

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

<b>NEPR</b>  <b>Received:</b>  <b>Aug 20, 2021</b>  <b>6:51 PM</b>
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**IN RE:**

IN RE: THE UNBUNDLING OF THE  
ASSETS OF THE PUERTO RICO  
ELECTRIC POWER AUTHORITY

**CASE NO. NEPR-AP-2018-0004**

**SUBJECT: LUMA's Reply to Brief filed by the  
Independent Consumer Protection Office.**

**LUMA'S REPLY BRIEF**

**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. Introduction**

As set forth in the procedural calendar set by this honorable Puerto Rico Energy Bureau on February 5, 2021, as amended by the Resolution and Order of June 22, 2021 ("June 22<sup>nd</sup> Resolution and Order"), LUMA hereby addresses the legal brief filed by the Independent Consumer Protection Office ("ICPO") on August 10, 2021 in this proceeding. As will be explained, LUMA agrees with the main position expounded by the ICPO that unbundling of rates and adoption of a uniform services agreement are important steps prior to implementing wheeling in Puerto Rico. As LUMA stated in its legal brief filed on August 10, 2021 in this proceeding ("LUMA's Final Brief"), LUMA favors measured efforts to unbundle electricity rates and adopt a just and reasonable tariff that considers the current changing and maturing state of the electric grid and electric power sector in Puerto Rico.

LUMA appreciates the recommendations made by the ICPO. LUMA construes the ICPO's position as lending additional support to LUMA's recommendation and request that the Energy Bureau adopt a phased approach to implementation of an unbundled tariff and a uniform services agreement to: (1) test the alternative unbundled tariff and alternative supply credit through reporting on unbundled costs in rate filings; (2) afford leeway to update the Cost of Service Study ("COSS") in accordance with the methodology proposed in Exhibit B to the testimony of Mrs. Margot Everett, Director, Guidehouse Inc. ("Guidehouse"), filed on May 17, 2021, as updated on July 21, 2021 ("COSS, Exhibit B to May 17<sup>th</sup> testimony"); (3) allow for finalization of other pending regulatory Energy Bureau proceedings, including final adoption of a revised Regulation 9138 on Electric Wheeling ("Regulation 9138") and the proceedings detailed at page 3 of LUMA's Final Brief; and (4) hold further processes with stakeholder participation to discuss the details of a uniform services agreement as explained at pages 4 through 5 and 37 through 38 of LUMA's Final Brief.

LUMA also agrees with the comments by the ICPO on the importance of establishing clear sector rules prior to implementation of wheeling services and agreements. That recommendation by the ICPO is aligned with LUMA's proposal at pages 4 and 24 through 26, 32, 36, and 38 through 41, of its Final Brief, where LUMA explained with reference to the record, including the written and live testimony of Mr. Gerardo Cosme, ICPO representative, that to benefit customers, including wheeling and non-wheeling customers, clear policy and sector rules should be evaluated through additional processes and stakeholder participation, as a prudent and needed step prior to implementing an unbundled tariff and a uniform services agreement.

LUMA looks forward to working with the ICPO, the Energy Bureau and stakeholders, in establishing an Unbundling Framework based on the COSS and adopting an unbundled tariff that is fair and equitable to all customer classes; both wheeling and non-wheeling customers. LUMA hereby provides specific responses to several comments by the ICPO.

## **II. Discussion**

At paragraph 18 of its legal brief, the ICPO recommends that the COSS “should be tested or validated against different feasible future scenarios in which the capacity service cost is included, despite the forecasted decline in load.” LUMA agrees with this statement which is congruent with LUMA’s position expounded in its Final Brief, that the Energy Bureau adopt the Discounted Total Investment Method (DTIM) for computing marginal energy costs, which methodology relies on the development of a numerical relationship between costs related to load growth and the driver of that load growth. Because it is a method for determining marginal energy costs that can easily be updated as part of the filings of the FCA and PPCA and allows for evaluation of the marginal energy cost values over time, LUMA understands that it accommodates the recommendations by the ICPO for future testing of the COSS, including future consideration of load growth.

Regarding the ICPO’s statement at paragraph 19 that a load increase may be anticipated, LUMA submits that although future load growth is a possibility, there is currently no evidence of such load growth. If load increases in the future, LUMA would be responsible for procuring the generation resources to meet that load. It is important to underscore that the COSS is based on the current scenario as it looks at a moment in time to ascertain what are the expected costs to allocate and classify costs. *See* Transcript, Evidentiary Hearing of July 19, 2021 (“July 19<sup>th</sup> Transcript)

page 19 lines 23-25; page 20 lines 1-5; page 68 lines 22-24, and page 136 lines 18-23. It considers spending plans by the Provider of Last Resort (“POLR”) to meet reliability needs. *See id.*, page 21 lines 11-25, page 22 lines 1-6. The COSS provides an estimate of what marginal costs would be given inputs of load and decision making and planning that were set in the Integrated Resource Plan (“IRP”) process and were available at the time of developing the COSS that serves as basis for the proposed Alternative Unbundled Tariff proposed by Guidehouse and LUMA in this proceeding. If reliability needs change in the future or if load changes from the current forecast used in the COSS and the IRP approved by the Energy Bureau, then there would be a change that may be considered in the future within the framework of the COSS. That potential future load growth does not preclude adoption by the Energy Bureau of the proposed Unbundling Framework and of the COSS and its methodology.

Furthermore, LUMA agrees with ICPO’s comment at paragraph 20 that marginal capacity costs may increase due to, for example, transition to renewable resources. It is important to clarify, however, that until costs are included in rates, they are not technically avoided and therefore should not be included in the COSS. As explained at page 26 of LUMA’s Final Brief, there is uncertainty on how renewable targets will be met and that, in turn, raises uncertainties that the COSS cannot currently measure on marginal costs related to renewable resources, including the specter of customers returning to the grid and additional costs to the POLR to meet load. This requires further consideration and definition of POLR obligations and stranded costs. *See* LUMA’s Final Brief at pages 22-23.

At paragraph 21 of its legal brief, the ICPO states that to address customer departures, the energy credit base incentive is more favorable than combining capacity credit on wheeling rates.

LUMA is not fully privy to the ICPO's underlying rationale for this statement that appears to suggest that energy credits would provide a better framework as compared to capacity credits. However, LUMA underscores that the proposed Alternative Unbundled Tariff and proposed Alternative Supply Credit are based on both energy and capacity savings, to provide a credit that will be calculated in cents/kWh and based on energy usage. Thus, LUMA respectfully understands that its proposal is aligned with the ICPO's statement favoring an energy credit.

LUMA also agrees with the recommendation by the ICPO at paragraph 22 of its legal brief, that requirements should be developed to ensure that Retail Energy Suppliers provide reliable and long-lasting services. That is precisely why, based on the proposals developed by Guidehouse and filed before this Energy Bureau, including the COSS, the Proposal for Unbundled Tariffs Report of May 10, 2021, Exhibit to May 17<sup>th</sup> testimony ("Exhibit C, Unbundled Report"), and the Proposal for Uniform Services Agreement Report, Exhibit D to the May 17<sup>th</sup> testimony ("Exhibit D, Uniform Services Agreement Report"), and the evidence presented on the record, LUMA has requested that the Energy Bureau adopt a phased approach to implementation of unbundled rates and of a uniform services agreement, to ensure that sector rules are solidified.

At paragraph 23, the ICPO remarks that there will be no increase of costs to the POLR if the capacity supplied is from a renewable source. Respectfully, LUMA cannot agree with this statement given that available data and evidence does not currently support a conclusion that the POLR will not incur costs related to renewable resources. As has been explained in this proceeding, including the testimony of Mrs. Everett, there are important ancillary services that need to be defined. How ancillary services will change with future integration of renewables is not clear, thereby raising the material possibility that the POLR will incur costs that cannot be

considered avoidable costs. *See* LUMA’s Final Brief at pages 22-26 and 37; *see also* July 19<sup>th</sup> Transcript at page 109 lines 8-25 and page 110 lines 1-7 (on ancillary services).

LUMA agrees with ICPO on the importance that the uniform services agreement includes consideration of “marginal energy cost gap or any unforeseeable costs to ensure a fair unbundled rate to all customers, including generation, transmission or distribution or a combination of those services.” *See* ICPO legal brief at paragraph 24. This remark by the ICPO illustrates the justifications underlying the proposal to adopt “true up mechanisms” to address any unforeseeable costs and avoid cost-shifting. *See* LUMA’s Legal Brief at pages 23-24, 27, 32, 34, 37. This recommendation by the ICPO is also aligned with LUMA’s recommendation that the Energy Bureau should hold workshops and further processes with stakeholders to discuss the terms of a uniform services agreement.

LUMA also agrees conceptually with the ICPO’s recommendation that parallel to the uniform services agreement, the COSS be validated with studies done in other proceedings before the Energy Bureau such as the rate case. *See* ICPO legal brief at paragraph 25. Although the ICPO did not mention the scope of the proceedings that it recommends should be considered, as LUMA explained at pages 3 and 26 of its Final Brief, it is advisable that the Energy Bureau allow other proceedings such as Case No. CEPR-MI-2018-0010 on the Regulation of Electric Energy Wheeling (Rule 9138), Case No. NEPR-MI-2019-0009 on interconnections, the distribution planning proceeding, Case No. NEPR-MI-2019-0011, and proceedings on Demand Response, Case No. NEPR-MI-2021-0006, and Case No. NEPR-MI-2020-0012 on Procurement Plan for Renewables, to develop and conclude before implementing a uniform services agreement.

LUMA also agrees with the ICPO's recommendation at paragraph 26 of its legal brief, that for a reliable operation of Retail Energy Suppliers, LUMA should study the actual conditions of the electrical and communications infrastructure, overseen by PREB with stakeholder participation. As stated in LUMA's System Remediation Plan ("SRP"), approved on June 23, 2021 by the Energy Bureau in Case No. NEPR-MI-2020-00019, LUMA will conduct assessments of Distribution Lines, *see* SRP at pages 94-99, as well as assessments of Transmission Lines, *see id.*, at pages 120-124. Importantly, LUMA's assessments of distribution lines are also aligned with ongoing hosting capacity efforts in Case No. NEPR-2019-0011. Thus, the assessments of the grid that the ICPO is recommending, have been approved by the Energy Bureau and are underway within the approved timelines of LUMA's SRP. LUMA will report periodically on the progress of said assessments and the results of its efforts. The data and analysis obtained from those assessments will foreseeably help ensure that once the sector rules are clarified and adopted and an unbundled tariff and a uniform services agreement are implemented, Retail Energy Suppliers would be in position to provide reliable services to wheeling customers.

Relatedly, LUMA agrees with the ICPO that the Transmission and Distribution System ("T&D System") needs to be transformed to an intelligent system capable of managing complex transactions before Retail Energy Suppliers serve customers. *See* ICPO legal brief at paragraph 27. LUMA's proposed phased approach will allow continuation of efforts to harden and modernize the electric grid in alignment with the ICPO's recommendation to ensure that Retail Energy Providers are able to serve customers who leave the PREPA grid and reduce customer returns that may impact rates. Importantly, in addition to the aforementioned assessment programs that LUMA will conduct as part of the approved SRP, LUMA will implement several remediation programs to

repair, harden and improve the electric grid, including distribution lines rebuild, *see* SRP, Case No. NEPR-2020-0019, at pages 82-88; distribution poles and conductors repairs, *id.* at pages 89-93; investments in Information Technology and Operation Technology Systems and Networks, *id.* at pages 102-108; rebuilding transmission and distribution substation, *id.* at pages 127-137; refurbishing control centers that are critical to delivering economic and reliable energy, *id.*, at pages 159, 166-173; replacement of the Energy Management System that is used to monitor, control and optimize the performance on the generation, transmission and distribution system, *id.*; and implementation of an Advanced Distribution Management System, *id.* at page 159. Finally, LUMA will implement remediation programs to develop capabilities related to energy management and load/generation balancing, including addressing technology needs to efficiently manage renewable energy, battery storage and demand response programs, *id.*, *see also id.* at pages 178-82. LUMA is confident that implementation of these remediation programs is key to properly support wheeling services and offer safe and reliable electric power services.

Finally, it is important to address ICPO's comment at paragraph 30 of its legal brief that delays in establishing an unbundled tariff and in implementing wheeling will have a negative impact on customers. To the extent that ICPO may be correlating any portion of the proposals for an Unbundling Framework, the COSS, the proposed Alternative Unbundled Tariff or the proposed Alternative Uniform Services Agreement with delays in offering wheeling services in Puerto Rico, LUMA notes that these proposals and the proposed phased approach will not cause delays that could negatively impact customers. To the contrary, the phased approach would lay the groundwork for prompt, efficient implementation of the unbundled rate, energy capacity credit and uniform services agreement that minimizes adverse impacts on customers. Taking a phased



approach will help advance wheeling and avoid regression. Further processes prior to implementing wheeling agreements and services may, at some level, entail that wheeling services may not be available immediately to customers that would otherwise opt-in. Premature implementation of wheeling services, however, would have a negative impact on wheeling and non-wheeling customers. For example, premature implementation could impact a wheeling customer that is tied to a transaction that does not work or receives unreliable services. Non-wheeling customers could bear the burden of cost-shifting and the impact of having customers return to demand services from the POLR that at the time may not have load capabilities to serve all customers in an equitable, cost-efficient and reliable manner.

In conclusion, LUMA understands that the ICPO's comments and position are aligned with LUMA's proposal for the Energy Bureau to adopt an Unbundling Framework and the COSS as the accepted methodology for adoption of the proposed Alternative Unbundled Tariff, as well as with the proposed phased approach to implementation which will allow for reporting of information of the unbundled tariff, adaptation of the COSS methodology, and further consideration of sector rules before wheeling services are offered. This phased implementation will inure to the benefit of all customers and avoid reevaluation of wheeling regulations, tariffs and wheeling services agreements, or the need to scale back wheeling services to customers who elect to receive them.

**WHEREFORE**, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned and grant LUMA's requests as stated in its Final Brief of August 10, 2021.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 20<sup>th</sup> day of August 2021.

I hereby certify that I filed this Motion using the electronic filing system of this Puerto Rico Energy Bureau. I hereby certify that I will send notice of this filing to intervenors: Cooperativa Hidroeléctrica de la Montaña, via Ramón Luis Nieves Esq, [ramonluisnieves@rlnlegal.com](mailto:ramonluisnieves@rlnlegal.com); Office of the Independent Consumer Protection Office, [hrivera@opic.pr.gov](mailto:hrivera@opic.pr.gov) and [contratistas@oipc.pr.gov](mailto:contratistas@oipc.pr.gov); Puerto Rico Manufacturer's Association via Manuel Fernández Mejías Esq.,, [manuelgabrielfernandez@gmail.com](mailto:manuelgabrielfernandez@gmail.com); and Ecoeléctrica via Carlos Colón, Esq., [ccf@tcm.law](mailto:ccf@tcm.law). It is also certified that I will serve notice of this motion to counsel for the Puerto Electric Power Authority, Katuska Bolaños, [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law).



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