

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

NEPR Received: Jan 16, 2024 10:07 PM

IN RE:

IN RE: PUERTO RICO ELECTRIC POWER
AUTHORITY PERMANENT RATE

CASE NO. NEPR-MI-2020-0001

**SUBJECT: Informative Motion and Request for
Confidential Treatment**

**INFORMATIVE MOTION ON FCA AND PPCA COSTS FOR DECEMBER 2023
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”), and respectfully state and request the following:

I. Information on FCA and PPCA Costs for the Month of December, 2023

1. LUMA’s duties over system regulatory matters pursuant to Section 5.6 of the Puerto Rico Transmission and Distribution Operation and Maintenance Agreement (“T&D OMA”) as supplemented by the Puerto Rico Transmission and Distribution System Supplemental Terms Agreement, include preparing quarterly reconciliations and calculated factors for the Fuel Clause Adjustment (“FCA”), Purchased Power Clause Adjustment (“PPCA”), and Fuel Oil Subsidy (“FOS”) riders. LUMA, however, does not own or operate generation facilities nor purchase fuel for generation. Moreover, the costs of operating the Transmission and Distribution System (“T&D System”) are not included in the FCA, PPCA, and FOS riders. In connection with the monthly and quarterly reconciliations of fuel and generation costs, LUMA receives information

from the Puerto Rico Electric Power Authority (“PREPA”) or Genera PR LLC and the independent generators and performs a calculation that serves as a true-up mechanism to reconcile forecasted and actual costs.

2. In a Resolution and Order issued in this proceeding on September 29, 2023, this Energy Bureau set the following FCA and PPCA factors that were applied from October 1, 2023, until December 31, 2023 (“September 29th Order”):

Adjustment Clause	Factor(\$/kWh)
FCA	\$0.110912
PPCA	\$0.039406

3. On December 21, 2023, this Energy Bureau issued a Resolution and Order in which, among other directives, it approved the reconciliation and adjustment of the fuel and purchase power costs. The Energy Bureau approved a recovery of \$63,953,624.59 for fuel costs due to insufficient revenues and a return to customers of \$26,815,571.29 for purchased power costs due to excess revenues (“December 21st Order”). The Energy Bureau also established the following quarterly factors for the FCA, and PPCA riders to be implemented from January 1, 2024, through March 31, 2024:

Adjustment Clause	Factor(\$/kWh)
FCA	\$0.130057
PPCA	\$0.025168

4. After receiving data on actual fuel and purchased power costs for the month of December 2023, and to keep the Energy Bureau informed of the results of the calculations on the reconciliation of fuel and purchased power costs, LUMA hereby informs that for the month of

December 2023, the Fuel Costs, and the prior period adjustments (FCA), were \$156,356,535.31 and revenues totaled \$173,559,902.03. There was an excess revenue of \$17,203,366.72. *See FAC-PPAC Reconciliation December 2023_Values.xlsx*. The Purchased Power Costs, and the prior period adjustments (PPCA), were \$26,765,338.09 and revenues totaled \$33,605,084.05. There was an excess revenue of \$6,839,745.96. *Id.*

5. Given the aforementioned, for December 2023, there was a combined excess revenue of \$24,043,112.68. *Id.*

6. LUMA recalculated the factors in accordance with PREPA's Tariff Book and following the accelerated reconciliation provisions for both FCA and PPCA which provide 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. To wit, PREPA's Tariff Book states that for each month after final Fuel Purchase Expense and Purchased Power Expense are available to PREPA, PREPA 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.

7. The table below depicts the factors that would be in effect for the months of February and March, 2024, if this Energy Bureau determines to adjust the reconciliation for the current quarter:

Adjustment Clause	Factor(\$/kWh)
FCA	\$0.105401
PPCA	\$0.037236

See February - March 2024 Potential Factors .xlsx.

8. LUMA notes that there is currently a high level of uncertainty over international oil prices. To mitigate volatility in customer bills, LUMA respectfully suggests that it may be prudent for this Energy Bureau to defer December’s reconciliation until the March Quarterly Filing, such that the impact of revenues and costs for January and February 2024 can be incorporated.

9. With this Motion, LUMA is submitting the following files:

A. Confidential Folder

FAC-PPAC Reconciliation December 2023.xlsx
FAC-PPAC Reconciliation Sept-Oct-Nov 2023.xlsx
February - March 2024 Potential Factors.xlsx

B. Public Files in Values Folder

FAC-PPAC Reconciliation December 2023_Values.xlsx
FAC-PPAC Reconciliation Sept-Oct-Nov 2023_Values.xlsx
February - March 2024 Potential Factors _Values.xlsx

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

10. The confidential Excel files mentioned in paragraph 5 of this Motion *supra*, and 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.

11. 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).

12. 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.”

13. 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).

14. 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.

15. 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).

16. 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.”

B. Grounds for Confidentiality

17. 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)).

18. 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).

19. 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.

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.*

20. 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.

21. 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 for all relevant purposes 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 16th day of January 2024.

I hereby certify that I 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 Lionel Santa Crispin, Lionel.santa@prepa.pr.gov, and Alexis G. Rivera Medina, arivera@gmlex.net, counsels for Genera PR LLC, Jorge Fernandez-Reboredo, jfr@sbglaw.com, Alejandro López Rodríguez, alopez@sbglaw.com, and Joaquín M. Lago González, jlago@sbglaw.com, and the Independent Consumer Protection Office, through Director Hannia Rivera, hrivera@oipc.pr.com.



DLA Piper (Puerto Rico) LLC
500 Calle de la Tanca, Suite 401
San Juan, PR 00901-1969
Tel. 787-945-9107
Fax 939-697-6147

/s/ Margarita Mercado Echegaray
Margarita Mercado Echegaray
RUA NÚM. 16,266
margarita.mercado@us.dlapiper.com

Excel spreadsheets submitted via email