

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

**NEPR**

**Received:**

**Aug 26, 2022**

**6:31 PM**

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

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

**SUBJECT: Requests Regarding the “Further Processes” Scheduled on the Wheeling Services Agreement, Request for an Agenda for the Technical Conference of September 23<sup>rd</sup>, and submission of a proposed agenda.**

**REQUESTS REGARDING THE “FURTHER PROCESSES” SCHEDULED ON  
THE WHEELING SERVICES AGREEMENT, REQUEST FOR AN AGENDA FOR THE  
TECHNICAL CONFERENCE OF SEPTEMBER 23<sup>RD</sup> AND SUBMISSION OF A  
PROPOSED AGENDA**

**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, and 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) this Puerto Rico Energy Bureau (“Energy Bureau”) issued a Final Resolution and Order in this proceeding (“Final Resolution and Order”). In what is relevant to this Motion, on page 21 of the Final Resolution and Order, this Energy Bureau determined that “further processes” were needed to adopt a standard wheeling services agreement. For this, the Energy Bureau requested stakeholder comments by April 25, 2022, and scheduled a technical conference for May 17, 2022. *See* Final Resolution and Order at page 21.

2. LUMA timely submitted a *Motion for Reconsideration of Final Resolution and Order of March 24, 2022* (“Motion for Reconsideration”).<sup>1</sup> 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 for thirty (30) additional days, the timeframe to rule upon LUMA’s Motion for Reconsideration.

3. 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”). The Energy Bureau ordered that LUMA 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.<sup>2</sup> Further, the Energy Bureau granted twenty (20) days for stakeholders to submit comments on relevant issues for wheeling services agreements outlined in Attachment B to the Final Resolution and Order<sup>3</sup>. Finally, this Energy Bureau scheduled a

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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. Therein, LUMA contended that there were 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. As such, it was in the public interest to conclude the process of addressing LUMA’s Motion for Reconsideration before LUMA is called upon to file the rider. Thus, 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.

<sup>22</sup> On August 15, 2022, LUMA requested an extension until August 24, 2022, to submit the rider.

<sup>3</sup> On August 24, 2022, LUMA submitted its proposed changes to the wheeling rider with this Energy Bureau. See “Motion Submitting Proposed Changes to the Draft Wheeling Customer Rider” (“Submission of Proposed Changes to the Wheeling Rider”).

Technical Conference for September 23, 2022, to discuss the relevant issues for a wheeling services agreement (“September 23<sup>rd</sup> Technical Conference”).

4. Without waiving the right to judicial review of the Final Resolution and Order and of the denial of LUMA’s Motion for Reconsideration, LUMA respectfully submits that it is beneficial to all of the parties to this proceeding and to stakeholders who may submit comments on a wheeling services agreement, for this Energy Bureau to initiate a new non-adjudicative or “MI” proceeding to discuss the “further processes” required to implement wheeling including the stakeholder comments on the wheeling services agreement.

5. As the record of this proceeding shows, including the Final Resolution and Order and the August 10<sup>th</sup> Order, this proceeding has been adjudicative in nature and thus ruled by Section III of the LPAU and Regulation 8543. The Final Resolution and Order and the August 10<sup>th</sup> Order concluded the formal adjudicative phase of this “AP” proceeding and is a final determination that recognizes the rights of the parties to seek judicial review. However, Section V of the Final Resolution and Order on page 21, where this Energy Bureau issued the directives for stakeholders to submit comments and scheduled a technical conference to discuss the wheeling services agreement, is labeled “Further Processes to Establish Wheeling Services Agreements . . . ,” which title does not clearly state whether the “further processes” are meant to be a continuation of the captioned adjudicative proceeding or will be conducted as a non-adjudicative proceeding. Also, the Final Resolution and Order does not explain the nature and scope of further proceedings to consider the wheeling services agreement or the procedural rules that will apply.

6. Importantly, the Energy Bureau’s reference in the Final Resolution and Order to “stakeholders” when requesting comments is more consistent with an MI docket rather than

intervenors or parties to this proceeding which correlates with the adjudicative proceedings laid-out in Regulation 8543. Given the dearth of legal and regulatory guidance and rules on the nature and scope of the processes that may be conducted in this proceeding under the rubric of an adjudicative procedure after a Final Resolution and Order subject to judicial review per the LPAU was issued, LUMA respectfully submits that transparency and the public policy mandates of the LPAU to foster informal resolutions of controversies and to ensure that processes before administrative agencies are quick, just and economical and afford equitable resolutions, *see* Section 1.2 LPAU, 3 LPRA §9602, weigh in favor of having clear rules on the nature and scope of the “further processes” regarding the wheeling services agreement.

7. Given the aforementioned, LUMA respectfully submits that a better course of action is for this Energy Bureau to open a new, non-adjudicative proceeding (“MI proceeding”), prior to the deadline for filing comments on the wheeling services agreement and receive those comments for filing in the new MI proceeding. This will allow for more active participation by stakeholders and provide a more collaborative and cost-effective setting for LUMA and stakeholders to address and discuss key issues regarding the wheeling services agreement with this Energy Bureau and its consultants.

8. Relatedly, LUMA respectfully posits that it would be of material benefit to stakeholders and LUMA to learn, prior to the deadline for filing comments on the wheeling services agreement, the nature, and scope of the processes that it will conduct to adopt a wheeling services agreement. This, considering that this Energy Bureau has expressly ruled that there will be “further processes,” and that statement could reasonably be understood to encompass more than the mere implementation of the Final Resolution and Order.

9. Furthermore, LUMA requests that this Energy Bureau issue an agenda of the topics to be discussed in the September 23<sup>rd</sup> Technical Conference. As Exhibit 1 to this Motion, LUMA respectfully submits a proposed agenda for the Technical Conference. This request seeks to ensure that LUMA's representatives attending the September 23<sup>rd</sup> Technical Conference are prepared to address the Energy Bureau's questions. The agenda will also allow for a more effective hearing process and enable LUMA to present its recommendations on the steps and resources that will be required to complete all of the work related to wheeling and stakeholders to provide comments on the proposed next steps.

**WHEREFORE**, LUMA respectfully requests that the Energy Bureau **take notice** of this Motion and **grant** the reliefs requested herein, which include: (1) an order to open a non-adjudicative proceeding to address the adoption of the wheeling services agreement; and (2) issuance of an agenda for the September 23<sup>rd</sup> Technical Conference in accordance with the proposed agenda that is submitted as Exhibit 1 to this Motion.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 26<sup>th</sup> day of August 2022.

I hereby certify that this Motion was filed in the electronic docket of 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:

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*Exhibit 1*  
*Proposed Agenda*

# Exhibit 1 – LUMA Technical Conference Proposed Agenda

## Proposed Agenda

1. Puerto Rico Energy Bureau to outline objectives and goals of new docket
2. LUMA to present proposed future state wheeling ecosystem
3. LUMA to present proposed enabling agreements to enable wheeling in Puerto Rico
4. Discussion of procedural calendar
  - a. Stakeholder comments/views on procedural calendar
5. LUMA to present next steps