

**GOVERNMENT OF PUERTO RICO
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

INFORMATIVE MOTION AND REQUEST FOR REMEDY

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority ("PREPA") through its undersigned legal representation and respectfully informs and requests as follows:

1. On June 25th, 2023, the Puerto Rico Energy Bureau ("PREB") issued a Resolution and Order regarding the Fiscal Year 2024 Annual Budget for Puerto Rico's electric utility system ("FY 2024 Budget"), including the budgets for LUMA Energy, LLC and LUMA ServCo, LLC ("LUMA"), Genera PR, LLC ("Genera"), and PREPA (HoldCo, PropertyCo, and HydroCo). That determination included a modification of the proposed budgets for the fiscal year 2024 submitted by PREPA, LUMA, and Genera. Specifically, the HoldCo (including PropertyCo) budget was reduced from \$53.367 MM to \$21.975 MM; and HydroCo's budget was reduced from 18.325 MM to \$13.520 MM. Finally, the PREB approved the budgets as modified.
2. On June 30th, 2023, PREPA filed a motion for reconsideration and, among other things, stated that the budget approved by the PREB would leave PREPA inoperative.
3. As explained in the motion for reconsideration, the approved FY 2024 Budget does not provide sufficient funding for PREPA's remaining functions and responsibilities. At

present, PREPA has no way to comply with all of its obligations and carry out its daily operations and is currently in default in several matters of great importance.

4. As an example, all of PREPA's contracts with its external law firms have expired. This jeopardizes the procurement of federal funds, as well as over ten thousand (10,000) cases actively litigated across administrative agencies and the courts of Puerto Rico.

5. Specifically, a case is currently pending before the Puerto Rico Supreme Court regarding the cancellation of the current security services contract for which PREPA had been ordered to submit its brief by July 22nd. However, since there are no funds in the PREB authorized FY 2024 Budget for litigation services, and the contract for the law firm that handles the case expired on June 30th, there were no attorneys available to comply with the Supreme Court's *Order*. A motion to request an extension of time was filed, and the Supreme Court granted an extension until August 9, 2023, to submit PREPA's brief.

6. PREPA's Legal Division, comprised of three attorneys, provides a wide variety of legal services to PREPA, such as:

- a. contract drafting, negotiation and evaluation,
- b. providing legal advice to different PREPA stakeholders,
- c. drafting legal opinions and resolutions for PREPA's Governing Board,
- d. handling requests for information from the FOMB, Office of the Inspector General (both state and federal), the Puerto Rico Office of the Comptroller, Drug Enforcement Agency, Homeland Security, the Puerto Rico Department of Family, Treasury Department, subpoenas and court orders directed to PREPA in cases in which PREPA is not a party;

e. providing notarial services for official matters, drafting memorandums of understanding and inter-governmental agreements, and

f. any other request by PREPA.

7. The only reduction in the Legal Division's workload after the transition of the Generation System to Genera PR, LLC, has been the number of contracts pertaining to Generation, which was handled in-house by these attorneys. The workload assigned to outside law firms, except for PREB matters related to the Generation area, remained intact.

8. Additionally, there are several thousand court, labor, administrative, and expropriation cases (some of these dating back to 1994) that will be unattended and will produce adverse judgments against PREPA, which could potentially cost PREPA millions of dollars and which will absolutely have a negative effect on ratepayers.

9. The Engineering Division was dissolved due to the transition to Genera. Thus, PREPA further needs funds to have at its disposal the services of external consultants to develop new projects or repair existing projects not reimbursable by the federal government.

10. We must also point out the fact that the Environmental Protection Agency, the United States Department of Justice, and the Department of Energy have made it clear that, now that Genera will be the operator of PREPA's power plants, under the Consent Decree, the Air Compliance Program under the Clean Air Act, the State Implementation Plan (SIP), Climate Change Committee, and other environmental statutes, PREPA remains responsible for compliance with these environmental laws, agreements, or responsibilities as the owner of the power plants and facilities. Likewise, PREPA is still

responsible for the use, maintenance, and control of the Boiling Nuclear Superheater (BONUS) reactor facility, as established in the Letter of Agreement between the Department of Energy Office and PREPA. In other words, PREPA remains obligated to ensure continued compliance with operations on its property under U.S. Federal law and the agreements mentioned above. These responsibilities, when combined with the lack of resources due to budgetary constraints, also jeopardize PREPA's obligations under the Consent Decree, as well as others, which could result in penalties and fines and eventually impact our ratepayers.

11. As an additional example, PREPA has no contracts with its external auditors, directly affecting the preparation of its audited financial statements, including the backlog of work related to preparing FY 2022 statements. Likewise, PREPA has yet to execute several contracts for professional services for the Finance Division. Those services are imperative so PREPA can operate and comply with all its obligations. Attached to this motion is a Revised Budget Proposal for FY 2024 and the list of contracts at risk of premature termination, with a justification for each contract. PREPA also certifies that the works to be performed by each contractor are not duplicative of the scope of work handled by LUMA or Genera PR, LLC. See *Exhibit A*.

12. There are other contracts, also included in *Exhibit A*, that PREPA has yet to execute due to budgetary constraints, even though such contracts relate to ongoing projects. The purpose of each of these contracts is also integrated into *Exhibit A*. These services are necessary for PREPA to be able to finish the projects and avoid wasting the initial investment already made. It is important to mention that the expenses of these specific contracts are reimbursable by FEMA.

13. With the approved FY 2024 Budget, it is not possible for PREPA to operate efficiently and manage its day-to-day operations. The budget cuts have disrupted all areas of PREPA, and as time goes on, the situation will only get worse. Without these contracts, PREPA is putting the essential services of its operation at great risk.

14. For the reasons previously discussed and due to the modifications to the proposed FY 2024 Budget, PREPA's Executive Director requested authorization from its Governing Board to utilize funds from its FEMA reimbursement account.

15. On July 5th, 2023, PREPA's Governing Board approved Resolution 5076 granting authorization to utilize the funds deposited in the FEMA reimbursement account. This, to cover any budgetary gaps and avoid rate increases in the electric system to the people of Puerto Rico. *See Exhibit B.*

16. Specifically, the Governing Board resolved:

Grant exclusive authorization to the Executive Director and or the Chief Financial Officer or the President of the Board of Directors for the use of the funds in the abovementioned bank accounts, with prior approval by the PREB and FOMB, for budget related uses for funding of any budgetary gaps created by the reductions in the budget imposed by the PREB of FOMB, which affect the fulfillment of PREPA's functions and obligations. The funds can also be use to fulfill pending obligations under any OMA agreement, that has not been accomplish due to cash flow constraints.

17. In compliance with the Governing Board Resolution 5076, PREPA hereby seeks approval from this Honorable Bureau to use the FEMA reimbursement account to cover the budgetary gaps between the PREB's certified budget and the PREPA's Revised Budget Proposal for FY 2024. Specifically, PREPA is seeking the PREB's consent to use the amount of \$31.56 MM from the FEMA reimbursement account for HoldCo and \$5.95 MM for HydroCo. in order to cover the deficits resulting from the FY 2024 Budget.

18. It is respectfully requested that the PREB recognize, acknowledge, and address the situation caused by the reduced approved budget and consent to the utilization of funds from the FEMA reimbursement account. PREPA's operations, including many of its most important facets, are paralyzed as a result of the lack of funds to manage its day-to-day operations. PREPA is convinced that this is the correct mechanism to solve the situation since it would not represent what would otherwise be an inevitable rate increase in the electricity rate for the people of Puerto Rico.

WHEREFORE, it is respectfully requested from this Honorable Energy Bureau to take notice of the above and approve the amended budget attached to this motion and authorize the retirement of funds from the FEMA reimbursement account as requested above.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 28th day of July 2023.

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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>.

In San Juan, Puerto Rico, this 28th day of July 2023.

s/Alexis G. Rivera Medina
Alexis G. Rivera Medina



RESOLUTION 5076

Request for Approval for the Use of Restricted Accounts to Service PREPA's Obligations to Avoid an Increase in Energy Bills

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 cost that is consistent with environmental protection, non-profit, focused on citizen participation and its clients.

WHEREAS: On September 20, 2017, Hurricane María devastated Puerto Rico including PREPA's electrical system. Emergency restoration efforts lasted from the date of the event until approximately March 31, 2019. On January 7, 2020, a magnitude 6.4 earthquake affected Puerto Rico's southern region. This seismic event caused a blackout of PREPA's electrical system and damaged the Costa Sur Power Plant.

WBJ

WHEREAS: Hurricane María caused damages to all of generation assets, including PREPA's steam turbines units, combined cycles, combustion turbines, and hydroelectric units, thus, affecting PREPA's base generation dependable capacity and the emergency response capacity for the past five years. In addition, it caused damages to the water irrigation districts and the hydroelectric water conveyance infrastructure, such as dams, water canals, and penstocks.



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*We are an equal opportunity employer and do not discriminate on the basis of race, color, gender, age, national or social origin, social status, political ideas or affiliation, religion; for being or perceived to be a victim of domestic violence, sexual aggression or harassment, regardless of marital status, sexual orientation, gender identity or immigration status; for physical or mental disability, for veteran status or genetic information

WHEREAS: The Federal Emergency Management Agency (FEMA) approved and has reimbursed emergency federal funds for the electric service restoration works conducted after Hurricane María and the earthquake of 2020. In addition to these emergency funds, the Federal Government approved funds under the Sections 404 (Hazard Mitigation Grant Program) and 428 (Public Assistance Alternative Procedures-Permanent Projects) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The funds under Sections 404 and 428 assigned to PREPA are intended to conduct permanent works to harden and increase the resiliency of the electrical system and PREPA's water assets, mitigating the effects and damages of major events on such assets.

WHEREAS: Through Resolution 4991 of July 2022, this Board approved the opening of one or more bank accounts exclusively for depositing federal funds received from FEMA or other federal entities, through COR3, PRHD, or other governmental entities and of one or more ledger accounts exclusively for the procurement, contracting, and execution of the projects that will receive federal funds from FEMA or other federal entities to account for advances and reimbursements, considering the segregation of generation and water assets and in compliance with the regulations governing federal funds accounting practices.



WHEREAS: The Puerto Rico Electric Power Authority (PREPA), after much evaluation and effort, submitted to the Puerto Rico Energy Bureau (PREB) and the Federal Oversight and Management Board (FOMB) its budget for Fiscal Year 2023-2024. After the technical budget hearing in the PREB, said budget suffered significant reductions which will not allow PREPA to fulfill its obligations. Motions for reconsideration of said decision have been filed with the PREB, explaining in detail the adverse effects of said reductions.

WHEREAS: Since the outcome of the budget reconsideration request before the PREB and FOMB, left PREPA with the same budgetary constraints PREPA requests approval to use funds or any contractual obligations, from these accounts to cover any budgetary gap, as well pending obligations under the executed OMA's, this measure will avoid a rate increase to our customers.

WHEREAS: After approval by this Board, the use of said funds will require, for

budget related uses, Reb's and FOMB's approval.

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

1. Grant exclusive authorization to the Executive Director and or the Chief Financial Officer or Fernando Gil President of the Board of Directors, for the use of the funds in the above-mentioned bank accounts, with prior approval by the PREB and FOMB, for budget related uses, for funding of any budgetary gaps created by the reductions in the budget imposed by the PREB or FOMB, which affect the fulfillment of PREPA's functions and obligations. The funds can also be use to fulfill pending obligations under any OMA agreement, that has not been accomplish due to cash flow constrains.

Approved in San Juan, Puerto Rico, on this fifth day of July two thousand twenty-three.



Maricarmen Boria Goitia
Corporate Secretary