

**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: Resolution and Order pertaining to
various motions.

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

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.



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.

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).

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}

1 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

2 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

3 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

4 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.

Further, through the April 2 Motion, PREPA for the first time specified the amount required approximately \$3.3 million related to legal and professional advisors. Specifically, PREPA requested:

1. King and Spalding (\$2.5 million for completed Tranche 1)
2. Sargent & Lundy (\$300,000 for update of the ESAs of the Authority's plants including peaking units in Vega Baja, Jobos, Dagua, Yabucoa, Vieques, and Culebra)
3. Other Legal Advisor (\$500,000).¹⁹

On April 5, 2023, the Energy Bureau directed PREPA to provide responses fully and clearly to the Commissioner's Requests, as cited above, within five (5) business days. In addition, the Energy Bureau issued a Requirement of Information ("ROI") on PREPA's Motions requesting FY23 Generation Budget Amendment.

Through motions filed on April 5 and April 11, 2023, PREPA reiterated that it required approximately \$3.3 million of operating expenses necessary to continue executing tasks related to compliance with Energy Bureau directives and ongoing legal responsibilities.²⁰

The Energy Bureau **PARTIALLY APPROVES** PREPA's budget amendment request for FY2023 intended to fund additional operational and maintenance expenses **ONLY** related to Legal & Professional Advisors in the amount of **\$2.8 million**; that is \$2.5 million for King and Spalding fees and \$300,000 for Sargent and Lundy fees.

The Energy Bureau **REMINDS** PREPA that the Energy Bureau has taken the monetary responsibility of over one million dollars to undertake Tranche 2 and Tranche 3, which should have been budgeted by PREPA for FY23. This allowed PREPA additional funds that could be used for Tranche 1. Also, utilities can prudently reallocate approved funds. Therefore, it is surprising that PREPA requests additional funds for legal advisors to complete Tranche 1. The Energy Bureau **WARNS** PREPA that it has never filed a motion indicating that Tranche 1 shall be delayed due to the lack of funds required for legal services. This action of requesting additional funds in order to complete Tranche 1 amendments only days before the expiration of the Termination Date of the PPOA's is contrary to and does not further the Puerto Rico energy policy goals.

The Energy Bureau **HIGHLIGHTS** that the delay of the completion of the Tranche 1 projects can jeopardize savings estimated in twelve million dollars per month, savings which are desperately needed by the ratepayers.

The Energy Bureau **ORDERS** PREPA to provide, **on or before five (5) business days** of the notification of this Resolution and Order, a detailed explanation and/or justification of the "Other Legal Advisor Expenditures" totaling \$500,000. Upon review of PREPA's filing, the Energy Bureau will determine if the approval of those funds is warranted.

¹⁹ April 2 Motion, Annex A, p. 16.

²⁰ See pp. 9 – 10 of the April 5 and April 11, 2023 Motions.



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 57-2014,²¹ 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.

The Energy Bureau **ORDERS** PREPA to provide the names and positions of its personnel presently responsible for the completion of Tranche 1. Further, the Energy Bureau **ORDERS** PREPA to **SHOW CAUSE, within five business (5) days** of the notification of this Resolution and Order, as to why a fine shall not be imposed to its personnel responsible for the completion of Tranche 1 due to violation of our energy policy; particularly Section 4.2 of Act 17-2019,²² in accordance with Article 6.36 of Act 57-2014.

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 12, 2023. I also certify that on April 12, 2023, a copy of this Resolution and Order was notified by electronic mail to the following: jaime.elkoury@promesa.gov; margarita.mercado@us.dlapiper.com; ana.rodriquezrivera@us.dlapiper.com; mvazquez@diazvaz.law; jmarrero@diazvaz.law; brannen@genera-services.com; kbolanos@genera-services.com; regulatory@genera-pr.com. I also certify that on April 12, 2023, 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, on April 12, 2023.

	 Sonia Seda Gaztambide Clerk
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²¹ Puerto Rico Energy Transformation and RELIEF Act, as amended ("Act 57-2014").

²² Puerto Rico Public Policy Act ("Act 17-2019").