

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

NEPR Received: Aug 14, 2023 9:25 PM

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

CASE NO. NEPR-MI-2020-0001

**SUBJECT: Accelerated Reconciliation and
Submission of FCA and PPCA Calculated
Factors and Request for Confidential
Treatment**

**MOTION SUBMITTING ACCELERATED RECONCILIATION, SUBMISSION OF FCA
AND PPCA 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, NEPR-MI-2020-0001. The reconciliations and FCA and PPCA proposed factors are filed quarterly with this honorable Energy Bureau.

The FCA and PPCA riders included in the Puerto Rico Electric Power Authority’s (“PREPA”) Book of Tariffs contain an accelerated adjustment clause that provides that, if after the completion of a monthly billing cycle, it is determined that the actual costs of purchase power and

fuel costs deviate from the forecasted costs by more than \$20 million, the factors of the FCA and PPCA clauses may be recalculated for the remainder of the quarterly period.

LUMA hereby submits the reconciliation amounts of purchase power and fuel costs for July 2023. Considering the size of the reconciliation amounts, LUMA calculated revised FCA, PPCA, and FOS factors that this Energy Bureau could apply during September 2023 if the Energy Bureau were to decide to recover the reconciliation deficit in September.

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 involves 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. FCA and PPCA Factors

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, issued in Case CEPR-2015-AP-0001, and the PREPA Book of Tariffs 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 submissions on reconciliations and calculated factors for the FCA, PPCA and FOS riders factors, including, when applicable, accelerated adjustments of the FCA and PPCA riders.

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 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 fuel cost is the cost of fuel purchased for all PREPA-generating facilities for the three forecasted months in the quarterly 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 selling 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, or as ordered by the Energy Bureau, and the calculated factors, approved by this Energy Bureau, go into effect the on the first day of 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.

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 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:

$$\text{PPCA} = \text{Total Costs Purchased Power} + \text{Prior Period Reconciliation}$$

$$\text{Total Applicable Net Retail kWh Sales}$$

Id.

The total cost of purchased power is the cost of purchased energy and capacity resources for the three forecasted months in the quarterly 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 selling energy to all customer classes, including the net metering clients. *Id.*

C. Accelerated Adjustment

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.

IV. Factors Determined by the Energy Bureau for August 1st through September 30th, 2023

In a Resolution and Order issued in this proceeding on July 31, 2023, this Energy Bureau set the following FCA and PPCA to be applied from August 1st, 2023, until September 30, 2023 (“July 31st Order”):

Adjustment Clause	Factor \$ kWh	Effective Dates
FCA	\$0.094111	August 1 st , 2023, to September 30 th , 2023
PPCA	\$0.027931	August 1 st , 2023, to September 30 th , 2023

V. Reconciliations for FCA and PPCA Riders

The reconciliations for the FCA and PPCA costs submitted with this Motion in the files entitled “FAC-PPAC Reconciliation Jul 2023_Values.xlsx” and “September 2023 Factors Accelerated Clause_Values.xlsx” include inputs of 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 the month of July 2023, the Fuel Costs and prior period adjustments (FCA) were \$219,954,016.18, and revenues totaled \$127,179,757.76. There is a revenue insufficiency of \$92,774,258.42.

For the month of July 2023, the Purchased Power Costs and the prior adjustments (PPCA) were \$33,835,208.85, and revenues totaled \$57,377,508.81. There was an excess revenue of \$23,542,299.96.

VI. Accelerated Reconciliation and Calculated Factors

Because the reconciliation for July 2023 yielded excess revenues of more than \$20 million, LUMA is filing this accelerated adjustment in compliance with the Tariff Book. However, to mitigate volatility in customer bills, LUMA respectfully suggests that this Energy Bureau defer July’s reconciliation until the September Quarterly Filing so that this amount can be spread out through three (3) months instead of one (1) month. Alternatively, the Energy Bureau could decide to recover a portion of the reconciliation amount in September, with the rest remaining for the subsequent quarter. The Excel spreadsheet entitled “September 2023 Factors Accelerated Clause.xlsx” includes the reconciliation amounts from May 2023 – June 2023, *see Attachment 4*, the reconciliation amount for July 2023, *See Attachment 4(a)*, and the calculations of the proposed FCA and PPCA factors for September 2023 per the accelerated reconciliation, *see Attachments 1 and 2* respectively.

LUMA respectfully requests that the Energy Bureau review the following calculated factors that could apply for September 2023:

Adjustment Clause	Factor(\$/kWh)
FCA	\$0.152739
PPCA	\$0.010329

VII. List of Documents Filed in Support of Reconciliations and Proposed Factors.

A. Confidential Folder

FAC-PPAC Reconciliation Jul 2023.xlsx
September 2023 Factors Accelerated Clause.xlsx

B. Public Files in the Values Folder

FAC-PPAC Reconciliation Jul 2023 Values.xlsx
September 2023 Factors Accelerated Clause Values.xlsx

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

The confidential Excel files mentioned in Section VI.A 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 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 and should not be disclosed in native form.

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

The bedrock provision on the management of confidential information filed before this Energy 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 [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 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 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 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 [Energy Bureau], unless otherwise set forth by the [Energy 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 Energy Bureau. To wit, Section 1.15 provides that “a person has the duty to disclose information to the [Energy Bureau] considered to be 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 [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* Energy Bureau Regulation No. 9137 on *Performance Incentive Mechanism*, 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. 80-2011.¹ 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)).

¹ 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 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 proposed FCA and PPCA factors. LUMA keeps and maintains these native files confidentially and does 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 harm 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, **consider** the filing of the accelerated FCA and PPCA reconciliations for July 2023, and the revised calculated factor for September 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 14th day of August 2023.

We hereby certify that we filed this Motion using the electronic filing system of this Energy Bureau and that I 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
(to be submitted via email)