

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

IN RE: REVIEW OF LUMA'S INITIAL BUDGETS

CASE NO.: NEPR-MI-2021-0004

SUBJECT: Request for Information on PREPA's March 14, 2023 Amendment Request.

RESOLUTION AND ORDER

I. Introduction and Procedural Background

On March 14, 2023, the Puerto Rico Electric Power Authority ("PREPA") filed with the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau"), a document titled *Request to Amend FY2023 PREPA Budget for Implementation of FOMB Certified Fiscal Plan Transformation Initiatives* ("March 14 Motion").

In the March 14 Motion, PREPA states it has submitted the motion to address three key and critical issues related to PREPA's budget, including operations, repairs and maintenance works under the PREPA fiscal plan, ongoing transformation, and pension system continuance. PREPA asserts that the proposed amendment does not impact the energy sales rates and does not burden customers as it is based on revenues from reimbursed federal funds that PREPA obtained during the present and past fiscal years. PREPA stresses the urgency of its request for it to comply with its generation related responsibilities.¹

Through the March 14 Motion, PREPA states that during the 2022 calendar year, it was reimbursed more than \$340 million in funds used to complete eligible generation projects and other funds from outstanding reimbursement requests and about \$70 million in calendar year 2023. PREPA asserts that it now needs to use those funds for other accounts in its proposed budget to continue operations during the remainder of FY 2023.² PREPA's March 14 Motion addresses four distinct categories of expense for which funds are requested, totaling \$254.4 million.

1. Operating and Necessary Maintenance Expenses ("NME") for \$60 million, comprised of \$40 million for Generation NME and \$20 million for operational expenses.
2. GENERA PR, LLC ("GENERA") Mobilization Fee for \$15 million.
3. Voluntary Transition Program ("VTP") for \$29.4 million.
4. Pension System Funding for \$150 million.³

PREPA asserts that it initially requested of the Financial Oversight Management Board ("FOMB") an amendment to its FY 2023 Budget for \$60 million, to add \$20 million to its operating budget and \$40 million to its NME budget, however the FOMB directed that the amendment be submitted initially to the Energy Bureau. PREPA notes that the amendment was rejected by the Energy Bureau in its Resolution and Order issued February 27, 2023 conditionally approving the FY 2023 Budget.⁴ PREPA states through the March 14 Motion it reiterates that request⁵ and that it is simultaneously petitioning approval of the budget

¹ March 14 Motion, pp. 1 – 2.

² *Id.*, p. 9.

³ *Id.*, p. 21.

⁴ See, In re: *Review of LUMA's Initial Budgets*, Case No.: NEPR-MI-2021-0004, Determination on LUMA's FY23 Annual Budgets and LUMA's FY24 Annual Budgets pre-filing requirements, February 27, 2023 ("FY23 Budgets Determination Order").

⁵ March 14 Motion, pp. 7 – 8.



amendment request to the Energy Bureau and FOMB.⁶ The Energy Bureau has considered PREPA's request to allocate FEMA reimbursements in accordance with the directives for Prioritization of FEMA Reimbursements as stated in the FY23 Budgets Determination Order.

II. Discussion and Analysis

PREPA's March 14 Motion requests a Budgetary increase for four distinct categories of expense totaling \$254.4 million, providing no funding source except for the Operating and Necessary Maintenance Expenses category⁷.

A. Operating and NME

PREPA asserts this funding for \$60 million, as broken down between NME for \$40 million and Operations for \$20 million, is urgently needed for improved and additional repairs and maintenance and operating resources for the legacy generation and water facilities and that it will help PREPA and soon GENERA to ensure adequate, reliable and dependable power generation essential for grid operation. PREPA states that among the critical works for which this budgetary expense is necessary is compliance with U.S. Environmental Laws as mandated under an Environmental Protection Agency Consent Decree, which if not performed will incur penalties. PREPA further explains that the upcoming projects for which funding is sought have long lead times or are multi-year projects or for which there needs to be more budgeted funding for a particular year.⁸

PREPA further asserts that all the projects for which funding is sought except for two have been approved by the Energy Bureau. PREPA states that within ten days, it will present Scopes of Work ("SOW"s) for these two projects, repair of the Aguirre unit 1-4 generator rotor and repair of the Mayaguez 3-B unit, for the Energy Bureau's approval. As an alternative to funding all the proposed projects, PREPA requests that the Energy Bureau approve the entire budget contingent upon approval of the Aguirre and Mayaguez initial SOWs. PREPA also contends this funding is necessary to support the use of temporary generation being provided by FEMA, the United States Army Corps of Engineers and the United States Department of Energy.⁹

B. Genera's Mobilization Fee

PREPA requests from the Energy Bureau, necessary FY 2023 budget amendment approval for the GENERA Mobilization Fee of \$15 million in accordance with its obligation under the generation Operations and Maintenance Agreement ("OMA"). PREPA states that in accordance with the OMA, it deposited \$15 million from its operational account into a new and dedicated mobilization account, to fund certain P3A authorized mobilization costs as it transitions to the service commencement date. PREPA asserts this claim is supported by a Title III Court approval on March 9, 2023, of an administrative expense claim in favor of GENERA for PREPA's obligations to GENERA during the mobilization period.¹⁰

C. Voluntary Transition Program

PREPA requests authorization to use \$29.4 million from its FEMA Reimbursement Account for the VTP. PREPA states that Act 120-2018, as amended by Act 17-2019, provides safeguards including ongoing employment and certain vested rights for certain PREPA

⁶ *Id.*, p. 2.

⁷PREPA provided a potential funding source, not approved by the Energy Bureau, for the Operating and Necessary Maintenance Expenses Category (\$60 million) by reallocating funds from the FEMA Reimbursement Accounts to the PREPA operational account to cover the expenses. See March 14 Motion, pp 12.

⁸ *Id.*, pp. 9 – 13.

⁹ *Id.*, pp. 11-12.

¹⁰ *Id.*, pp. 13 – 14.



employees. PREPA explains these safeguards as ensuring the availability of government jobs for those employees opting to remain in public service and, alternatively, the option to exit public service and participate in the VTP program.¹¹ Therefore, the VTP is expected to facilitate the relocation of PREPA employees to GENERA and indirectly help ensure the successful continuation of operation of generating facilities after the transition of their operation and maintenance to GENERA. PREPA states that concurrently with this Motion, it is requesting the necessary FY 2023 budget amendment from the FOMB to enact the VTP.¹²

D. Pension System Funding

PREPA requests authorization to use \$150 million from its FEMA Reimbursement Account for short term Pension Funding. PREPA asserts that the funded status of the PREPA Employee Retirement System ("PREPA ERS") was strained before it entered bankruptcy and that retirements and resignations have exacerbated the financial condition of the PREPA ERS. PREPA-ERS does not expect to pay full monthly pension benefits during FY 2023 and states that based upon recent projections, absent financial assistance, plan assets will be depleted by May 2023. PREPA states that the requested \$150 million will enable it to ensure enough funding of benefit payments for an additional five (5) to six (6) months while a long-term solution is negotiated and implemented. PREPA asserts that thousands of retirees and employees will be negatively affected if they do not receive their pension and other benefits.¹³

III. Conclusion

The Energy Bureau emphasizes this Resolution or the information to be provided does not imply or provide implicit or explicit approval for the allocation of unrestricted FEMA reimbursement funds for any expenditures that have not received Energy Bureau approval.

The Energy Bureau **ORDERS** PREPA to, within three (3) business days of issuing this Resolution and Order, detail (by fiscal year) the expenditures and budget items that correspond to the \$410 million FEMA reimbursements PREPA states were received during calendar year 2022 and 2023.¹⁴ PREPA shall identify any operational and/or necessary maintenance expenditures that were modified, cancelled or postponed in order to complete the projects for which FEMA reimbursed PREPA. If any operational and/or necessary maintenance expenditures were modified, cancelled, or postponed indicate their status and if they are no longer required, explain why.

The Energy Bureau **ORDERS** LUMA, within three (3) business days from the notification of this Resolution and Order to express its position regarding the March 14 Motion, including the requirement for LUMA to notify PREB of any budget amendments as stated in section 7.3(e) of the T&D OMA.¹⁵

The Energy Bureau **ORDERS** GENERA, within three (3) business days from the notification of this Resolution and Order, to share its position regarding the NME activities proposed by PREPA in the March 14 Motion.

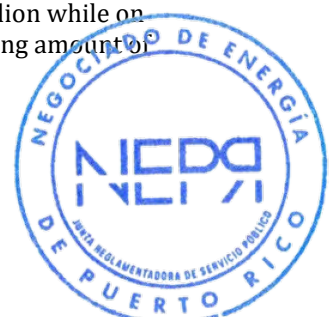
¹¹ Note that PREPA requests on page 15 that the PREB increase FY 2023 budget by \$29.4 million while on page 19, the funding request is for \$37.5 million. It appears that to reach the requested funding amount of \$254.4 million, \$29.4 is the appropriate number.

¹² March 14 Motion, pp. 14 – 15.

¹³ *Id.*, pp. 15 -16.

¹⁴ March 14 Motion, p. 7.

¹⁵ Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement, between PREA, P3A and LUMA, dated June 20, 2020 ("T&D OMA").



The Energy Bureau **WARNS** PREPA that:

- (i) noncompliance with this Resolution and Order, regulations and/or applicable laws may carry the imposition of fines and administrative sanctions of up to \$25,000 per day;
- (ii) any person who intentionally violates Act 57-2014, as amended, by omitting, disregarding, or refusing to obey, observe, and comply with any rule or decision of the Energy Bureau shall be punished by a fine of not less than five hundred dollars (\$500) nor over five thousand dollars (\$5,000) at the discretion of the Energy Bureau; and
- (iii) for any recurrence of non-compliance or violation, the established penalty shall increase to a fine of not less than ten thousand dollars (\$10,000) nor greater than twenty thousand dollars (\$20,000), at the discretion of the Energy Bureau.

Be it notified and published.


Edison Avilés Deliz
Chairman


Sylvia B. Ugarte Araujo
Associate Commissioner


Ferdinand A. Ramos Soegaard
Associate Commissioner



Antonio Torres-Miranda
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on March 25, 2023. Associate Commissioner Lillian Mateo Santos did not intervene. I also certify that on March 25, 2023 a copy of this Resolution and Order was notified by electronic mail to jaime.elkoury@promesa.gov; margarita.mercado@us.dlapiper.com; ana.rodriquezrivera@us.dlapiper.com; jmarrero@diazvaz.law; brannen@genera-services.com; kbolanos@genera-services.com; regulatory@genera-pr.com; and I have moved forward filing the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today, March 25, 2023.




Sonia Seda Gaztambide
Clerk