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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: Motion in Compliance with the September 13 Order

MOTION IN COMPLIANCE WITH THE SEPTEMBER 13 ORDER

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, LUMA[1] 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's ("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").

2. On June 25, 2023, the Energy Bureau issued a *Resolution and Order* ("June 25 Order") through which it modified the Proposed Consolidated Fiscal Year 2024 submitted by LUMA and approved the modified budgets subject to compliance with various orders ("FY24" Approved

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

Budget"). The June 25 Order directed 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.

3. On July 19, 2023, after a series of procedural events including various contract submittals, 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 by line-item, as approved in the June 25 Order.[2] This order was reiterated by the Energy Bureau on the August 3, 14, and 16 orders.

4. On September 2, 2023, PREPA filed a document titled *Urgent Motion to Submit the McGuireWoods Contract for the Energy Bureau's Review and Approval* ("September 2 Motion"). In the September 2 Motion, PREPA submitted a proposed contract for professional services between PREPA and McGuire Woods, LLP for the Energy Bureau's review and approval ("McGuireWoods Contract"). McGuire Woods, LLP will provide professional services to PREPA in assisting and advising PREPA's management concerning all aspects of the Hurricane María and earthquake insurance claims, including developing the coverage strategy, and advising on potential litigation strategy.

5. Through the September 2 Motion, PREPA expressed that the referenced proposed contract shall be in effect from its execution until June 30, 2024, and shall not exceed a cumulative amount of $2.6MM. PREPA further stated that said amount was not part of the FY24 Approved Budget, as it is subject to reimbursement, through the Federal Emergency Management Agency ("FEMA") assistance reimbursement account. Thus, PREPA requested approval to execute the

[2] *Resolution and Order* dated June 19, 2023 ("June 19 Order") at p. 3.

McGuireWoods Contract.

6. On September 13, 2023, the Energy Bureau issued a *Resolution and Order* ("September 13 Order"), whereby the Energy Bureau granted PREPA one business day to clarify if the services to be rendered through the MCGuireWoods Contract are (i) to be reimbursed by FEMA; (ii) to specify the amount that will be refunded by FEMA and (iii) the expected timeline for such reimbursement.

7. PREPA herein informs the Energy Bureau how the Federal Emergency Management Agency (FEMA), treats insurance proceeds and its related expenses in pursuing an insurance claim:

Throughout PREPA's project formulation process, information on actual or anticipated insurance is provided to COR3 and FEMA to ensure that no duplication of benefits is experienced while claiming damages within one asset. FEMA reduces its financial assistance by deducting within the award, actual insurance proceeds received and if amounts are unavailable, anticipated proceeds will be used to estimate the reduction until actual amounts are determined.[3] Once actual insurance information is obtained, a financial reconciliation, normally carried out at **closeout**, is performed by FEMA to revise the award, thus increasing or decreasing FEMA funding to ascertain no duplication of benefits occurs. Nevertheless, FEMA requires that PREPA make a reasonable effort to pursue its claim, and thus will offset/reduce the insurance reduction to include PREPA's reasonable legal fees.[4]

8. In light of the above, reasonable legal fees will be covered by FEMA financial assistance, albeit through a financial reconciliation process performed once the actual insurance proceeds are

[3] 44 CFR 206.250 (Public Assistance Program and Policy Guide V3.1 Chapter 2 Section V Subsection P Page 40).
[4] (Public Assistance Program and Policy GuideV3.1 Chapter 2 Section V Subsection P Page 40 & COR3 Insurance and Duplication of Benefit Policy Page 7).

determined. PREPA wants to clarify that, even though the McGuireWoods Contract is not like a project for which funds are obligated for and then disbursed, FEMA does require the Applicant, in this case, PREPA, to make reasonable efforts to pursue claims to recover insurance proceeds that it is entitled to receive from its insurer(s). Hence, If the Applicant (PREPA) expends costs to pursue its insurance claim, FEMA offsets the insurance reduction with the Applicant's reasonable costs to pursue the claim. In other words, FEMA will subtract the cost of reasonable legal fees from the insurance proceeds before reducing assistance to PREPA.

9. McGuireWoods has been instrumental to PREPA's insurance recoveries. With their assistance, PREPA has already recovered $210,391,969 on the Hurricane Maria claim and $70,000,000 on the January 2020 Earthquake claim. The risk for PREPA of not having continued representation and assistance in these claims is far greater than the expenditure of a $2.6MM contract, that will be offset by FEMA at closeout. The bulk of negotiations, litigation, and/or arbitration is imminent, and it is critical that PREPA aggressively pursue its insurance coverage, including in court, if necessary, to avoid the risk that FEMA may attempt to claw-back obligated funds under the federal Stafford Act if PREPA fails to pursue them. The representatives from McGuireWoods are available to answer any questions or concerns the Energy Bureau may have and would make themselves available for a meeting with the Energy Bureau's Commissioners to justify the ongoing process of the insurance claims.

10. In the September 13 Order, the Energy Bureau warned PREPA "that if the services to be rendered through the McGuire Woods, LLP Contract are not reimbursed by FEMA or are partially reimbursed, PREPA must identify the budgeted line item of the HoldCo Non-Labor/Other Operating Expenses Category Budget from which the amount not reimbursed will be deducted from". Respectfully, the alternative proposed by the Energy Bureau is not feasible for PREPA, due

to the reduction in its proposed FY2024 Budget. The McGuireWoods Contract alone is $2.6MM, meanwhile the approved HoldCo Non-Labor/Other Operating Expenses, as adjusted by the Energy Bureau, resulted in a net amount of $3.822MM for contracts and other applicable expenses.[5]

WHEREFORE, PREPA respectfully requests the Energy Bureau to take **NOTICE** of the information provided, **FIND** PREPA in compliance with the September 13 Order and **GRANT** approval for PREPA to Execute the McGuire Woods Contract.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 15th day of September 2023.

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[5] July 19 Order at p.3, "The Energy Bureau **HIGHLIGHTS** that as approved in the June 25 Resolution, the approved Non-Labor Operating Expenses for HoldCo during FY24, as adjusted, of $11.772MM, include $7.95MM for Retiree Medical Benefits,14 resulting in a net amount of $3.822MM for contracts and other applicable expenses".

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 15th day of September 2023.

/s Joannely Marrero-Cruz
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