

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

NEPR Received: Mar 28, 2022 5:57 AM
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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: Fifth Motion to Reiterate
Request For Entry Of Resolution And
Order Detailing PREPA’s Role In The
Tranche 2 RFP Process and to Request
Meeting

**FIFTH MOTION TO REITERATE REQUEST FOR ENTRY OF RESOLUTION
AND ORDER DETAILING PREPA’S ROLE IN THE TRANCHE 2 RFP
PROCESS AND TO REQUEST MEETING**

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:

This is PREPA’s *fifth* motion requesting the Energy Bureau of the Puerto Rico Service Regulatory Board (“Energy Bureau” or “PREB”) to act upon a matter of relevant consequence: securing continuance of the procurement of renewable energy generation and storage services.

A little over five (5) months have passed since PREPA submitted the draft Tranche 2 RFP for the consideration and approval of the Energy Bureau, and subsequent publication¹. Five (5) months have also passed since the Energy Bureau determined that the Tranche 2 RFP would be led by a newly created administrative figure, an independent coordinator. On October 29, 2021, the Energy Bureau entered 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. Among other matters,

¹ PREPA filed a draft Tranche 2 RFP submitted for the consideration of the Energy Bureau on October 15, 2021, that may be used to further develop a final version of the Tranche 2 RFP. The draft Tranche 2 RFP was prepared by PREPA using as template the Tranche 1 RFP, which was approved by the Energy Bureau, and also incorporating the lessons learned through said procurement process.

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**[.]” October 29 Resolution at p. 14 (emphasis added). 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). A month passed and such resolution had not been entered. 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.² However, the appointment of the PREB-Independent Coordinator did not materialize until after three (3) months.

Finally, on January 27, 2022, the Energy Bureau entered *Resolution and Order* formally appointing the Tranche 2 PREB-Independent Coordinator and scheduling of an informative webinar (the “January 27 Order”). The January 27 Order specifically detailed the responsibilities and duties of the PREB-Independent Coordinator³ which, pursuant to the order, would be carried

² 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, 2022, 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.

³ 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

out under the Energy Bureau's direction and supervision. The January 27 Order did not include neither PREPA, nor LUMA's, role and responsibilities in the Tranche 2 RFP process but anticipated that "Energy Bureau [would] shortly issue a separate resolution establishing the responsibility of LUMA and PREPA." *Id.* at p. 14.

However, due to the importance of the matter at hand, PREPA was compelled to keep insisting and, on February 24, 2022, PREPA filed a *fourth* request for a detailed description of PREPA's role and responsibilities in the Tranche 2 RFP process.⁴ To date, the Energy Bureau has remained completely silent as to what it understands PREPA, or its agent LUMA's, role in the Tranche 2 RFP is going to be. PREPA's main concern is that as the governmental entity, responsible in law for the final execution of the PPOA, ESSA and GSA, it is expected that PREPA is made privy to

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; and (22) Incidental tasks necessary to perform any of the foregoing duties. January 27 Order at pp. 4-5.

⁴ PREPA, *Fourth Motion to Reiterate Request For Entry Of Resolution And Order Detailing PREPA's Role In The Tranche 2 RFP Process* (Feb. 24, 2022).

the entire process and has an all-inclusive participation, as originally planned in the October 29 Order.

It is crucial to understand what responsibilities the Energy Bureau understands that PREPA will have in the process 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.

PREPA once again submits that it welcomes 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. Moreover, this supervision may not even be considered as additional since PREPA has been in constant communication with the Energy Bureau through all the stages of the Tranche 1 RFP, and it shouldn't be any different for the Tranche 2 RFP or subsequent tranches.

As stated before, 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 and affordable energy future. Accordingly, PREPA requests that the Energy Bureau enter a resolution and order detailing the responsibilities PREPA will have in the process, which shall be assigned according to law. PREPA, as owner of the assets of the transmission and distribution system in Puerto Rico, has primarily responsibility in selecting the power supply resources that would be interconnected with such system. This responsibility is recognized by the Energy Bureau when it states that PREPA will execute the resulting contracts from the Tranche 2 RFP process.

Furthermore, given all the time that has passed without information from the Energy Bureau regarding PREPA's roles and responsibilities in the Tranche 2 RFP process, PREPA's Governing Board, in the meetings held on March 23 and 25, 2022, instructed PREPA's management to seek a meeting with the Energy Bureau to discuss the delays in the Tranche 2 RFP process, the reasons of such delays, which roles and responsibilities the Energy Bureau will assign PREPA, how may PREPA be of assistance and, more importantly, which are the plans to move forward in an expedited manner. Therefore, PREPA respectfully requests the Energy Bureau to promptly concede a face-to-face meeting between the Honorable Commissioners and PREPA's officials and Governing Board directors.

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 process and to promptly schedule a meeting with PREPA to discuss such role and the plans for future tranches.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 28th day of March 2022.

/s Maralíz Vázquez-Marrero
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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 28th day of March 2022.

s/ Katuska Bolaños-Lugo

Katuska Bolaños-Lugo