



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

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

CASE NO.: NEPR-AP-2018-0004

SUBJECT: Resolution extending the term to  
address LUMA's *Motion for Reconsideration  
of Final Resolution and Order of March 24,  
2022*

**RESOLUTION**

**I. Relevant Background**

On March 24, 2022, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Final Resolution and Order in the instant case ("Final Resolution") through which it established the formula for the wheeling credit. The Energy Bureau stated that such formula would be the sum of the full Fuel Charge Adjustment ("FCA") and full Purchased Power Charge Adjustment ("PPCA").<sup>1</sup> The Energy Bureau ordered LUMA<sup>2</sup> to file a formal version of the wheeling customer rider within seven (7) days after the notification of the Final Resolution, including a description of and rationale for any changes proposed from the draft version provided as Attachment A to the Final Resolution.<sup>3</sup>

On March 30, 2022, LUMA filed a document titled *Urgent Request for Extension of Time to Submit Wheeling Customer Rider and Proposed Changes to Same* ("March 30 Motion"). Through the March 30 Motion, LUMA requested the Energy Bureau to grant until April 21, 2022 for LUMA to address the portion of the Final Resolution that requires filing the Proposed Rider.<sup>4</sup> Further, LUMA asserted that, even though the deadline for moving for reconsideration was April 13, 2022, it required until April 21, 2022, to review the Final Resolution and the draft customer rider to determine if it would propose changes to the draft rider and to draft an explanation and rationale for any proposed changes.<sup>5</sup>

On April 8, 2022, the Energy Bureau issued a Resolution ("April 22 Resolution") through which it granted LUMA until April 21, 2022, to file the Proposed Rider.<sup>6</sup> However, the Energy Bureau clarified that if LUMA was requesting a time extension to move for reconsideration, such request was denied.<sup>7</sup>

On April 13, 2022, LUMA filed a document titled *Motion for Reconsideration of Final Resolution and Order of March 24, 2022* ("Request for Reconsideration"). Through its Request for Reconsideration, LUMA questions certain portions of the Final Resolution and requests their reconsideration. Among other things, LUMA argues that several statements, conclusions, and findings set forth in the Final Resolution are not properly supported by the administrative record nor by substantial evidence in the administrative record, and therefore, should be reconsidered.<sup>8</sup>

<sup>1</sup> See Final Resolution, pp. 16-18.

<sup>2</sup> LUMA Energy, LLC as ManagementCo., and LUMA Energy ServCo, LLC as ServCo. (collectively, "LUMA").

<sup>3</sup> See, Final Resolution, p. 18. LUMA's proposed rider along with the explanation and rationale for any proposed changes is hereinafter collectively referred to as the "Proposed Rider".

<sup>4</sup> March 30 Motion, p. 3.

<sup>5</sup> *Id.*, pp. 2-3.

<sup>6</sup> April 22 Resolution, p. 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*, p. 14.

First, LUMA argues that the Energy Bureau's alleged refusal to adopt the unbundling framework proposed by the Puerto Rico Electric Power Authority ("PREPA") and LUMA is not supported by substantial evidence in the administrative record, and should be reconsidered.<sup>9</sup> LUMA also seeks reconsideration of the Energy Bureau's decision to reject the Marginal Cost of Service Study filed by PREPA and LUMA (MCoSS) and to establish the wheeling rate or credit since the Energy Bureau allegedly did not consider the totality of the evidence in the record.<sup>10</sup> LUMA asserts that such a determination is an arbitrary change in the Energy Bureau's position on what was needed to unbundle rates and adopt an energy wheeling credit, without an explanation based on substantial evidence on the record.<sup>11</sup> Relatedly, LUMA requests reconsideration of certain statements and findings in connection to the aforementioned determinations.<sup>12</sup>

Further, LUMA requests reconsideration of the Energy Bureau statements and conclusions of law regarding the determination that the formula for the FCA and PPCA is a reasonable proxy for marginal energy costs for the wheeling credit and that it is reasonable to fix the energy wheeling credit based on the current FCA and PPCA riders.<sup>13</sup> LUMA argues that such portions of the Final Resolution are not grounded on substantial evidence on the administrative record.<sup>14</sup>

LUMA requests reconsideration of the Energy Bureau determinations relating to the obligations of the Provider of Last Resort ("POLR").<sup>15</sup> LUMA states that such determinations are not supported on substantial evidence on the record, and that the evidence on the record establishes the burden of the POLR when customers return.<sup>16</sup>

Regarding the monthly balancing charges, LUMA states it considers that forecasting and measuring actual hourly generation costs is problematic and unreliable, and it will work to develop a method for determining such costs as directed by the Energy Bureau.<sup>17</sup> However, LUMA disagrees with the Energy Bureau's finding there is no need for any additional true-up charges.<sup>18</sup> Further, LUMA requests reconsideration of a portion of the Final Resolution through which the Energy Bureau adopts the structure of the default proposal for the annual imbalance charge, since it is allegedly unsupported by substantial evidence on the record.<sup>19</sup> Moreover, LUMA seeks reconsideration of the Energy Bureau's determination that there is no need for additional annual true-up charges as proposed by LUMA and PREPA's consultant Guidehouse.<sup>20</sup>

Additionally, through the Request for Reconsideration, LUMA states it was not afforded prior notice or opportunity to be heard on the Energy Bureau's intention to fix generation eligibility requirements, and therefore, certain determinations in the Final

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<sup>9</sup> *Id.*, pp. 18-22.

<sup>10</sup> *Id.*, pp. 22-30.

<sup>11</sup> *Id.*, p. 23.

<sup>12</sup> *Id.*, pp. 18-30.

<sup>13</sup> *Id.*, pp. 31-38.

<sup>14</sup> *Id.*, p. 36.

<sup>15</sup> *Id.*, pp. 38-40.

<sup>16</sup> *Id.*, p. 38.

<sup>17</sup> *Id.*, p. 40.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*, pp. 42-44.

<sup>20</sup> *Id.*, p. 45.



*[Handwritten signatures and initials in blue ink, including 'Jim', 'JH', and 'SPM']*

Resolution in relation to generation eligibility are arbitrary and deprive LUMA of its rights to procedural due process.<sup>21</sup> LUMA further argues that such findings lack support on the administrative record and should be stricken down.<sup>22</sup>

LUMA asserts that the time frame proposed by the Energy Bureau to consider the Standard Wheeling Agreement is unreasonable, since it does not provide the Energy Bureau with sufficient time to consider motions for reconsideration filed on or before April 13, 2022 regarding the Final Resolution.<sup>23</sup> LUMA also states that, given the proceedings relating to the Standard Wheeling Agreement were allegedly “dormant” from August 2021, it will need to reassess the resources available to conduct further proceedings on a Wheeling Services Agreement. Therefore, it requests that the Energy Bureau stay such proceedings or extend the deadlines until June 2022, after proceedings in Case No. NEPR-MI-2021-0004, regarding LUMA’s Annual Budgets, conclude and the Energy Bureau approves LUMA Budgets for Fiscal Year 2023.<sup>24</sup> LUMA also argues that if the Energy Bureau intends to set the default wheeling credit, that credit should be adopted temporarily or implemented as a pilot effort, which will allow the Energy Bureau to gather additional data.<sup>25</sup>

Finally, LUMA questions the consideration of Regulation 9351<sup>26</sup> in the Final Resolution, since the Energy Bureau allegedly enacted such regulation four (4) months after the record closed.<sup>27</sup> LUMA also states it has been unable to corroborate that Regulation 9351 was approved in conformity with Act 38-2017.<sup>28</sup>

On April 20, 2022, LUMA filed a document titled *Request for Stay of Portions of Final Resolution and Order of March 24, 2022, Pending Final Adjudication, and Request for Additional Remedies* (“April 20 Motion”). In the April 20 Motion, LUMA asserts that the evidence in the administrative record supports the reconsideration of various aspects and that the Request for Reconsideration puts forth weighty arguments with a high likelihood of success.<sup>29</sup> Through the April 20 Motion, LUMA requests that the Energy Bureau: (i) stay several orders in the Final Resolution until the Request for Reconsideration is adjudicated; (ii) reschedule the matters pertaining such orders; and (iii) clarifies a portion of the Final Resolution. LUMA also proposes that the Energy Bureau opens a separate proceeding for certain implementation matters regarding the instant case.

On April 22, 2022, the Energy Bureau issued a Resolution and Order (“April 22 Resolution”) through which it accepted for evaluation the Request for Reconsideration. The Energy Bureau is in the evaluation process of the Request for Reconsideration. However, as shown, LUMA puts forth several arguments that require a detailed analysis because of their novelty, extension, and complexity.

## II. Discussion and Determination

Section 3.15 of Act 38-2017 establishes that when a party to an administrative proceeding files a request for reconsideration, the Agency must issue and notify its

<sup>21</sup> *Id.*, p. 46.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*, p. 47.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Known as *Regulation on Electric Energy Wheeling* (“Regulation 9351”).

<sup>27</sup> Request for Reconsideration, p. 48.

<sup>28</sup> Known as *Administrative Procedure Act of the Government of Puerto Rico* (“Act 38-2017”).

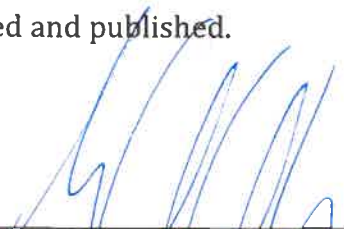
<sup>29</sup> April 20 Motion, pp. 2-3, ¶2- ¶4.




determination within ninety (90) days following the filing of the motion.<sup>30</sup> Nevertheless, within those ninety (90) days, the Agency can extend, for just cause, the term to resolve for a period that will not exceed thirty (30) additional days.<sup>31</sup>

LUMA filed its Request for Reconsideration on April 13, 2022. Therefore, the ninety-day term expires on July 12, 2022. Given the complexity of the analysis needed to address LUMA's Request for Reconsideration and considering the new arguments brought, the Energy Bureau deems that additional time is needed to properly analyze LUMA's requests. The Energy Bureau **DETERMINES** that there exists just cause to extend the original ninety-day term to address the Request for Reconsideration, by an additional thirty (30) days, under Section 3.15 of Act 38-2017. The Energy Bureau **EXTENDS** the referenced term by an additional thirty (30) days. Therefore, the Energy Bureau will issue its final determination on LUMA's Request for Reconsideration on or before **August 11, 2022**.

Be it notified and published.

  
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Edison Avilés Deliz  
Chairman

  
\_\_\_\_\_  
Lillian Mateo Santos  
Associate Commissioner


  
\_\_\_\_\_  
Ferdinand A. Ramos Soegaard  
Associate Commissioner

  
\_\_\_\_\_  
Sylvia B. Ugarte Araujo  
Associate Commissioner

#### CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau have so agreed on July 11, 2022. I also certify that on July 11, 2022 a copy of this Resolution was notified by electronic mail to the following: yahaira.delarosa@us.dlapiper.com; margarita.mercado@us.dlapiper.com, kbolanos@diazvaz.law; jmarrero@diazvaz.law; contratistas@jrsp.pr.gov; hriviera@jrsp.pr.gov; manuelgabrielfernandez@gmail.com; ramonluisnieves@rlnlegal.com; ccf@tcm.law; and agraitfe@agraitlawpr.com. I also certify that today, July 11, 2022, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today July 11, 2022.

  
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Wanda I. Cordero  
Interim Clerk



<sup>30</sup> 3 L.P.R.A. § 9655.

<sup>31</sup> *Id.*