

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

NEPR Received: Apr 14, 2023 10:34 PM

IN RE: REVIEW OF LUMA’S INITIAL BUDGETS

CASE NO.: NEPR-MI-2021-0004

SUBJECT: Motion in Compliance with the April 5 Resolution and Order

**MOTION IN COMPLIANCE WITH
THE APRIL 5 RESOLUTION AND ORDER**

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 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 Motion”). Through said filing PREPA impressed upon the Energy Bureau the urgent need PREPA has to amend its fiscal year 2022-2023 (“FY2023”) budget to be able to address the Genera PR LLC (“Genera PR”) Mobilization Service Fee for effective transformation efforts, necessary operations, repairs and maintenance works under the PREPA fiscal plan, and the continuance of payments to its pension system. As PREPA explained in the March 14 Motion, the budget amendment request 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.

2. 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 and requested the Energy Bureau to authorize an amendment to the FY2023 Generation Budget with the purpose to allocate: (i) \$15 million to pay for the Genera PR mobilization costs; (ii) \$29.4 million to fund the Voluntary Transition Program (“VTP”); (iii) \$200 million to fund PREPA’s Employee Retirement System (“PREPA ERS”); and (iv) \$81.8 million for Generation Necessary Maintenance Expenses (“NME”) and Operational expenditures (collectively, “O&M Expenses”) (\$46.4 million FY2023 and \$35.4 million for FY2024).

3. On March 25, 2023, the Energy Bureau issued a *Resolution and Order* (“March 25 Order”) in which, among other things, in what is relevant, the Energy Bureau ordered PREPA to detail by Fiscal Year the expenditures and budget items that corresponded Federal Emergency Management Agency (FEMA) reimbursements, which PREPA stated were received during the calendar year 2022 and 2023, this was in response to the March 14 Motion. PREPA was also directed to identify and inform any operational and/or necessary maintenance expenditures that were modified, canceled, 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, canceled, or postponed indicate their status and if they were no longer required and explain the reason.

4. Further, on March 26, 2023, PREPA filed with the Energy Bureau a document titled *Petition to the Energy Bureau’s March 25 Order Regarding the Revised Request to Amend the FY2023 Budget* (“March 26 Motion”).

5. Through the March 26 Motion, PREPA indicated that on March 24, 2023, the Financial Oversight and Management Board for Puerto Rico (“FOMB”) issued a Resolution (“FOMB March 24 Resolution”) through which the FOMB approved and fully funded a modified version of

PREPA's amendment request as follows: (i) Genera PR Mobilization Funding - \$15 million to pay for Genera PR Mobilization costs as required under the LGA OMA; (ii) VTP Funding - \$29.4 million to fund a VTP; (iii) Pension Funding – \$65M for FY2023 pension funding. No amounts for pension funding for FY2024, subject to further analysis and deliberations with the Government of Puerto Rico; (iv) Generation NME and Operational expenditures - \$46.4 million for FY2023, through a reserve, subject to the Energy Bureau's review and approval¹. PREPA also requested the Energy Bureau to take administrative notice of the FOMB March 24 Resolution.

6. After some procedural events, on March 28, 2023 PREPA officials met with Energy Bureau Commissioners and advisors to clarify portions of the March 25 Order. PREPA also provided information to the five requests made by the Commissioners during the March 28 meeting. Thereafter, on April 2, 2023, PREPA submitted to PREB a document 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").

7. In response, on April 5, 2023, the Energy Bureau issued a *Resolution and Order* ("April 5 Order") requesting additional information as stated in Annex A of the April 5 Order and also determined further responsive information was warranted to evaluate responses to the following Commissioners requests, including information from PREPA in the form of:

- a. Detailed information of the Generation NME expenditures, by year, by project including crow 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

¹ Generation NME and Operational expenditures - \$46.4 million for FY2023, to be divided as \$23.1 million for Operational and Maintenance Expenses and \$23.3 million for Necessary Maintenance Expenses.

PREPA should state so and detail the amounts for FY2023 and FY2024.

April 5 Order p. 4

8. Annex A of the April 5 Order included the following request for information for PREPA to respond in five business days, which are due today, April 14, 2023.

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."
 - (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 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.
 - (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 filing, 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?
 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.

April 5 Order at pp.7-8.

9. In compliance with the April 5 Order, PREPA submits its responses to PREB’s requirements of information, and also provides as item eleven (11) responses to the referenced Commissioners’ requests. See, Annex A.

10. PREPA respectfully requests this Honorable Energy Bureau to schedule a technical meeting early next week, in which PREPA can respond any questions by the Energy Bureau in order to clarify and provide further context in an effort to assist the Energy Bureau’s review of PREPA’s documents.

WHEREFORE, PREPA respectfully requests the Energy Bureau to **FIND** that PREPA has complied with the April 5 Order and **REITERATES ITS REQUEST** for the Honorable Energy Bureau to Grant Approval to the FY2023 Budget Amendment Request.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 14th day of April 2023.

/s Maralíz Vázquez-Marrero

Maralíz Vázquez-Marrero

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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 14th day of April 2023.

/s Joannely Marrero-Cruz

Joannely Marrero Cruz

Annex A

[Annex A Responses to RFIs April 5 Order](#)

**Requirements of Information
Annex A to the April 5 Motion**

1. Provide the most recent itemized estimate of Genera's mobilization costs.

Response: See, Attachment in folder RFI #1



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.

Response: See, Attachments in folder RFI #2a.

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.

Response: See, Attachments in folder RFI #2b.

c) Any study, if available, supporting minimum cash balances needed for the operation of the Electric System, based on Prudent Utility Practices.

Response: There is no study. However, the T&D and Generation OMAs outline the requirements for the funding of these accounts.



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.

Responses:

a) Provide the March 9, 2023 letter.

Response: See, Attachments in folder RFI #3a.

b) Provide PREPA’s proposed Administrative Order to enact the VTP related to the Genera transaction with all its supporting documentation.

Response: To clarify, the Administrative Order to enact the VTP related to the Genera transaction was issued by the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”, for its Spanish acronym), Order OA-2023-001 dated March 14,2023. See, Attachments in folder RFI #3b.



4. In the 2017 Rate Order, 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. The Energy Bureau stated that the rates would remain in effect until the Energy Bureau changed them prospectively

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.

Response: See, Attachment in folder RFI #4.



5. PREPA, in ANNEX D of its April 2, 2023 filing, 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?

Response: Correct.



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.

Response: See, Attachments in folder RFI #6a.

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.

Response: See, Attachments in folder RFI #6b.

c) Provide latest Audited Financial Statements for PREPA ERS Pension Plan.

Response: See, Attachment in folder RFI #6c.

d) Provide a description of all the control mechanisms to be implemented in this “pay as you go” short term cash need for FY23.

Response: See, Attachment in folder RFI #6d.

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.

Response: PREPA requested information from the PREPA-ERS and at the time of this motion has not received a response. As soon as PREPA ERS provides the information, PREPA will supplement this response.



PREB RFI # 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?

Response:

PREPA does not have access to any alternate funds to cover the requested amounts for the Genera Mobilization Fee, VTP and Emergency ERS Contribution. These amounts have already been approved by the FOMB. See, FOMB March 24 Resolution.



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.

Response: See, Attachment in folder RFI #8.

Attachment contains both FEMA/COR3 disbursed listings and a separate tab reconciling both the March 14 and April 2 motions. Variance description was included in *Recon* tab for reimbursements and includes a description of items eliminated from the March 14 Motion and new items included the April 2 motion.



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?

Response: See, Attachment in folder RFI #9.



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.

Response: See, Attachment in folder RFI #10.

All reimbursements included in the April 2 Motion totaling \$410 Million are previously expensed amounts that were subsequently reimbursed by COR3. PREPA included a list of all invoices tied to Reimbursed amounts including each related Invoice Date.



11. 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. These requests were:

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.

Response: See, Attachments in RFI #11.

