

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

**IN RE: THE IMPLEMENTATION OF THE
PUERTO RICO ELECTRIC POWER
AUTHORITY INTEGRATED RESOURCE PLAN
AND MODIFIED ACTION PLAN**

CASE NO.: NEPR-MI-2020-0012

SUBJECT: Appointment of Tranche 2
Independent Coordinator; scheduling of
webinar.

RESOLUTION AND ORDER

I. Procedural Background

A. PREPA's IRP

On August 24, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued the Final Resolution and Order in Case No. CEPR-AP-2018-0001 regarding the Puerto Rico Electric Power Authority's ("PREPA") Integrated Resource Plan ("IRP") through which it approved in part and rejected in part PREPA's Proposed IRP ("Approved IRP").¹ The Approved IRP orders the adoption and implementation of a Modified Action Plan as set forth therein, which includes the development of competitive solicitation processes for the procurement of new renewable resources and battery energy storage resources in support of meeting Act 17-2019² targets for renewable energy installations.³

In the Approved IRP, the Energy Bureau established a schedule for minimum quantities of renewable resources and battery energy storage resources to be required through Request for Proposals ("RFP") processes and directed PREPA to submit a renewable resource and battery energy storage procurement plan.

B. Renewables Procurement Plan

On October 6, 2020, the Energy Bureau issued a Resolution and Order through which opened the instant docket to manage the implementation phase of the Approved IRP and the Modified Action Plan ("October 6 Resolution").⁴ In the October 6 Resolution, the Energy Bureau determined that it was appropriate to open a separate docket for the implementation phase of the Approved IRP,⁵ since Case No. CEPR-AP-2018-0001 constitutes an adjudicative proceeding opened to evaluate PREPA's Proposed IRP.⁶ The Energy Bureau also stated that it may open additional dockets related to the implementation of the Approved IRP and Modified Action Plan, as necessary.⁷

On October 23, 2020, PREPA filed in the instant case a document titled *Motion Submitting Draft Procurement Plan* ("October 23 Motion"). As part of the October 23 Motion, PREPA submitted its Draft Procurement Plan.⁸ On December 8, 2020, the Energy Bureau issued a Resolution and Order ("December 8 Resolution") through which it ordered PREPA to modify

¹ Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan, *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018- 0001, August 24, 2020.

² Known as *Puerto Rico Energy Public Policy Act* ("Act 17-2019").

³ Approved IRP, p. 266.

⁴ October 6 Resolution, p. 1.

⁵ Approved IRP, pp. 14-15.

⁶ October 6 Resolution, p.1.

⁷ *Id.*

⁸ See October 23 Motion, Exhibit A.



the Draft Procurement Plan PREPA submitted for the implementation of the Modified Action Plan.⁹ Through the December 8 Resolution, the Energy Bureau set forth specific changes for PREPA to incorporate in its Draft Procurement Plan, and ordered PREPA to file a final version of the Procurement Plan on or before December 22, 2020.¹⁰ Also, the Energy Bureau ordered PREPA to: (i) file on or before May 1, 2021, an updated Procurement Plan reflecting the specific plans for Tranche 2, and incorporate into that document both lessons learned from the Tranche 1 and any requirements that originated from the Optimization Proceeding or any other intervening Resolutions and Orders issued by the Energy Bureau;¹¹ and (ii) develop, maintain, update and file with the Energy Bureau every six (6) months a timeline for anticipated installations of renewable energy and battery storage resources.¹²

On December 22, 2020, PREPA filed a document titled *Motion in Compliance with Order Submitting Final Procurement Plan and Associated Request for Proposal* through which it submitted a revised Procurement Plan ("December 22 Motion"). On that same date, PREPA submitted a document titled *Motion for Reconsideration of Resolution and Order on Draft Procurement Plan* ("December 22 Reconsideration"). Through the December 22 Reconsideration, PREPA asserted that the December 8 Resolution failed to acknowledge critically important technical considerations and the need for specific interconnection studies, and that PREPA was concerned with Energy Bureau's determinations regarding the timeline for evaluation of RFP responses as well as "its failure to take into account the time required for essential interconnection studies."¹³ PREPA argued that it will require from twelve (12) to fourteen (14) months to complete interconnection studies for projects tendered in response to the RFP.¹⁴

Amend
M
Further, through the December 22 Reconsideration, PREPA requested the Energy Bureau to: (i) amend the December 8 Resolution to allow PREPA to adequately evaluate the proposals that will result from the RFP process; (ii) reconsider how the December 8 Resolution addresses the subject of project evaluation timelines; and (iii) clarify that PREPA will not be obligated to execute a power purchase and operating agreement or energy storage services agreement with any project proponent until the required interconnection Feasibility Study, System Impact Study and Facilities Study have been completed, their results shared with the project proponent and the Energy Bureau, and the results of those studies reflected to the extent appropriate in the pricing and technical provisions of the agreement.¹⁵

Amend
2/15
On January 5, 2021, the Energy Bureau issued a Resolution and Order through which it stated that the December 8 Resolution specifically acknowledged underlying technical considerations associated with interconnection studies ("January 5 Resolution").¹⁶ The Energy Bureau also stated that it does not minimize the importance of time required to review and consider in totality the first set of responses to the RFP.¹⁷ However, in consideration of certain PREPA arguments, the Energy Bureau: (i) extended the time for RFP evaluation from forty-five (45) to seventy-five (75) days;¹⁸ (ii) clarified that it expects PREPA to evaluate responses to the RFP and identify an initial set of respondent proposals that can proceed to the contract negotiation stage ("Phase III") within the 75-day timeline for

⁹ See December 8 Resolution, p. 12.

¹⁰ *Id.*

¹¹ *Id.*, Attachment A, p. 1.

¹² *Id.*, Attachment A, p. 8, ¶ 12.

¹³ December 22 Reconsideration, pp. 4-6.

¹⁴ *Id.*, pp. 12-13.

¹⁵ *Id.*, p. 16.

¹⁶ See January 5 Resolution, pp. 3-4.

¹⁷ *Id.*, p. 5.

¹⁸ *Id.*, p. 5.



evaluation of the responses to the RFP;¹⁹ (iii) denied PREPA's request that the Energy Bureau clarify PREPA's obligations regarding executing power purchase and operating agreements or energy storage service agreements until certain interconnection studies have been completed;²⁰ (iv) reminded PREPA that the December 8 Resolution on the evaluation of the Draft Procurement Plan explicitly and extensively directed PREPA to holistically and innovatively consider interconnection issues and not let them delay the planning for and procurement of required levels of renewable resource installation;²¹ and (v) ordered PREPA to attend a Stakeholder Meeting to be held remotely on January 14, 2021.²²

After several procedural incidents, on July 23, 2021 PREPA and LUMA submitted a document titled *Joint Motion to Submit Revised Updated Procurement Plan* ("July 23 Motion"). Attached to the July 23 Motion was a document titled *Renewable Energy Generation and Energy Storage Resource Procurement Plan-Update No.2* ("Updated Procurement Plan").

C. Tranche 2 RFP

The Tranche 1 RFP was issued by PREPA on February 22, 2021.²³ Following issuance of the Tranche 1 RFP, PREPA received bids and completed initial bid evaluations. Throughout that process, a series of delays affected both bid selection in the Tranche 1 RFP process, but also resulted in delays in issuance of the Tranche 2 and subsequent RFPs initially targeted in the Procurement Plan.

Given the delays that occurred during the Tranche 1 RFP process, On October 29, 2021, the Energy Bureau issued a Resolution and Order ("October 29 Resolution") in which it determined to utilize an Independent Coordinator to conduct the Tranche 2 RFP.²⁴ In the October 29 Resolution, the Energy Bureau stated that: The role of the Puerto Rico Energy Bureau-Independent Coordinator ("PREB-IC"), will include, without limitation: (a) conduct all steps of the competitive bidding process; (b) manage all communications with proponents; (c) manage all communications protocols with proponents; (d) assure adherence to the code of conduct; (e) submit comments and recommendations to the Energy Bureau concerning the Tranche 2 RFP process; (f) develop in coordination with PREPA the proposal evaluation methodology, models, criteria, and assumptions; (g) evaluate proposals; (h) negotiate with proponents; (i) report to the Energy Bureau on monitoring results during each stage of the RFP process; and (j) assure that the goals of the Tranche 2 RFP and related Updated Procurement Plan provisions were achieved.²⁵ The Energy Bureau also indicated that it would issue this separate resolution detailing the powers and duties of the PREB-IC.²⁶

II. Responsibilities and Duties of the PREB-Independent Coordinator

Under the Energy Bureau's direction and supervision, the PREB-IC²⁷ will have full responsibility to conduct the Tranche 2 RFP process. Specific responsibilities and duties assigned to the Independent Coordinator include:

¹⁹ *Id.*

²⁰ *Id.*, p. 6.

²¹ *Id.*, pp. 5-6.

²² *Id.*, p. 7.

²³ See Motion Informing Issuance of Renewables RFP Tranche 1, *In re. Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, Case No. NEPR-MI-2020-0012, February 22, 2021.

²⁴ See October 29 Resolution, pp. 13-14.

²⁵ *Id.*, p. 14.

²⁶ *Id.*

²⁷ On December 13, 2021, the Energy Bureau, through the Public Service Regulatory Board, contracted with Accion Group, LLC to be the PREB-IC as per contract number 2022-000076 ("PREB-IC").



1. Design and administer the Request for Proposals (RFP) procurement process in a fair, unbiased, and impartial manner to ensure the procurement process is conducted with the utmost integrity and fairness, in compliance with the applicable laws and regulations, as well as the Approved IRP and the Updated Procurement Plan.²⁸
2. Implement and manage the RFP process, including all communications with bidders.
3. Host and maintain an electronic web-based platform that will be used to manage the RFP process, including management of all communications with bidders, posting of RFP, Power Purchase and Operating Agreement (PPOA), Energy Storage Service Agreement (ESSA), Grid Services Agreement (GSA), and other supporting documents, posting of bid forms, receipt of bid submissions and document uploads by bidders, and management of bid data and any supplemental data requests and responses ("PREB-IC Platform").
4. Design the solicitation process and proposed forms of the RFP, PPOA, ESSA, GSA, and other documents as needed.
5. Develop bid evaluation approach, and outline approach in the RFP, including both quantitative and qualitative approach and criteria to be applied in bid evaluation.
6. Coordinate with the T&D Operator, LUMA²⁹, to determine Minimum Technical Requirements ("MTR") and technical data requirements for bidders and publish those requirements in the RFP.
7. Coordinate with LUMA to determine preferred project locations, based on projected transmission and/or distribution system conditions, and publish list of preferred project locations in the RFP.
8. Develop recommendations on any bid qualification requirements and/or threshold bid requirements, including credit requirements and security requirements to be published in the RFP and enforced during the bid evaluation and PPOA, ESSA, and GSA contracting process.
9. Host Stakeholder Webinar to provide stakeholders and market participants with information about the RFP process, such as, bid requirements, bid evaluation methodology, communications protocols, among others.
10. Through the PREB-IC Platform, circulate draft RFP, PPOA, ESSA, and GSA for comments by stakeholders, and summarize comments received for consideration by the Energy Bureau in determining final RFP, PPOA, ESSA, and GSA documents to be utilized in the RFP process.
11. Through the PREB-IC Platform, receive bids on or before bidding due date.
12. Complete initial screening of bids and determine bid completeness and conformance with threshold information requirements outlined in the RFP.
13. Notify bidders of any data deficiencies and provide opportunity to cure during the bid cure period.
14. Complete initial ranking and evaluation of bids utilizing the bid evaluation methodology.
15. Develop a short-list of bids to be considered for detailed transmission/distribution system evaluation and system impact study.
16. Provide relevant bid information to LUMA and coordinate with LUMA to assure LUMA's completion of transmission and distribution system interconnection and system impact analyses that consider the sequence of the T&D rebuild activities that are primarily federally funded to assist with the recovery of the grid and mitigate the impact of future disaster events.
17. Integrate transmission and distribution system analyses completed by LUMA into overall bid evaluation and bid ranking.
18. Determine final bid rankings and develop recommendations for bids to proceed to PPOA, ESSA, and GSA execution.

²⁸ If and when necessary, the Energy Bureau will modify the Updated Procurement Plan, to accommodate the execution of the Tranche 2 RFP through the PREB-IC.

²⁹ LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively, "LUMA").



19. Monitor any bid negotiations with bids selected for PPOA execution and advise PREB of any concerns or deviation from the non-negotiable pro-forma PPOA, ESSA, or GSA.
20. Provide bid evaluation, PPOA, ESSA, and GSA information needed for review and approval by the Energy Bureau and by the Financial Oversight and Management Board for Puerto Rico ("FOMB"), in connection with contract approval under the PREPA Fiscal Plan and by the Puerto Rico Public-Private Partnerships Authority ("P3 Authority"), when available.
21. Facilitate execution of approved PPOAs, ESSAs, and GSAs by PREPA.
22. Incidental tasks necessary to perform any of the foregoing duties.

The responsibilities and duties outlined above will enable the PREB-IC to conduct a robust and fair RFP process to procure renewable energy and battery energy storage resources for Puerto Rico. The responsibilities and duties are subject to Energy Bureau oversight and modification, if needed, as the RFP process proceeds.

The Energy Bureau reiterates³⁰ its directives to LUMA and PREPA to cooperate with the PREB-IC and provide any needed data and analytical support required to enable successful completion of the Tranche 2 RFP process.

III. Webinar

The PREB-IC will host a Stakeholder Webinar scheduled for Friday, **January 28, 2022, at 1:00 p.m.** Atlantic Standard Time (AST). The PREB-IC will repeat the Stakeholder Webinar on **February 4, 2022, at 1:00 p.m.** Atlantic Standard Time (AST). This Webinar provides an overview of the process used for the Tranche 2 solicitation to procure renewable energy and battery energy storage resources, and to demonstrate the functionalities found in the PREB-IC Platform that will serve as the vehicle for all communications, bid submittals, data requests and announcements during the bidding process. All interested potential Market Participants (MPs) and interested persons are urged to register for the Webinar through the PREB-IC Platform³¹ by clicking the Stakeholder Webinar tab on the menu bar and submitting the form. Those who register for the Webinar on the PREB-IC Platform will receive access details by email 24 hours before the Webinar. Those who cannot attend the Webinar at the foregoing dates, will have access to the PREB-IC Platform to watch the recording of the Webinar.

To further streamline and reduce the potential questions and comments during the formal bidding process, the Energy Bureau has determined that it is beneficial and convenient to post the draft RFP, PPOA, ESSA, and GSA documents on the PREB-IC Platform in the coming weeks for stakeholders to provide informal feedback and comments.

The release date and schedule for the Tranche 2 RFP process will be issued by the Energy Bureau via a Resolution and Order in the coming weeks and published through the PREB-IC Platform, the Energy Bureau's social media and any public notices required by laws

IV. Conclusion

The Energy Bureau **ASSIGNS** the responsibilities and duties outlined above to the PREB-IC, and **ORDERS** LUMA and PREPA to fully collaborate with the PREB-IC and provide any needed data and analytical support required to enable successful completion of the RFP process. The Energy Bureau specifically **ORDERS** PREPA and LUMA to provide a point of contact for this purpose. The Energy Bureau **ORDERS** LUMA to collaborate and coordinate with the PREB-IC, to complete transmission and distribution system impact analyses as needed to support the bid evaluation process, and to develop long-term marginal cost

³⁰ On January 13, 2022, the Energy Bureau sent letters to LUMA's and PREPA's representatives, notifying the designation of the PREB-IC and requesting the designation of a point of contact to coordinate the support required from them for the successful implementation of the Tranche 2 RFP.

³¹ Available at: <https://prebrfp.accionpower.com>, Last verified January 25, 2022.




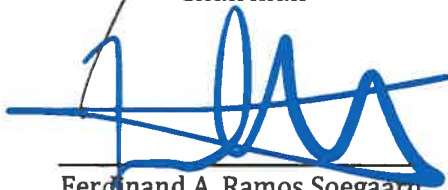
projections for the Puerto Rico power system to be utilized by the PREB-IC in completing detailed bid evaluations.

The Energy Bureau will shortly issue a separate resolution establishing the responsibility of LUMA and PREPA.

The Energy Bureau **WARNS** LUMA and PREPA that noncompliance with the Energy Bureau's orders or applicable legal requirements may carry the imposition of administrative fines of up to twenty-five thousand dollars (\$25,000.00) per day, per violation and/or other sanctions that the Energy Bureau may deem appropriate.

Be it notified and published.


Edison Avilés Deliz
Chairman


Ferdinand A. Ramos Soegaard
Associate Commissioner


Lillian Mateo Santos
Associate Commissioner


Sylvia Ugarte Araujo
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on January 27, 2022. Associate Commissioner Ángel R. Rivera de la Cruz dissented with a written opinion. I also certify that on January 27, 2022 a copy of this Resolution and Order was notified by electronic mail to the following: laura.rozas@us.dlapiper.com; margarita.mercado@us.dlapiper.com, kbolanos@diazvaz.law; mvazquez@diazvaz.law; and 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 January 27, 2022.


Sonia Seda Gaztambide
Clerk



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

**IN RE: IMPLEMENTATION OF THE PUERTO
RICO ELECTRIC POWER AUTHORITY
INTEGRATED RESOURCE PLAN AND
MODIFIED ACTION PLAN**

CASE NO.: NEPR-MI-2020-0012

SUBJECT: Appointment of Tranche 2
Independent Coordinator; scheduling of
webinar

Associate Commissioner Ángel R. Rivera de la Cruz, dissenting

Today, the majority of the Puerto Rico Energy Bureau (“Energy Bureau”) issued a Resolution and Order through which it appointed the Independent Coordinator for the Tranche 2 procurement process established in the Puerto Rico Electric Power Authority’s Approved IRP.¹ The Energy Bureau also established the Independent Coordinator duties and scheduled a “webinar” to be held on January 28, 2022. For the reasons expressed herein, I dissent.

* * *

Although in principle I agree with the appointment of an Independent Coordinator for the Tranche 2 procurement process, as well as its duties and responsibilities, the Energy Bureau should have established the duties and responsibilities of LUMA² and the Puerto Rico Electric Power Authority (“PREPA”) at the same time. This way, all parties involved in the procurement process, or that have critical information regarding the electric system, which is crucial to its timely completion and success, will have a clear definition of its duties and responsibilities from the very beginning. This, to avoid confusion and duplicative work, and to start the process with clear, well-defined roles.

The majority of the Energy Bureau merely expressed that it will shortly issue a separate resolution establishing the LUMA’s and PREPA’s responsibilities. This is not sufficient given the fact that on the same Resolution and Order the Energy Bureau scheduled a Stakeholder Webinar to, among other things, provide an overview of the process to be used for the Tranche 2 solicitation to procure renewable energy and battery energy storage resources. Such webinar will take place less than a day from its formal announcement, without having the benefit of clearly defined responsibilities for LUMA and PREPA.

Moreover, by issuing the Resolution and Order at the eleventh hour, there is a big probability that interested stakeholders will not have time to make arrangements to participate of the scheduled webinar. To that effect, since the majority’s intention is to repeat the webinar on February 4, 2022, there was no rush to issue this Resolution and Order without carefully establishing the Independent Coordinator’s, LUMA’s and PREPA’s responsibilities with regards to the Tranche 2 procurement process.

For all of the above, I dissent.



Angel R. Rivera de la Cruz
Associate Commissioner



In San Juan, Puerto Rico, on January 27, 2022.

¹ Final Resolution and Order on the Puerto Rico Electric Power Authority’s Integrated Resource Plan, In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan, CEPR-AP-2018-0001, August 24, 2020 (“Approved IRP”).

² LUMA Energy, LLC as ManagementCo, and LUMA Energy Servco, LLC as ServCo, collectively, “LUMA”.