

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

NEPR Received: Aug 10, 2021 10:52 PM

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 Final Brief.

LUMA'S FINAL 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

This proceeding involves consideration by the Puerto Rico Energy Bureau ("Energy Bureau") of proposals filed by the Puerto Rico Electric Power Authority ("PREPA") to unbundle the tariffs paid by customer classes for electric power services in a fair and equitable manner that avoids cost-shifting between different customers and enables the provision of wheeling services. LUMA hereby presents its final recommendations and requests based on the three proposals prepared by PREPA's and LUMA's consultant, Guidehouse, Inc. ("Guidehouse"), which respectfully, are uncontested and were not substantively challenged by intervenors or any evidence admitted for the record.

As explained in this submission, LUMA supports efforts to unbundle rates and adoption of a just and reasonable unbundled tariff. To reach that goal and to ensure fairness to wheeling and

non-wheeling customers, LUMA proposes a phased approach that includes as a first step, adoption by the Energy Bureau of the Unbundling Framework as presented in the *Proposals for Unbundled Tariffs Report*, Exhibit C to Witness Margot Everett’s testimony, filed on May 17, 2021 (“Exhibit C, Unbundled Report”), Section 2.2.1., pages 8 through 11. This framework for unbundling tariffs (“Unbundled Framework”) includes:

- segment costs by generation, transmission, distribution and customer costs;
- further separating costs within each of these functions by marginal and residual costs; and
- developing marginal and residual rates by function that are then applied to any customer class to allocate costs.

LUMA also requests that the Energy Bureau adopt the Cost of Service Study (“COSS”) in full, as presented in Exhibit B to the testimony of witness Margot Everett, filed on May 17, 2021 (“COSS, Exhibit B to May 17th testimony”), as updated on July 21, 2021 (to present revised tables E-1, E-1 and E-3 at pages iv through v), which methodology and soundness was not challenged by intervenors nor any evidence admitted for the administrative record. This includes adoption of the Discounted Total Investment Method for estimating marginal costs by function and the use of capacity weights to develop marginal energy prices from the Fuel Charge Adjustment Rider Factor (“FCA”) and the Purchase Power Charge Adjustment Rider Factor (“PPCA”). *See id.*, at pages iv through v; Sections 2.3.3 through 2.3.10 at pages 8-21.

LUMA respectfully submits that at this time, the Energy Bureau should not immediately implement an unbundled tariff nor adopt a uniform services agreement. Considering the weight of the evidence admitted on the administrative record, LUMA requests that the Energy Bureau

establish a phased approach to implementation of an unbundled tariff. This phased approach would include adoption of the Unbundled Framework and include the following:

- LUMA to report unbundle costs, and indicative rates, and any other implementation issues in accordance with the Unbundling Framework with each rate filing;
- LUMA to report the indicative Alternative Supply Credit value in line with the filings of the FCA and PPCA, *see* Transcript, July 19, 2021 (“July 19th Transcript”), page 92 lines 13-16; and
- LUMA to update the COSS in accordance with the COS study methodology submitted in this proceeding in connection with the next rate case filing.

This proposal of a phased approach will help avoid cost-shifting. It will work to ensure fairness to all customers, including wheeling and non-wheeling customers.

LUMA requests that, prior to adopting a uniform services agreement, the Energy Bureau should determine if the revised Regulation 9138 on wheeling that is currently under consideration in Case No. CEPR-MI-2018-0010 will be enacted; allow for finalization of interconnection regulations and the approval of a standard proforma interconnection agreement, currently being undertaken in Case No. NEPR-MI-2019-0009; and permit further developments in the distribution planning proceeding, Case No. NEPR-MI-2019-0011, proceedings on Demand Response, Case No. NEPR-MI-2021-0006, and efforts in the Renewables Procurement Plan proceedings in case NEPR-MI-2020-0012. LUMA proposes that a series of workshops be held to consider the Term Sheet filed in Exhibit D to the testimony of Mrs. Everett filed on May 17, 2021, Proposal for Uniform Services Agreement Report (“Exhibit D, Uniform Services Agreement Report”), Section 3 at pages 25-29, and the issues that were presented in Exhibit A to the Motion filed on May 28,

2021, in response to questions posed during the technical conference of May 18, 2021, outlining necessary steps to resolve prior to implementation of a uniform services agreement that include:

- establish a process to develop a formal uniform services agreement, to include a final, legally binding agreement that is approved by the Energy Bureau and implemented upon initiation of wheeling in Puerto Rico,
- allow LUMA to develop a proposal, with a timeline, for implementing the Alternative Uniform Services Agreement and Alternative Unbundled Tariff proposed by Guidehouse and LUMA in Exhibit C, Unbundled Report at pages 18-19, and Exhibit D, Uniform Services Agreement Report at pages 25-28 to consider:
 - demonstrated ability to transition a customer from Provider of Last Resort (POLR) service to Energy Services Provider (ESP) as well as transition from ESP to POLR, to include processes to ensure customer protection to confirm customer transfers from one provider to another;
 - demonstrated ability to bill customers appropriately for ESP services, if required;
 - demonstrated ability to bill ESPs to include auditing rights for ESPs and dispute resolution processes approved by the Bureau; and
 - demonstrated ability to compute imbalance rates as approved by the Energy Bureau and using reliable and auditable data.

Importantly, as explained in this submission, sector rules should be considered and established prior to adoption of a uniform services agreement to avoid gaming and other unintended repercussions and to fully consider that the multiple and significant sector transitions,

including the separation of PREPA into GridCo¹ and GenCo², attainment of compliance with the Renewable Portfolio Standards (“RPS”) and the transition of responsibility and operations of PREPA’s generation assets. *See* July 19th Transcript, page 126, lines 9-13.

II. Background

On October 14, 2020, this honorable Energy Bureau issued a Resolution and Order (“October 14th Resolution and Order”) that, among others, requested information to be provided by the Puerto Rico Electric Power Authority (“PREPA”) and announced that technical conferences would be held on wheeling-related matters. Exhibit A to the October 14th Resolution and Order, is the Energy Bureau’s proposed Interim Unbundled Rate. At the time, the Energy Bureau had enacted Regulation 9138 on Electric Energy Wheeling (“Regulation 9138”).

On December 23, 2020, the Energy Bureau issued a Resolution and Order (“December 23rd Resolution and Order”), on the procedure that it intended to follow for unbundling PREPA's rates. Specifically, the Energy Bureau directed that:

it is in the public interest to proceed to the unbundling of PREPA's rates as expeditiously as possible so that eligible wheeling customers can purchase their power from a certified EPSC or other eligible independent power producers. Therefore, the Energy Bureau is ordering PREPA to file, no later than February 1, 2021, one or more proposals for an unbundled rate for wheeling, along with a uniform wheeling service agreement between PREPA and the independent power producer and any other pertinent policy details. Each proposal must include the rate that wheeling customers should continue to pay PREPA for transmission, distribution, billing, and any other relevant costs, such as stranded costs. The rate should also include the credit that the PREPA customer who engages in wheeling will have deducted from their otherwise applicable rate.

¹ Per the OMA, Grid Co is the “the entity, which may be directly or indirectly owned by Owner or an Affiliate of Owner, that acquires or obtains ownership of the T&D System after the reorganization of PREPA.”

² Per the OMA, Gen Co is the “entity, which may be directly or indirectly owned by [PREP] or an Affiliate of [PREPA], that acquires or obtains ownership of the Legacy Generation Assets after the reorganization of PREPA.”

Id. at page 3.

In the December 23rd Resolution and Order, this Energy Bureau directed that it would hold and evidentiary proceedings and requested that PREPA file the following:

- A. A fully unbundled cost of service study based upon the general techniques the Unbundling Report, with updated data as feasible and an explanation of any different methodologies used. This study shall allocate revenues among classes, and within each class, allocate revenues among at least the following three categories:
 - 1. All non-generation costs, not subject to competition from wheeling;
 - 2. Generation costs avoidable by wheeling-related reduction in PREPA generation requirements;
 - 3. All other generation costs that will be stranded by reduction in sales;
- B. A proposed unbundled tariff and structure consistent with the default unbundling tariff and structure, as originally set forth in Appendix A of the Energy Bureau's October 14, 2020 Resolution . . . ; and
- C. Any other proposed unbundling tariffs and structures, containing unbundled rates based on the cost of service study.

Id. at pages 4-5.

With respect to the proposed unbundling tariffs and structures, the Energy Bureau directed that PREPA may file one or more additional proposals. *Id.* at page 4. The Energy Bureau stated that “based upon the initial investigation, including comments and the two technical sessions, . . . the basic outline and structure of the proposal outlined in Appendix A of the October 14 Resolution [was] reasonable.” *Id.* at page 5. The Energy Bureau further stated that “based on the conservative nature of that proposal, it is likely that the unbundled credit for customers engaged in wheeling will be no less than the sum of the FCA and the PPCA,” with some modifications and clarifications outlined in the December 23rd Resolution and Order. *Id.* at pages 5-8.

On January 5, 2021, the Energy Bureau issued a Resolution and Order that set a procedural calendar for this adjudicative proceeding (“January 5th Order”). Among others, the January 5th Order set the date for PREPA to file the following:

A fully unbundled cost of service study based upon the general techniques used in the Unbundling Report, with updated data as feasible and an explanation of any different methodologies used. This study shall allocate revenues among classes, and within each class, allocate revenues among at least the following three categories:

1. All non-generation costs, not subject to competition from wheeling;
 2. Generation costs avoidable by wheeling-related reductions in PREPA's generation requirements;
 3. All other generation costs stranded by a reduction in sales;
- B. A proposed unbundled tariff and structure consistent with the default tariff and structure, as originally set forth in Appendix A of the Energy Bureau’s October 14 Resolution, and further modified in the December 23 Resolution, and
- C. Any proposed unbundling tariffs and structures, containing unbundled based on the cost of service study.

Id. at pages 2-3.

On January 20, 2021, the Energy Bureau granted a request for intervention filed by the Independent Consumer Protection Office (“ICPO”). Then, on February 25, 2021, the Energy Bureau issued a Resolution and Order that granted petitions for intervention that had been filed separately by EcoEléctrica and the Puerto Rico Manufacturer’s Association (“PRMA”). In a Resolution and Order of February 26, 2021, the Energy Bureau granted a request by Cooperativa Hidroeléctrica de la Montaña (“Cooperativa”), to intervene in this proceeding.

An amended procedural calendar was issued by the Energy Bureau in a Resolution and Order of February 5, 2021 (“February 5th Procedural Calendar”).

Technical conferences were held on March 15 and April 15, 2021. For both technical conferences, PREPA filed copies of the presentations offered by Guidehouse, Inc. (“Guidehouse”) which included information on preliminary findings and proposed methodologies, among others. *See* Motions of March 12, 2021 and April 13, 2021.

On May 10, 2021, PREPA filed the following: (1) 2021 Cost of Service Study dated May 10, 2021; (2) Proposal for Unbundled Tariffs Report dated May 10, 2021; (3) Proposal for Uniform Services Agreement Report dated May 10, 2021; and (4) PREPA Unbundling Rate Filing Working Papers. *See Motion in Compliance with Resolution and Ordered Entered on February 5, 2021*, (“May 10th Filing”). Then, on May 17, 2021, PREPA filed the Direct Testimony of Mrs. Margot Everett, Director for Guidehouse and a revised Table 2-4 to the Proposal for Unbundled Tariff Report. *See Motion in Compliance with Resolution and Order Entered on May 13, 2021*. Included with the testimony were six exhibits:

- Exhibit A: Resume for Witness Everett,
- Exhibit B: 2021 Cost of Service Study, dated May 10, 2021,
- Exhibit C: Proposals for Unbundled Tariffs Report dated May 10, 2021,
- Exhibit D: Proposal for Uniform Services Agreement Report dated May 10, 2021,
- Exhibit E: PREPA UnbundlinRate_Filing_Working_Papers.xlsx, and
- Exhibit F: Revised Default Unbundled Tariff Sheet.

A Technical Hearing was held on May 18, 2021, where Guidehouse offered a presentation on the aforementioned filings of May 10th and May 17th. *See Motion to Submit Presentation Projected During the May 18, 2021 Initial Technical Hearing*. On May 28, 2021, PREPA filed a *Motion in Compliance with Bench Order Entered During the May 18th Technical Hearing*,

submitting clarifications on marginal energy costs, algorithm of charges to Imbalance Costs, and recommendations on matters to be discussed in workshops prior to implementation of the Uniform Services Agreement.

Per the February 5th Procedural Calendar, as amended by a Resolution and Order issued on June 22, 2021, discovery processes in this proceeding were conducted between May 10, 2021 and June 30, 2021 (“June 22nd Resolution and Order”). LUMA answered three sets of the Requirements for Information issued by the Energy Bureau (1st Requirement of Information of June 10, 2021, answered on June 21, 2021; 2nd Requirement of Information of June 11, 2021, answered on June 24, 2021; and 3rd Requirement of Information issued on June 18, 2021, answered on June 28, 2021), and one Requirement of Information issued on June 10, 2021 by the ICPO, that LUMA answered on June 21, 2021.

As set forth in the June 22nd Resolution and Order, intervenors ICPO and PRMA submitted pre-filed testimonies on July 9, 2021; after discovery closed. *See* June 22nd Resolution and Order at page 2.

On July 15, 2021, the Energy Bureau issued Guidelines and an Agenda for the evidentiary hearing that was scheduled for July 19th and 20th, 2021. On July 17, 2021, the Energy Bureau issued an amended agenda for the evidentiary hearing.

On July 19, 2021, the PRMA filed a Motion to Amend Direct Testimony of Ms. Yandia Pérez, Vice President. (“PRMA’s July 19th Motion to Amend Pre-Filed Testimony”). In said request, the PRMA requested leave to strike a portion of the answer to the sixth question of the pre-filed testimony where electricity rates in the State of Illinois were referenced.

During the first day of the evidentiary hearing, on July 19, 2021, Mrs. Margot Everett (“Mrs. Everett” and/or “witness Everett”), Director, Guidehouse, appeared for cross examination by Energy Bureau consultants, Mr. Mark Lebel and Mr. Paul Chernick, as well as by counsels for intervenors ICPO and Cooperativa. Commissioner Rivera posed questions to Mrs. Everett after re-direct examination. Mr. Dennis Seilhamer conducted proceedings as the Hearing Examiner.

During the evidentiary hearing of July 19, 2021, upon a request by LUMA, the Energy Bureau admitted into evidence the following three exhibits:

- a. Exhibit A- LUMA’s Response to question 7 (AP-2018-0004-PREB-LUMA-ROI-SET03-2021-06-24-07) of the Energy Bureau’s Second Requirement of information, at pages 9 through 12;
- b. Exhibit B- Revised Figure 2-4 Supply Stack by Type, included at page 3 of LUMA’s Response to question 1 (AP-2018-0004-ICPO-LUMA-ROI-SET02-2021-06-21-01) of the First Requirement of Information issued by the Independent Consumer Protection Office; and
- c. Exhibit C- Amended workpapers filed with LUMA’s Response to question 17 (AP-2018-0004-PREB-LUMA-ROI-SET03-2021-06-24-13) of the Third Requirement of Information issued by the Energy Bureau, (pdf text of Response 17 and excel table with revised workpapers).

During the evidentiary hearing of July 19, 2021, LUMA also requested and was granted leave to file amended versions of tables E-1, E-2, and E-3, of the Summary of the 2021 Cost of Service Study that was submitted on May 17, 2021 as Exhibit B, COSS, Exhibit B to May 17th testimony. Tables E-1, E-2, and E-3 are found at pages iv and v of the 2021 Cost of Service Study. *See* COSS, Exhibit B to May 17th testimony. As authorized by the Energy Bureau, on July 21,

2021, LUMA submitted revised versions of Tables E-1, E-2, and E-3, of the Summary of the 2021 Cost of Service Study.

On July 20, 2021, LUMA filed an *Urgent Request on Admissibility of Testimony of Mrs. Yandia Pérez of the Puerto Rico Manufacturers Association* (“LUMA’s Urgent Request”). LUMA raised concerns regarding the admissibility of the pre-filed testimony of the PRMA and requested that prior to admitting the testimony, the Energy Bureau issue an initial determination of admissibility. On July 20, 2021, the PRMA opposed LUMA’s Urgent Request.

The second session of the evidentiary hearing was held on July 20, 2021 and was scheduled for cross-examinations of intervenors ICPO and the PRMA. At the initial portion of the session, the Mr. Seilhamer announced that the Energy Bureau denied LUMA’s Urgent Request and the testimony of the PRMA would be admitted. *See* Transcript, July 20, 2021 (“July 20th Transcript”), page 5, lines 13-25. LUMA requested reconsideration of the ruling which was denied. *Id.* page 9 lines 2-25, page 10, lines 1-25, page 11, lines 1-3.

Mr. Gerardo Cosme was cross-examined and answered questions posed by Energy Bureau consultants, counsel for LUMA, and counsel for the ICPO. *Id.* pages 13-61. Then, Mrs. Y. Pérez of the PRMA was cross-examined and answered questions on his pre-filed testimony posed by Energy Bureau consultants, counsel for LUMA. *Id.* pages 68-109.

Upon conclusion of the testimonies, counsel for LUMA requested leave to present closing arguments on the third day of the session that was scheduled for July 21, 2021. After a brief recess, the Energy Bureau directed that closings should be made thereby cancelling the third day of the session. *Id.* at page 112 lines 16-25, page 113 lines 1-3, page 114 lines 22-25, page 115 lines 1-12. Per the ruling of the Energy Bureau, counsel for LUMA presented a closing statement. *Id.*

pages 118-121. Counsel for the PRMA also made closing remarks. *Id.* page 115 lines 16-25, page 116 and page 117 lines 1-22.

On July 21, 2021, LUMA respectfully submitted a copy of the Exhibits A, B, and C, that were admitted and marked as evidence in this proceeding on July 19, 2021. On even date, LUMA requested the audio of the proceedings to prepare a transcript. Upon receiving an audio recording of the proceedings, LUMA commissioned a reporter to produce a transcript. The transcript is referenced in this Motion and will be submitted to the Energy Bureau via motion with a copy to the parties.

Per the June 22nd Resolution and Order, LUMA hereby submits its final brief.

III. Discussion

Based on the direct testimony of witnesses Mrs. Everett and Mr. Cosme for ICPO, the materials submitted in this docket and the evidence presented during the evidentiary hearing, including Exhibits A, B and C offered by LUMA and admitted during the evidentiary hearing, LUMA submits its final recommendations and presents several requests.³

A. LUMA requests that the Energy Bureau adopt the proposed Unbundling Framework

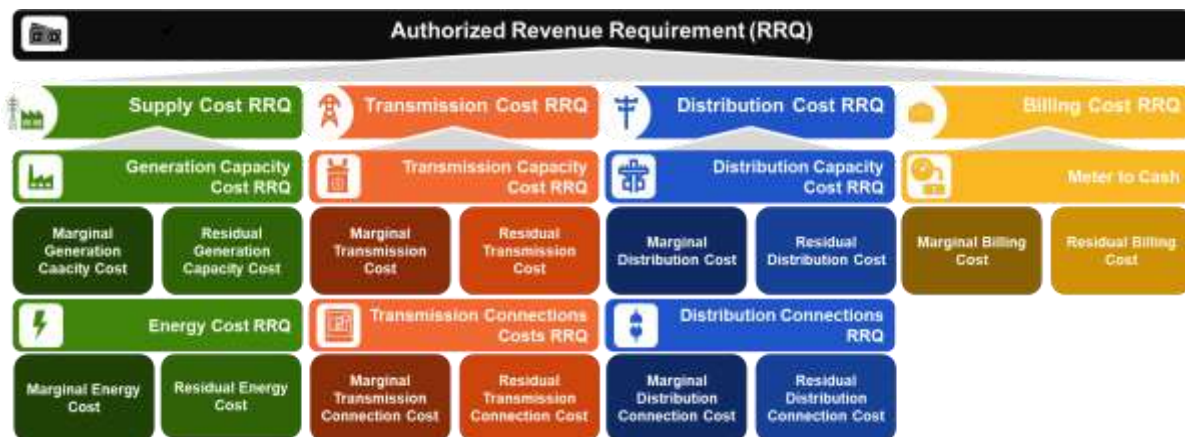
LUMA respectfully submits that the unbundling of rates is a worthwhile endeavor and with the Unbundling Framework included in Exhibit C, Unbundled Report, there is clear direction on the approach to unbundling of rates in Puerto Rico that can be implemented over time. Further,

³ It bears noting that while this proceeding was active, on June 1, 2021, LUMA begun exercising duties as operator of PREPA's Transmission and Distribution System ("T&D System") pursuant to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement of June 22, 2020, which includes the role of representing PREPA in proceedings before this Energy Bureau See OMA, Section 5.6 (System Regulatory Matters). LUMA has contracted with Guidehouse to continue to support this proceeding. LUMA supports all submissions provided by Guidehouse on PREPA's behalf.

the Unbundled Framework allows for improvements in underlying calculations needed to quantify the values, allowing for the flexibility to make improvements while creating clarity and stability. Lastly, it is respectfully submitted that the Unbundling Framework provides transparency and paves the way to allow for the development of sector competition and other aspects of public policy as identified in Act No. 57-2014 and Act No. 17-2019, particularly to enable wheeling. *See* Act 17-2019, Section 1.5(2)(f), Section 1.7, Act 57-2014, Section 6.3 (f) and (g), as amended by Act 17-2019 (affording the Energy Bureau authority over wheeling and to ensure that prices for wheeling are just and reasonable and consistent with the public interest) and Act 57-2014, Section 6.30, as amended by Act 17-2019 (setting factors for wheeling).

LUMA respectfully requests that the Energy Bureau adopt the proposed unbundled framework, included in Exhibit B of the filing made on May 10, 2021 and Exhibit C of the May 17th filing. The Unbundled Report, Exhibit C, at page 10, contains Figure 2.3 which illustrates the Unbundled Framework that LUMA requests be adopted by the Energy Bureau and that is reproduced below.

Figure 2.3: Unbundling Costs Framework



See also Exhibit C, Unbundled Report at pages 10-11.

Figure 2.3 shows the unbundling of revenue requirement by function (Supply, Transmission, Distribution and Billing) and then by marginal and residual costs.⁴ It is respectfully submitted that the record does not include a different unbundled framework than the one proposed by Guidehouse and submitted by LUMA and PREPA. Further, throughout hearings, no parties cross-examined Mrs. Everett on the Unbundled Framework, nor challenged the framework or its methodology. Therefore, the proposed Unbundled Framework is unopposed.

The proposed Unbundled Framework follows the policy requirements of Act 57-2014 on the factors to be considered for the Energy Bureau to regulate wheeling services as it is based on a considered study and proposal for unbundling of costs by function that enables designation of unbundled costs. It is designed to enable the Energy Bureau to ensure that the unbundled rate for wheeling services to be implemented, is based on an examination of real cost drivers identified in the COSS. This, in turn, will allow for adoption of a reasonable rate for wheeling services subject to periodic revisions that will help avoid cost-shifting to protect both wheeling and non-wheeling customers. *See* Act 57-2014, Section 6.30, as amended by Act 17-2019 (setting factors for wheeling including the state of the transmission and distribution infrastructure, the loss of energy related to operations and costs; the reasonable conditions that must be established to guarantee the protection and the proper and efficient maintenance of the transmission and distribution infrastructure; the criteria to set rates to ensure thus making the use of this mechanism feasible, and promoting production of energy and the competitiveness of Puerto Rico in terms of service

⁴ “Marginal costs are costs incurred with an incremental increase in demand for that service while Residual is the difference between the total actual costs to provide that service and the marginal costs.” Exhibit C, Unbundled Report at page 9.

costs and availability, thus safeguarding the interests of the People, including the distance between the electric power company and energy subscribers without adversely affecting wheeling nonsubscribers).

B. Adoption of the Cost of Service Study

The COSS, Exhibit B to May 17th testimony, as updated on July 21, 2021 through submission of revised tables E-1, E-2 and E-3, provides a detailed explanation of the COSS performed by Guidehouse that supports adoption of the Unbundled Framework in line with public policy requirements, including:

1. the proposed methodology in the COSS for calculating the Marginal Cost of Service (“MCOS”) and the Residual costs, *see* COSS, Exhibit B to May 17th testimony, pages iv-v as amended by the filing of July 21, 2021; and Section 2.3.3, at pages 8-9;
2. the proposed values included in the COSS for marginal capacity costs, *see* COSS, Exhibit B to May 17th filing at pages v as amended by the filing of July 21, 2021; and COSS, Exhibit B to May 17th testimony, at pages 10-13; and
3. the methodology proposed for calculating marginal energy costs, *see* COSS, Exhibit B to May 17th testimony, at pages 14-18.

The methodology for calculating the MCOS is designed to calculate the costs associated with providing incremental energy and capacity over the next ten years. Specifically, the COSS explains that “MCOS studies examine the incremental, or marginal, costs of supplying or delivering energy to a customer. These marginal costs can be for generation capacity, energy, transmission capacity, distribution capacity, and meter to cash services. Marginal capacity COS

studies are designed to create a statistical relationship between capital costs and change in capacity for the same period of time.” COSS, Exhibit B to May 17th testimony, at page iv.

The uncontested methodology employed to calculate marginal costs Discounted Total Investment Method (DTIM) is explained in Section 2 of the COSS. Specifically, Table 2-2. Summary of Marginal Cost Methodologies of Section 2, at page 9, explains the DTIM methodology as follows: “Discounted Total Investment Method takes the ratio of the forecasted discounted capital increases to the forecasted discounted capacity increases.” The DTIM approach was chosen because of its relevance to Puerto Rico, as explained in Table 2-2 “because [it] represents all planned investments but can also allow for focus on those investments needed for load growth[, and] is more forgiving regarding the ‘timing’ of load changes versus costs, which is best for Puerto Rico given the timing of investments is changing as the sector restructuring continues.” *See* COSS, Exhibit B to May 17th testimony, Table 2-1 at page 9.

As witness Everett explained in her pre-filed direct testimony, “[t]he approach used was a Discounted Total Investment Method (DTIM) that relies on the development of a numerical relationship between costs related to load growth and the driver of that load growth. Guidehouse determined that measuring marginal costs of energy was the appropriate approach to developing unbundled rates and an appropriate supply credit that represents the avoided costs of a customer leaving PREPA's system for an alternative energy supply.” *See* Exhibit A to May 17th Submission, lines 97-102.

The proposed approach to the COSS was presented to the Energy Bureau and the public at two Technical Conferences and at the Technical Hearing held in this proceeding. Intervenors did not propose a different methodology, nor does the record of this proceeding otherwise include

critique to the COSS methodology or a different proposal. In fact, as noted in the direct testimony of Mrs. Everett's, there was little feedback in the Technical Conferences. *See* Exhibit A to May 17th Submission, lines 107 to 111 (“Q15.What information did you receive from the Energy Bureau’s experts during the Technical Conferences that helped in the development of the 2021 Cost of Service Study? A15.We received limited feedback during the Technical Conferences regarding the cost of services results, but we listened to the questions and tried to address some of those questions directly in our proposal.”). Although the PRMA requested in its pre-filed testimony of July 9, 2021 that the Energy Bureau order PREPA to file a “comprehensive and real transmission cost-based study”, neither the pre-filed testimony, nor the live testimony of the representative of the PRMA, questioned the methodology of COSS or provide any grounds to reject the COSS. In fact, on cross examination, the PRMA representative testified that the PRMA does not have a proposal for a methodology for a real cost study. *See* July 20th Transcript, page 105 lines 8-16. The witness also stated that she did not have criteria to provide an objection to the methodology of the COSS. *Id.* at page 107 lines 4-9. Thus, the Energy Bureau should not give probative weight to this testimony and should reject the proposal made in the direct testimony of the PRMA.

With no alternatives or opposition to the proposed DTIM methodology, LUMA respectfully requests that the Energy Bureau adopt the DTIM method for performing cost of service studies to be applied to the unbundling of rates in Puerto Rico. The methodology proposed for developing COSS in the future is sound and reasonable for Puerto Rico and should be adopted such that a consistent approach may be presented in future proceedings with updated data, creating

transparency on changes in underlying assumptions rather than obscuring data changes with methodological changes.

The results of the COSS presented in Exhibit B to May 17th testimony are summarized in Table E-2. Cost-Reflective Rates of the Executive Summary, as updated on July 21, 2021, to address questions raised during the technical conferences and further outlined in hearings. For convenience, the final version of Table E-2 is shown below.

Table E-2. Cost-Reflective Rates

	Generation Capacity	Energy*	Transmission Capacity	Distribution Capacity
	(\$/kW of CP)	(\$/kWh)	(\$/kW of CP)	(\$/kW of NCP)
Marginal Cost Rate	0	0.07984	0	0
Residual Rate	206.46	0.03234	96.26	207.06

*Based on 2017 rates

As Table E-2 shows, and is detailed in Exhibit B to May 17th testimony, the marginal costs are zero for capacity related costs. This is due to two factors. First, the current 10-year plan has no planned investments for capacity related to generation, transmission and distribution capacity additions to address load growth. *See* COSS, Exhibit B to May 17th testimony at page iv; Section 2.3.4 at pages 10-11; Section 2.3.6 at pages 12-13; *see also* Exhibit A to May 17th Submission, lines 117-120 (pre-filed testimony of Mrs. Everett). Second, the ten-year forecast shows that load is expected to decline over this period, also limiting the need for additional capacities. *See* COSS, Exhibit B to May 17th testimony at page iv; and Section 2.3.4. Because marginal costs are based on the relationship between capacity investments for load growth and actual expected load growth, the results drive to zero capacity costs at this time. If the forecast were to change and incremental

capacity is needed to meet load growth, then marginal capacity costs would potentially be non-zero.

During the evidentiary hearings, there were lines of questioning from Energy Bureau consultants regarding the potential for marginal costs associated with incremental operating and maintenance (O&M) costs. *See* July 19th Transcript at pages 13-18. Specifically, there were questions on whether Operation and Maintenance costs might be avoided by load departures because plants could be retired earlier. *Id.* at page 16, line 25, page 17 lines 1-25, page 18 lines 1-3. Witness Everett first noted that these incremental costs, if expected, are incorporated into the Integrated Resource Plan (IRP) and she noted the IRP is a separate process and an input into the COSS, not part of the COSS. *Id.* Further, she stated that such costs being avoided would have to be incorporated into the IRP and linked to a load forecast that includes the estimate of the load that would depart. She argued that these were more ‘scenarios’ that may happen if load departs but that these scenarios would also be part of the IRP. *Id.* page 21 lines 11-25, page 22 lines 1-6 (“there is an established plan of what needs to -- what PREPA, the POLR provider, is intending to spend over the next 10 years to meet reliability needs. And if those reliability needs would change, if load changes from what the forecast that’s used in the cost-of-service or in the integrated resource planning process, then there would be a change. But my point is that -- so, I want to differentiate between what the cost-of-service is doing versus ongoing marginal costs. And what I’m talking about is the cost-of-service study has -- is computing an estimate of what marginal costs would be given inputs of load and decision making and planning in the IRP process.”). Witness Everett also explained that these costs are only avoided if the load departure is permanent, such that the plant is not needed and can be permanently retired without jeopardizing reliability for all Puerto Rico

customers if the departed load returns to the POLR. *See id.* page 140 lines 16-25 and page 141 line 1 (“if that load is not permanently removed, it’s doubtful that those costs are actually saved . . . So specifically when it comes to cost-of-service study and marginal capacity costs, you know, we have that estimate, and then we take that estimate and we turn it into an avoided cost because we are able to justify that cost is permanently avoided”). Finally, she noted that plant retirements would not necessarily create cost savings because such early retirements also accelerate other costs, such as write offs for remaining book value and decommissioning costs. *Id.* page 12 lines 21-25, page 13 lines 1-2.

It bears noting that no party presented an alternative estimate of marginal capacity costs in either filed testimony or during hearings. As such the only proposed values are those provided in the COSS as updated. LUMA respectfully request that the Energy Bureau accept the values presented in Table E-2, as updated and supported in the COSS for capacity costs, Exhibit B to May 17th testimony.

Also presented in Table E-2 of the COSS, as updated on July 21, 2021, are marginal energy costs equating to \$0.07984 per kWh. As noted in both the COSS report and in the testimony of witness Everett, this is an indicative rate based on a methodology designed to calculate marginal energy costs from the FCA and PPCA factors used to determine energy rates for customers. *See* July 19th Transcript at page 138 lines 23-25; page 139 lines 1-16 (“Could you explain what you meant by indicative rates? These rates are -- so, an indicative rate is an estimate of what the rate will be given what current revenue requirement is the current -- or the costs that were used in the analysis of coming up with the rate. So it means that the rate may not be what is shown in this table, because whenever you put a rate actually into place, you want to make sure that that rate is

representative of the rates that are currently facing these customers. So because we've made the recommendation of tying the supply credit to the FCAA and the PPCA, you would want to make sure that when you actually implement the rates, that the rate is reflective of the FCAA and the PPCA at the time that that rate is going in, and then that rate gets regularly updated.”).

LUMA requests that the Energy Bureau adopt the methodology for computing the marginal energy costs as presented in Exhibit B to May 17th testimony. This is a sound and reasonable method aligned with policy requirements set forth in Act 57-2014, as amended, to enable future adoption of fair and reasonable wheeling rates. It is a method for determining marginal energy costs that can easily be updated as part of the update filings for these rate riders. This allows for continued updating of the marginal energy costs and reporting of those costs to the Energy Bureau periodically and avoids the challenges related to a ‘set’ marginal energy value that becomes stale over time. This, in turn, operates in favor of fairness to consumers and avoids cost-shifting that affects wheeling nonsubscribers as Section 6.30 of Act 57-2014, promotes.

LUMA recommends that the Energy Bureau adopt the methodology for calculating the marginal energy costs and will provide the updated values in each filing of the FCA and PPCA. LUMA believes this is an important first step to later implement unbundled rates in Puerto Rico and supports providing transparency and updated information to monitor and evaluate the marginal energy cost values over time.⁵

C. Challenges to Implementation of an Unbundled Rate and Adoption of a Uniform Services Agreement

⁵ Also, this methodology was not challenged in this proceeding. No alternative methods for marginal energy costs were provided by intervenors or the Energy Bureau in written testimony or during hearings.

It is respectfully submitted that the record, including the testimony of intervenor ICPO supports that the Energy Bureau adopt a phased approach, commencing with adopting an unbundling framework and leave for the future, after careful consideration, adoption implementation of an unbundled rate and adopted of a uniform services agreement. The record includes evidence of the challenges, including potential cross subsidization between customers, with implementing an unbundled rate and a uniform services agreements at this time.

The identified challenges were included in Exhibit C, Unbundled Report, Section 3 at pages 15 through 28, in slide 14 of the May 18 Technical Conference presentation that was filed on May 18, 2021, and also at Exhibit D, Uniform Services Agreement Report at pages 29-30 regarding the uniform services agreement.

The main challenges to an unbundled rate and proposed solutions are:

1. **Sector Changes**-PREPA is undergoing substantial changes in its circumstances and the electricity structure in Puerto Rico is transitioning. Namely, the creation of GenCo that will own and operate PREPA's legacy thermal generation assets and sell supply to LUMA could result in a change in agreements depending on the GenCo's compensation structure, role, and responsibilities, and 'transfer pricing' to LUMA. *See* Exhibit D, Uniform Services Agreement Report at page 29. Also relevant is the creation of GridCo as an important related sector change. Thus, the sector's final end-state is not clear at this time. LUMA thus proposes that the Energy Bureau continue to monitor sector progress and update tariff consistent with proposed unbundling framework when sector structure stabilize;
2. **Stranded Costs & POLR Obligation**-Key tariff considerations are associated with extreme load loss, decommissioning costs, RPS implications, provider of last resort

provisions, system planning responsibilities, ESP load following capabilities (generation meeting load on an hourly basis), and potential cost variability by time of day or season. *See* July 19th Transcript at pages 59-61 (on customer returns, capacity challenges in Puerto Rico, lack of capacity market in Puerto Rico and harmful impact on customers). LUMA proposes that the Energy Bureau address POLR obligations and stranded costs separately and determine if LUMA remains POLR or if ‘customer return’ options should be limited. These considerations must be integrated with policies and procedures to ensure sufficient capacity and reliability to meet the needs of Puerto Rico electricity customers;

3. **Billing-** Key operational considerations are associated with billing system adaptability, Robust Meter Data Management System (“MDMS”), and consumer protection. LUMA proposes that a plan for implementing billing and tracking systems be developed before implementing any unbundled tariff or a uniform services agreement;
4. **Cost shifts-** There are significant risks of cost shifting associated with the default unbundled tariff from those who are served on the new tariff to those customers who remain with LUMA. *See* Exhibit C, Unbundled Report, Section 3.3 at page 26. LUMA proposes that the Energy Bureau adopt true-up mechanisms that capture all costs and, as COSS capabilities advance, update the true-up to collect these costs from the appropriate customer groups;
5. **Customer Self-Supply-** Consideration should be given to customer self-supply options, that may include distribution and transmission avoided costs, but also driving connection rules and requirements. *Id.* Section 3.4 at page 26. LUMA proposes that the Energy Bureau

address customer supply separately from ESP or other wholesale providers and adopt clear rules on self-supply options; *id.*, *see also id.* Section 3.6 at page 28; and

6. **Ancillary Services Costs**- The Energy Bureau should address the costs of providing firm energy, usually provided through Ancillary Services. True-up mechanisms that capture these costs until these services are separately measured should be considered and adopted. This is aligned with Section 6.30 (d) of Act 57-2014, as amended which requires consideration of ancillary services in proportion to the amount of energy injected into the grid.

In addition to the challenges related to the Unbundling Tariff, the record establishes challenges with immediate adoption of a uniform services agreement. These were summarized in Exhibit D, Uniform Services Agreement Report, at pages 29-30, as well as in the May 18, 2021 Technical Conference presentation (see slide 20). These challenges include the scenario of **Sector restructuring that creates uncertainty**. The underlying assumption of the future structure of the sector is that GenCo will own and operate PREPA's legacy generation facilities. The "GridCo" will be responsible for PREPA's legacy PPOAs plus any new contracts created through RFP processes or other mechanisms where a third party sells energy to the GridCo. In this structure, energy costs would be segmented between GridCo PPOAs and GenCo legacy generators. This assumption on the sector's future structure regarding ownership of PREPA's legacy generation assets has several implications that weighs in favor of deferring adoption of a uniform services agreement. *See id.* at page 29 and Section 4.1 at page 30 (Sector Restructuring). First, supply credits will need to be driven by both factors, and thus impact the final rates. Second, since imbalances and losses are also a function of the combined costs of the GenCo and GridCo energy

costs, this cost structure also needs to be considered. *Id.* Specifically, imbalances would be based on the incremental GridCo's costs to meet that load in any hour, regardless of source (e.g., PPOA or generator). *Id.* Losses Adder would be based on the actual difference between GenCo delivered energy and metered loads. Once GenCo is established, a separate agreement between generators may be required and could drive fees in the Uniform Services Agreement. *Id.*

Also, load-related GenCo and GridCo PPOA ancillary services charges will be included in PREPA's charges, while generation-related GenCo and GridCo PPOA ancillary services will be charged to each generator. *Id.* This raises the very likely probability that the new contract that may be awarded to a third-party generation operator could be significantly affected. If a new ESP were to produce kWh that needed to be firmed and shaped in order to deliver to the end-use customer, the GenCo plants operated by the new third-party generation operator will be required to provide production and ancillary services in a way that is not currently being contemplated by them since the rules are clearly not yet defined. It is not possible for LUMA to say with any certainty what the net impact will be because neither the ancillary services agreement nor the third-party generation operator agreement are defined yet. However, it is reasonable to assume that the third-party generator will claim their operations are being negatively affected and they will require a financial adjustment which would create an additional cost to ratepayers.

Also, there are challenges in connection with **legal terms and conditions** that require legal input and review. *Id.*, table 4-1 at page 29 and Section 4.2 at page 30. LUMA proposes a series of workshops and stakeholder engagement on the Term Sheet that was submitted with Exhibit D, Services Agreement Report, to solicit input on legal terms and conditions.

There are also challenges regarding **the need for clear rules to enable policy compliance.** *Id.* table 4-1 at page 29 and Section 4.3 at page 30. Because policy and market rules, including restructuring, remain unclear and create additional uncertainty, LUMA proposes that the Energy Bureau adopt the Unbundled Tariff Framework that, as the record shows, is able to accommodate market changes. The Energy Bureau should then determine who is responsible for meeting RPS requirements and addressing unexpected costs related to plant retirements and environmental provisions, among others. As Mrs. Everett testified on the challenges posed by undefined RPS rules and developing scenarios for RPS compliance:

we have to make sure that we are clear on the rules around renewables as well. So that's yet another reason why we didn't include them here, because we don't really know yet exactly how renewable targets will be met, whether or not the ESPs will be required to meet them, what are the ramifications if they don't, and how will the rules and regulation work for that. So there's still some work to be done to straighten out exactly how that renewable credit -- excuse me -- that renewable goal is being met, and who is responsible for meeting it. There are instances where, for example, utilities who deliver electricity sometimes are responsible for the carbon or renewable. It depends on how the rules are set up, so that, too, is an ambiguous point. And then -- sorry, one last thing. And then 5 you layer into that what we talked about earlier today, that if the customer can return, and now the polar provider has that obligation. So there's a pretty significant risk that at some point that renewable obligation that LUMA or the polar provider does not save cost because of related to renewal targets.

July 19th Transcript, page 123 lines 11-25, page 124 lines 1-11.

Lastly, LUMA notes there are numerous other ongoing proceedings that could potentially impact the values of the unbundled tariff and the structure of a uniform services agreement. These include but are not limited to, 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.

At a minimum, the rules related to retail wheeling should be finalized prior to the establishment and finalization of a retail wheeling tariff and a uniform services agreement, especially as they will set forth the obligations for the POLR. In this docket, priority should be given to adopting an unbundling framework.

D. The Proposed Alternative Unbundling Tariff

If the Energy Bureau determined to adopt an unbundled rate design, LUMA requests that the Energy Bureau adopt the Alternative Unbundling Tariff submitted in Section 2.3, Exhibit C at page 18 of the Unbundled Report, that would provide a supply credit to customers who choose to receive energy supply from ESPs. In lines 113 to 129 of her direct pre-filed testimony, witness Everett explains the approach to developing an unbundled rate structure:

Using the Cost-of-Service Study Results, Guidehouse then developed a framework for unbundling costs. Foundational to this framework is the development of marginal cost-based rates and the relevant driver of those marginal costs by customer class. Using those results, Guidehouse calculated marginal cost revenues to represent the amount of revenues that would be collected if all customers were charged marginal costs. Using the marginal cost revenues and total revenue requirements we then calculated the residual, or remaining costs, that would not be collected if customers only paid marginal costs, representing stranded costs related to lost sales. Finally, using the marginal and residual revenues, marginal and residual rates can be calculated. . . . In conclusion Guidehouse prepared two unbundled rate options. The first included a rate option that uses the marginal costs developed from the cost of service study, consistent with the approach advocated by the Energy Bureau. The second proposed a slight modification to the default by adding changes related to the calculation of the Fuel [Charge] Adjustment (FCA) and Power Purchase [Charge] Adjustment (PPCA) rate riders to address the recommendation of the implementation of a true-up mechanism.

Exhibit A to May 17th Submission, lines 113-129.

Witness Everett also established that Guidehouse “received limited feedback during the Technical Conferences regarding the unbundled rates, but we listened to the questions and tried to address some of those questions directly in our proposal.” *Id.* lines 138-40. Throughout the course of two technical conferences, one held on March 15, 2021 and the other on April 15, 2021, Guidehouse presented its proposed methodology for the COSS, preliminary findings, as well as the Alternative Unbundling Tariff. Prior to filing the written proposal, Exhibit on May 10, 2021, Guidehouse did not receive substantive guidance or objections to the Alternative Unbundling Tariff. After the filing of May 10, 2021, the public was able to participate in Technical Hearing held on May 18, 2021. At that juncture, no substantive guidance or objections were received on the Alternative Unbundling Tariff. Thus, the Alternative Unbundling Tariff was presented as part of a transparent and open process, whereby the Energy Bureau, stakeholders and the public had opportunity to provide feedback and guidance. It is respectfully submitted that the Energy Bureau should adopt the Alternative Unbundling Tariff that is supported by the record, has not been contested and, as explained in this submission and in Exhibit C, Unbundled Report, is a just and reasonable mechanism based on real costs that will lead to avoidance of cost-shifting, avoid cross-subsidization among customers to attain implementation of a just and reasonable wheeling rate as Act 57-2014 envisions.

As part of Exhibit C, and as authorized by the Bureau, witness Everett provided an Alternative Unbundling Tariff with the application of introduction of a Retail Supply Choice Credit. *See* Exhibit C, Unbundled Report, Section 2.3 at pages 18-22. The tariff recommendation is to update this credit based on the FCA and PPCA values whenever they are updated and approved by the Energy Bureau. *See* July 19th Transcript, page 92, lines 8-10 (“ideally you, what

you would want to do is you would want to update the supply credit in tandem with the FCA and the PPCA.”). Specifically, the Fuel Charge component is effectively the FCA times a Fuel Charge Rider factor equal to the percent of capacity related to dispatchable PREPA owned generation assets divided by all PREPA owned generation capacity. Similarly, the Purchase Power charge component is the PPCA times a PPCP, which is a factor equal to the percent of capacity related to dispatchable Purchase Power Agreements (“PPAs”) divided by all PPA owned generation capacity. Table 2-12, Exhibit B, 2021 Cost of Services Study. Indicative FCA and PCCA Rider Costs and Rates included in Exhibit B, 2021 Cost of Services Study, provides an example of the proposed methodology and indicative values of the Retail Supply Choice Credit.

Although at the Energy Bureau’s request Guidehouse, through the testimony of Mrs. Everett, filed a revised default unbundled tariff on May 17, 2021 that was compliant with what the Energy Bureau requested as a default tariff, Guidehouse originally proposed an alternative rate that included modifications to address a few key short comings of the default tariff. It is respectfully submitted that the revised default tariff proposal still contains important shortcomings and thus LUMA recommends that the Energy Bureau adopt the Alternative Unbundled Tariff proposed in Exhibit C, Unbundled Report. The shortcomings of the default tariff include that using the sum of the FCA and PCA exclusively does not establish a linkage between the supply credit and avoided costs as defined in Exhibit B, 2021 Cost of Services Study. As explained on page 16 of Exhibit C, Unbundled Report, Section 2.2, “the primary default unbundling tariff and structure, as dictated by previous orders, consists of a ‘Retail Supply Credit’ equal to the FCA factor plus the PPCA factor. [LUMA] understands that this was a suggestion by the Energy Bureau and not an order and that the COSS should drive the supply credit. Therefore, [LUMA] proposes using the

results the COSS and applying these costs to the Unbundling Framework discussed above. To that end there are two key inputs from the COSS: Cost Reflective Marginal Generation Capacity Cost Rate (Cost Reflective MGCC); and Cost Reflective Marginal Energy Costs Rate (Cost Reflective MEC).”

An additional shortcoming is that the FCA and PPCA include prior period adjustments, which are costs that have already occurred and thus cannot be avoided. *See* Exhibit C, Unbundled Report at page 17. These adjustments can be caused by several issues, such as actual plant performance and customer loads. Because these adjustments are a pass through of actual costs, they are not avoidable and thus should be excluded from the Retail Supply Credit. Further, these adjustments can also be caused by load variability or extreme weather events; also costs that are not avoidable as they have already occurred.

The Alternative Unbundling Tariff addresses the shortcoming of the default unbundling tariff, as explained in Exhibit C, Unbundled Report, at page 22. That is done by addressing any incremental costs from all customers using the grid beyond the expectations build into rates and recovering that deviation from all customers, while excluding the deviation from the Retail Supply Credit. *Id.* This is done by redefining the FCA and PPCA riders to only include forecasted costs and putting the prior period adjustments included in those riders in a separate rider applied to all customers. This also keeps the marginal energy costs forward looking versus a mix of forward and backward-looking costs, as they are today. *Id.*

If the Energy Bureau determines that it will at this time adopt an unbundled tariff and retail supply credit, LUMA respectfully requests that Energy Bureau approve the Alternative

Unbundling Tariff, proposed in Section 2.3 of Exhibit C, Unbundled Report at pages 18-19 that was not challenged during the proceeding.⁶

E. Adoption of a Structure for future Alternative Uniform Services Agreement Structure and further processes

In Exhibit D to the testimony of Mrs. Everett filed on May 17, 2021, includes, as requested by the Energy Bureau, a Default Uniform Services Agreement following the guidelines provided by the Energy Bureau in a Default Uniform Services Agreement. *See* Exhibit D, Uniform Services Agreement Report, Table E-1, Term Sheet at pages iv-v and *id.*, Section 3 at pages 25-28. Also presented is an Alternative Uniform Services Agreement. *See id.*, and Table 3- at pages 25-28. Table 3-1, of Exhibit D, is a Services Agreement Term Sheet for Default and Alternative Uniform Services Agreements that provides a summary of each necessary component of a Uniform Services Agreement and how both the Default and Alternative agreements address the components for each (“Term Sheet”).

The following components of the Alternative Services Agreement are the same as the Default Agreement proposed by the Energy Bureau: ESPC Eligibility, ESPC Notification of Customer Enrollment, PREPA Customer Notifications, Imbalance Provisions, and Losses Rate. *Id.* Further there are eight components that have been identified as necessary but that the Default

⁶ Although the PRMA presented pre-filed testimony suggesting that the supply retail credit be set in nine cent per dollar and that a proposed supply retail credit of twelve cents would be insufficient, on cross examination the PRMA was not able to explain its proposal nor provide the support and foundation for the same. *See e.g.* July 20th Transcript at page 71 lines 22-25 and page 72 lines 1-11 (explaining that proposal is aspirational); page 74 lines 14-25 and page 75 lines 1-12 (stating that PRMA only presented the target number of nine cents nets and the calculations were not presented); page 77 lines 24-25 and page 78 lines 1-19 (stating that 12 cent credit would be more attractive and explaining that additional information was not available on prices that the EPS could offer); and page 108 lines 5-19 (lack of knowledge on what the nine cents would cover). That proposal and testimony should not be accepted.

Agreement had not yet contemplated. These are: Notification Timing, Transfer Timing, Losses Adder, Credit Rating, Scheduling, Ancillary Services, Standby Service, and True-Up Mechanism. *Id.*

LUMA respectfully posits that if the Energy Bureau decides to adopt a uniform services agreement, it should adopt the Alternative Uniform Services Agreement Term Sheet components subject to further refinement as the rules related to wheeling are studied and finalized in Puerto Rico. LUMA requests that the Energy Bureau adopt the Alternative Uniform Services Agreement framework as presented in Exhibit D, Uniform Services Agreement Report, with the following specifics:

- Imbalance charges calculated as demonstrated in Exhibit D, Uniform Services Agreement Report, Section 2.7.2;
- Imbalance penalties calculated as demonstrated in *Id.*, Section 2.7.4;
- Collateral requirements as recommended in *Id.*, Section 2.8.1 and 2.8.2 at pages 20-21, and
- True-up mechanism explained in Exhibit D, Uniform Services Agreement Report.

It is important to note that the Term Sheet components were not opposed in direct testimony nor was evidence presented for the record during the evidentiary hearings. Importantly, no other terms sheets have been proposed. In fact, the Energy Bureau did not include the uniform services agreement as a topic for discussion during the evidentiary hearing and the Energy Bureau did not question witness Everett on the proposal for the Alternative Uniform Services Agreement. LUMA therefore respectfully understands that the Energy Bureau is cognizant of the challenges of

adopting a uniform services agreement and the desirability of additional processes before such an agreement is adopted.

Guidehouse's recommendations on deviations from the Default Uniform Services Agreement are included in Exhibit D, Uniform Services Agreement Report. Below is a discussion on the salient elements of the Alternative Uniform Services Agreement to support the request that the Energy Bureau approve the Alternative Uniform Services Agreement in whole or in part.

First, **performance charges** are discussed in Section 2.7.3 at pages 16 through 17 of Exhibit D, Uniform Services Agreement Report. The modifications included in the Alternative Uniform Services Agreement on performance charges are twofold. First, the Alternative Agreement proposes refining the Default Agreement's definition of bandwidths, where the Default Agreement notes percentages by year. *Id.* at page 17 and 26. Guidehouse notes that bandwidths should be tied to calendar year and thus apply to all ESPs in that calendar year, rather than have a bandwidth 'vintage' per ESP and allow for 'grandfathering'. *Id.* at page 17.

Second, the Default Uniform Services Agreement also proposes using the absolute value of the difference in kWh delivered times the bandwidth times the 'Average' supply credit, while the Alternative Agreement proposes looking at the value of imbalance in each hour. *See id.* This second change is to limit cost shifting between customers (or cross-subsidization) to account for the actual 'price' of imbalances in each hour. *See id.*

The aforementioned proposed changes included in the Alternative Uniform Services Agreement are necessary to provide consistency across all ESPCs and ensure minimal cost shifting while encouraging the ESPC to provide services closely aligned with the customer's load. *See id.*, at page 17. For this reason, the Alternative Uniform Services Agreement looks at cumulative

annual hourly Imbalances. This also creates simplicity in billing because LUMA would take the total annual Imbalance Payments and apply the charge accordingly and it eliminates a surprise for the ESPC as they know their Imbalances to date and thus can predict any such charges. *Id.*

Secondly, **late payments and payment terms** which are common in contract language and are designed to ensure parties pay in a standardized and timely basis. The Default Uniform Services Agreement is silent on this item. Guidehouse recommended the inclusion of a late payment of 5%. *Id.*, Section 2.7.4 at pages 17-18. Also included in this change is consideration for when the POLR should consider the ESP in default. This change is made to protect from cost shifting to non-participants due to carrying costs for ESPs until they pay and, potentially, defaulting. *See id.* (discussing this shortcoming and proposed solution for alternative).

Third, Exhibit D, Uniform Services Agreement Report, notes there are several costs that could be incurred by the POLR to follow the ESP's load in the event the ESP is not able to do so. To that end, these costs should be '**trued-up**'. The most obvious is congestion and is discussed in Section 2.7.5 at page 18. LUMA proposes a true-up mechanism that spreads deviations between revenue collected and actual costs related to FCA and PPCA. This approach benefits both the ESPC and LUMA customers because it accounts for deviations in costs separate from the Supply Credit and provides all incremental savings and costs to all customers. *Id.* Without a true-up mechanism, there is the risk these costs would be incurred by non-participants (customers who remain with LUMA).

Fourth, the proposal on **credit terms** included in the Alternative Uniforms Services Agreements should be accepted. In reviewing the credit terms proposed for the Default Agreement, Guidehouse determined that there were industry best practices that should be applied

and thus made those proposals in the Uniform Services Alternative Agreement. *See id.*, Section 2.8 at page 20. The two major changes were to address the fact that some entities could have better credit quality and thus should have less stringent collateral requirements. *Id.* This is a common practice, with the higher the credit rate, the lower the collateral needs. Second, there is the issue that only one month of the costs to serve the customer' load would not account for the fact that the ESP may up to 90 days to pay. *Id.* As such, the POLR is then exposed to the fact that an ESP could be collecting revenues from the customer for load served but provide no generation and thus leaning completely on the POLR to supply.

The Alternative Uniform Services Agreement proposes to require up to four times the ESPC's customers' average monthly loads (in kWh) times the average annual Hourly Imbalance Rate from the previous year. *Id.* at page 21. This accounts for the fact that some periods may be higher cost than others and that the ESPC potentially can continue 'serving' the customer for up to 90 days without paying LUMA for imbalances. That is, four times was determined to be the possible exposure to both high use months (up to two times the 'average') and the fact that customers have 60 days to pay, and potentially 90 days with minimal penalty, exposing LUMA and customers who remain with LUMA to effectively 3 months of back payments. *Id.*

In sum, the Alternative Uniform Services Agreement protects customers in providing more beneficial credit terms by requiring a letter of credit or cash collateral for four times the estimate of one month of the Independent Power Producers' ("IPP's") customers' avoided fuel cost settlement and purchased power cost adjustment times the credit collateral requirement percentage, when compared with the Default Uniform Services Agreement that provides for a letter of credit

for an estimate of one month of the IPP's customers' avoided fuel cost settlement and purchase power cost adjustment. *See id.* Section 2.8.2 at page 21 and Table 3-1, Term Sheet at page 27.

Lastly, the Alternative Uniform Services Agreement discusses the types of **customer returns** and how to handle potential implications of returning customers. *See id.*, Section 2.9 at pages 21-22. Customer returns are a real possibility and rules on handling need to be addressed to ensure consumer protections for participating customers and avoid cost shifting to non-participating customers. Specifically, there is the risk that a customer can 'game' by cycling to and from POLR services. *See also id.*, Section 2.9.

It is important to remember that the supply credit is based on the assumption that the credit includes avoided costs to LUMA for a third-party providing supply to LUMA's customers rather than LUMA serving those customers, to include avoiding the investment in additional capacity. *Id.* When a customer returns, LUMA may not have the capacity to serve that customer as they did not make the required investment (otherwise the avoided MGCC should not be included in the supply credit). Therefore, when a customer returns to the POLR it is common practice to put that customer on different rates that reflects the incremental costs, particularly capacity, that are required to serve the customer. *See* Section 2.9 at page 22 for the alternative proposal. The Alternative Uniform Services Agreement includes refinements based on the following principles:

1. Customer who chooses to return should be limited from opting for ESPC supply for 12 months to ensure customer does not arbitrage at the expense of LUMA's remaining customers, and
2. Customer who returns due to ESPC default or ESPC choice would be eligible for opting for ESP supply after a 30-day period to settle and address administrative issues.

As shown in the May 28th filing, there are several items that should be addresses and discussed before finalizing a uniform services agreement. These include:

- (A) Credit Terms
 - a. Consideration for credit quality of ESP
 - b. Potential amount of credit exposure
 - c. Computation of collateral based on potential exposure and credit quality
 - d. Determination of billing responsibilities – ESP vs PREPA
 - i. Ramifications on PREPA’s billing system to track multiple contractual terms for customers with different ESPs or different price plans from ESP
 - ii. Process for partial payments
 - iii. Credit terms for PREPA to each ESP
 - iv. Payments to ESP for PREPA collections relative to customers’ billing cycles
- (B) Imbalance Charges & Performance Charge
 - a. Symmetrical performance for over or under supply of generation relative to ESP load obligations
 - b. Incorporation of market prices in performance charges
 - c. Determination of imbalance rate (set after the fact or pre-set with true-up)
 - d. Auditing provisions for ESPs for imbalance rate
- (C) Customer return policies
 - a. ESP default vs ESP return or customer return
- (D) Customer sign-up process and timing
 - a. Timing of customer transition (to or from ESP)
 - b. Notification process and requirements
- (E) Standby Rate
 - a. Application (when it applies)
 - b. Structure (demand versus energy)
- (F) Ancillary Services
 - a. Determination of charging mechanisms/placeholders
 - b. Process for determining when charges will be applied
 - i. What will be in place
 - ii. What mechanisms are needed.

To complete these tasks, there are several improvements and studies needed. These were highlighted, in part, in the testimony of the ICPO representative, Mr. Cosme who “recommend[ed] feasibility studies or evaluations to be done on minimum grid and generation requirements that

need to be in place before commencement of wheeling agreements. These studies or evaluation can be done similar to the ones currently being done to allocate and host distributed renewable energy resources. This will ensure a suitable open sector of RES in Puerto Rico that will benefit wheeling customers and present no harm to non-wheeling customers as well. *See* Pre-Filed Testimony submitted on July 9, 2021, lines 22-30 at page 2. During the July 20th evidentiary hearing, Mr. Cosme further provided as an example the problems with implementing net metering in Puerto Rico to avoid unorganized implementation of wheeling. *See* July 19th Transcript page 45 lines 12-25; page 46 lines 1-15; and page 47 lines 1-5. His recommendation included the following: “What I think that, at least for this time, it’s just to make an assessment of what we have and what would we need for that to happen.” *Id.* page 47 lines 23-25.

IV. Conclusion

The record supports a phased approach to implementation of both an unbundled tariff and a uniform services agreement. First, each of the challenges that have been identified for the record and summarized in this Motion, must be addressed to avoid many of the significant pitfalls seen in other jurisdictions as they transitioned to supply choice. LUMA emphasizes its support of unbundling and encourages the Energy Bureau to adopt a phased approach to allow for a purposeful implementation and thoughtful mitigation of risks of cost shifts from departing customers to those customers that remain with the POLR. Although LUMA supports adoption of an unbundling framework, LUMA recommends deferral of implementation of the unbundled tariff until pending challenges are addressed and the uniform services agreement is fully formed, drafted and adopted by the Energy Bureau, in the context of clearly defined sector rules.

The phased approach is supported by the uncontested testimony of Mrs. Everett who explained that: “I think that’s the best way to do this because with a phased approach, you don’t - you have an opportunity to catch where they may be some issues that could swell into greater issues if it were not done in a phased approach. So testing the systems and the processes, being able to get the bills rolling out, all of those things are best done, initially, in small increments such that you’re confident that all of those processes and systems and data collection activities that I mentioned before, are in place, operational and appropriate.” *See* July 19th Transcript page 149 lines 13-25; and page 150 lines 1-6. The testimony of the ICPO representative also supports this approach. *See* Pre-Filed Testimony of July 9, 2021 and July 20th Transcript at pages 4-62.

As witness Everett has recommended through uncontested testimony regarding a proposal for a phased approach:

The first step is being able to unbundle rates and show how they -- show the different cost components on a regular basis.

The second is ensuring that data of around actual cost per kilowatt hour can be tracked, captured and managed for purposes of creating an appropriate imbalance charge. So you need to make sure that you have a system that is put in place, that can capture this data, that is accurate and auditable. Because ultimately, this is a rate that the POLR provider will be charging to the ESP, and the ESP should have visibility into how that rate is being generated. So there needs to be a fairly robust structure around capturing that, a process for capturing that, and the ability to audit that. So that’s another.

A third is making sure that we understand exactly what the roles and responsibilities are for each of the entities, be it the ESP or LUMA. And these include, but aren’t limited to, who is billing for these customers, will LUMA be just billing for their services and the ESP charging for theirs, how are we going to actually display these supply credits on the bill, what does it take to actually make sure that customers can track their supply credit on the bill. So billing issues also have to be resolved, and the ability to be actually able to bill customers needs to be put in place.

And then there's the details of the Uniform Services Agreement, that we outlined several areas where we thought some additional detail needs to be added to, in particular, making sure that your imbalance rate eliminates any opportunity for parties to game the system and use LUMA or the POLR provider as the providing services to their customers, that the ESP should be providing.

And then things like credit, handling, all of those issues still, in our view, need some further refinement and clarity to make sure that roles and responsibilities in the actual charges and fees are clear. And that the underlying processes and systems that need to support these activities are in place, operational and tested.

Id. page 147 lines 17-25; page 147 lines 1-25; page 148 lines 1-25; and page 149 lines 1-12.

Mrs. Everett further testified: “And so I would advocate that you continue to support and move forward with unbundling rates, but whether or not you take the next step of creating a Uniform Services Agreement, allowing certain customers to depart and receive supply, needs to be planned for. Because there have been so many instances where there had -- where jurisdictions have moved forward without sorting a lot of that out, and it has resulted in some pretty unfortunate situations, you know, bankrupt utilities, customer bills going through the roof. So you really want to make sure that you get the rules right and that you've structured everything to meet those rules to avoid such calamities as we saw in California and most recently in Texas, with direct access.”). July 19th Transcript, page 128, lines 5-21.

Through the testimony of Mr. Cosme, ICPO agreed with concerns raised by Guidehouse regarding unbundled tariffs, stating that “in order to make this unbundling tariff a comprehensive one that covers a future faced with up to 100 percent of renewables . . . self-generation by wheeling customers has to be addressed as part of the unbundled tariff as suggested by Guidehouse in their reports,” *See* Pre-Filed Testimony submitted on July 9, 2021, lines 8-11 at page 7.

LUMA recognizes the importance of moving forward on unbundling rates and creating wheeling options as soon as practicable. LUMA also notes that retail wheeling does not need to immediately follow the adoption of an unbundling framework or the adoption of unbundled rates. There are examples in the United States of implementing competition in electricity markets first at the wholesale level by ensuring fair and open interconnection procedures and the competitive solicitation of new generation resources following the identification of need in an integrated resource planning process. States that have rushed into retail market competition have been plagued with unreliability and high prices, with the most recent occurring in Texas. *See* July 19th Transcript, page 113, lines 1-125, page 114 lines 1-11; page 127, lines 23-25; and page 128 lines 1-21

The resulting hardships of rushed implementation of an unbundled tariff or adoption of a uniform services agreement to open the sector for services, without clear sector rules and prior to addressing the challenges discussed in this Motion in Exhibit C, Unbundled Report and Exhibit D, Uniform Services Agreement Report, would be largely borne by captive customers. This should be avoided in Puerto Rico in compliance with Act 54-2014 as amended by Act 17-2019.

LUMA emphasizes that the uniform services agreement should be put in place prior to allowing retail wheeling.

LUMA believes that the intent in this docket should be to develop the rules and processes to find an appropriate balance to ensure a transparent and efficient market so that customers do not overpay, and the Energy Bureau can act in the best interest of protecting customers from decisions that lead to unjust, unreasonable or insufficient rates. Electricity customers of Puerto Rico must be the ultimate beneficiaries of these processes and their benefits must be known and measurable.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned request and grant the requests included in this submission.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 10th 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@rnlegal.com; Office of the Independent Consumer Protection Office, hrivera@opic.pr.gov and contratistas@oipc.pr.gov; Puerto Rico Manufacturer's Association via Manuel Fernández Mejías Esq., manuelgabrielfernandez@gmail.com; and Ecoeléctrica via Carlos Colón, Esq., 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.



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