

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

NEPR Received: Feb 21, 2022 4:38 PM

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: Fourth Motion to
Reiterate Request For Entry Of
Resolution And Order Detailing
PREPA's Role In The Tranche 2 RFP
Process

**FOURTH MOTION TO REITERATE REQUEST FOR ENTRY OF RESOLUTION
AND ORDER DETAILING PREPA'S ROLE IN THE TRANCHE 2 RFP
PROCESS AND INFORMING PREPA'S POINT OF CONTACT**

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:

On October 29, 2021, the Energy Bureau of the Puerto Rico Service Regulatory Board ("Energy Bureau" or "PREB") issued a *Resolution and Order* (the "October 29 Resolution") in which, on its own accord, it determined to appoint an independent coordinator for the Tranche 2 RFP were, among other matters, the Energy Bureau informed that it would "execute the Tranche 2 RFP through an PREB-Independent Coordinator [but that] PREPA will keep a significant role in the Tranche 2 RFP process since it is required to provide all the technical and administrative resources necessary for the successful execution of the Tranche 2 RFP process." October 29 Resolution at p. 14. The Energy Bureau added that the appointment of the PREB-Independent Coordinator would "allow the Energy Bureau to execute a direct role **in overseeing the process**, and will implement compliance actions required for the successful, swift and transparent implementation of the procurement process." *Id.* (emphasis provided). For this purpose, the Energy Bureau further stated that, "[i]n a separate **resolution, [it would] set the detailed powers and**

duties of the PREB-Independent Coordinator as well as the role of PREPA in the Tranche 2 RFP process.” *Id.* (emphasis added). Further, the Energy Bureau resolved that “PREPA and its consultants will **review and discuss** with the PREB-Independent Coordinator, without limitation, **all decisions** regarding the Tranche 2 RFP procedural matters, evaluation, disqualification, non-selection, and selection of proposals.” *Id.* (emphasis added). Unfortunately, various months passed, and the Energy Bureau did not enter the anticipated resolution. In response, PREPA filed various motions requesting both the appointment of the PREB-Independent Coordinator as well as an order detailing PREPA’s role in the Tranche 2 RFP. The first of the motions was filed on December 13, 2021, titled “*Motion Requesting Expedited Appointment of the PREB PREB-Independent Coordinator and Resolution and Order Detailing PREPA Role in Anticipation for the Tranche 2 RFP*” (the “December 13 Motion”). Later, on January 14, 2021, PREPA filed “*Motion to Reiterate Request for entry of Resolution and Order Detailing PREPA’s Role in the Tranche 2 RFP Process*” (the “January 14 Motion”) and finally on January 25, 2022 PREPA filed “*Third Motion to Reiterate Request for Entry of Resolution and Order Detailing PREPA’s Role in the Tranche 2 RFP Process*” (the “January 25 Motion”). PREPA hereby incorporates and adopts by reference the arguments and request for relief made in these previous filings including the procedural history of both the IRP Final Order and the Tranche 1 RFP process.

On January 27, 2022, the Energy Bureau entered *Resolution and Order* formally appointing the Tranche 2 PREB-Independent Coordinator and scheduling of informative webinar (the “January 27 Order”). The January 27 Order specifically detailed the responsibilities and duties of the PREB-Independent Coordinator which, pursuant to the order, would be carried out under the Energy Bureau’s direction and supervision. Among the duties and responsibilities ascribed to the PREB-Independent Coordinator were to:

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.
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, LUMA 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.
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.

January 27 Order at pp. 4-5.

The January 27 Order also required that both PREPA and LUMA provide a point of contact for the Tranche 2 RFP but did not detail the roles PREPA or LUMA would have in the Tranche 2 RFP process and merely advised that the “Energy Bureau [would] shortly issue a separate resolution establishing the responsibility of LUMA and PREPA.” *Id.* at p. 14. To this day no such order has been entered.

As the Energy Bureau is keenly aware, PREPA has already filed three (3) separate motions requesting an order detailing PREPA’s role in the Tranche 2 RFP process given that, as the governmental entity, responsible in law for the final execution of the PPOA’s, ESSA’s and GSA’s

it is expected that PREPA is made privy to the process and has participation as originally contemplated in the October 29 Order.

As stated before, it is vital to understand what responsibilities the Energy Bureau will give PREPA given that the procurement process the Energy Bureau seeks to implement is bound by specific laws and regulations including legal avenues for unsuccessful bidders. Failing to clarify PREPA's role as well as the overall legal process envisioned undermines the legality of the intended undertaking by the Energy Bureau. Lastly, it must be noted that PREPA has no issue with the appointment of the PREB-Independent Coordinator as the figure was initially conceived by the October 29 Order. PREPA also has no issue with the overseeing of the process by the Energy Bureau. However, the importance of the process requires clear directives within the bounds of the law. PREPA's intent with this motion is nothing more than to move forward with the very important common goal of complying with the renewable energy and storage procurement process required by the law and necessary for a cleaner energy future. Accordingly, PREPA requests that the Energy Bureau enter a resolution and order detailing the legal responsibilities PREPA will have in the process. Lastly, PREPA informs the Energy Bureau that the PREPA point of contact¹ for the Tranche 2 RFP will be Suheil M. Acevedo Serrano (suheil.acevedo@prepa.com), Socorro de Lourdes Lugo Guzmán (lourdes.lugo@prepa.com), and Francisco Santos Rivera (francisco.santos@prepa.com).

WHEREFORE, the Puerto Rico Electric Power Authority respectfully requests that the Energy Bureau issue a resolution and order detailing the role of PREPA in the Tranche 2 RFP.

¹ PREPA reserves the right to include additional resources and points of contact for the Tranche 2 RFP process. Given the Energy Bureau's failure to enter an order detailing the responsibilities and extent of PREPA's role in the process, it is difficult for PREPA to anticipate additional points of contacts of resources necessary.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 21st day of February 2022.

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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 and laura.rozas@us.dlapiper.com.

In San Juan, Puerto Rico, this 21st day of February 2022.

s/ Katuska Bolaños-Lugo
Katuska Bolaños-Lugo