

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

NEPR

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IN RE: REVIEW OF LUMA'S INITIAL
BUDGETS

CASE NO.: NEPR-MI-2021-0004

SUBJECT: Motion to Submit PREPA's
Contract for Professional Services in
Compliance with Portion of the June 25 Order
and Urgent Request for Approval

**MOTION TO SUBMIT PREPA'S CONTRACT FOR PROFESSIONAL SERVICES IN
COMPLIANCE WITH PORTION OF THE JUNE 25 ORDER AND URGENT
REQUEST FOR APPROVAL**

COMES NOW the Puerto Rico Electric Power Authority ("PREPA"), through its counsel of record, and respectfully submits and requests as follows:

1. On May 16, 2023, LUMA¹ filed a document titled *Submission of Consolidated Annual Budgets for Fiscal Year 2024 and Proposed Annual T&D Projections Through Fiscal Year 2026* ("May 16 Motion") for the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") review and approval. The May 16 Motion included the following budget components: (i) the proposed T&D budget developed by LUMA, (ii) the proposed generation budget developed by Genera PR, LLC ("Genera") on behalf of the PREPA, for the PREPA subsidiary GENCO LLC ("GenCo"), and (iii) the proposed Budget developed by PREPA for its holding company, HoldCo, and its subsidiaries PREPA HydroCo LLC ("HydroCo") and PREPA PropertyCo, LLC ("PropertyCo").

¹ LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly referred to as, "LUMA").

2. On June 25, 2023, after a series of procedural events, including a technical conference and various submissions including responses to the Energy Bureau's requests for information, the Energy Bureau entered *Resolution and Order* issuing a determination on the FY24 Annual Budgets for the electric utility system including the budgets for LUMA Energy, LLC and LUMA ServCo, LLC (collectively, "LUMA"), Genera-PR, LLC ("Genera") and PREPA ("June 25 Order").

3. The June 25 Order included a series of orders to PREPA. In what is pertinent to this motion, the Energy Bureau ordered PREPA to "to file with the Energy Bureau for review and approval, any new contract or amendment to an existing contract, prior to executing or making any award of such contract or amendment". See June 25 Order at p. 31.

4. Pursuant to the June 25 Order, PREPA herein submits to the Energy Bureau a contract titled Professional Services Agreement executed by PREPA on June 30, 2023, between PREPA and O'Melveny Myers LLP ("O'Melveny Contract"). This agreement was negotiated prior to the June 25 Order, approved by PREPA's Governing Board on June 24, 2023² and approved by the Financial Oversight and Management Board for Puerto Rico ("FOMB") on June 26 2023, for a quantity not to exceed nine million dollars and to enter in effect from July 1, 2023 until June 30, 2024.³ See, Exhibit A.

5. It is imperative for PREPA that the Energy Bureau review and approve the O'Melveny Contract as this firm provides PREPA legal services in connection to with PREPA's ongoing operational and financial restructuring, litigation in the Title III case⁴, mediation, fiscal plan issues, among others.

² See, PREPA's Governing Board Resolution No. 5045 dated June 24, 2023 as Exhibit B.

³ PREPA has until July 17, 2023 to comply with Act 18-1975 requirements to submit the O'Melveny Contract to the Comptroller of Puerto Rico Office for PREPA to be able to execute its obligations.

⁴ *In re P.R. Elec. Power Auth.*, Bankruptcy Case No. 17 -BK-4780 (LTS) (D.P.R. July 7, 2017) (the "Title III Case").

6. The O'Melveny Contract is subject to the Bankruptcy Advisor Cost portion of the FY2024 budget which was approved as proposed by this Energy Bureau. Pursuant to the current litigation schedule in the Title III case, these professional services are warranted, and it would be detrimental for PREPA that the professional services be suspended. Consequently, PREPA respectfully requests this Energy Bureau to urgently approve the O'Melveny Contract.

WHEREFORE, PREPA respectfully requests the Energy Bureau to take **NOTICE** of the information provided in compliance with the June 25 Order and **APPROVE** the O'Melveny Contract as submitted for review and approval .

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 7th day of July 2023.

/s Maralíz Vázquez-Marrero
Maralíz Vázquez-Marrero
TSPR 16,187
mvazquez@diazvaz.law

/s Joannely Marrero-Cruz
Joannely Marrero Cruz
TSPR 20,014
jmarrero@diazvaz.law

DÍAZ & VÁZQUEZ LAW FIRM, P.S.C.
290 Jesús T. Piñero Ave.
Oriental Tower, Suite 803
San Juan, PR 00918
Tel.: (787) 395-7133
Fax. (787) 497-9664

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 and to Genera-PR, LLC through its legal representatives jfr@sbgblaw.com; alopez@sbgblaw.com; legal@genera-pr.com; regulatory@genera-pr.com.

In San Juan, Puerto Rico, this 7th day of July 2023.

/s Joannely Marrero-Cruz
Joannely Marrero Cruz

Exhibit A

[0157-20230707- First PREPA Contract for PREB Approval](#)

Exhibit B

PREPA'S Governing Board Resolution No.5045



GOVERNMENT OF PUERTO RICO

PUERTO RICO ELECTRIC POWER AUTHORITY

Governing Board | jgob@prepa.com

RESOLUTION 5045

Approval of Professional Services Contract with O'Melveny & Myers, LLP for Fiscal Year 2023-2024

- WHEREAS: The Puerto Rico Electric Power Authority (PREPA) is a public corporation and an instrumentality of the Government of Puerto Rico created by the Act 83 of May 2, 1941, as amended (Act 83). PREPA was created to provide electrical energy in a reliable way contributing to the general welfare and sustainable future of the people of Puerto Rico, maximizing benefits and minimizing social, environmental, and economic impacts. In addition, PREPA provides a service based on affordable, fair, reasonable, and non-discriminatory costs that is consistent with environmental protection, non-profit, focused on citizen participation and its clients.
- WHEREAS: Act 83 authorizes PREPA to grant contracts and formalize all the instruments that are necessary or convenient in the exercise of any of its powers.
- WHEREAS: Section 15(1)(a) of Act 83 states that all purchases made and contracts for supplies or services, except professional services, entered into by PREPA, including its capital construction contracts, shall follow a bid process. *allc*
- WHEREAS: According to Section 15(2)(d) of Act 83, a competitive bidding process shall not be necessary, when: professional or expert services or work are required and PREPA deems it in the best interests of good administration for such works or services to be contracted without such process.
- WHEREAS: On July 7, 2020, PREPA and O'Melveny & Myers, LLP (O'Melveny & Myers), executed Professional Services Contract 2021-P00013 (Contract), for the services of advising and assisting PREPA on various matters relating to the restructuring of PREPA, including legal issues arising from PREPA's ongoing operational and financial restructuring, litigation, Title III matters, mediation, fiscal plan issues, plan of adjustment development, finance, securities, and corporate, for a maximum amount of \$9,000,000 (Contract Amount), until June 30, 2021.



PO Box 364267 San Juan, Puerto Rico 00936-4267

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- WHEREAS: After several amendments, a new Contract between the parties was executed for the fiscal year 2022-2023, from July 1, 2022, to June 30, 2023, with a not to exceed Contract Amount of \$9,000,000.
- WHEREAS: Given PREPA's financial situation and status as a Title III debtor, and especially now that the Title III case is in its final stage, the services rendered by the Consultant are more necessary than ever before.
- WHEREAS: PREPA's Legal Affairs Division requests authorization to execute a new contract, with a maximum amount of \$9,000,000, for Fiscal Year 2023-2024, from July 1, 2023, to June 30, 2024.
- WHEREAS: PREPA's General Counsel considered the request and concluded that the new professional services contract with O'Melveny & Myers may be carried out, after the approval of the Governing Board and the Financial Oversight Management Board.
- WHEREAS: On May 19, 2023, PREPA's Acting Chief Financial Officer, Ms. Lizzandra Matías Varela, certified the availability of \$9,000,000, under account 01-4019-92303-556-673, in the budget for Fiscal Year 2023-2024.

THEREFORE: In accordance with Act 83, PREPA's Governing Board resolves to:

1. Approve the Professional Services Contract between PREPA and O'Melveny & Myers, LLP for Fiscal Year 2023-2024, from July 1, 2023, until June 30, 2024, for a maximum amount of \$9,000,000.
2. Authorize the Executive Director to execute the Professional Services Contract, after receiving the approval of the Office of Management and Budget of Puerto Rico, and the Financial Oversight and Management Board for Puerto Rico.

Approved in San Juan, Puerto Rico, on the twenty-fourth day of May two thousand twenty-three.


Astrid I. Rodríguez-Cruz
Corporate Secretary