

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

<b>NEPR</b>  <b>Received:</b>  Dec 31, 2021  6:58 PM
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**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:** Motion To Restate Request To  
Lift Imposition Of Sanction And Request For  
Reimbursement Of Fine Paid

**MOTION TO RESTATE REQUEST TO LIFT IMPOSITION OF SANCTION AND  
REQUEST FOR REIMBURSEMENT OF FINE PAID**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority (“PREPA”), through its counsel of record, and respectfully submits and prays as follows:

1. On August 26, 2021, the Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau”) issued a *Resolution and Order* (the “August 26 Order”) in the captioned case by which it directed the Puerto Rico Electric Power Authority to provide the results of the Selection of Proposals for Phase III Evaluation, including copy of the selected proposals for the Tranche 1 RFP on or before September 9, 2021. The August 26 Order includes a general language that is customarily used by the Energy Bureau in which it admonishes PREPA that noncompliance with orders or applicable legal requirements may carry the imposition on administrative fines. August 26 Order at p. 2. On September 8, 2021, PREPA requested an extension of time until September 20, 2021 to comply.<sup>1</sup>
2. After a series of procedural filings, PREPA submitted the *Motion to Submit Proposals Under Seal and Request for Confidential Designation filed on September 20, 2021* (the “September

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<sup>1</sup> *Motion for Extension of Time to Submit Information Requested on Resolution and Order Dated August 26, 2021, Including Information Related to Pricing* submitted by PREPA on September 8, 2021.

20 Motion”) with various documents, including the proposals, as well as information requests made to the Proponents that advanced to Phase III of the Tranche 1 RFP Process. Further, in the September 20 Motion, PREPA informed the Energy Bureau that the evaluation of proposals had not finished, therefore the review, award and negotiations of contracts was still ongoing.

3. On October 12, 2021, the Energy Bureau issued a *Resolution and Order* (the “October 12 Resolution”) in which the Energy Bureau recounted the procedural background of the captioned case and determined the documents submitted as part of the September 20 Motion did not comply with the August 26 Order, however, there was neither an order to show cause or a term to comply as part of the October 12 Resolution, nor did the order include any language admonishing PREPA of the possibility of imposition of administrative fines.

4. In response to the October 12 Resolution, PREPA filed its *Response to, and Motion for Clarification of, October 12, 2021 Resolution and Order Addressing the Target Date for Issuance of the Tranche 2 RFP and Other Matters* on October 15, 2021 (“October 15 Motion”). In the October 15 Motion, PREPA stated that:

[it] disagrees with the Energy Bureau’s determination that [PREPA] has failed to submit pricing information per technology group as required by the August 26 Order. In fact, PREPA representatives provided that pricing information to members of the Energy Bureau on September 16, 2021, in a meeting PREPA and the Energy Bureau organized for the purpose of engaging in good faith discussions with the Energy Bureau on best practices and PREPA’s concerns about Energy Bureau requirements for the Tranche 1 process. **PREPA provided per technology group pricing information in this manner in order to abide by the process contemplated in the RFP, to protect the confidentiality of RFP responses and to maintain the integrity of the RFP process, while keeping the Energy Bureau abreast of the information requested.** Thus, PREPA *has* provided the Energy Bureau with the evaluation of pricing per technology group which the Energy Bureau takes it to task for not having provided as part of PREPA’s September 20 Motion and the Energy Bureau has had that information in its possession since September 16, 2021. This constitutes substantial compliance with the requirements of the August 26 Order.

Accordingly, **PREPA respectfully requests the Energy Bureau to clarify its October 12 Resolution** to retract its determination that PREPA has not fully complied with the August 26 Order.

October 15 Motion at pp. 2-3, ¶ 3 (emphasis added).

5. On November 8, 2021, to PREPA’s surprise, instead of the requested clarification, the Energy Bureau issued a *Resolution and Order* the (the “November 8 Order”) in which it declared PREPA as non-compliant with the Energy Bureau’s August 26 Order concerning submission of pricing information per technology group regarding the Tranche 1 RFP and in consequence imposed a \$5,000 fine on PREPA stating that

[t]he general and preliminary information informally provided by PREPA to the Energy Bureau, was neither complete nor final. The processes before the Energy Bureau, regardless of their nature (*e.g.*, adjudicative, or not adjudicative) are based on the information in the record. To be part of the record, information (*e.g.*, documents, motions, photos, video, etc.) must be filed with the Energy Bureau’s Clerk via the mechanisms provided in the applicable regulations and resolutions. PREPA has not filed the information required under the August 26 Resolution.

November 8 Motion at p. 5, ¶ 4.

6. It is important to stress that the sanction imposed on PREPA *without* a prior order to show cause.

7. On November 9, 2021, PREPA filed a motion in compliance titled *Motion Submitting Pricing Information Per Technology Group Regarding the Tranche 1 RFP and Request to Lift Imposition of Sanctions* (the “Request for Lift of Sanctions”)<sup>2</sup> in which PREPA informed the Energy Bureau that, as stated in the October 15 Motion, it understood it had complied with the

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<sup>2</sup> In the Request for Lift of Sanctions, PREPA stated it had been forthcoming with the Energy Bureau regarding its understanding that it indeed had complied with the August 26 Order and had requested a clarification to the Energy Bureau on this precise point. Also, PREPA informed it could understand and agree with the Energy Bureau’s request for the information to be formally filed in the docket for it to be part of the record. However, at the time of the filing of the October 15 Motion, PREPA had a good faith understanding that it had indeed complied with submitting the pricing information to the Commissioners and had countered as such with the filing of the Motion for Clarification.

submittal of the pricing information per technology group regarding the Tranche 1 RFP when PREPA's RFP Evaluation Committee representatives submitted such information to the Commissioners during the meeting that was held on September 16, 2021. As of today, the Energy Bureau has not ruled on the Request for Lift of Sanctions.

8. The very next day after receiving the November 8 Order, and before the November 12, 2021 deadline imposed by the Energy Bureau, PREPA submitted the results of Selection of Proposals for Phase III with the pricing evaluation per technology group as well as the copies of any communications to proponents selected to proceed to Phase III that were part of the deliberative process for the Tranche 1 RFP. Subsequently, PREPA has also paid the fine imposed by the Energy Bureau to avoid the accrual of penalties or additional administrative fines. The payment the fine was realized to avoid additional expenses, since PREPA agrees with the Energy Bureau that penalties are ultimately borne by its customers, which is contrary to the public interest PREPA serves.

9. PREPA hereby adopts by reference the arguments of facts and law included in the Request for Lift of Sanctions and restates that the \$5,000 fine in the context discussed above, is onerous, against the public interest and is an abuse of discretion on the part of the Energy Bureau.

10. PREPA restates and respectfully requests the Honorable Energy Bureau to reconsider its imposition of sanctions and to reimburse the \$5,000 fine paid by PREPA. The Energy Bureau must consider the evidence on the record which clearly shows that PREPA has consistently filed timely responses to the orders of the Energy Bureau or has timely requested extensions when warranted.

11. PREPA asserts that there is no evidence of blatant disregard, malice or letting Energy Bureau's orders go unattended in the case of caption. What the record of this case does show is evidence of an earnest misunderstanding, which was promptly corrected by PREPA **in less than**

**24 hours** upon receiving the November 8 Order. Consequently, the People of Puerto Rico, who ultimately bear the costs of the fine imposed, should not be penalized for what can be categorized as a misinterpretation for which PREPA timely sought clarification and rectified.

12. The Energy Bureau should also consider other costs that the fines and penalties represent for the costumers of PREPA. As the Energy Bureau is aware PREPA's FCA and PPCA adjustment clauses are reconciled on a quarterly basis to recover the costs associated with the fuel and energy purchases. The most recent factors approved by the Energy Bureau for the January to March 2022 quarter increased 16.8% the customers rate per kWh, states that for example a residential unsubsidized clients would be subject to pay 3.1% more than last quarter.<sup>3</sup> The People of Puerto Rico's should not be paying for fines on top of all the additional expenses that they have had to incur during this trying times.

13. One could argue that the imposition of the fine doesn't increase customers' rates because its nominal when compared to PREPA's budget and also, it is paid out of the base rate and thus, doesn't represent an increase in the rate the customers pay. However, PREPA is a public corporation and the rate its biggest income source. An expense of \$5,000 in a bankrupt public corporation in such dire financial state does have an impact. Even though PREPA may sound like a broken record, the punitive action of the imposition of sanctions doesn't benefit neither the public corporation, nor the People of Puerto Rico, and thus, said cost should not be borne by PREPA's customers.

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<sup>3</sup> *Resolution and Order* entered yesterday, December 30, 2021 in the case no. NEPR-MI-2020-0001, *In re: PREPA's Permanent Rate Case* no. NEPR-MI-2020-0001.

WHEREFORE, the Puerto Rico Electric Power Authority respectfully requests that the Energy Bureau to rule on the Request for Lift of Sanctions and reimburse PREPA the \$5,000 fine imposed on PREPA.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 31<sup>st</sup> day of December 2021.

*s/ Maralíz Vázquez-Marrero*  
Maralíz Vázquez-Marrero  
[mvazquez@diazvaz.law](mailto:mvazquez@diazvaz.law)  
TSPR 16,187

*s/ Katuska Bolaños-Lugo*  
Katuska Bolaños-Lugo  
[kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law)  
TSPR 18,888

**DÍAZ & VÁZQUEZ LAW FIRM, P.S.C.**  
290 Jesús T. Piñero Ave.  
Oriental Tower, Suite 803  
San Juan, PR 00918  
Tel.: (787) 395-7133  
Fax. (787) 497-9664

**CERTIFICATE OF SERVICE**

It is hereby certified that, on this same date, I have filed the above motion with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and a courtesy copy of the filing was sent to LUMA through its legal representatives at [margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com) and [laura.rozas@us.dlapiper.com](mailto:laura.rozas@us.dlapiper.com).

In San Juan, Puerto Rico, this 31<sup>st</sup> day of December 2021.

*s/ Katuska Bolaños-Lugo*

Katuska Bolaños-Lugo