

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

**NEPR**

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**Aug 28, 2023**

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**IN RE:** REVIEW OF LUMA'S INITIAL BUDGETS

**CASE NO.:** NEPR-MI-2021-0004

**SUBJECT:** PREPA's Motion to Clarify the August 24 Submittal and Request for Extension of Time to Comply with Portions of the August 16 Resolution and Order

**PREPA'S MOTION TO CLARIFY THE AUGUST 24 SUBMITTAL AND REQUEST  
FOR EXTENSION OF TIME TO COMPLY WITH PORTIONS OF  
THE AUGUST 16 RESOLUTION AND ORDER**

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

1. On June 25, 2023, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a *Resolution and Order* ("June 25 Order") through which it determined the Consolidated Fiscal Year 2024 ("FY24") Budget. The Consolidated Fiscal Year 2024 ("FY24") budget has the following components: (i) the T&D budget developed by LUMA<sup>1</sup>, (ii) the proposed generation budget developed by Genera PR, LLC ("Genera") for the PREPA subsidiary GENCO LLC ("GenCo"), and (iii) the budget developed by PREPA for its holding company, HoldCo, and its subsidiaries PREPA HydroCo LLC ("HydroCo") and PREPA PropertyCo, LLC ("PropertyCo").
2. Through the June 25 Order, the Energy Bureau ordered PREPA to file for review and approval, any new contract or amendment to an existing contract, before executing or making any award of such contract or amendment.

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<sup>1</sup> LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively referred to as, "LUMA").

3. In response, between July 7 and July 20, 2023, PREPA submitted various contracts between PREPA and multiple contractors for review and approval by the Energy Bureau.<sup>2</sup>

4. On July 11, 2023, the Energy Bureau issued a Resolution and Order ("July 11 Order") through which it determined that PREPA did not comply with the criteria for the Energy Bureau's review of the contracts submitted by PREPA. The Energy Bureau established that in order for the Energy Bureau to review and grant approval of these contracts, PREPA had to specify: 1) if these are the totality of the contracts to be executed during FY24 and 2) how the amounts referenced pertaining these contracts fit within the FY24 Approved Budget. The Energy Bureau also ordered PREPA to certify that there was no duplicity of scopes of work between the efforts handled by LUMA, Genera, and/or PREPA.

5. On July 28, 2023, after a series of motions and resolutions pertaining to the new contract approval requirement, 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 Federal Emergency Management Agency ("FEMA") reimbursement account for budgetary funding in excess of the Energy Bureau's approved amounts that PREPA deems necessary.

6. On August 14, 2023, the Energy Bureau issued a *Resolution and Order* ("August 14 ROI Order"). In the August 14 Order, the Energy Bureau stated that in its determination of the proper

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<sup>2</sup> *Motion to Submit PREPA's Contract for Professional Services in Compliance with Portion of the June 25 Order and Urgent Request for Approval* dated July 7, 2023; *Second Motion to Submit PREPA's Contracts for Professional and Technical Services in Compliance with Portion of the June 25 Order and Urgent Request for Approval* dated July 7, 2023; *Third Motion to Submit PREPA's Contracts for Professional and Technical Services in Compliance with Portion of the June 25 Order and Urgent Request for Approval* dated July 7, 2023; *Urgent Request for Approval of Four Contracts for Professional Services in Compliance with the June 25 and July 11 Orders* dated July 12, 2023; *PREPA's Informative Motion in Compliance with the July 11 and July 13 Orders* dated July 14, 2023 and *Motion to Submit the Amended Contract in Compliance with the July 19 Order* dated July 20 2023.

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. Additionally, the Energy Bureau specified that 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. Furthermore, in the August 14 ROI Order the Energy Bureau, among other things, ordered PREPA to comply with the following request for information:

- a. 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
- c. that the contracts for which it seeks approval, are the most cost effective available;
- d. 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;
- e. provide a detailed demonstration of how PREPA's internal personnel and resources are being leveraged before proposing additional external consulting services;
- f. provide evidence of sufficient internal controls and active supervision to confirm that ratepayer funds used for external consulting services are used judiciously;
- g. 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 4 resubmit that contract for approval.

8. Thereafter, on August 16, 2023, the Energy Bureau issued a *Resolution and Order* restating its previous orders and granted PREPA ten (10) days to file a table including the totality of the approved and proposed contracts for FY24, the amounts approved and proposed for those contracts, the line items from the category to which they correspond, and the remaining balance

for that category considering said amounts (“August 16 Order”). The Energy Bureau also reminded PREPA that all executed contracts not approved by the Energy Bureau nor included in the referenced table must be terminated and no services pertaining to those contracts can be rendered.

9. On August 24, 2023, PREPA filed a document titled *PREPA’s Request for Extension of Time to Comply with the August 14 Resolution and Order* (“August 24 Request for Extension”) whereby PREPA requested an extension for six days, until September 1, 2023, to comply with the responses to the August 14 ROI Order, stating that given the level required, PREPA is still in the process of compiling the necessary information to complete its response.

10. In tandem, also on August 24, 2023, PREPA filed a document titled *Motion to Submit Two Urgent Contracts in Compliance with the Energy Bureau’s Orders Necessary to Comply with the Tranche I Implementation* (“August 24 Motion”). In its August 24 Motion, PREPA submitted a proposed contract between PREPA and Sargent & Lundy for \$200,000 to particularly, to assist PREPA during the Renewable Generation and Energy Storage Resources Tranche 1 Process.

11. Through the August 24 Motion, PREPA also informed that the Financial Oversight & Management Board for Puerto Rico (“FOMB”) had not yet approved the King and Spalding Contract that the Energy Bureau approved on July 13, 2023, in the amount of \$1MM, subject to the Bankruptcy Advisor Title III Costs of the FY24 Budget. Thus, PREPA resubmitted an amended proposed King and Spalding Contract for \$100,000 for the Energy Bureau’s review and approval.

12. On August 28, 2023, the Energy Bureau issued a *Resolution and Order* (“August 28 Order”). The August 28 Order, among other matters, the Energy Bureau finds that PREPA complied with the previous Order by filing the requested table referencing the approved and proposed contracts the amounts approved and proposed for those contracts, the line items from the category to which they correspond, and the remaining balance for that category considering said

amount, which was also part of the August 16 Order.

13. In the August 28 Order, the Energy Bureau also proceeded to approve the Sargent and Lundy Contract for \$200,000 which corresponds to the Regulation and Environmental Inspection budget line item from the HoldCo Non-Labor/Other Operating Expenses Category. However, the Energy Bureau denied the King and Spalding Contract for the \$100,000 requested by PREPA and conditionally approved it for \$88,000, citing that PREPA omitted to reference a contract between PREPA and the Regulatory Compliance Services Corp. for \$250,000: \$200,000 corresponding to the Bankruptcy Title III Advisor Costs portion of the FY24 Budget and \$50,000 to the legal services line item in the Non-Labor Expenses Category as approved by the Energy Bureau in its *Resolution and Order* dated July 19 2023.

14. PREPA clarifies that as part of footnote no. 8 in p.6 of the August 24 Motion, it informed the Energy Bureau that “the FOMB approved the Regulatory Compliances Services Corp. Contract with conditions and only for the PREPA Restructuring and Title III services, thus eliminating the need for the \$50,000 earmarked from the legal services budget as approved in the July 19 Order”. Accordingly, there was no reckless omission by PREPA in the calculations of the remaining balance available in the legal services line item in the Non-Labor Expenses Category for the King and Spalding Contract, since the amounts were not compromised.

15. Consequently, PREPA respectfully requests the Energy Bureau to reconsider the portion allowed from legal services line item in the Non-Labor Expenses Category for the King and Spalding Contract and grant PREPA approval to execute the referenced contract for the full \$100,000 requested in the August 24 Motion.

16. Lastly, PREPA requests this Energy Bureau to allow PREPA additional time to comply with any outstanding requirements in the August 16 Order. It is PREPA’s belief that the Energy Bureau

is treating the requirements of the August 14 ROI Order and the August 16 Order as two separate workstreams when the issues discussed related to the contracts are intimately intertwined and thus how PREPA responds to the ROI ultimately affects the contracts PREPA has proposed before the Energy Bureau for review and approval, impacting the requested table and the elimination of contracts.

**WHEREFORE**, PREPA respectfully requests the Energy Bureau to take notice of the information herein provided, reconsider its determination of the King and Spalding Contract and treat the August 14 ROI Order and August 16 Orders as one continuous workstream, thus granting the Request for Extension, until September 1, 2023, for compliance with both orders.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 28<sup>th</sup> day of August 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>, and a courtesy copy of the filing was sent to LUMA through its legal representatives at [margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com) and [laura.rozas@us.dlapiper.com](mailto:laura.rozas@us.dlapiper.com) and to Genera-PR, LLC through its legal representatives [jfr@sbgblaw.com](mailto:jfr@sbgblaw.com); [alopez@sbgblaw.com](mailto:alopez@sbgblaw.com); [legal@genera-pr.com](mailto:legal@genera-pr.com); [regulatory@genera-pr.com](mailto:regulatory@genera-pr.com).

In San Juan, Puerto Rico, this 28<sup>th</sup> day of August 2023.

*/s Joannely Marrero-Cruz*  
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