EE Rider in EE/DR TPP Case (“April 11th EE Rider Filing”). In the April 11th EE Rider Filing LUMA submitted, as an Exhibit 1, a narrative discussion of the background and supporting information for the EE Rider calculated factor and, as an Exhibit 2, an excel table containing the EE Riders calculated factor for FY 2023, the planned program budget for FY 2023, and a proposed filing schedule for adjustment and reconciliations, among other supporting information. In said filing, LUMA also requested the Energy Bureau to direct that future filings on the EE Rider be submitted in the docket of the instant proceeding (“Permanent Rate Case”). This, because the Permanent Rate Case was conceived and designed to consolidate all processes related to the implementation of rate riders, including rider factors and reconciliations. Therefore, interests of expediency and procedural economy weigh in favor of submitting the EE Rider’s calculated factor and future filings on the EE Rider in this Permanent Rate Case docket.

In attention to an Energy Bureau bench order issued on May 5, 2023 in the EE/DR TPP Case, on May 19, 2023, LUMA filed in that case, as Exhibits 1 and 2, revised versions of Exhibits 1 and 2 to the May 11th EE Rider Filing, respectively (“May 19th EE Rider Filing”). In the May 19th EE Rider Filing, LUMA reiterated its request that future filings on the EE Rider be made in the Permanent Rate Case.

In the June 30th Order, this Energy Bureau determined, among others, to suspend the EE Charge [EE Rider] for the month of July 2023 given the “great probability that the costs associated with [EE] programs will be paid with funds not associated with the EE Charge [EE Rider].” *See* June 30th Resolution and Order, page 11. On July 1, 2023, the Energy Bureau issued a Resolution and Order (“July 1st Resolution and Order”) wherein it clarified that it did not suspend the EE and DR programs as a result of the suspension of the EE Charge [EE Rider] and ordered LUMA to continue with the implementation of the TPP and the EE/DR programs. *See* July 1st Resolution and Order, page 2. Thus, the EE Rider has not yet been approved by this Energy Bureau.

As LUMA explained in the EE/DR TPP Case, the only currently available funding mechanism for the TPP is the EE Rider. *See Urgent Motion Requesting Determination Regarding the Revised EE Rider Petition and Clarifying the Calculated Factor in the Revised EE Rider Petition and Clarifying the Calculated Factor in the Revised EE Rider Petition Submitted on May 19, 2023*, filed on June 29, 2023 in the EE/DR TPP Case. Furthermore, as LUMA explained in a motion filed on July 14, 2023 in the EE/DR TPP Case, the determination to suspend approval and implementation of the EE Rider without an alternative funding source in place has constrained LUMA’s ability to move towards reaching milestones to implement the TPP. *See Response to Orders Staying Approval and Implementation of EE Rider and Request for suspension of deadlines*

to submit proof of customer enrollment and documentation regarding capability to call events related to the Emergency DR Program.

Because the bill impacts of the EE Rider are reflected in the filing submitted today with the May and June 2023 FCA and PPCA reconciliations and the calculated factors to be implemented on August 1st, 2023, LUMA is filing the EE Rider's calculated factor in this docket in identical form to that filed as Exhibit 2 to the May 19th EE Rider Filing, in the EE/DR TPP Case and that was filed with this Energy Bureau in this proceeding on June 20, 2023. *See Exhibit 2* to this Motion, including public and confidential versions of the Exhibit. LUMA respectfully requests that the Energy Bureau consider the EE Rider calculated factor in this Permanent Rate docket and direct that all future filings regarding the implementation of the EE Rider, including future calculated factors and reconciliations, be filed in this Permanent Rate docket.

VIII. List of Documents Filed in Support of Reconciliations and Calculated FCA, PPCA, and FOS Factors.

1. Confidential Folder

- | |
|---|
| <ol style="list-style-type: none">1. Inventory (Fuel) - May 31, 2023<ol style="list-style-type: none">a. WEIGHTED AVERAGE FUEL PRICE_PREPA
SYSTEM_BunkerC_Diesel_May 31 2023_Confidential.xlsxb. Precio Ponderado Análisis _ 2023.05.31-REG_Confidential.xlsx2. August-September 2023 Proposed Factors.xlsx3. FAC-PPAC Reconciliation May-June 2023.xlsx4. EE Rider Factor Calculation.xlsx |
|---|

2. Public Files in Values Folder

- | |
|---|
| <ol style="list-style-type: none">1. Inventory (Fuel) - May 31, 2023:<ol style="list-style-type: none">a. WEIGHTED AVERAGE FUEL PRICE_PREPA
SYSTEM_BunkerC_Diesel_May 31 2023_Values.xlsxb. Precio Ponderado Análisis _ 2023.05.31-REG_Values.xlsxc. CAMBALACHE_EOM INVENTORY_31MAY2023_PREPA
TANKINVENTORY |
|---|

- d. Costa Sur_Full Report 1310100017076 - PREPA_TK Inventory
 - e. DAGUAO_EOM INVENTORY_31-MAY-2023_PREPA TANKINVENTORY-5-31
 - f. GA023268 PREPA CENTRAL SJ TANK INVENTORY 5.31
 - g. GA023274 PREPA AGUIRRE TANK INVENTORY 5.31.23
 - h. GA023275 PREPA Yabucoa TANK INVENTORY 5-31
 - i. JOBOS_EOM INVENTORY # 2 FUEL OIL 31MAY2023 @ PREPA JOBOS -5-31
 - j. MAYAGÜEZ_Full Report 1310100017077 - PREPA TK INVENTORY
 - k. Palo Seco_EOM_INVENTORY_2023_05_31
 - l. Vega Baja_Full Report 1310100017078 - PREPA_2023_05_31
2. August-September 2023 Proposed Factors_Values.xlsx
 3. FAC-PPAC Reconciliation May-June 2023 _Values.xlsx
 4. EE Rider Factor Calculation_Values.xlsx

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

The confidential Excel files mentioned in Section VIIIA 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. They also include sensitive commercial information belonging to LUMA and/or PREPA that are thus protected by law from disclosure, and that should not be disclosed in native form.

A. Applicable Laws and Regulations 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 LPRA §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 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 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 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).

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.*

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 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*, 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 filing of the FCA and PPCA reconciliations for the months of May and June 2023 and the two scenarios proposed on the calculated factors to apply starting on August 1, 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 17th day of July 2023.

We hereby certify that we 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@jrsp.pr.gov.



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Exhibit 1
reconciliations files to be submitted via email