

**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:** Roles of PREPA and LUMA in the  
Procurement Process for Upcoming Tranches.

**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").<sup>1</sup> The Approved IRP orders the adoption and implementation of a Modified Action Plan 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 17-2019<sup>2</sup> targets for renewable energy installations.<sup>3</sup>

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

**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").<sup>4</sup> 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,<sup>5</sup> since Case No. CEPR-AP-2018-0001 constitutes an adjudicative proceeding opened to evaluate PREPA's Proposed IRP.<sup>6</sup> The Energy Bureau also stated that it may open additional dockets related to implementing the Approved IRP and Modified Action Plan, as necessary.<sup>7</sup>

After several procedural incidents, on July 23, 2021, PREPA and LUMA<sup>8</sup> 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").

<sup>1</sup> 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.

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

<sup>3</sup> Approved IRP, p. 266.

<sup>4</sup> October 6 Resolution, p. 1.

<sup>5</sup> Approved IRP, pp. 14-15.

<sup>6</sup> October 6 Resolution, p.1.

<sup>7</sup> *Id.*

<sup>8</sup> LUMA Energy, LLC, and LUMA Energy ServCo, LLC (collectively, "LUMA").



On February 22, 2021, PREPA issued the Tranche 1 RFP.<sup>9</sup> Following the issuance of the Tranche 1 RFP, PREPA received bids and completed initial bid evaluations. Throughout that process, delays affected the bid selection process for the Tranche 1 RFP and have resulted in the delay of the issuance of the Tranche 2 RFP 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 conduct the Tranche 2 RFP using an Independent Coordinator.<sup>10</sup> 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."<sup>11</sup> The Energy Bureau also indicated that it would issue a separate resolution detailing the powers and duties of the PREB-IC.<sup>12</sup>*

After the October 29 Resolution, PREPA filed several motions<sup>13</sup> in which PREPA requested the expedited appointment of the Independent Coordinator and that the Energy Bureau state PREPA's tasks and responsibilities.<sup>14</sup> PREPA mentioned that it needs to coordinate and engage any technical and administrative resources it might need in anticipation for its role in the Tranche 2 RFP.<sup>15</sup>

On January 27, 2022, the Energy Bureau issued a Resolution and Order ("January 27 Order") in which, among others, it informed the appointment of the PREB-IC.<sup>16</sup> The January 27 Order stated the PREB-IC's responsibilities and duties.<sup>17</sup> The January 27 Order instructed PREPA

<sup>9</sup> 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.

<sup>10</sup> See October 29 Resolution, pp. 13-14.

<sup>11</sup> *Id.*, p. 14.

<sup>12</sup> *Id.*

<sup>13</sup> See *Motion Requesting Expedited Appointment of the PREB Independent Coordinator and Resolution and Order Detailing PREPA Role in Anticipation for the Tranche 2 RFP*, December 13, 2021 ("December 13 Motion"); *Motion to Reiterate Request for Entry of Resolution and Order Detailing PREPA's Role in the Tranche 2 RFP Process*, January 14, 2022; *Third Motion to Reiterate Request for Entry of Resolution and Order Detailing PREPA's Role in the Tranche 2 RFP Process*, January 25, 2022; *Fourth Motion to Reiterate for Entry of Resolution and Order Detailing PREPA's Role in the Tranche 2 RFP Process and Informing PREPA's Point of Contact*, February 21, 2022 ("February 21 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*, March 28, 2022; and *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*, April 28, 2022.

<sup>14</sup> December 13 Motion, ¶ 15.

<sup>15</sup> *Id.*, p. 7.

<sup>16</sup> On December 13, 2021, the Energy Bureau, through the Public Service Regulatory Board, hired Accion Group, LLC to be the PREB-Independent Coordinator ("PREB-IC") as per contract number 2022-080076.

<sup>17</sup> January 27 Order, Section II, pp. 3-5.



and LUMA<sup>18</sup> to provide a point of contact to work with the PREB-IC on the Tranche 2-RFP in terms of providing needed data, technical, and analytical support.<sup>19</sup> The January 27 Order also stated that the Energy Bureau would shortly issue separate resolution establishing the responsibilities of LUMA and PREPA.<sup>20</sup> In the February 21 Motion, PREPA also included a list of persons identified as PREPA's points of contacts for the Tranche 2 RFP ("PREPA's POC").<sup>21</sup>

The Energy Bureau recognizes the prudence of PREPA's request to clarify its responsibilities for Tranche 2 RFP to timely secure any required consultants. Notwithstanding the foregoing, as stated in the October 29 Resolution, the PREB-IC will carry out the responsibilities and duties associated to the Tranche 2 RFP, including but not limited to the RFP solicitation process and the bid evaluation process. Since the PREB-IC has the knowledge, expertise, and resources required to execute the duties and responsibilities assigned by the Energy Bureau, there is no need for PREPA to retain technical consultants. Furthermore, LUMA, as operator of the transmission and distribution system, will execute the technical and analytical studies required for the evaluation of the interconnection proposed in the bids as well as any interconnection and/or system impact information in support of the execution of the Tranche 2 RFP.

Accordingly, the Energy Bureau does not foresee, at this moment, that PREPA will require to coordinate and/or seek approval for the engagement of technical consultants for the Tranche 2 RFP.

The Energy Bureau does foresee that PREPA will require administrative resources and legal advisors to support the PREB-IC efforts in preparing the documents and finalizing the contract documentation required for execution.

## II. Selection Committee

In response to the Energy Bureau's determination to conduct the Tranche 2 RFP process through an independent coordinator, the PREB-IC, the Puerto Rico Public-Private Partnership Authority ("P3 Authority") withdrew PREPA's authorization to conduct the Tranche 2 RFP process.<sup>22</sup>

The P3 Authority recommended the creation of a selection committee for the evaluation and selection of proposals resembling the Partnership Committee established pursuant to Act 29. After careful consideration, the Energy Bureau decided to agree with the P3 Authority's recommendation and create such committee. Therefore, through this Resolution and Order, the Energy Bureau will create a committee for the evaluation and selection of proposals for the remainder of the RFP process (*i.e.*, Tranches 2 through 6) ("Selection Committee" or "Committee"). The Selection Committee will be comprised of six (6) members, which will be selected as follows: (i) the Executive Director of the P3 Authority or his/her delegate; (ii) one (1) officer of PREPA directly concerned with the RFP process or his/her delegate; (iii) one (1) member of PREPA's Governing Board, selected from the members appointed by the Governor at his sole discretion; (iv) two (2) officials from other government entities, chosen by PREB for their knowledge and/or experience in similar transactions; and (v) one (1) representative from LUMA, chosen by LUMA for their knowledge and/or experience in similar transactions.

The Tranche 2 RFP bid evaluation process will be carried out by the PREB-IC and once said evaluation is complete the PREB-IC shall submit its input and recommendations to the Selection Committee for its consideration. Thereafter, the Selection Committee must prepare

<sup>18</sup> LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively, "LUMA").

<sup>19</sup> January 27 Order, Section IV, p. 5.

<sup>20</sup> January 27 Order, p. 6.

<sup>21</sup> February 21 Motion, p. 5. (Suheil M. Acevedo Serrano; Socorro de Lourdes Lugo Guzman, and Francisca Santos Rivera)

<sup>22</sup> See, P3 Authority's letter to Edison Aviles, the Chairman of the Energy Bureau, dated April 20, 2022.



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a report, which shall include the reasons for selecting the chosen proponents, a description of the procedure followed for the selection, including comparisons between the proponents and the rankings obtained, as well as all other information pertinent to the procedure followed and the evaluation conducted. The report must then be presented to the Energy Bureau for the final determination on the selection of the most favorable proposals.

Through this Resolution and Order, the Energy Bureau **CONSTITUTES** the Selection Committee for the evaluation and selection of bids for all the subsequent RFP processes.

The Committee will be comprised of six (6) members, out of which the Energy Bureau will select two (2) members from other government entities with knowledge and/or experience in similar transactions. These two members from other government entities will be announced through a future resolution.

### III. PREPA's role in the RFP Process

The responsibilities and duties of PREPA regarding the RFP Process are the following:

1. Select one (1) PREPA Governing Board member, selected from the members appointed by the Governor at his sole discretion to form part of the Selection Committee.
2. Select one (1) PREPA officer, directly concerned with the RFP Process or his/her delegate, to form part of the Selection Committee.
3. Provide any data and information required by the PREB-IC.
4. Provide guidance and input to the Energy Bureau and PREB-IC concerning the lessons learned of Tranche 1 to ensure they are incorporated in future tranches.
5. Collaborate effectively and efficiently with the PREB-IC. At this stage, the PREPA POCs (some of whom participated directly in the execution of the Tranche 1 RFP) are expected to work with the PREB-IC, LUMA and the Energy Bureau for a timely and successful execution of the RFP process.
6. Provide legal advice and resources in ensuring the RFP documents, including the PPOAs to be included as part of the RFP and final contracts execution.
7. Assist the PREB-IC in finalizing the RFP documents and the PPOA's to be included as part of the RFP.
8. Assist the PREB-IC and provide comments (upon request) for the evaluation of the bids.
9. Assist the PREB-IC and provide comments for the preparation of the non-negotiable PPOAs as part of the RFP process.
10. PREPA's POC to participate in meetings and/or provide information requested by the PREB-IC or PREB staff related to the RFP process; and
11. Execute the corresponding PPOAs (upon the timely completion of the approvals by the PREPA Governing Board) based on the results of the final PREB determination on the bid evaluation and selection process by the PREB-IC and the Selection Committee.

The Energy Bureau reiterates that any final decisions required during the RFP process shall be determined by the Energy Bureau. PREPA's role shall in no manner delay the RFP process.



#### IV. LUMA's Role in the RFP Process

The responsibilities and duties of LUMA regarding the RFP Process are the following:

1. Select one (1) LUMA officer, with knowledge and/or experience in similar transactions, to form part of the Selection Committee.
2. Provide any data and information required by the PREB-IC.
3. Provide guidance and input to the Energy Bureau and PREB-IC concerning the lessons learned of Tranche 1 regarding interconnection studies, system impacts and other related technical matters to ensure they are incorporated in future tranches.
4. LUMA's POC to participate in meetings or provide information requested by the PREB-IC or PREB staff related to the RFP process.
5. Collaborate effectively and efficiently with the PREB-IC for a timely and successful execution of the RFP process; and
6. Timely provide to the PREB-IC any required studies and data to obtain the information necessary to evaluate the interconnection of projects.

The Energy Bureau reiterates that any final decisions required during the RFP process shall be determined by the Energy Bureau. LUMA's role shall in no manner delay the RFP process.

#### V. Conclusion

As stated before, the Energy Bureau recognizes the prudence of PREPA's request to clarify its responsibilities for future RFP Processes. Notwithstanding the foregoing, since the PREB-IC will carry out the responsibilities and duties associated to the RFP process, including but not limited to the RFP solicitation process and the bid evaluation process PREPA's involvement will be limited to that specified in Part III, above. Furthermore, LUMA, as operator of the transmission and distribution system, will execute the technical and analytical studies required for the evaluation of the interconnection of the proposed projects as well as any interconnection and/or system impact information in support of the execution of the RFP processes. LUMA's involvement will be limited to that specified in Part IV, above.

Through this Resolution and Order, the Energy Bureau **CONSTITUTES** the Selection Committee for the evaluation and selection of bids for all the subsequent RFP processes. The Energy Bureau will select two (2) members from other government entities with knowledge and/or experience in similar transactions to form part of the Committee. These two (2) members from other government entities will be announced through a future resolution. The Energy Bureau **ORDERS** PREPA and LUMA to inform the members that shall form part of the Selection Committee on or before June 30, 2022.

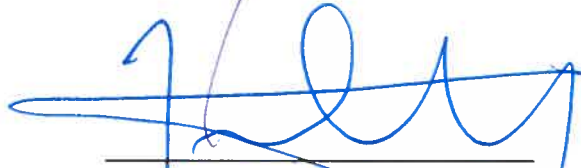
The Energy Bureau **WARNS** LUMA and PREPA that noncompliance with the Energy Bureau's orders or applicable legal requirements may carry the imposition of administrative fines of up to twenty-five thousand dollars (\$25,000.00) per day, per violation and/or other sanctions that the Energy Bureau may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


Be it notified and published.



  
\_\_\_\_\_  
Edison Avilés Deliz  
Chairman

  
\_\_\_\_\_  
Lillian Mateo Santos  
Associate Commissioner

  
\_\_\_\_\_  
Ferdinand A. Ramos Soegaard  
Associate Commissioner

  
\_\_\_\_\_  
Sylvia B. Ugarte Araujo  
Associate Commissioner

**CERTIFICATION**

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on June 9, 2022. Associate Commissioner Ángel R. Rivera de la Cruz did not intervene. I also certify that on June 9, 2022 a copy of this Resolution and Order was notified by electronic mail to the following: [laura.rozas@us.dlapiper.com](mailto:laura.rozas@us.dlapiper.com); [margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com), [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law); and [mvazquez@diazvaz.law](mailto: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 June 9, 2022.

  
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Sonia Seda Gaztambide  
Clerk

