

**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: Requirement of Information
("ROI") on PREPA's Motions requesting FY 23
Generation Budget Amendment.

RESOLUTION AND ORDER

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 and 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 rest 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 it reiterates that request⁵ and that it is simultaneously petitioning approval of the budget amendment request to the Energy Bureau and FOMB.⁶ The Energy Bureau has considered PREPA's request to allocate

¹ March 14 Motion, pp. 1 – 2.

² *Id.*, p. 9.

³ *Id.*, p. 21.

⁴ See, Resolution and Order, *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, p. 8.

⁶ *Id.*, p. 2.



FEMA reimbursements in accordance with the directives for Prioritization of FEMA Reimbursements as stated in the FY23 Budgets Determination Order.

Pursuant to Section 7.3(a) of the OMA⁷, LUMA Energy, LLC ("ManagementCo") and LUMA Energy Servco, LLC ("ServCo") (jointly referred as "LUMA") has the obligation to file a proposed consolidated budget before the Energy Bureau that shall include the Generation Budget which is provided by PREPA. Pursuant to Section 7.3(e) (iii)(x) of the OMA, LUMA has the obligation to notify the Energy Bureau, Administrator, and Owner of amendments to the Generation Budget. This obligation, logically and clearly, requires that PREPA, as the entity handling the Generation Budget, constantly communicates with LUMA, and more importantly that PREPA will not act alone or unilaterally regarding an amendment to the approved consolidated budget. This is even more important because any changes to the system's budget⁸ could have an adverse effect on public policy compliance matters and/or other budget items given PREPA's dire financial situation.

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On March 24, 2023, PREPA filed a document titled *Renewed and Reiterated Urgent Request to Amend FY2023 PREPA Budget for Implementation of FOMB Certified Fiscal Plan Transformation Initiatives* ("March 24 Motion") in which PREPA reiterated its request for an amendment to the FY2023 Generation Budget as described in the March 14 Motion. PREPA also clarified and updated the March 14 Motion. PREPA requested that the Energy Bureau authorize an amendment to the FY2023 Generation Budget to allocate: (i) \$15 million to pay for the GENERA mobilization costs; (ii) \$29.4 million to fund the VTP; (iii) \$200 million to fund the Pension System; and (iv) \$81.8 million for NME (\$46.4 million FY2023 and \$35.4 million for FY2024).

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On March 25, 2023, the Energy Bureau issued a Resolution and Order ("March 25 Order") in which, among other things, required LUMA to on or before March 29, 2023, state its position on the March 14 Motion, including the requirement for LUMA to notify the Energy Bureau of any budget amendments as stated in Section 7.3(e) (iii)(x) of the OMA. Also, the Energy Bureau ordered PREPA to 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; to 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 and if any operational and/or necessary maintenance expenditures that were modified, cancelled or postponed indicate their status and if they are no longer required, explain why. Finally, the Energy Bureau ordered GENERA to share its position regarding the NME activities proposed by PREPA in the March 14 Motion.

On March 26, 2023, PREPA filed a document titled *Petition to the Energy Bureau's March 25 Order Regarding the Revised Request to Amend the FY2023 Budget* ("March 26 Motion"), in which PREPA indicated that FOMB approved and fully funded a modified version of PREPA's amendment request as follows:⁹

- a) Genera PR Mobilization Funding - \$15 million to pay 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 person 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.

⁷ Transmission and Distribution System Operation and Maintenance Agreement of June 22, 2020 ("OMA").

⁸ On February 27, 2023, the Energy Bureau issued a Resolution and Order approving the Certified Budget, subject to certain conditions and reporting requirements.

⁹ March 26 Motion, p. 3, ¶¶ 8-9.



Through the March 26 Motion, PREPA requested the Energy Bureau to take administrative knowledge of FOMB's March 24 Resolution¹⁰ in accordance with Sec 9.03 of Regulation 8593.^{11 12}

On March 29, 2023, GENERA, filed a document in response to the March 25 Order ("Genera March 29 Response"), in which Genera states..." Therefore, Genera supports any activity that can be executed by PREPA during the mobilization period and continued by Genera after Service Commencement Date to secure the continuance of maintenance repairs and stabilize planning and scheduling. Nonetheless, it is respectfully requested that the Energy Bureau, exercising its power of fiscal oversight, evaluates the impact that the execution of the NMW activities would have on PREPA's liquidity."¹³

On March 29, 2023, LUMA filed a motion titled *Motion in Compliance with Resolution and Order of March 25, 2023* ("March 29 Motion"). In the March 29 Motion LUMA recognizes its obligation under the OMA to notify the Energy Bureau, PREPA and the P3A for PREPA to request a budget amendment and states that PREPA did not inform LUMA of the need to amend the Generation Budget before seeking such amendment from the FOMB and the Energy Bureau.¹⁴ LUMA expressed that as PREPA is aware, LUMA is concerned with PREPA's ability to fund the Service Accounts. LUMA is, thus, supportive of any measure taken to ensure PREPA's compliance with its contractual obligations under the OMA and respectfully requests that any measure taken by the Energy Bureau consider PREPA's obligations to fund the Service Accounts under the OMA.¹⁵

In the March 29 Motion LUMA stated that pursuant to its initial analysis, some of the projects included in Exhibit B of Annex C of the March 14 Motion (*i.e.*, the list of projects which expenditures are being reimbursed) are classified as Transmission and Distribution ("T&D") projects and that further information is needed to identify where the reimbursed funds for those projects should be allocated. It is LUMA's position that the proposed expenditures need to be explained by PREPA in further detail for the Energy Bureau to determine the proper allocation.¹⁶

It is LUMA's position that, although the entity in charge of the generation is the one responsible for the development and implementation of generation projects, any infrastructure or operational generation projects should be proven to be the most efficient use of funds consistent to build a more reliable electric system with low outage rates.¹⁷

On April 2, 2023, PREPA filed a motion titled *Modified FY2023 Budget Amendment Request for Implementation of FOMB Certified Fiscal Plan Transformation Initiatives and in Compliance with the March 25 Order* ("April 2 Motion"). In the April 2 Motion, PREPA states that on March 28, 2023 it met with Energy Bureau Commissioners to clarify the March 25 Order and enumerates the five requests the Energy Bureau made during the meeting.¹⁸

These requests were:

¹⁰ March 26 Motion, Annex A.

¹¹ Regulation on Adjudicative, Notices of Compliance, Rate Review and Investigation Proceedings, Regulation No. 8543, December 18, 2014 ("Regulation 8543").

¹² March 26 Motion, p. 4, ¶ 13.

¹³ Genera March 29 Response, p. 3.

¹⁴ March 29 Motion, ¶ 34.

¹⁵ *Id.* at ¶ 35.

¹⁶ *Id.* at ¶ 36.

¹⁷ *Id.* at ¶ 37.

¹⁸ See. April 2 Motion at pp. 3-4. ("Commissioner's Requests")



- a. Detailed information of the Generation NME expenditures, by year, by project including cross reference to Scope of Works ("SOW's") and Project Worksheets ("PW's") as well as reimbursement information.
- b. State whether a project was completed or not.
- c. State whether any current NME expenditures caused a deferment to any previously approved project.
- d. Detailed information of operational expenditures with a correlation to the Generation NME expenditures.
- e. In the case PREPA understands that projects could cross over to FY2024 PREPA should state so and detail the amounts for FY2023 and FY2024.

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PREB notices that certain NME information was furnished in Annex E in which NME information was provided for FY22-FY23, Annex G in which NME information was provided for FY21-FY22, and Annex H in which NME information was provided for FY18-FY19, and notices that PREPA submitted extensive information not specifically requested in the March 25 Order or the Commissioner's Requests. The Energy Bureau finds that PREPA was not fully responsive to the specific queries and instead provided fragmented information as well as information already submitted by PREPA through other motions. The Energy Bureau expects PREPA to fully respond to its requests and **DIRECTS** PREPA to provide responses fully and clearly to the Commissioner's Requests, as cited above, within five (5) business days after the notification of this Resolution and Order. In addition, the Energy Bureau notes unexplained discrepancies in the total amounts disbursed by FEMA/COR3 between the March 14 Motion and the April 2 Motion, pursuant to which, further information is required in Annex A of this Resolution and Order.

2
Through the April 2 Motion PREPA detailed the inherent need for the approval of the O&M Expenses and requested that the Energy Bureau find the March 14 and March 24 requests moot. Also, PREPA requested that the Energy Bureau find it in compliance with the March 25 Order and grant approval of PREPA's Modified Amendment Budget Request. Finally, PREPA stated that in addition to the O&M Expenses, the Modified Budget Amendment Request includes the Genera PR Mobilization Fee, the VPT, and ERS contributions for the remainder of FY2023 that PREPA asserts have already been approved by the Oversight Board.

3
PREPA stated in the April 2 Motion, "... As PREPA explained in the Request to Amend the FY2023 Budget, such an amendment does not impact the energy sales rates, nor it represents a burden to the customers, as the update is based on revenues from reimbursed federal funds gathered by PREPA during the present and past fiscal years."¹⁹ It is, therefore, clear that PREPA is requesting that the components of the amendment be funded from FEMA reimbursed federal funds. Although the FOMB allowed the requested amounts for the GENERA PR Mobilization Fee, the VPT and ERS contributions for FY 2023, it stated that the funds should come from PREPA operating accounts.²⁰ This is distinct from the FEMA Reimbursement Account.

4
The Energy Bureau directed LUMA, in its May 31 Resolution²¹, to file annual reports on the implementation of improved efficiencies and quantification of resulting savings. The annual report submitted by LUMA for Fiscal Year 2022 highlights the advances LUMA has attained in collecting past due bills more effectively. In the October 29 Motion,²² LUMA explains that its efforts to address collections more effectively from past due bills resulted in collection of more than \$203 million in past due bills.

¹⁹ April 2 Motion, pp. 4-6, ¶ 11.

²⁰ March 26 Motion, Annex A, page A-4 (see footnotes).

²¹ Resolution and Order, *In re: LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, May 31, 2021 ("May 31 Resolution").

²² *In re: LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, *Motion Submitting LUMA's Annual Report for Fiscal Year 2022 and Report on Efficiencies* filed by LUMA on October 29, 2022, ("October 29 Motion"), p. 22.



The Energy Bureau, through this ROI, is seeking to identify sources of funding that could be employed to cover PREPA's budget amendment request. The Energy Bureau is interested in learning how LUMA accounts for these collections on behalf of the utility and **ORDERS** LUMA to provide on or before five (5) business days after the notification of this Resolution and Order the information detailed in Annex B to this Resolution and Order.

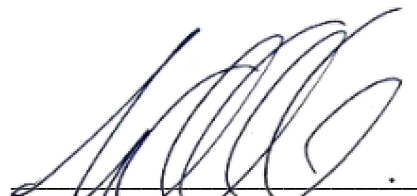
Upon review of the March 14 Motion, Renewed March 14 Motion, the March 29 Motion, and the April 2 Motion the Energy Bureau **ORDERS** PREPA within five (5) business days from the notification of this Resolution and Order to explain the justification for PREPA's lack of timely coordination and communication with LUMA prior to the preparation and filing of a budget amendment, required under Section 7.3(e)(x)(ii) of the OMA.

The Energy Bureau **ORDERS** PREPA to provide on or before five (5) business days after the notification of this Resolution and Order, the information detailed in Annex A to this Resolution and Order.

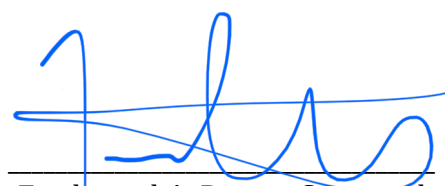
As requested by PREPA through the March 26 Motion, the Energy Bureau **TAKES ADMINISTRATIVE NOTICE** of FOMB's March 24 Resolution in accordance with Sec 9.03 of Regulation 8593.

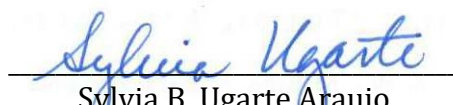
The Energy Bureau **WARNS** PREPA and LUMA that: (i) noncompliance with this Resolution and Order, regulations and/or applicable laws may carry the imposition of fines and administrative sanctions of up to \$25,000 per day; (ii) any person who intentionally violates Act 57-2014, as amended, by omitting, 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


Lillian Mateo Santos
Associate Commissioner


Ferdinand A. Ramos Soegaard
Associate Commissioner


Sylvia B. Ugarte Araujo
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 April 5, 2023. I also certify that on April 5, 2023 a copy of this Resolution and Order was notified by electronic mail to jaime.elkoury@promesa.gov; margarita.mercado@us.dlapiper.com; ana.rodriguezrivera@us.dlapiper.com; mvazquez@diazvaz.law; 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, April 5, 2023.





Sonia Seda Castambide
Clerk

ANNEX A
(Requirement of Information – PREPA)

1. Provide the most recent itemized estimate of Genera's mobilization costs.
2. If the Genera PR LLC's ("GENERA") Mobilization Fee, PREPA's Voluntary Transition Program ("VPT"), and the Emergency PREPA Employee Retirement System Contribution expenses were to be funded using cash available in PREPA's operating accounts, provide all the information supporting the fact that the use of such cash will not impact PREPA's existing operational priorities. The information shall include, without limitation:
 - (a) Weekly/Monthly Cash Flow for the last two (2) years with all bank account balances.
 - (b) Prior years (at least 4 years) budgets to actual results on a budgetary basis to demonstrate compliance with the applicable budget, including information on total revenue and expense actuals demonstrating surplus (or deficiency) for each year.
 - (c) Any study, if available, supporting minimum cash balances needed for the operation of the Electric System, based on Prudent Utility Practices.
3. According to PREPA: "on March 9, 2023 the Oversight Board sent a letter to the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF") indicating that it had 'Approved with Conditions' a proposed Administrative Order to enact the VTP related to the Genera transaction, subject to an amendment to PREPA's Certified Budget reflecting the VTP's projected expenditure and a proportional cash revenue to allow for the VTP-related disbursement."²³
 - (a) Provide the March 9, 2023 letter.
 - (b) Provide PREPA's proposed Administrative Order to enact the VTP related to the Genera transaction with all its supporting documentation.
4. In the 2017 Rate Order,²⁴ the Energy Bureau approved \$314,390,000 of Debt Service (Principal and Interest) and \$125,756,000 of Debt Service Coverage in the Revenue Requirement totaling \$440,146,000.²⁵ The Energy Bureau stated that the rates would remain in effect until the Energy Bureau changed them prospectively.²⁶
 - a) Provide an accounting and full explanation of the collection of the \$440,146 and corresponding expenditures for this budgetary amount, broken down by both Debt Service (Principal and Interest) and Debt Service Coverage, for each fiscal year beginning with FY 2017 up to and including FY 2021.
5. PREPA, in ANNEX D of its April 2, 2023 filing²⁷, lists that \$53,766,423 was transferred on 2/1/23 from COR3 in FEMA reimbursements for FAASt Mobile Generation Units Purchases.
 - (a) Is this amount, \$53,766,423, part of the \$309,157,969.97 aggregate balance in the FEMA Reimbursement Account 030-261678 as of March 30, 2023?

²³ *In re: LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, Request to Amend FY2023 PREPA Budget for Implementation of FOMB Certified Fiscal Plan Transformation Initiatives, filed on March 14, 2023, p. 15.

²⁴ Final Resolution and Order, *In re: Puerto Rico Electric Power Authority Rate Review*, Case No. CEPR-AP 2015-0001, January 10, 2017 ("2017 Rate Order").

²⁵ 2017 Rate Order, p. 217, Attachment 1, line 20 & line 21.

²⁶ *Id.*, p. 2.

²⁷ See, PREPA's *Modified FY2023 Budget Amendment Request for Implementation of FOMB Certified Fiscal Plan Transformation Initiatives and in Compliance with the March 25 Order* filed on April 2, 2023.



6. PREPA-ERS Pension Funding

- (a) Provide all supporting documentation that substantiates the need for \$65M for funding for the PREPA-ERS for FY 2023.
 - (b) Provide the budgeted amount of employer contribution that will potentially be liberated for the months of May and June due to the \$65M request for funding.
 - (c) Provide latest Audited Financial Statements for PREPA ERS Pension Plan.
 - (d) Provide a description of all the control mechanisms to be implemented in this “pay as you go” short term cash need for FY23.
 - (e) Provide historical information of members of the PREPA-ERS Pension Plan transferred to a private entity (example: LUMA) and if they requested the liquidation of their pension account balances.
7. If FEMA funds are not available to cover the proposed budget increase, has PREPA identified an alternate source of funding for the requested GENERA Mobilization Fee, the VPT and the Emergency ERS Contribution?
8. In PREPA’s April 2, 2023 Motion titled, “*Modified FY2023 Budget Amendment Request for Implementation of FOMB Certified Fiscal Plan Transformation Initiatives and In Compliance with the March 25 Order,*” at Annex D, p. 184 of 203, the total value of the Amount Disbursed by FEMA/COR3 is \$410,424,531.61. In PREPA’s March 14, 2023 Motion titled, “*Request to Amend FY2023 PREPA Budget for Implementation of FOMB Certified Fiscal Plan Transformation Initiatives,*” at Annex C, Exhibit B, p. 58 of 82, the total value of the Amount Disbursed by FEMA/COR3 is \$490,591,173.65, which constitutes a variance of more than \$80 million. Explain this variance in detail.
9. Refer to *In re: Manejo del Mantenimiento y Reparaciones de Unidades de Generación Utilizadas por la Autoridad de Energía Eléctrica de Puerto Rico para Suplir el Servicio Eléctrico*, NEPR-MI-2021-0014, “Moción en Cumplimiento de Orden Dictada Durante Conferencia Técnica Celebrada el Pasado 3 de Septiembre de 2021” filed by PREPA on September 8, 2021.

Exhibit A, NME Budgets FY17-FY21, indicates that during FY19, \$58.1M were spent from the NME budgets to purchase the FT-8 MOBILEPAC units that FEMA reimbursed in PA-02-PR-4339-PW-09312 and was transferred to PREPA on February 1, 2023.

- (a) Noting that NME funds were used for the acquisition of these facilities during FY19, what NME activities were modified, cancelled, or postponed during FY19 and any other subsequent year in order to accommodate the FT-8 MOBILEPAC expense?
10. The April 2 Motion,” at Annex D, p. 184 of 203, Amounts Disbursed by FEMA/COR3 are enumerated. Which of the Amounts Disbursed by FEMA/COR3 as identified in this table reimburses activities for which ratepayer funds have already been expended, similar to the FAASt Mobile Generation Units Purchases, for which \$53,766,423 were reimbursed in FY2023 for expenditures made in FY2019.



ANNEX B
(Requirement of Information – LUMA)

1. The October 29 Motion, at page 22, LUMA explains that its efforts to more effectively address collections from past due bills resulted in collection of more than \$203 million in past due bills.

In the “Petition for Approval of Initial Budgets and Related Terms of Service,” filed on February 24, 2021, at Exhibit 1, p. 26, Bad Debt was budgeted in the FY 2022 Initial Budgets at \$59 million as approved by the Energy Bureau in the “Determination on LUMA’s Initial Budgets”, dated May 31, 2021.

- a) Specify the time period for the past due bills that resulted in the collection of the cited \$203 million.
- b) Specify how the \$203 million is reflected in the FY 2022, FY 2023, and FY 2024 budgets.
- c) What was the actual level of Bad Debt that was incurred/accrued in FY 2022?

