

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

NEPR Received: Apr 28, 2022 11:27 AM

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: Sixth Motion to Reiterate
Request for Entry of Resolution and
Order Detailing PREPA’s Role in the
Tranche 2 RFP Process and to Request
Meeting

**SIXTH 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:

On October 15 2021, a little over six (6) months ago, PREPA submitted the draft Tranche 2 request for proposals (RFP) for the consideration and approval of the Energy Bureau of the Puerto Rico Service Regulatory Board (“Energy Bureau” or “PREB”) and subsequent publication.¹ In response the Energy Bureau determined that the Tranche 2 RFP would be led by a newly created administrative figure, an independent coordinator (the “PREB-Independent Coordinator”).² On October 29, 2021, the Energy Bureau informed that it would “execute the Tranche 2 RFP through an PREB-Independent Coordinator [but that] **PREPA [would] keep a significant role in the Tranche 2 RFP process**[.]” October 29 Resolution at p. 14 (emphasis added). For this purpose,

¹ PREPA filed a draft Tranche 2 RFP for the consideration of the Energy Bureau on October 15, 2021. This draft 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 from the Tranche 1 RFP.

² 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.

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). As of today, the Energy Bureau has not issued such resolution. However, PREPA has diligently and repeatedly requested further direction from the Energy Bureau as to what PREPA’s role in the Tranche 2 RFP process would be, to no avail.

After the October 2021 announcement, PREPA repeatedly reiterated through multiple filings that it welcomed the appointment of the PREB-Independent Coordinator, as the figure was initially conceived by the October 29 Order. However, it was not until January 27, 2022, that the Energy Bureau entered *Resolution and Order* formally appointing the PREB-Independent Coordinator and detailing the specifics of its responsibilities and duties (the “January 27 Order”). Nevertheless, to PREPA’s surprise, the January 27 Order did not include neither LUMA’s, nor PREPA’s, role and responsibilities in the Tranche 2 RFP process, but anticipated that the “Energy Bureau [would] shortly issue a separate resolution establishing the responsibility of LUMA and PREPA.” *Id.* at p. 14.

To date PREPA has filed **five (5) motions**³ requesting the Energy Bureau to act upon the need to issue a resolution and order detailing the role of PREPA in the Tranche 2 RFP process and to schedule a meeting with PREPA to discuss such role and also the plans for future tranches. However, to PREPA’s surprise, as of today, the Energy Bureau **has not** answered PREPA’s

³ PREPA, *Motion Requesting Expedited Appointment of the PREB PREB-Independent Coordinator and Resolution and Order Detailing PREPA Role in Anticipation for the Tranche 2 RFP* filed on December 13, 2021 (the “December 13 Motion”); *Motion to Reiterate Request for entry of Resolution and Order Detailing PREPA’s Role in the Tranche 2 RFP Process* filed on January 14, 2022 (the “January 14 Motion”) ; *Third Motion to Reiterate Request for Entry of Resolution and Order Detailing PREPA’s Role in the Tranche 2 RFP Process* filed on January 25, 2022 (the “January 25 Motion”); *Fourth Motion to Reiterate Request For Entry Of Resolution And Order Detailing PREPA’s Role In The Tranche 2 RFP Process* filed on February 24, 2022 (the “February 24 Motion”); *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* filed on March 28, 2022 (the “March 28 Motion”). PREPA hereby incorporates and adopts by reference the arguments and requests for relief made in these previous filings, including the procedural history of both the IRP Final Order and the Tranche 1 RFP process.

reiterated requests. In addition to these requests, on April 11, 2022, PREPA's evaluation committee of the Tranche 1 RFP process (the "Evaluation Committee") contacted the PREB-Independent Coordinator to offer assistance in the Tranche 2 RFP process and asked Mr. Harold T. Judd from Accion Group, the PREB-Independent Coordinator, what PREPA could expect in this process, since there has been a lack of response from the PREB on the same. Mr. Harold T. Judd responded that they cannot communicate with PREPA unless PREB authorizes them to do so and the company does not have such authorization.

To PREPA's additional surprise, on April 19, 2022, the PREB-Independent Coordinator published the Draft Tranche 2 RFP for the Tranche 2 RFP without prior notice to PREPA or participation from PREPA even though the draft includes PREPA's logo on the cover page. PREPA learned of this publication through an automated publication from the Energy Bureau's procurement platform. The publication of a document of the importance of the Draft Tranche 2 RFP without having consulted with PREPA before and, moreover, without PREPA having any idea of what the Energy Bureau understands what PREPA's role in the Tranche 2 RFP process will be, astonished PREPA. This, considering that the October 29 Resolution states that PREPA would keep a significant role in the Tranche 2 RFP process. PREPA's repeated filings demonstrates that PREPA understands that it shall have an active and significant role and participation in the Tranche 2 RFP process. This understanding goes beyond what could be commonly referred to as a "genuine" interest of a stakeholder. PREPA's understanding stems from its responsibility of safeguarding the legal validity of the procurement process as PREPA is the legal entity which by law has the responsibility of carrying out the procurement process. Given that PREPA did not have any role or participation in the preparation of the Draft Tranche 2 RFP document, PREPA respectfully request the Energy Bureau to retire PREPA's logo from that

document. Keeping PREPA's logo on the document would represent that the Energy Bureau prepared the draft document in coordination with PREPA, which is false.

Unfortunately, the Energy Bureau has remained completely silent and has failed to issue an official ruling on what PREPA's, or its agent LUMA's, role in the Tranche 2 RFP process will amount to. PREPA is compelled to keep insisting in a detailed description, in the form of a resolution and/or order, of PREPA's role and responsibilities in the Tranche 2 RFP process due to the importance of the matter at hand. PREPA restates that its main concern is that as the governmental entity, with the legal responsibility for the final execution of the PPOA, ESSA and GSA, it is expected that PREPA is made privy to the entire process and has an all-inclusive participation, as originally contemplated 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. This concern is even more obvious since the preparation of the Draft Tranche 2 RFP publication was not made in coordination with PREPA.

As the Energy Bureau is aware, PREPA as owner of the assets of the transmission and distribution system in Puerto Rico, has primarily responsibility of procuring and selecting the generation 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. Any party that signs a contract is able to execute such contract after preparing documents with the terms and conditions acceptable to the party and having negotiated such terms and conditions directly with the other parties. Hence, it is not possible for

PREPA to execute the Tranche 2 contracts without having any participation in the Tranche 2 RFP process. Therefore, PREPA hereby notifies the Energy Bureau that it will not execute any contract resulting from a process conducted by others. PREPA will not be complying with its fiduciary duties, as a public corporation created by law in Puerto Rico, if it executes any contract in which PREPA did not have any primary participation.

As stated in several of the motions filed before, the importance of the process to secure the procurement of renewable energy generation and storage services, requires clear directives within the bounds of the law. PREPA's intent with this **sixth 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 the Energy Bureau in the Final IRP Order⁴, which,

⁴ In the Final IRP Order the Energy Bureau states on several occasions that PREPA is the party called to conduct, with the Energy Bureau's oversight, the renewable resources and battery energy storage services. The following are examples of such instances:

- “[The] Modified Action Plan consists of specific directives to PREPA, including the following key components: Development by PREPA, with the Energy Bureau’s guidance and approval, of a detailed procurement plan for renewable resources and battery energy storage. [sic] to achieve compliance with the renewable portfolio standard (RPS)[.]” Final IRP Order at p. 14, ¶ 92.
- “The Energy Bureau **ORDERS** PREPA to issue a series of RFPs for provision of renewable energy in support of Act 82’s RPS goals, and for the provision of battery energy storage in support of capacity requirements needed to meet PREPA’s peak load requirements and in support of integration requirements for renewable energy generation.” Final IRP Order at p. 15, ¶ 94.
- “The Energy Bureau **ORDERS** PREPA to develop competitive solicitation processes for procurement of renewable resources and battery energy storage resources in support of “no regrets” findings for these resources from the IRP and in support of meeting Act 17 targets for renewable energy installations and exceeding those targets were economical.” Final IRP Order at p. 16, ¶ 97.

The Final IRP Order is final and unappealable as the Energy Bureau has reminded PREPA in various occasions. The changes in the process contemplated by the Energy Bureau as relevant to the Tranche 2 RFP seem to defer considerably from the process established in the Modified Action Plan. However, to date, the Energy Bureau has not amended the Final IRP Order to change the Tranche 1-6 procurement process that is now final and unappealable and thus, the parties and intervenors have not had the opportunity to evaluate how their rights may be affected by this new process. Since the Energy Bureau has failed to enter a resolution and/or order through which it defines how the PREPA procurements will be managed, and decided upon, and which are now to be led by the PREB-Independent Coordinator, PREPA is not able to ascertain at this time if the process is legally valid or not. Accordingly, PREPA hereby reserves all rights and defenses to raise any additional arguments regarding this and any other matter to which the Energy Bureau has not entered a final ruling.

as prompted by the Energy Bureau, is the operative document and roadmap as to how to proceed with the procurement process for renewable energy and storage resources. Accordingly, PREPA requests the Energy Bureau to enter a resolution and order detailing the responsibilities PREPA will have in the Tranche 2 RFP process.

Lastly, as stated in the March 28 Motion, given all the time that has passed without receiving the Energy Bureau's notice regarding PREPA's roles and responsibilities in the Tranche 2 RFP process, PREPA's Governing Board has instructed PREPA's management to seek a meeting with the Energy Bureau to discuss the delays in the Tranche 2 RFP process, and among others, which roles and responsibilities the Energy Bureau will assign PREPA. Consequently, PREPA respectfully requests once again that the Energy Bureau promptly concedes a face-to-face meeting between the Honorable Commissioners and PREPA's officials and Governing Board members.

WHEREFORE, the Puerto Rico Electric Power Authority respectfully requests the Energy Bureau to clearly establish PREPA's role in the Tranche 2 RFP process, to schedule a meeting with PREPA to discuss such role and the plans for the Tranche 2 RFP, and to cease using PREPA's logo in documents that has not been prepared by PREPA nor PREPA had any participation on.

RESPECTFULLY SUBMITTED.

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

s/ Katuska Bolaños-Lugo
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