

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

IN RE: Wheeling Implementation

CASE NO.: NEPR-MI-2023-00001

SUBJECT: Resolution and Order Approving stakeholder consultation and affirming decision for PREPA to share data

RESOLUTION AND ORDER

I. Introduction and Background

On January 13, 2023, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order initiating this procedure ("January 13 Resolution"). Through the January 13 Resolution, the Energy Bureau ordered:

- 1) LUMA¹ to file a draft Wheeling Services Agreement on or before March 30, 2023;
- 2) LUMA to file a draft Wheeling Services Agreement Application Form before the Stakeholders Technical Conference;
- 3) LUMA to file a proposed nonrefundable fee with documentation before the Stakeholders Technical Conference;
- 4) LUMA and PREPA to respond to the Information Requests in Attachment A within 20 days of this Resolution and Order.²

The January 13 Resolution also requested stakeholders to comment on the wheeling implementation agreements (included as Attachment B), scheduled a Stakeholders Technical Conference for February 23, 2023, and requested comments from stakeholders before and after the Stakeholders Technical Conference. Finally, the January 13 Resolution stated that the Energy Bureau would guide LUMA on the wheeling services agreement before the March 30, 2023, deadline.³

On February 2, 2023, LUMA filed a document titled *Motion Submitting Responses to Requests for Information Issued Through Resolution and Order Dated January 13, 2023* ("February 2 Motion"), in which LUMA responded to the Information Requests in Attachment A of the January 13 Resolution.

On February 15, 2023, LUMA filed a document titled *Motion Submitting Wheeling Services Agreement Application Form and Proposal for the Non-Refundable Fee* ("February 15 Motion"), in which LUMA included a draft Wheeling Services Agreement Application Form and proposed a nonrefundable fee.

On February 21, 2023, LUMA filed a document titled *LUMA's Motion Submitting Stakeholders Comments in Anticipation to Technical Conference* ("February 21 Motion"), in which LUMA submitted its responses to Appendix B of the January 13 Resolution.

On February 23, 2023, the Energy Bureau held the Virtual Stakeholder Technical Conference as scheduled ("February 23 TC"). On the same day, LUMA filed a document titled *Motion Submitting Presentations Offered During Technical Conference of February 23, 2023*

¹ LUMA Energy, LLC, and LUMA Energy ServCo, LLC (jointly referred to as "LUMA").

² January 13 Resolution, p. 4.

³ *Id.*, p. 3.



("February 23 Presentation"). Circon⁴, LUMA, and Phoebus⁵ filed comments after the February 23 TC.⁶

On March 10, 2023, LUMA filed a document titled *Request for Extension of Time to Submit Wheeling Services Agreement* ("March 10 Motion"), in which LUMA requested an extension until April 21, 2023, to file the draft wheeling services agreement which LUMA had to file on or before March 30, 2023, as per the January 13 Resolution.⁷

On March 24, 2023, the Energy Bureau issued a Resolution and Order providing guidance on wheeling implementation agreements, amending the procedural schedule in this proceeding, and directing PREPA to share its OSI-PI data requested by LUMA ("March 24 Order"). The March 24 Order also granted LUMA March 10 Motion to extend until April 21, 2023 the submission of the draft WSA and any amendments to the WSAAF and nonrefundable fee.⁸

On March 31, 2023, PREPA filed a document titled *Motion to Inform PREPA's Position in Regard to the OSI PI Fuel Data and Request for Reconsideration of the March 24 Order* ("PREPA March 31 Motion").

On April 10, 2023, LUMA submitted a document titled *Motion in Partial Compliance with Resolution and Order of March 24, 2023*, that provided supplemental responses to the March 24 Order.

On April 12, 2023, the Instituto de Competitividad y Sostenibilidad Economica ("ICSE") submitted a document titled *Moción del ICSE en respuesta al "Motion to Inform PREPA's Position in Regard to the OSI-PI Fuel Data and Request for Reconsideration of the March 24 Order"* ("ICSE April 12 Motion").

On April 21, 2023, LUMA filed a motion titled *Motion in Compliance with Resolution and Order of March 24, 2023, Submitting Draft Wheeling Services Agreement and Information in Support of Draft Wheeling Services Agreement Application Form* ("April 21 Motion"). In this motion, LUMA submitted a draft wheeling services agreement ("WSA"), draft wheeling services agreement application form ("WSAAF"), and non-refundable fee as directed by the Energy Bureau in the March 24 Order. LUMA also described initial collaboration with stakeholders in developing the draft agreement and offered additional information on the Oregon Direct Access Program.

LUMA requests that the Energy Bureau take notice of the information filed in the April 21 Motion and deem that LUMA complied with prior orders. In addition, LUMA requests at least six months additional time for stakeholder consultation to finalize the WSA, including hiring an independent monitor to facilitate discussions.

On April 27, 2023, LUMA filed *LUMA's Response to PREPA's "Motion to Inform PREPA's Position in the Regard to the OSI PI Fuel Data and Request for Reconsideration of the March 24 Order"* ("LUMA April 27 Response").

⁴ Circon Energy, LLC. ("Circon").

⁵ Phoebus Fund PR, LLC. ("Phoebus").

⁶ See, "Comments and Responses of Circon Energy LLC Following the Technical Conference of February 23, 2023" filed by Circon on March 2, 2023 ("Circon March 2 Comments"). *Motion Submitting Post-Technical Conference Comments* filed by LUMA on March 3, 2023 ("March 3 Comments"). "The Phoebus Fund PR, LLC Comments for Wheeling Technical Conference on February 23 2023," filed by Phoebus on March 7, 2023 ("Phoebus March 7 Comments").

⁷ March 10 Motion, p. 4, ¶ 15.

⁸ March 24 Order.



II. Discussion of LUMA's April 21 Filing

A. LUMA's Compliance with March 24 Order.

In the March 24 Order, the Energy Bureau directed the following:

- LUMA supplements record on items in Section IV.A.1. on or before **April 7, 2023**;
- LUMA must file the draft Wheeling Services Agreement on or before **April 21, 2023**, consistent with guidance in this and past Energy Bureau Resolution and Orders;
- LUMA must file any amendments to the draft Wheeling Services Application Form and non-refundable fee on or before April 21, 2023;
- PREPA to share its OSI-PI data requested by LUMA on or before five (5) business days of the notification of this Resolution and Order; and
- LUMA shall collaborate with stakeholders in finalizing draft wheeling implementation agreements.⁹

The Energy Bureau **TAKES NOTICE** that LUMA's April 10 Motion supplemented the record with the information requested by the Energy Bureau in Section IV.A.1. of the March 24 Order. LUMA's April 21 Motion contains "Exhibit 1 – Wheeling Services Agreement," with a draft WSA, draft WSAAF, and non-refundable fee with the supporting documents.¹⁰ LUMA's filing also describes the collaboration with stakeholders prior to filing with the Energy Bureau¹¹.

The Energy Bureau **DETERMINES** that LUMA's filings contain the information requested in the March 24 Order and **COMPLIANT** with the prior orders issued in this proceeding. The Energy Bureau now turns to LUMA's request for additional stakeholder consultation to finalize the agreements.

B. Request for Additional Stakeholder Consultation

In Section 5.1 of Exhibit 1, of the April 21 Motion, LUMA describes a process for additional stakeholder consultation to finalize the WSA and requests approval from the Energy Bureau. LUMA states:

"LUMA intends to review the feedback provided by the stakeholders thoroughly and respond to each of them in the coming weeks. LUMA appreciates the input from these stakeholders and acknowledges that the time available for collaboration was minimal, especially given that this is a new initiative, and which requires a relatively comprehensive agreement. As a result, LUMA proposes that stakeholder collaboration continue beyond April 21, 2023. If so approved by the Energy Bureau, LUMA would continue to meet on a regular basis with these stakeholders, and any others with a self-identified interest in this docket, to work toward finalizing the WSA. LUMA believes that this sort of collaborative process is the most efficient process to develop a draft WSA for Energy Bureau approval. If the Energy Bureau approves such a process, LUMA would request that the Energy Bureau designate at least one representative for participation.

LUMA envisions retaining an independent moderator with relevant knowledge and experience to help facilitate these stakeholder sessions and would further

⁹ March 24 Order, p. 8.

¹⁰ See April 21 Motion at Annex A for draft WSA, Annex B for draft WSAAF, and Annex C for Nonrefundable fee.

¹¹ *Id.*, p. 6 and Exhibit 1 – Section 5.0 "Stakeholder Collaboration."



anticipate that there would be periodic check-ins to apprise the Energy Bureau of progress. LUMA expects that such a process might take about six months to complete. The completion period could certainly be shorter, although that would require more diligent and frequent participation by stakeholders that in practice might be difficult to schedule given the number of parties involved. At the end of the collaboration period, LUMA suggests that any items which are not resolved between LUMA the stakeholders will be submitted to this Energy Bureau for final adjudication.”¹²

The Energy Bureau believes that the stakeholder collaboration envisioned by LUMA may improve the likelihood of a successful program launch but is concerned that the proposed 6-month timeline may unnecessarily delay implementation of wheeling. For these reasons, the Energy Bureau is approving further stakeholder collaboration under the following conditions:

- the independent monitor will report directly to the Energy Bureau every two weeks;
- the independent monitor's reports to the Energy Bureau can consider LUMA's comments but do not require final approval by LUMA;
- LUMA shall include these conditions in the scope of services with the independent monitor; and
- LUMA will work in good faith with all parties towards final resolution of the WSA within three months of the date that stakeholders file comments on the draft agreements (described further in II.D.).

At the end of this period, parties can file any items which are not resolved for final determination by the Energy Bureau.

C. Guidance to LUMA for Stakeholder Consultation

The Energy Bureau has reviewed LUMA's April 21 Motion and provides the following guidance to consider during consultation with stakeholders:

- *LUMA has not justified the estimated implementation costs* – In Section 3.0, LUMA estimates one-time implementation costs between \$20-\$70 million and \$5-\$10 million in annual operating costs.¹³ The Energy Bureau understands that these are preliminary estimates and that LUMA will provide more refined information at the conclusion of Stage 1. Based on the estimates for the Wheeling Cost Recovery Charge in Table 4, the Energy Bureau is concerned that LUMA's proposed implementation costs will deter early participation in wheeling and prevent the program from reaching a scale to justify the implementation steps. The Energy Bureau is also unclear how several of the proposed actions are independent from other system upgrades that LUMA is already planning and how the costs would be considered incremental to the wheeling program. The Energy Bureau will require additional updates on the implementation costs as stakeholder consultation continues. The Energy Bureau also expects to review and approve any final implementation costs that LUMA intends to recover from wheeling customers.
- *LUMA continues to request costs that were adjudicated in prior proceedings* – Annex D appears to include costs that were adjudicated in Case No. NEPR-AP-2018-0004. This current, non-adjudicative proceeding, which was requested by LUMA, is not the appropriate venue to relitigate these issues before the Energy Bureau.

LUMA should view this guidance solely to inform further stakeholder collaboration in finalizing implementation agreements and should not be viewed as approval either in part

¹² *Id.*, p. 15.

¹³ *Id.*, pp. 9-11.



or whole of any draft agreements. The Energy Bureau may provide further guidance after receipt and review of stakeholder comments.

D. Stakeholder Comments on LUMA's April 21 Motion

The Energy Bureau appreciates the stakeholder participation through this stage of the proceeding. The PREB requests comments from interested stakeholders on the draft WSA, WSAAF, and non-refundable fee within twenty-one (21) days of this Resolution and Order. The Energy Bureau invites broad participation and comments on all aspects of the program that will contribute to success. The request for comments on the implementation agreements will help the Energy Bureau focus stakeholder consultation in finalizing the wheeling implementation agreements.

III. Discussion of PREPA's March 31 Motion

In this motion, PREPA requests the Energy Bureau to reconsider the March 24 Order directing PREPA to share OSI-PI data with LUMA within five (5) business days. PREPA states that these fuel cost data are entered into the software manually and PREPA "cannot assure the accuracy and correctness of the OSI-PI fuel data and strongly believes that using this data to validate other calculations, like the hourly marginal cost, can lead to error."¹⁴

PREPA also states that the OSI-PI software is licensed and offers that unit heat rate curves can provide an alternative to the fuel cost data.¹⁵ Finally, PREPA states that if the Energy Bureau reiterates its order, PREPA will need at least one month to gather and send fuel data to LUMA.¹⁶

ICSE's April 21 Motion requests that the Energy Bureau deny PREPA's motion for reconsideration. ICSE states that PREPA has not provided evidence that the OSI-PI software license precludes sharing the fuel cost data. Moreover, ICSE states that LUMA is an agent of PREPA under the T&D operator agreement.

LUMA's April 27 Response also requests that the Energy Bureau deny PREPA's March 31 Motion. LUMA's response details the contractual relationship between PREPA and LUMA, and LUMA's repeated attempts to request the information from PREPA.¹⁷ LUMA describes operational needs for the information and that LUMA has professional staff to review and vet the accuracy of the data for the proposed uses.¹⁸

The Energy Bureau **DENIES** PREPA's March 31 Motion for reconsideration for the following reasons:

- LUMA has provided strong justifications for the using the data to support operational needs and improving estimates of system marginal energy costs;
- LUMA staff have the professional capability to review and analyze the applicability of the OSI-PI data for the stated purposes; and
- Per the T&D OMA, LUMA is responsible for System Operations.

Under LUMA's responsibility for System Operations, they have requested this data to, "identify potential opportunities to lower costs to consumers by validating dispatch decisions and strategies, optimizing the daily unit commitment schedule, evaluate policies on spinning reserves, or implement dozens of other daily decisions made by System Operations. LUMA has been trying to carry out these actions for almost 18 months. Without the OSI-PI Fuel Data, LUMA will endure significant further delays and in several cases LUMA

¹⁴ PREPA March 31 Motion, p. 4.

¹⁵ *Id.*, pp. 3-4.

¹⁶ *Id.*, p. 5.

¹⁷ See LUMA response Exhibit 1.

¹⁸ LUMA response pp. 8-9.



will lack the basic operational data to support many of PREB’s initiatives to transform the electric sector.”¹⁹

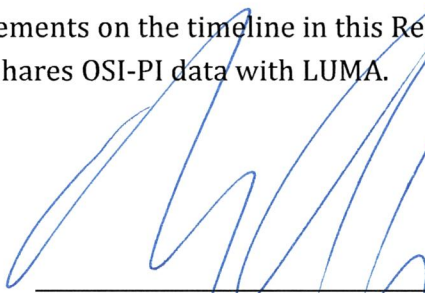
The Energy Bureau agrees with LUMA’s goals to improve system operations and **DIRECTS** PREPA to produce immediately the OSI-PI Fuel Data to LUMA.

IV. CONCLUSION


For all of the above, the Energy Bureau **ORDERS** that:

- Interested stakeholders file comments on LUMA’s draft implementation agreements within 21 days of this Resolution and Order;
- LUMA hires an independent monitor consistent with directives in Section II.B.;
- LUMA engages in good faith efforts to collaborate with stakeholders and finalize the implementation agreements on the timeline in this Resolution and Order; and
- PREPA immediately shares OSI-PI data with LUMA.

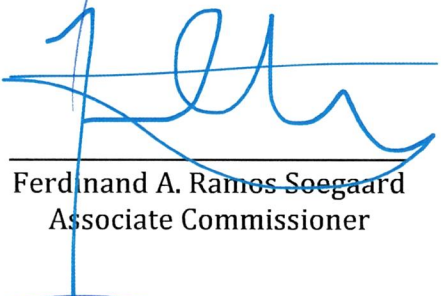
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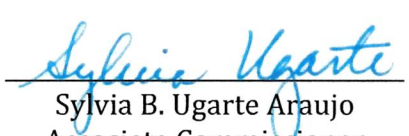
Edison Avilés Deliz
Chairman



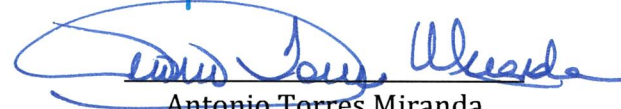
Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



Sylvia B. Ugarte Araujo
Associate Commissioner




Antonio Torres Miranda
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on June 6, 2023. I also certify that on June 6, 2023 a copy of this Resolution and Order was notified by electronic mail to: ana.rodriquezrivera@us.dlapiper.com; margarita.mercado@us.dlapiper.com; akennedy@phoebusfund.com; jmarrero@diazvaz.law, tbrown@circonenergy.com; contratistas@jrsp.pr.gov, hrivera@jrsp.pr.gov, manuelgabrielfernandez@gmail.com, ramonluisnieves@rlnlegal.com; ccf@tcm.law and agraitfe@agraitlawpr.com; and I have moved forward with filing the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today, June 6, 2023.



Sonia Seda Gaztambide
Clerk

¹⁹ LUMA April 27 Response, p.9.

