GOVERNMENT OF 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:** Review of PREPA's Contract – Cost Controls

RESOLUTION AND ORDER

I. Introduction

On May 16, 2023, LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly referred to as, "LUMA") filed, for the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") review and approval, 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"). 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 Puerto Rico Electric Power Authority ("PREPA") for the PREPA subsidiary GENCO LLC ("GenCo"), and the proposed Budget developed by PREPA for its holding company, HoldCo, and its subsidiaries PREPA HydroCo LLC ("HydroCo") and PREPA PropertyCo, LLC ("PropertyCo").

On June 25, 2023, the Energy Bureau issued a Resolution and Order ("June 25 Resolution") through which, to reflect the appropriate budget allocation for the various entities to be funded, it modified the Proposed Consolidated Fiscal Year 2024 ("FY24") Budget submitted by LUMA and approved the modified budgets subject to compliance by LUMA, Genera and PREPA with various orders included in the June 25 Resolution.

Through the June 25 Resolution, the Energy Bureau ordered PREPA to file for its review and approval, any new contract or amendment to an existing contract, prior to executing or making any award of such contract or amendment.

On July 12, 2023, PREPA filed a document titled, *Urgent Request for Approval of Four Contracts for Professional Services in Compliance with the June 25 and July 11 Orders* ("July 12 Motion"). Through the July 12 Motion, PREPA submitted four (4) contracts for professional services for review and approval by the Energy Bureau for services to be rendered from July 1, 2023 to June 30, 2024, among them the Díaz & Vázquez Contract ("D&V Contract") in the amount $3.350MM. PREPA stated that of the referenced amount, $2MM corresponds to the Bankruptcy Title III Advisor Costs portion of the FY24 Budget, and the other $1.350MM corresponds to the HoldCo Non-Labor Expenses Category, for the HoldCo Operating and Capital Expenditures portion of FY24 Budget. PREPA did not specify the budgeted line item from the Non-Labor/Other Operating Expenses Category to which the $1.350MM corresponds.

On July 13, 2023, the Energy Bureau issued a Resolution and Order, through which it approved the four (4) contracts for professional/ services as requested by PREPA in its July 12 Motion, including the D&V Contract. Further, the Energy Bureau granted PREPA three (3) business days to identify the budgeted line item from the Non-Labor/Other Operating Expenses Category to which the $1.35MM corresponds.

On July 14, 2023, PREPA filed a document titled, *PREPA's Informative Motion in Compliance with the July 11 and July 13 Orders* ("July 14 Informative Motion"). Through the July 14 Informative Motion, PREPA indicated that it had determined to allocate for the remainder of the D&V Contract the amount of $200,000 from the legal services budgeted line item in the FY 2024 Non- Labor/Other Operating Expenses Category Budget as approved by the Energy Bureau.

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On July 19, 2023, the Energy Bureau issued a Resolution and Order, through which it granted PREPA three (3) business days to clarify to which line item from the Non-Labor/Other Operating Expenses Category the remaining $1.35 MM corresponds to ("July 19 Resolution").[1]

On July 20, 2023, PREPA filed a document titled, *Motion to Submit the Amended Contract in Compliance with the July 19 Order* ("July 20 Motion"). Through the July 20 Motion, PREPA clarified that it made reductions in the line item budgets to comply with the approved budget. Specifically, PREPA indicated that it reduced the D&V Contract from $3.35 MM to $2.2 MM. PREPA further expressed that $2 MM corresponds to the Bankruptcy Advisor Costs portion of the FY24 Budget and the other $200,000 corresponds to legal services under the Non-Labor/Other Operating Expenses Category.[2] PREPA requested that the Energy Bureau take notice of the referenced contract amendment and approve the revised D&V Contract. PREPA also requested that the Energy Bureau find PREPA in compliance with the July 19 Resolution.[3]

On July 28, 2023, PREPA filed a document titled, *Informative Motion and Request for Remedy* ("July 28 Informative Motion"). Through the July 28 Informative Motion, PREPA requested authorization to use funds from its FEMA[4] reimbursement account for budgetary funding in excess of approved amounts that PREPA deems necessary[5].[6]

On August 3, the Energy Bureau issued a Resolution and Order, through which it took notice of the July 20 Motion and approved the D&V Contract amendment. However, the Energy Bureau determined that PREPA did not comply with the July 19 Resolution whereby the Energy Bureau ordered PREPA to submit, in its future filings, a table including the approved and proposed contracts, the amounts approved and proposed for those contracts, the line items from the Non-Labor/Other Operating Expenses Category to which they correspond, and the remaining balance of budgeted amount for Non-Labor Expenses ($11.7 MM) by line-item, as approved in the June 25 Resolution. The Energy Bureau reiterated that PREPA must submit in all future filings the referenced table.

II. Contract Costs, Need

The Energy Bureau, in its determination of the proper budget allocation for PREPA, decreased the Total HoldCo and HydroCo Operating Budgets from $53,367 million to $21.975 and from $18.324 to $13.520 respectively. PREPA proposed $41.071 million for HoldCo Non-labor expenses and $8.455 million for HydroCo Non-labor Expenses. The Energy Bureau reduced these to $11.772 million and $5.470 million respectively.[7] Funding for Professional Services Contracts falls under the non-labor budget.

PREPA may not have funding available for all the contracts it originally sought. The priority for PREPA is to ensure that the contracts for which it seeks funding are necessary, based on its reduced responsibilities. PREPA must ensure that any contracts for which it seeks funding, have been efficiently bid and negotiated, and that this be demonstrated to the Energy Bureau as a component of PREPA's requested approval.

PREPA should be able to demonstrate that the contracts for which it seeks approval are the most cost-effective contracts for necessary services. In reviewing PREPA's proposed budget,

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[1] For reference, refer to Appendix A (Page A-3) PREPA's FY24 Budget as approved by the FOMB.

[2] July 20 Motion, pp. 2-3, ¶7.

[3] July 20 Motion, p. 4.

[4] Federal Emergency Management Agency ("FEMA").

[5] July 28 Informative Motion, pp. 5-6, ¶¶17-18.

[6] The Energy Bureau will address this request in a subsequent Resolution and Order.

[7] See, June 25 Resolution, Attachment E and Attachment F.

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and without providing an exhaustive list of contracts, we have concerns about potential duplication of efforts and unjustified costs, such as in the financial services consulting contracts.

Specifically, PREPA proposed $2 million for audit services for FY 2024,[8] PREPA has not adequately justified this cost for the remaining work required by KPMG.

Additionally, PREPA proposed an $800,000 contract for financial statement services by Galindez[9] that seems potentially duplicative of work that could be handled internally by PREPA's finance department.[10]

PREPA must demonstrate to the Energy Bureau that it has effectively managed costs for the proposed KPMG contract and justify the need for the services provided in the Galindez contract rather than utilizing internal resources.

Regarding contracts for which PREPA seeks approval, which provide services to PREPA for its representation before the Energy Bureau or other governmental entities, the Energy Bureau notes that these services are delegated primarily to LUMA in LUMA's capacity as agent of PREPA.[11] The emphasis in the T&D OMA on avoiding duplicative efforts leads the Energy Bureau to believe that the requested consulting services may not be leveraging the resources already afforded to PREPA through the T&D OMA. LUMA must, as agent of PREPA, under established legal principles, act in good faith regarding the principal, which removes from PREPA the potential of contending that separate representation is necessary to ensure that its best interests are represented by LUMA. To secure Energy Bureau approval of the contracts PREPA is requesting, it must overcome the presumption created by LUMA's obligation as agent, for considering these contracts to be unnecessary.

In the July 28 Informative Motion, PREPA alludes to several contract expenditures being subject to "contractors' management of their own fees".[12] It is imperative that PREPA exercise diligent supervision over contracted labor and the associated invoicing. As the recipient of ratepayer funds, it is PREPA'S responsibility to ensure proper oversight and accountability for all external expenditures.

As part of PREPA's revised budget proposal, the Energy Bureau requires the inclusion of robust policies and procedures for the management of external consulting engagements.

This includes:

- Defined scopes of work, deliverables, timelines, and invoicing expectations within all contractor agreements.
- Designated internal supervisors responsible for approving work, monitoring progress, verifying satisfactory completion of deliverables, and authorizing payments for each contract.
- A formal process for reviewing invoices to confirm agreement with initial contract terms and documented work records, before payment approval.
- Regular auditing of contractor relationships to identify any discrepancies in invoiced charges versus contracted rates and delivered services.

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[8] See, July 28 Informative Motion, Exhibit A, page 4 of *58*.

[9] See, July 28 Informative Motion., Exhibit A, page 4 of 58.

[10] *See*, July 28 Informative Motion, Exhibit A, page 11 of 58.

[11] See, Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("T&D OMA") dated as of June 22, 2020, Section 5.6 System Regulatory Matters: (a) General. From the Service Commencement Date and during the duration of the Term thereafter, Operator shall function as agent of Owner, and Owner hereby irrevocably authorizes Operator to (i) represent Owner before PREB with respect to any matter related to the performance of any of the O&M Services provided by Operator under this Agreement, (ii) prepare all related filings and other submissions before PREB and (iii) represent Owner before any Governmental Body and any other similar industry or regulatory institutions or organizations having regulatory jurisdiction.

[12] See, July 28 Informative Motion, Attachment A, pp. 9 – 10, column "Justification for increase / Decrease in Budget".

III. Conclusion

For any proposed consulting contracts, the Energy Bureau expects clear justification of why the services cannot be performed by PREPA's existing staff, LUMA, Genera, and/or the Puerto Rico Public-Private Partnership Authority ("P3A"). This justification must include an itemized description of the specific expertise, workload capacity, or other factors that require supplementary external services.

Given the Energy Bureau's mandate to ensure prudent use of ratepayer funds, unjustified reliance on external consultants is unacceptable. PREPA's proposed budgets and contracts should reflect judicious coordination between internal personnel and strictly necessary supplemental consulting engagements.

Specifically, PREPA must demonstrate how responsibilities are being distributed across its finance, regulatory, operations, and other internal departments to reduce duplication and redundancy with any requested external services. PREPA must provide evidence of a coordinated effort to prioritize internal capabilities before engaging consultants. A comprehensive usage plan demonstrating PREPA's effective use of personnel and resources is essential for justifying its budget needs while meeting expectations for financial prudence.

The Energy Bureau **ORDERS** PREPA to:

a) within ten (10) calendar days of the notification of this Resolution and Order, provide the Energy Bureau with documentation of the steps that PREPA has undertaken and other support as PREPA may deem appropriate, to ensure that the contracts for which it seeks approval, are the most cost effective available;
b) provide with each request for contract approval, documentation of the steps that PREPA has undertaken and other support as PREPA may deem appropriate, to ensure that the contracts for which it seeks approval, are the most cost effective available;
c) provide demonstrated need of external consulting contracts adapted to the increased use of the existing T&D OMA and LGA OMA contractual realities of the entities that represent PREPA for most of its operational responsibilities and related regulatory matters;
d) provide a detailed demonstration of how PREPA's internal personnel and resources are being leveraged before proposing additional external consulting services;
e) provide evidence of sufficient internal controls and active supervision to confirm that ratepayer funds used for external consulting services are used judiciously;
f) demonstrate to the satisfaction of the Energy Bureau that it has exhausted all efforts in seeking to obtain and negotiate the most cost-effective contract possible for services rendered by KPMG – see criteria set forth in (a) above – or re-negotiate and resubmit that contract for approval.

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, 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.

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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 certify that the majority of the members of the Puerto Rico Energy Bureau agreed on August 14, 2023. Also certify that on August 14, 2023, I have proceeded with the filing of this Resolution and was notified by email to pre@promesa.gov; margarita.mercado@us.dlapiper.com; ana.rodriguezrivera@us.dlapiper.com; julian.angladapagan@us.dlapiper.com; mvazquez@diazvaz.law; jmarrero@diazvaz.law; brannen@genera-services.com; kbolanos@genera-pr.com; regulatory@genera-pr.com; jfr@sbgblaw.com; alopez@sbgblaw.com. I also certify that on August 14, 2023, I have moved forward with filing the Resolution issued by the Puerto Rico Energy Bureau.

For the record, I sign in San Juan, Puerto Rico, today, August 14, 2023.

Sonia Seda Gaztambide
Clerk

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