

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

NEPR Received: Mar 26, 2023 12:16 AM

IN RE: REVIEW OF LUMA’S INITIAL BUDGETS

CASE NO.: NEPR-MI-2021-0004

SUBJECT: Petition in Response to the Energy Bureau’s March 25 Order Regarding the Revised Request to Amend the FY2023 Budget

PETITION IN RESPONSE TO THE ENERGY BUREAU’S MARCH 25 ORDER REGARDING THE REVISED REQUEST TO AMEND THE FY2023 BUDGET

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:

1. On March 13, 2023, after month of exchanges and communications with the Puerto Rico Fiscal Oversight and Management Board (“Oversight Board” or “FOMB”) PREPA, once again, communicated to the FOMB and submitted a letter addressing PREPA’s urgent need to amend its fiscal year 2022-2023 (“FY2023”) budget to be able to address the Genera PR LLC (“Genera PR”) Mobilization Service Fee, monies for necessary operations, repairs and maintenance works under the PREPA fiscal plan, and the continuance of payments to its pension system (“Request to Amend the FY2023 Budget”).
2. On March 14, 2023, PREPA filed with the Honorable Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau” or “PREB”) a document titled *Request to Amend FY2023 PREPA Budget for Implementation of FOMB Certified Fiscal Plan Transformation Initiatives* (“March 14 Request”).
3. Thereafter, on March 17, 2023, the FOMB addressed PREPA’s Request to Amend the FY2023 Budget through a letter (“FOMB March 17 Letter”) substantially limiting the extent and

scope of PREPA's proposed revised budget and completely eliminating the "Operational Expenses, Necessary Maintenance Projects, and Capital Equipment" line item ("O&M Expenses") which is necessary for the adequate functioning of PREPA's generation assets.

4. In response, on March 21, 2023, PREPA reacted to the March 17 Letter urging the Oversight Board to reconsider PREPA's request impressing on them the importance of including O&M Expenses in the proposed revised budget. Especially, given the necessity of continuity in the maintenance and repair of PREPA's aged legacy generation and water facilities and stating that even if Genera PR were to take control of the legacy generation assets in May 2023, it is in Genera PR's best interest to have continuity and have the necessary maintenance and repair works ongoing ("March 21 Revised Request to Amend the FY2023 Budget").¹

5. The March 21 Letter also included a revised FY2023 Budget for PREPA, which included (i) the Oversight Board's requested amendments to the Mobilization Service Fee pursuant to the LGA OMA in the amount of \$15 million, (ii) the estimated costs for the implementation of the Voluntary Transition Program ("VTP") of PREPA employees transitioning to Genera PR in the amount of \$29.4 million, (iii) \$200 million increase to fund PREPA's Employee Retirement System ("PREPA ERS"), \$65 million for FY2023 (May and June) and \$135 million for FY2024 (July through October), and (iv) requests for a \$46,440,594 increase to its FY2023 O&M Expenses² and \$35,439,402 for continuance of these works in FY2024.

6. On March 22, 2023, PREPA provided further details to the Oversight Board of the basis to request the revised FY 2023 Budget through its letter titled *Supplemental Information for Budget*

¹ Annex A to the March 24 Motion.

² Given that more than three (3) months have passed since the original request to the Oversight Board in the December 8th Letter, PREPA estimates that not all the works in the O&M Expense Budget can be executed during the remainder of FY2023, especially considering the waiting time to receive equipment and materials under the current electric industry supply chain conditions. Hence, an adjustment was made and PREPA modified its request from 40 million to \$23,340,594 in the FY2023 NME budget.

Amendment Review (“March 22 Letter”).³

7. On March 24, 2023, PREPA submitted to the Energy Bureau a motion titled *Renewed and Reiterated Urgent Request to Amend FY2023 PREPA Budget for Implementation of FOMB Certified Fiscal Plan Transformation Initiatives* (“March 24 Motion”). Through the March 24 Motion, PREPA explained the revisions to the budget amounts requested through the March 14 Motion and provided a larger scope of justification for revised and/or modified Request to Amend the FY2023 Budget urging the Energy Bureau to approve the amendment.

8. On March 24, 2023, the Oversight Board also notified PREPA of a determination concerning PREPA’s March 21 Revised Request to Amend the FY2023 Budget and certified their own version of the modified FY2023 Budget (“FOMB’s March 24 Resolution”). See, Annex A

9. Through the FOMB’s March 24 Resolution, the FOMB certified and fully funded the following amounts for PREPA’s Revised FY2023 Budget:

- a) Genera PR Mobilization Funding - \$15 million to pay for Genera PR Mobilization costs as required under the LGA OMA.
- b) VTP Funding - \$29.4 million to fund a Voluntary Transition Program (VTP).
- c) Pension Funding – No amounts for pension funding, subject to further analysis and deliberations with the Government of Puerto Rico.
- d) Generation NME and Operational expenditures -\$46.4 million for FY2023, through a reserve, subject to the Energy Bureau’s review and approval.

10. On March 25, 2023, the Energy Bureau issued a *Resolution and Order* (“March 25 Order”), evaluating PREPA’s March 14 Motion and among other things, ordered 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

³ Annex B to the March 24 Motion.

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.

11. PREPA has the intention of responding to the March 25 Order but finds it essential to explain to the Energy Bureau in person the nuisances related to these operational and/or necessary maintenance expenditures. Therefore, PREPA respectfully requests the Energy Bureau to schedule a technical meeting on Tuesday, March 28, 2023, to discuss all maintenance projects, and particular intricacies, details, reasons, and justifications of the works performed or scheduled by PREPA. For PREPA it is imperative that this request for information from the Energy Bureau be addressed in a face-to-face process so that nothing is misunderstood or lost in translation.

12. PREPA's very committed officials are ready to present PREPA's necessities and reasoned requests before the Energy Bureau.

13. Lastly, PREPA also requests for these Energy Bureau to in accordance with Sec. 9.03 of Regulation 8543⁴ take administrative knowledge of FOMB's March 24 Resolution.

WHEREFORE, PREPA respectfully requests the Honorable Energy Bureau to take notice of the information herein provided, to take administrative knowledge of FOMB's March 24 Resolution, and to schedule a technical meeting to discuss the works performed and the necessities of PREPA's aged generation fleet.

RESPECTFULLY SUBMITTED.

⁴ Energy Bureau, *Regulation on Adjudicative, Notices of Compliance, Rate Review and Investigations Proceedings* Regulation No. 8543 (Dec. 18, 2014) ("Regulation 8543").

In San Juan, Puerto Rico, this 25th day of March 2023.

/s Maralíz Vázquez-Marrero

Maralíz Vázquez-Marrero

TSPR 16,187

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/s Joannely Marrero-Cruz

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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 25th day of March 2023.

/s Joannely Marrero-Cruz

Joannely Marrero Cruz

Annex A



David A. Skeel Jr.
Chair

Members

Andrew G. Biggs
Arthur J. González
Antonio L. Medina
John E. Nixon
Justin M. Peterson
Betty A. Rosa

Robert F. Mujica Jr.
Executive Director

BY ELECTRONIC MAIL

March 24, 2023

The Honorable Pedro Pierluisi Urrutia
Governor
Commonwealth of Puerto Rico

Dear Governor Pierluisi Urrutia,

Pursuant to a Resolution, a copy of which is attached hereto as Exhibit A (the “Resolution”), adopted by the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), and Section 202(c)(2) and 202(e)(4) of the Puerto Rico Oversight, Management, and Economic Stability Act, the Oversight Board hereby issues to the Governor this compliance certification that the revised Fiscal Year 2023 budget for the Puerto Rico Energy and Power Authority (“PREPA”), consisting of the document attached hereto as Exhibit 1, is a compliant budget as set forth in the Resolution.

The Oversight Board looks forward to continuing working with you for the benefit of the people of Puerto Rico.

Sincerely,

Robert F. Mujica Jr.
Executive Director

David A. Skeel
Andrew G. Biggs
Arthur J. Gonzalez
Antonio L. Medina
John E. Nixon
Justin M. Peterson
Betty A. Rosa

Hon. Pierluisi Urrutia

March 24, 2023

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CC: Hon. Omar Marrero Díaz
Mr. Josué A. Colón Ortiz
PREPA Governing Board
Mr. Edison Avilés Deliz
Mr. Fermín Fontanés
Mr. Wayne Stensby
Mr. Brannen McElmurray

EXHIBIT A

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO

March 24, 2023

**RESOLUTION CERTIFYING A REVISED FISCAL YEAR 2023 BUDGET FOR THE
PUERTO RICO ELECTRIC POWER AUTHORITY**

WHEREAS, on June 30, 2016, the federal Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”) was enacted; and

WHEREAS, Section 101 of PROMESA created the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”); and

WHEREAS, Section 202(c) of PROMESA establishes a multi-step procedure for the development, review, and approval of a budget for covered instrumentalities of the Commonwealth of Puerto Rico, such as the Puerto Rico Electric Power Authority (“PREPA”), providing that (i) the Governor must submit a proposed budget to the Oversight Board; (ii) the Oversight Board must review the proposed budget and determine, in the Oversight Board’s sole discretion, either that the proposed budget complies with the applicable fiscal plan or that it does not, in which case the Oversight Board must issue a notice of violation and recommended revisions, giving the Governor an opportunity to correct the violations; (iii) the Governor may then submit a revised proposed budget; and (iv) if the Governor fails timely to submit a proposed budget that the Oversight Board determines in its sole discretion is a compliant budget, the Oversight Board shall develop and submit to the Governor its own compliant budget; and

WHEREAS, on March 9, 2023, the Oversight Board provided to the Governor a letter requiring the submission of a revised FY2023 Budget for PREPA with revisions limited to allowing for payment: (a) up to \$15 million for the Mobilization Service Fee pursuant to section 4.6 of the Operating Maintenance Agreement; and (b) up to ~\$29.41 million in estimated costs for the implementation of the Voluntary Transition Program of PREPA employees transitioning to Genera PR LLC (“FY2023 Budget Timeline Letter”); and

WHEREAS, on March 13, 2023, PREPA failed to submit a proposed revised budget. Instead, PREPA submitted a letter disregarding the scope of the FY2023 Budget Timeline Letter, while outlining PREPA’s views on what should be included in the revised budget, and setting forth several additional proposed amendments, including: (a) a \$60 million increase in Operational Expenses, Necessary Maintenance Projects, and Capital Equipment that was rejected by PREB; and (b) a \$150 million increase in PREPA’s Employee Retirement System to cover additional interim pension funding beyond the FY2023 period; and

WHEREAS, the Oversight Board and its advisors held discussions with the Governor’s representatives regarding such submission; and

WHEREAS, after substantial deliberations, on March 17, 2023, the Oversight Board sent a notice of violation to the Governor pursuant to PROMESA Section 202(c)(1)(B) regarding the Governor's submission of a proposed revised FY2023 budget for PREPA; and

WHEREAS, on March 21, 2023, the Governor submitted a proposed revised FY2023 budget for PREPA; and

WHEREAS, after substantial deliberations, the Oversight Board has determined that the proposed revised budget for PREPA does not reflect a compliant budget as required by PROMESA Section 202(c)(2) and, as such, the Oversight Board has developed a revised compliant budget for PREPA pursuant to Section 202(e)(4) of PROMESA, which budget is attached hereto as Exhibit 1 (the "Compliant Revised FY2023 PREPA Budget");

WHEREAS, such Compliant Revised FY2023 PREPA Budget, among other things, fully funds a ~\$46.4 million increase in Operational Expenses, Necessary Maintenance Projects, and Capital Equipment through a reserve, subject to the review and approval of the Puerto Rico Energy Bureau.

WHEREAS, the Board is in deliberations with Government to identify an estimated \$150 million in liabilities owed by the commonwealth and related entities to PREPA, for the purpose of funding PREPA's Employee Retirement System for additional interim pension funding beyond the FY2023 period and anticipates identifying sufficient resources to fund the shortfall through the remainder of calendar year 2023.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT, pursuant to Section 202(c)(2) and 202(e)(4) of PROMESA, the Oversight Board shall submit to the Governor the Compliant Revised FY2023 PREPA Budget, and such budget shall (i) be deemed to be approved by the Governor, (ii) the subject of a compliance certification to be issued by the Oversight Board to the Governor, and (iii) in full force and effect beginning on March 24, 2023.

APPENDIX A

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EXHIBIT 1: PUERTO RICO ELECTRIC POWER AUTHORITY FISCAL
YEAR 2023 COMPLIANT BUDGET AND BUDGETARY
RESOLUTIONS PROVISIONS

APPENDIX A

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I. EXHIBIT 1 - BUDGET - REVENUES

PUERTO RICO ELECTRIC POWER AUTHORITY

\$ Thousand	FY23 Budget
Basic Revenue	
Residential	418,469
Commercial	585,076
Industrial	101,425
Public Lighting	60,749
Agricultural	1,962
Others	2,217
Total	\$ 1,169,899
Fuel & Purchased Power	
Residential	1,458,820
Commercial	1,543,555
Industrial	377,871
Public Lighting	48,729
Agricultural	4,603
Others	7,838
Total	\$ 3,441,415
CILT	
Residential	47,879
Commercial	50,660
Industrial	12,402
Public Lighting	1,599
Agricultural	124
Others	257
Total	\$ 112,950
Subsidies	
Residential	101,790
Commercial	107,702
Industrial	26,366
Public Lighting	3,400
Agricultural	327
Others	547
Total	\$ 240,132
Total Gross Revenue	\$ 4,964,396
Other Income	37,358
Total Unconsolidated Revenue	\$ 5,001,754
Bad Debt Expense	(74,466)
CILT & Subsidies	(353,082)
Total Consolidated Revenue	\$ 4,574,206

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II. EXHIBIT 1 BUDGET - EXPENSES (cont'd)
PUERTO RICO ELECTRIC POWER AUTHORITY

\$ Thousand	FY23 Budget
A. Fuel & Purchased Power	
Fuel	2,889,990
Purchased Power - Conventional	472,207
Purchased Power - Renewable	79,217
Total Fuel & Purchase Power Expenses	\$ 3,441,415
B. GenCo - Operations & Maintenance Expenses	
Labor	
Salaries & Wages	45,511
Pension & Benefits	28,904
Overtime Pay	11,733
Overtime Benefits	1,395
Total GenCo Labor Operating Expenses	\$ 87,543
Non-Labor / Other Operating	
Materials & Supplies	19,795
Transportation, Per Diem, and Mileage	1,527
Security	9,043
Utilities & Rents	3,623
Legal Services	7,405
Professional & Technical Outsourced Services	2,392
Regulation & Environmental Inspection	7,945
Other Miscellaneous Expenses	7,565
Total GenCo Non-Labor / Other Operating Expenses	\$ 59,294
Shared Services Agreement Impact	59,748
O&M Agreement Mobilization Fee^[1]	15,000
PREPA Voluntary Transition Program^[2]	29,399
Emergency PREPA Employee Retirement System Contribution^[2]	65,000
Operations and Maintenance Reserve^[3]	46,441
Total GenCo Operating Expenses	362,425
Maintenance	
Generation	99,039
Total GenCo Maintenance Projects Expense	\$ 99,039
Federal Funding Cost Share	-
Total GenCo Operating & Maintenance Expenses	\$ 461,464

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EXHIBIT 1 BUDGET - EXPENSES (cont'd) PUERTO

RICO ELECTRIC POWER AUTHORITY

\$ Thousand	FY23 Budget
<i>C. HoldCo - Operations Expenses</i>	
Labor	
Salaries & Wages	7,513
Pension & Benefits	4,508
Overtime Pay	439
Overtime Benefits	53
Total HoldCo Labor Operating Expenses	\$ 12,513
Non-Labor / Other Operating Expenses	
Materials & Supplies	288
Transportation, Per Diem, and Mileage	242
Retiree Medical Benefits	9,000
IT Service Agreements	850
Utilities & Rents	36
Communications Expenses	81
Professional & Technical Outsourced Services	4,144
Other Miscellaneous Expenses	1,825
PREPA Restructuring & Title III	25,100
FOMB Advisor Costs allocated to PREPA	24,400
Total HoldCo Non-Labor / Other Operating Expenses	\$ 65,966
Total HoldCo Operating Expenses	\$ 78,479
<i>D. GridCo - Operating & Maintenance Expenses</i>	
GridCo Labor Operating Expenses	246,471
GridCo Non-Labor / Other Operating Expenses	289,926
Operator Service Fees	121,785
2% Reserve	10,728
Maintenance Projects Expenses	79,778
Total GridCo Operating & Maintenance Expenses	\$ 748,688
Total Operating & Maintenance Expenses	\$ 4,730,046
Surplus / (Deficit) Before Legacy Pension and Debt Obligations^[4]	\$ (155,840)

[1] The O&M Agreement Mobilization Fee (\$15M) has already been funded through cash on hand.

[2] Expenses for the Voluntary Transition Program and the Emergency PREPA Employee Retirement System Contribution (\$94.4M) are to be funded through cash available in PREPA's operating accounts.

[3] The O&M Reserve (\$46.44M) is to be funded through cash available in the FEMA Reimbursement account. See details in Section 7 of the Enforcement of the Puerto Rico Electric Power Authority FY23 Budget below.

[4] To be funded as described in footnotes 1-3.

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III. ENFORCEMENT OF THE PUERTO RICO ELECTRIC POWER AUTHORITY FY23 BUDGET

Section 2.- All expenditures authorized in any prior fiscal year are terminated and no disbursement of public funds may be covered by such expenditure authorization, except: (1) expenditures to carry out capital improvements that have been accounted for and kept on the books; (2) capital and maintenance expenditures with procurement cycles that extend beyond the end of the fiscal year that have been accounted for and kept on the books; (3) the portion of any other expenditures authorized in the Puerto Rico Electric Power Authority (“PREPA”) Certified Budget for fiscal year 2023; and (4) the portion of the appropriations authorized for fiscal year 2023 that have been allocated, transferred or designated on or before June 30 of such fiscal year. This restriction on expenditures authorized in any prior fiscal year shall not apply to: (i) programs financed in whole or part with federal funds; (ii) orders by the United States district court with jurisdiction over all matters under Title III of PROMESA; and (iii) matters pertaining to any consent decree or injunction, or an administrative order or settlement entered into with a Federal Agency, with respect to Federal programs. In addition, the foregoing exceptions to the restrictions on expenditures authorized in any prior fiscal year are conditioned on the prior written approval of the Oversight Board.

Section 3.- On or before August 31, 2023, the Executive Director of PREPA will provide to the Oversight Board a certification indicating whether there are any unused amounts of the fiscal year 2023 certified budget for items (1), (2), (3), and (4) of Section 2 and, if so, an itemization of such unused amounts.

Section 4.- Notwithstanding any other statement, no unused budget allotments from any previous fiscal year shall be used by PREPA to fund current fiscal year expenditures, except as otherwise expressly authorized by the Oversight Board in writing after June 30, 2023.

Section 5.- The Executive Director of PREPA shall be responsible for not spending or encumbering during fiscal year 2023 any amount that exceeds the expenditures authorized for GenCo and HoldCo herein for fiscal year 2022, other than amounts above those budgeted for fuel and purchased power, which may fluctuate based on market factors or increase due to unforeseen expenses necessary to maintain the electric system’s reliability and safety.

Section 6.- Except for additional expenditures related to fuel and purchased power, the expenditures approved in this budget, including payroll and related expenses, may only be reprogrammed with the prior express written approval of the Oversight Board. For the avoidance of doubt, this prohibition includes any reprogramming of any amount, line item or expenditure provided in this budget. In the case of reprogramming to the fuel and purchased power budget, the Executive Director of PREPA must provide written notice to the Oversight Board of any change to such amounts within 5 days after any such change taking place.

Section 7.- Funds included in the “Operations and Maintenance Reserve” line item include those pertaining to PREPA’s Revised Proposed FY23 Budget Amendment, such funds may only be drawn on after PREPA receives formal authorization of the increased Operating and/or Necessary Maintenance Expense expenditures from the Puerto Rico Energy Bureau and only up to the amount authorized by such.

Section 8.- Pursuant to Section 203 of PROMESA, PREPA must submit to the Oversight Board, no later than 15 days after the last day of each quarter of fiscal year 2023, a budget to actual report, along

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with an explanation of relevant variances as provided in the certified Fiscal Plan. The Oversight Board may determine to provide PREPA a template to be used for such reporting, in which case any quarterly budget to actual reports submitted by PREPA must be submitted consistent with such reporting template.

Section 9.- The Oversight Board reserves the right to, in its sole discretion, issue a notice to the Governor, pursuant to PROMESA Section 202(a), setting forth a schedule for revising PREPA's budget.

Section 10.- The PREPA budget for fiscal year 2023 took effect on July 1, 2022.