

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

NEPR

Received:

Apr 20, 2022

10:30 AM

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

CASE NO. NEPR-AP-2018-0004

SUBJECT: Request for Stay and Additional
Remedies.

**REQUEST FOR STAY OF PORTIONS OF FINAL RESOLUTION AND ORDER
OF MARCH 24, 2022, PENDING FINAL ADJUDICATION AND REQUEST FOR
ADDITIONAL REMEDIES**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME now LUMA Energy, LLC (“ManagementCo”), and LUMA Energy ServCo, LLC (“ServCo”), (jointly referred to as “LUMA”), and respectfully state and request the following:

1. On April 13, 2022, pursuant to Section 11.01 of Regulation 8543, Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings (“Regulation 8543”) and Section 3.15 of the Uniform Administrative Procedure Act for the Government of Puerto Rico, Act 38-2017 (“LPAU” for its Spanish acronym) and within twenty (20) days after this Puerto Rico Energy Bureau (“Energy Bureau”) issued a Final Resolution and Order in this proceeding dated March 24, 2022 (“Final Resolution and Order”), LUMA submitted a *Motion for Reconsideration of Final Resolution and Order of March 24, 2022* (“Motion for Reconsideration”). LUMA requested reconsideration of several findings and determinations that,

as explained in the Motion for Reconsideration, are erroneous, amount to an abuse of discretion, or are not supported by substantial evidence in the administrative record.

2. LUMA respectfully submits that the Motion for Reconsideration puts forth weighty arguments supported by substantial evidence in the administrative record and that have a high likelihood of success. To wit, as explained on pages 18 through 38 of the Motion for Reconsideration, the Final Resolution and Order fails to consider and give proper weight to the uncontested evidence that was admitted for the record in this proceeding. The evidence supports the adoption on reconsideration of : (1) the Unbundling Framework proposed by the Puerto Rico Electric Power Authority (“PREPA”) and LUMA, which furthers the requirements set forth by this Energy Bureau, particularly in the Resolution and Order of December 23, 2020 (“December 23rd Resolution and Order”) whereby it determined 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.” *See* December 23rd Resolution and Order at page 3; (2) the Marginal Cost of Service Study (“MCoSS”) filed by PREPA and LUMA and that remains uncontested on the record; (3) the Alternative Unbundled Tariff, which is the only tariff and wheeling credit that is supported by the evidence presented for the record, including the proposal presented by Guidehouse, the pre-filed testimony of Mrs. Margot Everett and her testimony during the evidentiary hearings. *See* Exhibits A through D of the Motion in Compliance with Resolution and Order of May 13, 2021, filed on May 17, 2022 (“May 17th Filing”), and the Transcripts of the Evidentiary Hearings of July 19 and 20, 2021, filed on August 10, 2021, *Motion Submitting Transcripts of Evidentiary Hearings*. The Motion for Reconsideration establishes with reference to the record, that this Energy Bureau erred

and abused its discretion in rejecting these proposals and in setting the wheeling credit as the full FCA (fuel cost adjustment rider) and the PPCA (purchased power cost adjustment rider), *see Final Resolution and Order* at pages 10, 14, 16 and 22, in dereliction of Section 3.1 of the Uniform Administrative Procedures Act of the Government of Puerto Rico (“LPAU” by its Spanish acronym”), 3 LPRA § 9641 (2022).

3. In the Motion for Reconsideration, LUMA also puts forth arguments for this Energy Bureau to reconsider several determinations on important aspects regarding the future implementation of the wheeling credit, including the obligations of the Provider of Last Resort (“POLR”) and balancing charges. *See* Motion for Reconsideration at pages 38-46. These are all topics that should be considered prior to implementing the wheeling credit to avoid imposing undue financial burdens on non-wheeling customers and ensure equitable implementation of wheeling in Puerto Rico.

4. LUMA respectfully submits that it is in the public interest for this Energy Bureau to consider the Motion for Reconsideration before proceeding with further steps to implement the wheeling credit and adoption of the Wheeling Services Agreement. The arguments that LUMA has set forth in the Motion for Reconsideration are meant to enable the Energy Bureau, LUMA, and PREPA to further important public policy mandates under Act 57-20017 and Act 17-2019 to enable wheeling in Puerto Rico and “to ensure that wheeling does not result in technical problems, rate increases or any other unfair cross-subsidization between or among customer classes.” *See* Resolution and Order of February 9, 2019.

5. LUMA understands that there is a high likelihood that this Energy Bureau will consider favorably the arguments and requests for relief stated in the Motion for Reconsideration.

To ensure that the Energy Bureau has time and opportunity to consider the Motion for Reconsideration, LUMA respectfully requests that this Energy Bureau stay several of the orders included in the Final Resolution and Order until the Motion for Reconsideration is adjudicated.

6. On page 47 of the Motion for Reconsideration, LUMA requested that this Energy Bureau stay that portion of the Final Resolution and Order that orders further processes to adopt a standard Wheeling Services Agreement, which includes filing of stakeholder comments by April 25, 2022, in response to the questions issued by this Energy Bureau in Attachment B to the Final Resolution and Order (“Attachment B”) and a technical conference for May 17, 2022. *See* Final Resolution and Order at page 21. As explained in the Motion for Reconsideration, the time frame proposed by this Energy Bureau to consider a Standard Wheeling Services Agreement is unreasonable. It does not provide sufficient or reasonable time for the Energy Bureau to address the Motion for Reconsideration. Second, LUMA’s comments would depend on the Energy Bureau’s determination on the Motion for Reconsideration. It is prudent then to provide a reasonable amount of time, equivalent to the timeframe set under the calendar issued in the Final Resolution and Order now subject to revision, to analyze said ruling prior to offering those comments. Third, given that proceedings in this case regarding the Wheeling Services Agreements were dormant since August 2021, when LUMA submitted its final reply brief until issuance seven months later of the Final Resolution and Order, LUMA will need to reassess the resources available to conduct further proceedings on a Wheeling Services Agreement, including identifying the availability of funds to engage external consultants for this endeavor.

7. Moreover, as explained above, LUMA respectfully submits that on balance, the interest in allowing the Energy Bureau to consider the Motion for Reconsideration and the public

interests that favor careful analyses of relevant considerations anent implementation of a wheeling tariff or credit weigh decisively in favor of staying proceedings regarding the Wheeling Services Agreement. Thus, LUMA respectfully requests that the Energy Bureau stay proceedings regarding the Wheeling Services Agreement and extend the deadline for filing comments for at least forty-five days after this Energy Bureau issues a ruling on LUMA's Motion for Reconsideration and reschedule the Technical Conference. As such, LUMA respectfully petitions the Energy Bureau to schedule the Technical Conference no less than three weeks after the stakeholders submit their comments. The proposed schedule will allow all stakeholders and the Energy Bureau to review the comments submitted and prepare accordingly for the Technical Conference.

8. Relatedly, it bears noting that the May 17th Technical Conference conflicts with the evidentiary hearings on LUMA's Performance Metrics Targets scheduled from May 16 through May 20, 2022, in Case No. NEPR-AP-2020-0025. LUMA officers and representatives who would participate in the Technical Conference in this proceeding are already set to participate in the evidentiary hearings scheduled in Case No. NEPR-AP-2020-0025. Given this conflict, LUMA requests that this Energy Bureau reschedule the May 17th Technical Conference for an alternate date after the Energy Bureau rules on the Motion for Reconsideration and comments to Attachment B are filed.

9. Regarding Attachment B to the Final Resolution and Order, LUMA requests clarification of question 2, which has a placeholder for a page number, but the page number has not been set ("2. Please provide any comments on the potential methods for establishing hourly balancing charges to be billed to retail electricity suppliers on a monthly basis as discussed in

today's resolution and order on pages [insert].”). It is respectfully requested that this Energy Bureau clarify this question and identify the missing page numbers in question 2.

10. Finally, LUMA respectfully requests that the Energy Bureau stay that portion of the Final Resolution and Order that required LUMA to “file a formal version of the wheeling customer rider as a compliance item . . . with a description of and rationale for any changes proposed from this draft version.” *See* Final Resolution and Order at page 18. Pursuant to a Resolution and Order of April 8, 2022, the current deadline to file the wheeling customer rider is April 21, 2022. As explained in the Motion for Reconsideration, there are several grounds for this Energy Bureau to reconsider: the determination that adopting the default wheeling tariff and establishing the formula for the wheeling credit as the sum of the full FCA and full PPCA is just and reasonable; the determination that the full FCA and PPCA is a reasonable proxy for marginal energy costs for the wheeling credit; and the conclusions of law 1 through 3 on page 22 of the Final Resolution and Order, that reproduce the conclusion that it is reasonable to fix the energy wheeling credit on the basis of the current FCA and PPCA riders.¹

11. LUMA’s arguments in the Motion for Reconsideration are likely to succeed. LUMA established the lack of evidence to support the default wheeling tariff or framework that

¹ The conclusion of law on page 22 are:

1. Using existing rates as the basis for unbundling and wheeling tariffs is a simple and feasible method that can evolve in the future.
2. Establishing a wheeling credit defined by the sum of the fuel cost adjustment and purchased power cost adjustment is just and reasonable and satisfies the requirements of Article 9 of Regulation 9351.
3. This definition of a wheeling credit, in conjunction with hourly balancing charges and annual imbalance charges, will protect non-participating ratepayers from adverse financial consequences as required by Act 17-2019, § 5.26.

this Energy Bureau adopted in the Final Resolution and Order. As discussed on pages 31 through 38 of the Motion for Reconsideration, the only testimony admitted for the record regarding the wheeling tariff was in the form of the recommendations by Mrs. Margot Everett, who testified in support of a supply credit that is less than the rate components. As shown in the Motion for Reconsideration, the rejection of the proposed Alternative Unbundled Tariff amounts to an arbitrary and unreasonable decision by this Energy Bureau that should be reconsidered in accordance with settled canons regarding the requirements of decisions by administrative agencies. Also, on pages 36 through 37 of the Motion for Reconsideration, LUMA showed that the Energy Bureau did not consider scenarios in which the default wheeling credit is likely to lead to gaming or other market prices with the repercussion of shifting costs to non-wheeling customers. These are important and weighty considerations that this Energy Bureau should ponder before implementing the Final Resolution and Order and prior to requiring that LUMA file a formal version of the wheeling customer rider. It is in the public interest to first conclude the process of addressing LUMA's Motion for Reconsideration before LUMA is called upon to file the rider. Thus, LUMA requests that the Energy Bureau stay the order to file a formal version of the wheeling customer rider after the Wheeling Services Agreement has been determined. As this Energy Bureau may know, action items within the agreement process could impact the wheeling customer rider.

12. It is in the public interest for this Energy Bureau to first consider LUMA's arguments in the Motion for Reconsideration regarding the dangers to the interests of wheeling and non-wheeling customers of proceeding to implement the default wheeling tariff and credit and prior to opening additional proceedings regarding a Wheeling Service Agreements. As the record

shows and is stated in the Motion for Reconsideration, there are dangers with the premature implementation of wheeling where rules and protections are not fully defined: “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. *See* July 19th Transcript, page 128, lines 10-21, Testimony of Mrs. Margo Everett. After the arguments in the Motion for Reconsideration have been considered, LUMA respectfully proposes that it would be prudent to initiate a separate proceeding to establish the Wheeling Services Agreement and other rules required for wheeling implementation, including stakeholder comments and a Technical Conference.

13. LUMA’s Motion for Reconsideration and this request to stay further proceedings are meant to allow the Energy Bureau to have the opportunity to consider important aspects of its determination to adopt a wheeling credit without first unbundling rates and absent consideration of marginal costs. The benefits of further consideration of the rulings issued in the Final Resolution and Order for a few weeks or months are substantial and will place the Energy Bureau in a better position to adopt a wheeling tariff and pave the way for wheeling services in Puerto Rico.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **grant** this Motion and **stay** those portions of the Final Resolution and Order that: (1) require LUMA to file a formal version of the wheeling customer rider (which due date is currently set for April 21, 2022); (2) set April 25, 2022, as the due date to file comments and responses to Attachment B of the Final Resolution and Order; and (3) scheduled a Technical Conference that is currently set for May 17, 2022. LUMA respectfully requests that the deadlines to file a formal version of the wheeling

customer rider and comments and responses to Attachment B of the Final Resolution and Order be set for at least forty-five (45) days after the Energy Bureau rules LUMA's Motion for Reconsideration.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 20th day of April 2022.

I hereby certify that this Motion was filed in person with the Puerto Rico Energy Bureau and that a stamped copy of this Motion will be served via electronic mail to intervenors: Cooperativa Hidroeléctrica de la Montaña, via Ramón Luis Nieves, ramonluisnieves@rlnlegal.com; Office of the Independent Consumer Protection Office, Hannia Rivera, hrivera@jrsp.pr.gov, and Pedro E. Vázquez Mélenlez, contratistas@jrsp.pr.gov; Puerto Rico Manufacturer's Association via Manuel Fernández Mejías, manuelgabrielfernandez@gmail.com; and Ecoeléctricas via Carlos Colón, ccf@tcm.law. It is also certified that I will serve notice of this motion to counsel for the Puerto Rico Electric Power Authority, Katuska Bolaños, kbolanos@diazvaz.law, and Joannely Marrero Cruz, jmarrero@diazvaz.com.

I will also send a copy of this Motion to the following individuals or entities that the Energy Bureau included in its email, serving notice of the Final Resolution and Order. Several of those entities and persons **were not intervenors in this proceeding**:

astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, margarita.mercado@us.dlapiper.com,
Elias.sostre@aes.com; jesus.bolinaga@aes.com; cfl@mcvpr.com; ivc@mcvpr.com;
notices@sonnedix.com; leslie@sonnedix.com; victorluisgonzalez@yahoo.com;
tax@sunnova.com; jcmendez@reichardescalera.com; r.martinez@fonroche.fr;
gonzalo.rodriguez@gestampren.com; kevin.devlin@patternenergy.com;
fortiz@reichardescalera.com; jeff.lewis@terraform.com; mperez@prrenewables.com;
cotero@landfillpr.com; geoff.biddick@radiangen.com; hjcruz@urielrenewables.com;
carlos.reyes@ecoelectrica.com; meghan.semiao@longroadenergy.com;
tracy.deguise@everstreamcapital.com; agraitfe@agraitlawpr.com; h.bobea@fonrochepr.com;
ramonluisnieves@rlnlegal.com; hrivera@jrsp.pr.gov; info@sesapr.org;
yan.oquendo@ddec.pr.gov; acarbo@edf.org; pjcleanenergy@gmail.com; nicolas@dexgrid.io;
javrua@gmail.com; JavRua@sesapr.org; lmartinez@nrdc.org; thomas.quasius@aptim.com;
rtorbert@rmi.org; lionel.orama@upr.edu; noloseus@gmail.com; aconer.pr@gmail.com;
dortiz@elpuente.us; wilma.lopez@ddec.pr.gov; gary.holtzer@weil.com; ingridmvila@gmail.com;
rstgo2@gmail.com; agc@agcpr.com; presidente@ciapr.org; cpsmith@unidosporutuado.org;

jmenen6666@gmail.com; CESA@cleanegroup.org; acasepr@gmail.com;
secretario@ddec.pr.gov; julia.mignuccisanchez@gmail.com; professoraviles@gmail.com;
gmch24@gmail.com; ausubopr88@gmail.com; carlos.rodriguez@valairlines.com;
amaneser2020@gmail.com; acasellas@amgprlaw.com; presidente@camarapr.net;
jmarvel@marvelarchitects.com; amassol@gmail.com; jmartin@arcainc.com;
eduardo.rivera@afi.pr.gov; leonardo.torres@afi.pr.gov; carsantini@gmail.com;
directoralcaldes@gmail.com; imolina@fedalcaldes.com; LCSchwartz@lbl.gov;
thomas@fundacionborincana.org; cathykunkel@gmail.com; joseph.paladino@hq.doe.gov;
adam.hasz@ee.doe.gov; Sergio.Gonsales@patternenergy.com; Eric.Britton@hq.doe.gov;
energiaverdepr@gmail.com; Arnaldo.serrano@aes.com; gustavo.giraldo@aes.com;
accounting@everstreamcapital.com; mgrpcorp@gmail.com; jczayas@landfillpr.com;
Jeanna.steele@sunrun.com; mildred@liga.coop; rodrigomasses@gmail.com;
presidencia-secretarias@seguros multiples.com; cpsmith@cooperativahidroelectrica.coop;
maribel@cooperativahidroelectrica.coop; apoyo@cooperativahidroelectrica.coop;
larroyo@earthjustice.org; flcaseupdates@earthjustice.org; gguevara@prsciencetrust.org;
hrivera@jrsp.pr.gov; contratistas@jrsp.pr.gov; agraitfe@agraitlawpr.com;
rstgo2@gmail.com; pedrosaade5@gmail.com; rolando@bufete-emmanuelli.com;
notificaciones@bufete-emmanuelli.com; rhoncat@netscape.net;
Marisol.Bonnet@hq.doe.gov; ernesto.rivera-umpierre@hq.doe.gov;
elizabeth.arnold@hq.doe.gov; info@icsepr.org; john.jordan@nationalpfg.com;
info@marinsacaribbean.com; aconer.pr@gmail.com; pathart@ge.com;
contratistas@jrsp.pr.gov; Laura.rozas@us.dlapiper.com; renewableenergy@me.com;
rcorrea@prfaa.pr.gov; JGOB@prepa.com; israel.martinezsantiago@fema.dhs.gov;
jcintron@cor3.pr.gov; gsalgado@cor3.pr.gov; mario.hurtado@lumamc.com;
wayne.stensby@lumamc.com; Ashley.engbloom@lumamc.com; Legal@lumamc.com;
jorge.flores@lumapr.com; breanna.wise@lumapr.com; energia@ddec.pr.gov;
Francisco.Berrios@ddec.pr.gov; Laura.Diaz@ddec.pr.gov; isabel.medina@ddec.pr.gov;
ialicea@sanjuanciudadpatria.com; alescudero@sanjuanciudadpatria.com;

oabayamon@yahoo.com; quinonesporrata@qaclaw.com; equinones@qaclaw.com;
vcandelario@qaclaw.com .



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

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