

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

**NEPR**

**Received:**

**Aug 24, 2022**

**6:51 PM**

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

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

**SUBJECT: Motion Submitting Proposed Changes  
to the Draft Wheeling Customer Rider**

**MOTION SUBMITTING PROPOSED CHANGES TO THE  
DRAFT WHEELING CUSTOMER RIDER**

**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 March 24, 2022, the Puerto Rico Energy Bureau (“Energy Bureau”) issued a Final Resolution and Order in this proceeding (“Final Resolution and Order”). First, this Energy Bureau declined to adopt both the Unbundling Framework and the Marginal Cost of Service Study presented by the Puerto Rico Electric Power Authority (“PREPA”) and LUMA, which were prepared by Guidehouse. Second, this Energy Bureau adopted a Wheeling Tariff, setting the formula for the wheeling credit as the full fuel cost adjustment rider (“FCA”) and the purchased power cost adjustment rider (“PPCA”), which requires removing those riders’ costs from the bill to be issued to wheeling customers. Moreover, in the pertinent part, this Energy Bureau determined that further processes were needed to adopt a standard Wheeling Services Agreement and to develop a standard retail supply agreement.

2. 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 the issuance of the Final Resolution and Order, LUMA submitted a *Motion for Reconsideration of Final Resolution and Order of March 24, 2022* (“Motion for Reconsideration”).<sup>1</sup>

3. On April 22, 2022, the Energy Bureau entered a Resolution and Order that accepted LUMA’s Motion for Reconsideration. Thereafter, on July 11, 2022, the Energy Bureau issued a Resolution and Order stating that it would extend thirty (30) days more than the initially allotted timeframe to rule upon LUMA’s Motion for Reconsideration, as allowed under Section 3.15 of the LPAU.

4. On August 10, 2022, the Energy Bureau entered a Resolution and Order, whereas it denied LUMA’s Motion for Reconsideration (“August 10<sup>th</sup> Order”). Further, the Energy Bureau ordered LUMA to submit a formal version of the wheeling customer rider along with a description and rationale for any proposed changes from the draft version provided as Attachment A to the Final Resolution and Order within seven days. The deadline to file said submittal was August 17, 2022.

5. On August 15, 2022, LUMA filed a *Request for Extension of Time to Submit Changes to the Draft Wheeling Customer Rider*. Therein, LUMA petitioned until August 24, 2022, to determine if it would propose any changes to the draft wheeling customer rider as instructed by

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<sup>1</sup> Then, on April 20, 2022, LUMA filed a *Request for Stay of Portions of Final Resolution and Order of March 24, 2022, Pending Final Adjudication and Request for Additional Remedies*. LUMA requested this Energy Bureau stay several of the orders included in the Final Resolution and Order until the Motion for Reconsideration is adjudicated (“Request for a Stay”). Specifically, LUMA petitioned that the Energy Bureau stay the 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 on page 18. LUMA requested that the Energy Bureau stay the order to file a formal version of the wheeling customer rider for at least thirty days after it issues a determination on LUMA’s Motion for Reconsideration.

the Energy Bureau, as well as to draft the description and rationale for any changes it may have to the proposed version.

6. In compliance with the August 10<sup>th</sup> Order, LUMA submits herein its proposed changes to the draft wheeling customer rider as instructed by the Energy Bureau, including a description and rationale explaining those changes, as Exhibit 1 to this Motion. LUMA understands that there is an inherent risk to publishing a Wheeling Credit Rider tariff considering that the record does not support a determination that it is proper or reasonable to forego unbundling and proceed to set a wheeling credit based on the FCA and PPCA rider costs. Also, the most prudent way to set a wheeling rate is using evidence substantiated by a Marginal Cost-of-Service Study, which was not used to develop the Wheeling Customer Rider as per the determination of this Energy Bureau. Additionally, many key regulatory elements required to enact the rider are not yet in place. The Wheeling Customer Rider alone is not a complete solution and should be accompanied by a more fulsome tariff, such as the Wheeling Services Agreement tariff, before it can be implemented and made available for customer use.

7. Finally, as described in Exhibit 1, LUMA's submittal is an illustrative proposal of what a wheeling customer rider can be since, to protect customers and avoid gaming, the market rules for retail wheeling services and the wheeling services agreement needs to be adopted by this Energy Bureau before the wheeling customer rider is implemented.

**WHEREFORE**, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned, **receive and accept** Exhibit 1 to this Motion, and **deem** that LUMA complied with the Resolution and Order of August 10, 2022.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 24<sup>th</sup> day of August 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](mailto:ramonluisnieves@rlnlegal.com); Office of the Independent Consumer Protection Office, Hannia Rivera, [hrivera@jrsp.pr.gov](mailto:hrivera@jrsp.pr.gov), and Pedro E. Vázquez Mélenlez, [contratistas@jrsp.pr.gov](mailto:contratistas@jrsp.pr.gov); Puerto Rico Manufacturer's Association via Manuel Fernández Mejías, [manuelgabrielfernandez@gmail.com](mailto:manuelgabrielfernandez@gmail.com); and Ecoeléctricas via Carlos Colón, [ccf@tcm.law](mailto: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](mailto:kbolanos@diazvaz.law), and Joannely Marrero Cruz, [jmarrero@diazvaz.com](mailto: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**:

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Exhibit 1

## Exhibit 1 - Wheeling Customer Rider

### Introduction and Comments Regarding the Wheeling Customer Rider

As stated in the April 13, 2022, Motion for Reconsideration, LUMA Energy, LLC (LUMA) maintains there is an inherent risk to publishing this Wheeling Customer Rider (WCR), including, but not limited to, the following:

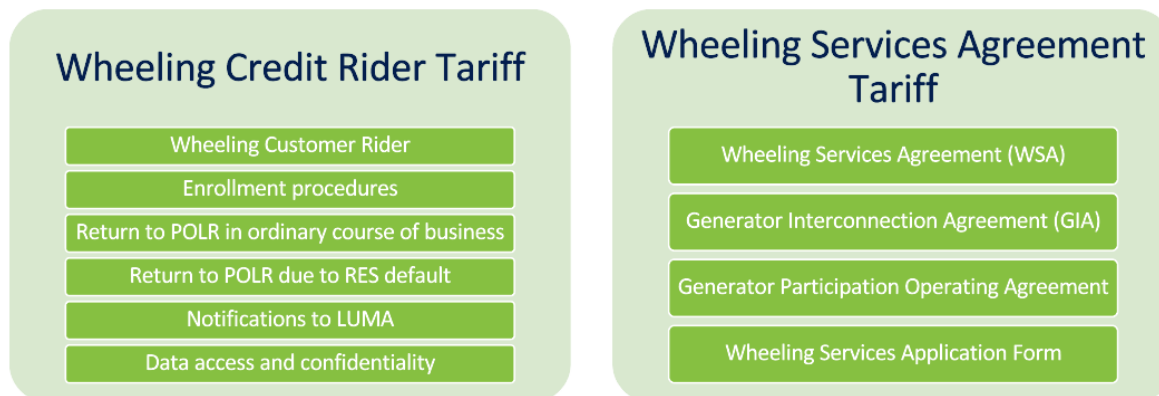
- Reasonableness - The record does not support a determination that it is proper or reasonable to forego unbundling and proceed to set a wheeling credit based on the Fuel Cost Adjustment (FCA) and Purchased Power Cost Adjustment (PPCA) rider costs.
  - The FCA and PPCA riders have not been confirmed on the record as a reasonable proxy for marginal energy costs for the wheeling credit.
  - Both factors contain fixed costs, which should be borne by all customers, and are based on average costs. This is different from the costs being avoided by wheeling customers, which are based on marginal costs. There are scenarios where the marginal cost is less than the average cost.
- Cross-subsidization - The most prudent way to set a wheeling rate is using evidence substantiated by a Marginal Cost-of-Service Study (MCoSS). Considering this WCR was not developed using an MCoSS, one cannot confirm wheeling will not result in cost shifting, or cross-subsidization to non-participating customers, which is financially disadvantaging to them.
- Readiness – Many key regulatory elements, required to enact this rider, have not yet been developed, reviewed, or approved by the Puerto Rico Energy Bureau (Energy Bureau or PREB) and are not yet in place.

The WCR alone is not a complete solution and requires an accompanying, more fulsome tariff before it can be implemented and be made available for customer use. Upon initial review, the WCR will need to be accompanied by a Wheeling Credit Rider Tariff (WCR Tariff) and a Wheeling Services Agreement Tariff (WSA Tariff). An illustrative structure of both tariffs is outlined below.



## Exhibit 1 - Wheeling Customer Rider

Figure 1. Illustrative Retail Wheeling Tariff Structure



Notes:

1. The two tariffs would set forth all of the rules and procedures for the retail wheeling program to ensure transparency for all participants. They would include standard forms of the WSA, GIA, the Generator Participation Operating Agreement and application form as exhibits and be drafted by LUMA and approved by the Energy Bureau.
2. The GIA would be part of the WSA and will be consistent with the LGIA which is currently in place.

The WCR Tariff will govern the relationship between the wheeling customer and LUMA, both in its role as the Transmission and Distribution (T&D) operator and in its agency role on behalf of the Puerto Rico Energy Power Authority (PREPA) with its attendant Provider of Last Resort (POLR) obligation. In addition to the WCR, the WCR Tariff should, at a minimum, include the following general elements:

- Enrollment procedures
- Return to PREPA/LUMA in ordinary course of business
- Return to PREPA/LUMA as a result of Retail Electricity Supplier (RES) default
- Notifications to LUMA
- Data access and confidentiality

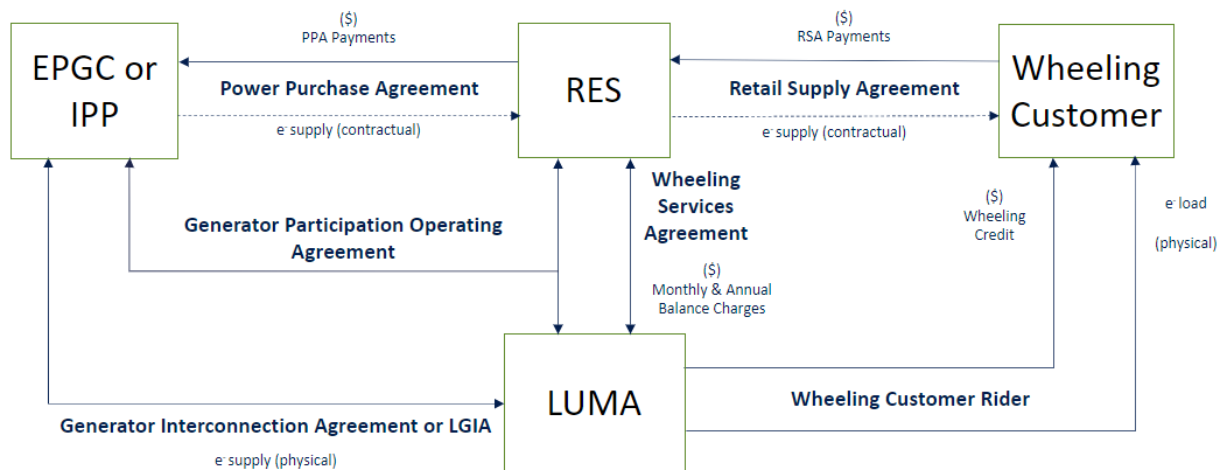
The WSA Tariff will govern the relationship between the RES and LUMA, both in its role as the T&D operator and in its agency role on behalf of PREPA with its attendant POLR obligation. The WSA Tariff should include the following:

- Wheeling Services Agreement (WSA)
- Generator Interconnection Agreement (GIA)
- Generator Participation Operating Agreement (GPOA)
- Wheeling Services Application Form (WSAF)

The relationship between the entities and the tariff elements is illustrated below.

## Exhibit 1 - Wheeling Customer Rider

Figure 2. Illustrative Retail Wheeling Deal Diagram



Assuming that the RES procures power from an Electric Power Generation Company (EPGC) or Independent Power Producer (IPP), that is independent of the RES, for sale to a wheeling customer under a Retail Supply Agreement (RSA) the following elements are required which would also be part of the WSA Tariff:

- GIA, which would be consistent with the Large Generator Interconnection Agreement (LGIA) currently used for projects selected in the Request for Proposal (RFP) process if the generator was larger than 20 MW.
- GPOA, which would establish the operational requirements, including under emergency conditions.

Some of these elements have been developed for other purposes and will be adapted for this purpose, other elements must still be developed before this rider can be enacted for customer use, including the establishment of:

- WSA
- GPOA
- WSAF and supporting processes/requirements
- RSA

The WCR presented below is illustrative only and is dependent on several guidelines and criteria that have not yet been established, as detailed above. Until such time as the necessary supporting elements have been reviewed and approved, the WCR is not an effective rider and will not be published in LUMA's Tariff Book.

## WHEELING CUSTOMER RIDER

### DESIGNATION:

WCR

### AVAILABLE:

Everywhere in Puerto Rico

### CUSTOMER ELIGIBILITY:

Large commercial and industrial customers (~~both~~, 250 kVA and over) with appropriate interval metering registering usage on an hourly basis, at a minimum, and who have ~~elected to receive supply~~ **entered into a Retail Supply Agreement to purchase all of their energy** from an eligible retail electricity supplier **with a Wheeling Services Agreement that is currently in effect**<sup>1</sup>. If an otherwise eligible customer does not currently satisfy the metering requirement, that customer ~~may~~ **must** pay **all costs associated with purchasing and installing** such metering **equipment**<sup>2</sup> or petition the Energy Bureau for specific approval of an estimated customer load shape as a **temporary** alternative means of satisfying the metering requirement **until such metering requirements are met**<sup>3</sup>.

### WHEELING CUSTOMER RATES:

The rates for an eligible wheeling customer pursuant to this rider are the same as the otherwise applicable rates for that customer with the exception that the FCA and PPCA shall no longer be charged to that customer. All other charges will continue to apply, and the wheeling customer will be billed normally for those charges. **Wheeling customers are not eligible for additional riders otherwise available to commercial and industrial customers.**<sup>4</sup>

### PROVISIONS FOR RETURN TO THE PROVIDER OF LAST RESORT:

When a wheeling customer returns to the provider of last resort, the change of service date shall be the end of the customer's current billing period **as defined in the notification clause of the Wheeling Services Agreement**<sup>5</sup>, except in case of a default by the retail electricity supplier. With such a default, the change of service date shall be the day of default.

A wheeling customer electing to return to the provider of last resort shall not be eligible to elect a new retail electricity supplier for a 12-month period after the change of service date. A wheeling customer shall be eligible to transfer from one **eligible** retail electricity supplier to another **eligible retail electricity supplier with a Wheeling Services Agreement that is currently in effect**<sup>6</sup> without penalty provided there is no interim period where the wheeling customer has no supplier.

A wheeling customer that returns to the provider of last resort due to the action of the retail electricity supplier, either the choice of the supplier or default, shall not be eligible to elect a new retail electricity supplier for 30 days after the change of service date. However, at the end of the 30-day restriction, that wheeling customer may not return to the same retail electricity supplier or any affiliate of that same supplier.

## Exhibit 1 – Wheeling Customer Rider

# Description and Rationale of Changes to Wheeling Customer Rider

Changes proposed to the *Customer Eligibility* section of the WCR are intended to clarify eligibility requirements by outlining the agreements which must be in effect and the equipment that must be in place before the rider can be enacted.

- 1- A wheeling customer must not just elect to receive supply, they must have entered into an RSA for all of their energy needs. Equally, the RSA must be with a RES which has a WSA currently in place.
- 2- Adding specificity around the costs associated with installing metering equipment.
- 3- In order to have a transparent and measured wheeling process, which is required to avoid cross-subsidization, an estimated customer load shape should only be a temporary solution until such time as metering requirements can be satisfied. An estimated customer load shape should not be a long-term solution.

Changes proposed to the *Wheeling Customer Rates* section of the WCR are intended to ensure that retail riders are not applied to wheeling customers.

- 4- Riders developed within the Tariff Book are for retail customers and are not intended to be combined with wheeling.

Changes proposed to the *Provider of Last Resort* section of the WCR are intended to add specificity to the provisions.

- 5- Ensuring consistency with the WSA to be developed and approved by the Energy Bureau.
- 6- Updated so that it is consistent with the language in the Customer Eligibility section of the WCR (see note 1).