

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

NEPR

Received:

Feb 5, 2025

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IN RE: PUERTO RICO ELECTRIC
POWER AUTHORITY RATE REVIEW

CASE NO. NEPR-AP-2023-0003

MOTION ON WINDMAR'S REQUEST FOR INFORMATION

TO THE PUERTO RICO ENERGY BUREAU:

Now comes Windmar Renewable Energy, Inc. (Windmar) represented by appearing counsel and very respectfully, states and prays as follows:

1. On January 13, 2025 the examiner Mr. Scott Hempling issued an informal order stating:

The Bureau will address the filing requirements' treatment of RPS compliance when it issues the filing requirements in late January or early February. In describing the required treatment, the Bureau will consider all comments received on January 17, 2025. The filing requirements will address only what the three companies have to file. The filing requirements will make no decision on anyone's entitlement to (a) REC ownership or (b) payments for RECs that anyone does own. As well, the PREB's ultimate decisions on the revenue requirement, for purposes of provisional rates and final rates, will make no decision on anyone's entitlement to those items. Any party seeking clarity about their entitlement to those items needs to raise those questions in the proceedings relating to RPS compliance, not in the rate case, because the rate case determines entitlement only to rates.

2. The day before the order, Windmar had submitted several questions to LUMA / PREPA concerning Renewable Energy Certificates (RECs) which have a direct bearing on the rate case's filing requirements.

3. Key to this analysis is a prior question, which is: *Are the RECs an operating expense of LUMA / PREPA?* If the answer is "yes", the RECs' potential costs must be included in the optimal budget to be filed by LUMA.

4. Mr. Hempling stated:

Prior budgets were constrained by the 2017 rate levels. The proposed budgets, in contrast, will reflect all actions and all associated costs that each entity deems necessary to provide the service that Puerto Rico deserves. But these new budgets might produce base rates higher than what the citizens are willing to pay. We therefore suggest, for discussion on January 10, a requirement that each entity submit an optimal budget, plus three alternative budgets, as follows:

a. The optimal budget would reflect all activities and costs that the entity asserts are justified by the benefits produced—again, all actions and all associated costs that each entity deems necessary to provide the service that Puerto Rico deserves.

5. The RECs are without doubt an expense, as such they must be included in the budget. In fact, PREPA is already paying RECs on the utility size PPOAs which is a recognition that it is an expense. Why is the REC on those PPOAs an expense, and not in others?

6. In this sense, potential REC expenses are not different from potential debt repayment charges (or “legacy charges”) under FOMB plan for PREPA in the Bankruptcy proceeding.

7. The questions raised by Windmar all pertain to RECs as an expense and refer to costs of RECs; amount of RECs, and the legal basis for LUMA to include certain RECs and not others, in its filings.

8. On the amount to be budgeted, the information is available. There are RECs actually being paid by PREPA, based on PREPA’s own PPOAs and the production, consumption and sales to the grid of distributed net metered consumers is also available.

9. There is no controversy about the REC’s legal status.

10. Article 4.1 of Act 17-2019 specifically restated the definition of the RECs as previously defined in Act 82-2010:

8) “Renewable Energy Certificate or REC”- means a personal property that constitutes a tradeable and negotiable asset or commodity that may be purchased, sold, assigned, and transferred between persons for any lawful purpose, which is integrally and inseparably equal to one (1) megawatt-hour (mwh) of electricity generated from a sustainable renewable energy source or alternative renewable energy source in Puerto Rico (issued and registered pursuant to this Act) and, in turn, represents all environmental and social attributes, as defined in this Act.

11. As such, RECs are clearly a potential expense that must be included in the optimal budget.

12. The two items to consider are amount of RECs from Net Metering prosumers and the price of the RECs.

13. The examiner position on Windmar request for information was stated originally on January 15, 2025:

For now, what is relevant or not relevant is for the parties to work out, thoughtfully, cooperatively, and respectfully. Disputes over relevance go to the Bureau, in the proper proceeding. The immediate purpose is to have in the rate filing the information necessary to enable the Bureau to put into the revenue requirement a reasonable value. As previously emphasized, the rate case does not determine entitlement to anything other than rates. So it is important to separate what is necessary to help the Bureau set rates (relevant) to what is necessary to determine entitlement to RECs or REC values (not relevant). At least most of Mr. González’s questions seemed to me relevant to getting a reasonable projected value into the filing, but I am not yet an expert on Puerto Rico’s RPS requirements and I don’t bind the Bureau.

It is also necessary to respect the immense workload for all, stemming from the multiplicity of Bureau proceedings pending. I know that for myself and the other Bureau consultants, we are sufficiently busy—especially in the next two weeks—that we hope not to have to deal with discovery disputes. Our experience is that usually all information comes out in the end, so better to make that information come out earlier rather than later. Remember though that in the near term, nothing is going to change about anyone’s entitlement to anything. So try to work out a schedule for asking and answering questions that acknowledges everyone’s immediate and difficult deadlines on other matters.

Finally, while it is my job to be helpful to all and to make this proceeding move smoothly and efficiently, I don't think I need to be part of additional back-and-forth on information requests among the parties, until there is a need for me to bring matters to the Commissioners' attention.

14. Informed by Mr. Víctor González, Windmar's principal trust there had been no response or contact by the LUMA / PREPA, the Examiner stated:

You may file a motion that specifies the information you wish to receive and that explains the information's relevance to the proceeding on permanent rates. If I determine that either the request or the failure to respond timely was unjustified, I will recommend that the Energy Bureau impose penalties.

15. The information requested relates to the distributed generators (NEM Customers) renewable capacity; and the NET Metering customers exported kWh that LUMA measures and reports as RECs for compliance.

16. The total NEM-customer generated RECs, that like the RECs from utility scale PPOAs can be used for RPS compliance, are the result of adding the NEM customers exported kWh (that LUMA reports) plus an estimate of the self-consumed kWh.

17. LUMA claims that it is only responsible to provide RECs from the PPCA. We requested for a breakdown of the price and quantity of those RECs per independent renewable energy producer. That information has not been provided.

18. What PREPA's budget includes as RPS compliance costs and why some RECs are budgeted, and others are not, has not been provided by LUMA nor PREPA.

19. All RECs are equal whether from NEM customers or PPOAS. All that is requested is information from LUMA as to what is the quantity of those RECs.

20. What does LUMA refer to when it says, "only the cost that are known and measurable". Can they share what they know and what they measure?

21. Do they refer to the costs that are in the PPCA as the “only” cost that is known and measurable? The RPS compliance RECs from the NEM customers; are they not also “known” and reported?

22. The information Windmar requests, which as shown is absolutely pertinent information on RECs, costs to be included in the optimal budget are:

1. Is the Purchased Power Cost Adjustment (PPCA) an operating cost?
2. Is the PPCA included in the operating cost of PREPA’s approved budget?
3. What does Luma refer to or means by the words, “*currently flow*”, in its statement “*LUMA understands that Renewable Energy Credits (RECs) currently flow through the Purchased Power Adjustment (PPCA).*”?
4. What is LUMA's understanding based on?
5. Can LUMA provide a breakdown of the amount and the price that LUMA pays to for the Renewable Energy Producers RECs that flow through the PPCA by specific operating PPOA?
6. Can PREPA, LUMA and or the PREB provide a breakdown of the amount and the price that LUMA has contracted to pay for the Renewable Energy Producers RECs by specific non-operating PPOA that are expected to be in operation in 2025, 2026, 2027 or 2028?
7. What are the basis, Law, Regulation, accounting rules or other, that PREPA or LUMA would use to justify and “*amendment to the revenue requirement*”?
8. What in LUMA's best judgement will trigger a REC purchase obligation?
9. Does LUMA agree that RPS compliance triggers a REC purchase obligation? If the answer is “no” please provide the reason why.
10. Does LUMA assert that PREPA’s budget includes RPS compliance costs?
11. How does LUMA calculate the RPS compliance costs?
12. Can LUMA provide information on what are “measurable” RPS compliance costs?

13. Can LUMA provide information on what are the known RPS compliance costs?
14. Can LUMA provide the quantity of NEM systems and their capacity as of the day it answers the question?
15. What LUMA estimates is the estimated generation of the NEM system approved in kWh per kW of capacity?
16. Can LUMA provide the quantity of NEM customers exported kWh for the year 2024?
17. Can LUMA provide an estimate of what that quantity will be in 2025, 2026, 2027 and 2028?
18. Does LUMA use the amount of NEM Customers exported kWh to provide a RPS compliance percentage?
19. What value and or what cost does LUMA assign to the NEM customers exported kWh that it reports for RPS compliance?
20. Does PREPA or LUMA claim ownership of the NEM customers exported kWh environmental attributes (RECs) that it reports for RPS compliance?
21. Does LUMA in its reports add the RECs from the Renewable Energy Independent Power Producers PPOAs and the RECs from the NEM clients exported kWh to provide the total RPS compliance percentage?
22. Will LUMA continue to do this in 2025, 2026, 2027, and 2028?
22. What Law or regulation requires LUMA to do this?
24. Does LUMA agree that for RPS compliance PPOA RECs. and NEM-customers exported kWh RECs are the same?

23. Having LUMA recognized the existence, value and cost of RECs as part of the PPCA, the main question is reduced to: why some RECs and not others are recognized by LUMA? Under what legal theory?

24. Up to now, LUMA (not PREPA) only response has been:

LUMA understands that Renewable Energy Credits (RECs) currently flow through the Purchased Power Cost Adjustment (PPCA). LUMA submits that to the extent a REC purchase obligation arises, either PREPA or LUMA can seek an amendment to the revenue requirement if such an amendment

is necessary. To the extent PREPA's budget includes RPS compliance costs, the costs included should be only the costs that are known and measurable within the three-year test period.

25. With all due respect, we have to express concern with the examiner's comment concerning possible penalties. Windmar is requesting information from PREPA / LUMA; costs, on the rate case, and open, adversarial process. We have been particularly respectful in communicating the information request and following the examiner's instruction.

26. It is at least uncomfortable to be threatened with penalties for the request of information in an open proceeding, under Law 57-2014 and Law 17-2019 which call for open and transparent processes in the Energy Bureau.

WHEREFORE, it is respectfully requested that the Hearing Examiner take notice of the foregoing.

RESPECTFULLY SUBMITTED.

I **CERTIFY** the present document was submitted electronically in the PREB's filing system and copy sent to: the Hearing Examiner; notice of filing to PREPA counsel arivera@gmlex.net; to LUMA counsel margarita.mercado@us.dlapiper.com and andrea.chambers@us.dlapiper.com; and Genera counsel lrn@roman-negron.com.

In San Juan, Puerto Rico, February 5, 2025.

/s/ LCDO. FERNANDO E. AGRAIT
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