

**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 July and August 2023, FCA, PPCA, PPCA, FOS, and EE Calculated Factors, Request for Confidential Treatment and Request for Additional Time to Comply with Portion of September 20th Order

MOTION SUBMITTING FCA AND PPCA RECONCILIATIONS FOR JULY AND AUGUST 2023, SUBMISSION OF FCA, PPCA, FOS, AND EE CALCULATED FACTORS, REQUEST FOR CONFIDENTIAL TREATMENT AND REQUEST FOR ADDITIONAL TIME TO COMPLY WITH PORTION OF SEPTEMBER 20TH ORDER

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 approved and revised 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. 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 and the Puerto Rico Electric Power Authority's ("PREPA") tariff book require the calculation of the FCA and PPCA 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 beginning on July 1, 2023.

On May 18, 2023, LUMA filed an accelerated reconciliation for the FCA and PPCA riders for March and April 2023. It revised calculated FCA and PPCA factors that this Energy Bureau could determine to apply during 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 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 (“June 20th Submission”).

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 the FOS factor set in the March 30th Order and the FCA and PPCA factors set in May 24th Order, instead of the FCA and 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 cost 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 cost 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 noon 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.* On the evening of September 18th, LUMA received Genera’s Fuel Optimization Plan and is in the process of reviewing the same. LUMA understands that the Fuel Optimization Plan remains a working document.

On July 17, 2023, LUMA filed with this Honorable Puerto Rico Energy Bureau (“Energy Bureau”) the reconciliations of the FCA and PPCA riders’ costs for May and June 2023, and the calculated 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. *See Submission of Reconciliations for May and June 2023, Submission of FCA, PPCA, PPCA, and FOS Calculated Factors, and Request for Confidential Treatment* (“July 17th Submission”).

With the July 17th Submission, LUMA filed the Energy Efficiency Rider’s (“EE Rider”) calculated factor in identical form to that filed for approval as Exhibit 2 to the EE Rider Filing of May 19, 2023, in Case No. NEPR-MI-2022-0001, *In Re: Energy Efficiency and Demand Response*

Transition Period Plan (the “EE/DR TPP Case”).¹ LUMA filed as Exhibit 1 of the July 17th Submission, among several other confidentially marked documents, the “EE-Rider-Factor-Calculation_Values” Excel document that displayed an EE Rider calculation with seven decimal places.

On July 31, 2023, this Energy Bureau issued a Resolution and Order with the subject *Determinación sobre los factores de las Cláusulas de Ajuste Trimestral para el período de agosto a septiembre de 2023*, whereby, among others, it approved the FCA, PPCA reconciliations for May and June 2023, set the FCA, PPCA, and FOS factors to be implemented from August 1, 2023 through September 30, 2023, and issued directives to implement the EE Rider (“July 31st Order”).

In the July 31st Order this Energy Bureau stated that it decided to implement the EE Rider starting August 1, 2023. *See* July 31st Order, page 7. Among others, the Energy Bureau included an EE Rider formula, with a calculation of nine decimal places. *See* page 8 of the July 31st Order.

In the July 31st Order this Energy Bureau also determined that the possibility of future availability of federal funds to implement energy efficiency programs warrants a stay of implementation of the EE Rider until it issues the next determination on the quarterly factors to apply starting on October 1, 2023. *See id.* page 8. This Energy Bureau further directed that LUMA shall include a \$0 value for the EE Rider in the bills issued to customers for the period of August 1, 2023, through September 30, 2023. *See Id.*

On August 1, 2023, LUMA requested relief from that portion of the July 31st Order that required LUMA to include a \$0 value for the EE Rider factor in the bills issued to customers for the period of August 1, 2023, through September 30, 2023. *See LUMA’s Urgent Request to Release*

¹ LUMA originally filed the proposed EE Rider factor on April 11, 2023, Case NEPR-MI-2022-0001. LUMA also requested 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.

LUMA from Compliance with Order to Include \$0 Value in Model Bill for EE Rider Factor (“August 1st Request for Relief”). In a Resolution and Order dated August 2, 2023, this Energy Bureau denied LUMA’s August 1st Request for Relief. In a Motion entitled *Motion in Compliance with Resolution and Order of August 2, 2023*, LUMA submitted proof of compliance with that portion of adding a line item corresponding to the EE Rider to the Model Bill issued to customers, with a \$0 value.

On August 14, 2023, LUMA filed a *Motion Submitting Accelerated Reconciliation, Submission of FCA and PPCA Calculated Factors, and Request for Confidential Treatment*, whereby LUMA provided information on July revenues and fuel and purchased power costs in order for this Energy Bureau to determine whether to effectuate the accelerated adjustment of the FCA and PPCA riders because the reconciliation for July 2023 yielded excess revenues of more than \$20 million (the August 14th Motion). LUMA suggested that the Energy Bureau not change rates for September.²

On August 17, 2023, this Energy Bureau issued a Resolution and Order whereby it took notice of LUMA’s August 14th Motion and ruled that it had nothing to provide at the time.³

On September 12, 2023, LUMA filed an *Urgent Request for Extension of Time to Submit Quarterly Reconciliations and FCA, PPCA, and FOS Calculated Factors* whereby it requested a brief extension of time, until September 18, 2023, to inform the Energy Bureau of the quarterly reconciliations and proposed FCA, PPCA and FOS calculated factors to be in effect from October 1, 2023, through December 31, 2023. This Energy Bureau granted LUMA’s Urgent Request

² LUMA also requested confidential treatment for certain spreadsheets submitted in Excel format and with formulae as part of a Confidential file included with the Motion.

³ The Energy Bureau also granted LUMA’s request for confidential treatment of the Excel spreadsheets included with its August 14th Motion and took notice that LUMA presented a public version of those files which contained all the information and data included in the confidential version of the documents, excluding formulae and references.

through Resolution and Order issued on September 13, 2023. Then, on September 15, 2023, LUMA filed an *Urgent Request for Brief Additional Extension of Time to Submit Quarterly Reconciliations and FCA, PPCA, and FOS Calculated Factors*, whereby it requested until today, September 20, 2023, to submit the quarterly reconciliations and proposed FCA, PPCA and FOS calculated factors to be in effect from October 1, 2023, through December 31, 2023. This Energy Bureau granted said request in a Resolution and Order dated September 18, 2023.

On September 20, 2023, the Energy Bureau entered a Resolution and Order directing LUMA to include in its proposed factors the impact of the 350 MW of temporary generation at Palo Seco and San Juan, whose fuel costs shall be paid with FEMA funds (“September 20th Order”). It also instructed LUMA to include with its filing the forecasted savings and cost per kWh savings calculation, which such temporary generation would represent to the people of Puerto Rico during the next trimester.

LUMA has calculated the reconciliations for the FCA and PPCA riders for July and August 2023 and the factors for the FCA, PPCA, and FOS riders to be applied for the period from October 1st through December 31, 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 from October 1st through December 31, 2023, including the temporary emergency generation at the Palo Seco and San Juan power plants.

Regarding the temporary emergency generation at Palo Seco and San Juan and the September 20th Order, LUMA does not have sufficient information on the breakdown of costs for the temporary emergency generators and was not involved in the process to set or calculate those costs. Similarly, LUMA is not involved in the decision-making process of the Government of

Puerto Rico regarding the 10% cost-share match. Thus, LUMA does not currently have sufficient data or guidance to submit in attention to that portion of the September 20th Order that required LUMA to state the impact of the temporary generation at Palo Seco and San Juan. It should be noted that LUMA has not received a breakdown of costs for the San Juan temporary generation. LUMA respectfully submits that additional information and guidance is needed from the Government of Puerto Rico in order to determine whether any portion of the 10% cost share would be recovered from customers through the FCA or another mechanism.

LUMA needs additional time until Friday, September 22nd to submit information in compliance with that portion of the September 20th Order that required a forecast of savings and costs per kWh regarding the temporary generators. To estimate savings, LUMA must complete an analysis, develop a forecast model, and document its approach to such in a supporting written narrative. Given that LUMA received the September 20th Order today, it was not possible to complete said analyses to file today.

It is respectfully informed that LUMA received Genera's Fuel Optimization Plan on the evening of Monday, September 18. Furthermore, the Energy Bureau has not approved the Plan and LUMA understands it is a draft subject to revisions. Thus, 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 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

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:

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

Id.

The total cost of purchased power is the cost of purchased 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 who 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.

4. EE Rider

The Energy Efficiency Rider is a mechanism that provides for the cost recovery of all expenses associated with implementing and administering energy efficiency programs operated by or on behalf of PREPA. *See* PREPA Tariff Book page 64. The costs of the program shall be

recovered through a per kilowatt-hour (kWh) charge for all customers, the Energy Efficiency Charge (EEC). *Id.* The formula to calculate the EEC is:

$$EEC = \frac{(Total\ Cost\ of\ EE\ Programs + Prior\ Period\ Reconciliation)}{Applicable\ Retail\ kWh\ Sales}$$

The total cost of energy efficiency programs means the total cost of energy efficiency programs administered by or on behalf of PREPA, approved by this Energy Bureau. *Id.*

The reconciliations of the EEC involve the under- or over-recovered funds for the first ten months of the current annual time period and the last two months of the prior annual time period. *Id.* PREPA shall provide estimates of the reconciling balance with each proposed annual filing of the EEC. Energy sales to all classes of customers, including the net inflow (i.e., inflow – outflow) to all net metering customers. *Id.*, p. 65. PREPA shall make a filing for a proposed EEC factor before the end of the eleventh month of each annual time period with the PREB, which will be proposed to go into effect with the first billing cycle of the first month of the annual time period. If a revised EEC factor is not approved, the previous years’ EEC factor shall remain in effect until a new factor is approved. *Id.*

IV. Factors Fixed by the Energy Bureau

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

Finally, in the July 31st Order, this honorable Energy Bureau set the following factors to apply from August 1 through September 30, 2023:

Adjustment Clause	Factor \$ kWh	Effective Dates
FCA	\$0.094111	August 1, 2023-September 30, 2023
PPCA	\$0.027931	August 1, 2023-September 30, 2023
FOS	\$0.014335	August 1, 2023-September 30, 2023
EE	\$0	August 1, 2023-September 30, 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 July-August 2023 _Values.xlsx” and October-December 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 July 2023, the Fuel Costs and prior period adjustments (FCA) were \$215,044,803.66. Revenues totaled \$127,184,188.09. There was a revenue deficiency of \$87,860,615.57.

For the month of July 2023, the Purchased Power Costs, and the prior adjustments (PPCA) were \$33,835,181.67, and revenues totaled \$57,378,744.61. There was an excess revenue of \$23,543,562.94.

For the month of August 2023, the Fuel Costs and prior period adjustments (FCA) were \$199,037,352.46, and revenues totaled \$139,503,975.78. There was a credit of \$60,675.02 pertaining to Naturgy shortfalls. There was a revenue insufficiency of \$59,472,701.66.

For the month of August 2023, the Purchased Power Costs, and the prior adjustments (PPCA) were \$37,998,998.60, and revenues totaled \$41,519,113.25. There was an excess revenue of \$3,520,114.65.

For the months of July and August 2023, there was a net revenue insufficiency of \$120,269,639.65.

It is informed that in the reconciliation, LUMA is proposing to return to customers the sum of \$15,680,984.10 that was collected in the prior period corresponding to the 10% non-federal match of projected costs of the temporary emergency generation site at Palo Seco. As explained above, LUMA respectfully submits that the Government of Puerto Rico should provide more information on these costs for this Energy Bureau to determine which categories of costs should be recovered through the FCA rider, if any. Until that information is available, LUMA suggests that this Energy Bureau return to customers the full amount of the costs associated with the Palo Seco temporary generation that were included in the factors in the prior period.

VI. Calculated Factors

The “October-December 2023 Proposed Factors.xlsx” Excel spreadsheet includes the proposed FCA, PPCA, and FOS factors calculations. The FCA and FOS factors are presented in Attachment 1, and the PPCA factors in Attachment 2.

LUMA is including the proposed calculation 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 July 31st Order, the Energy Bureau established that the estimated costs for the Demand Response program be added to the PPCA. The PPCA Factor calculation reflects those projected costs in compliance with this order.

LUMA respectfully requests that the Energy Bureau consider the following calculated factors to apply from October 1, 2023, through December 31, 2023:

Adjustment Clause	Factor (\$/kWh)
FCA	\$0.137924
PPCA	\$0.025168
FOS	\$0.016416
EE	\$0.001021

VII. Request Regarding Incorporation of EE Rider to Model Bill.

In compliance with the July 31st Order, LUMA is submitting the EE Rider Calculated factor for October 1st through December 31, 2023, and the bill impacts of the EE Rider. LUMA is including a spreadsheet titled “EE Rider Factor Calculation Per July 31 R&O.xlsx” in this filing, which reflects the updated EE Rider Calculation as determined by this Energy Bureau.

LUMA respectfully informs that the software programs that perform said EE Rider calculations and further include them in customers’ bills only support seven digits. As explained in *Exhibit 1* of this Motion, LUMA’s billing system cannot currently accommodate nine decimal points or ten digits to apply to customers’ bills. An explanation of the impacts of converting the calculation results from nine to seven decimal places is found in *Exhibit 1*.

LUMA remains committed to working with the Energy Bureau to implement the EE Rider factor. However, LUMA respectfully requests the Energy Bureau reconsider its calculation

standards to accommodate an EE factor of seven decimals, as opposed to nine decimals, as included in the July 31st Order.

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

1. Confidential Folder

1. Inventory (Fuel) – May 31, 2023
 - a. WEIGHTED AVERAGE FUEL PRICE SUMMARY_PREPA SYSTEM_BunkerC_Diesel_August 31 2023.xlsx
 - b. Precio Ponderado Análisis _ 2023.08.31-REG.xlsx
2. October - December 2023 Proposed Factors.xlsx
3. FAC-PPAC Reconciliation July - August 2023.xlsx
4. Q-2 FY 2024 Load Forecast September 2023 Update.xlsx
5. EE Rider Factor Calculation Per July 31 R&O.xlsx

2. Public Files in the Values Folder

1. Inventory (Fuel) – May 31, 2023:
 - a. WEIGHTED AVERAGE FUEL PRICE SUMMARY_PREPA SYSTEM_BunkerC_Diesel_August 31 2023_Values.xlsx
 - b. WEIGHTED AVERAGE FUEL PRICE_PREPA SYSTEM_BunkerC_Diesel_August 31 2023.pdf
 - c. Precio Ponderado Análisis _ 2023.08.31-REG_Values.xlsx
 - 2023.08.31-GENERA JOBOS TANK INVENTORY 8-23
 - 2023.08.31-GENERA PALO SECO TANK INVENTORY 8-23
 - 23-00304 EOM #2 FUEL OIL 31AUGUST2023 @ PREPA VEGA BAJA, P.R. REF. VB-TANKINVENTORY-8-23
 - 23-00305 EOM INVENTORY #2 FUEL OIL 31AUGUST2023 @ PREPA_CAM-TANKINVENTORY
 - 23-00306 EOM INVENTORY #2 FUEL OIL & FUEL OIL 31AUGUST2023 @ PREPA_CS-TANKINVENTORY
 - 23-00307 EOM INVENTORY #2 FUEL OIL 31AUGUST2023 @ PREPA_MAY-TANK INVENTORY
 - Full Report 1310100017215 - PREPA_SJ_EOM_20230831
 - Full Report 1310100017216 - PREPA_AG_EOM_20230831
 - Full Report 1310100017217 - PREPA_Yabucoa_EOM_20230831
 - GA023509 GENERA DAGUAO TANK INVENTORY 8-23
2. October - December 2023 Proposed Factors_Values.xlsx
3. FAC-PPAC Reconciliation July - August 2023_Values.xlsx

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|---|
| <ol style="list-style-type: none">4. Q-2 FY 2024 Load Forecast September 2023 Update_Values.xlsx5. EE Rider Factor Calculation Per July 31 R&O_Values.xlsx6. Exhibit 1_EE Rider.pdf |
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IX. Request for Confidential Treatment of Excel Files and Supporting Memorandum of Law.

The confidential Excel files mentioned in Section VIII 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 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 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 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. 80-2011.⁴ 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 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, FOS and EE Rider factors. LUMA and PREPA keep and maintain these native files confidentially and do not disclose them to the public or unauthorized third parties.

⁴ 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.*

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 July and August 2023, and the calculated FCA, PPCA, FOS and EE rider factors to apply to start on October, 2023; **grant** the request for additional time until September 22, 2023 to comply with that portion of the September 20th Order that required a forecast of savings and costs per kWh regarding the temporary generators; 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 20th day of September 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, counsels for Genera, alopez@sbgblaw.com and jfr@sbgblaw.com and to the Independent Consumer Protection Office, through Director Hannia Rivera, hrivera@jrsp.pr.gov.



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Exhibit 1
EE Rider Explanation

Supporting files to be submitted via email

PERMANENT RATE

Exhibit 1 - Energy Efficiency Rider

On June 20, 2023, LUMA filed a proposed Energy Efficiency (EE) Rider of 0.001328 to be in effect for Fiscal Year (FY) 2024 from July 1st, 2023, to June 30th, 2024.¹ On June 30th, 2023, the Puerto Rico Energy Bureau (PREB), determined not to begin the EE Rider in July 2023 and to wait until further funding sources can be determined.² On July 17, 2023, LUMA refiled its proposed EE Rider of 0.001328³ and on July 31, 2023, PREB implemented the EE Rider at zero (0) value until September 30th, 2023.⁴ In the July 31st R&O, PREB further established that beginning October 1st, 2023, the EE Rider would be set at \$0.001021497/kWh.⁵

In compliance with the July 31st R&O, LUMA will update the EE Rider on customer bills effective October 1st, 2023. However, LUMA informs that its billing system can only accommodate up to seven (7) digits and thus, cannot accommodate the 10-digit EE Rider Factor established July 31st R&O. To be able to accommodate such a large number, LUMA would have to make enhancements to its billing system.

LUMA's billing system configuration today includes the ability to calculate billing factors with seven (7) decimal places. This importantly not only impacts the billing system calculations but also impacts the presentation on the LUMA bill which is impacted by the length of characters. The configuration within the billing system limitation is not a roadmap configuration change LUMA has contemplated in the near future. To design, build, implement, and test enhancements to the system is a lengthy process requiring both external and internal resources and expertise over several months, an initiative which has not been contemplated in LUMA's FY2024 budget.

All other riders on LUMA's customer bill are calculated to the seventh decimal place only. This consistency helps customers to read and interpret their bill more easily.

The table below illustrates the difference in the dollars that LUMA forecasts to recover if the EE rider were to be rounded to 7 digits (see Table 1-1 for the impact if the rider is rounded down, and Table 1-2 for the impact if the rider is rounded up). LUMA understands that such a difference would be reconciled when the rider is calculated for the next fiscal year.

¹ See pages 8-12 12 of LUMA's Motion of June 20, 2023, Docket No. NEPR-MI-2020-0001 and EE Rider Factor Calculation FY 2024 spreadsheet.

² See Resolution and Order of June 30, 2023, Docket No. NEPR-MI-2020-0001.

³ See pages 11-15 of LUMA's Motion of July 17, 2023, Docket No. NEPR-MI-2020-0001 and EE Rider Factor Calculation spreadsheet.

⁴ See Resolution and Order of July 30, 2023, Docket No. NEPR-MI-2020-0001.

⁵*Id.*

PERMANENT RATE

Exhibit 1 - Energy Efficiency Rider

Table 1-1. Comparison of EE Rider Recoveries – Round Rider Down

	Existing (per July 31 st R&O, Permanent Rate)	Proposed	Difference
Cost of Programs FY2024	\$ 11,531,250.00	\$ 11,525,641.80	\$5,610.43
kWh	11,288,581,589.89	11,288,581,589.89	-
EE Rider (\$ / kWh)	\$ 0.001021497	\$ 0.001021	\$0.000000497

Table 1-2. Comparison of EE Rider Recoveries – Round Rider Up

	Existing (per July 31 st R&O, Permanent Rate)	Proposed	Difference
Cost of Programs FY2024	\$ 11,531,250.00	\$ 11,536,930.38	(\$5,678.16)
kWh	11,288,581,589.89	11,288,581,589.89	-
EE Rider (\$ / kWh)	\$ 0.001021497	\$ 0.001022	(\$0.000000503)

In light of the above, LUMA requests that the EE Rider be updated to 7 digits.