

**GOVERNMENT OF PUERTO RICO
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: Determination on *Motion to Submit List of Approved, Proposed, and Impending Contracts Including Operations Division and in Compliance with the August 29 Order*, filed by the Puerto Rico Electric Power Authority.

RESOLUTION AND ORDER

I. INTRODUCTION AND BACKGROUND

On June 25, 2023, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("June 25 Resolution") through which it modified the Proposed Consolidated Fiscal Year 2024 ("FY24") Budget submitted by LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively referred to as, "LUMA") and approved the modified budgets subject to compliance with various orders in the June 25 Resolution. The Energy Bureau further ordered the Puerto Rico Electric Power Authority ("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.

Through Resolutions issued on July 19, August 3, and August 14, 2023, the Energy Bureau ordered PREPA to submit in all future filings a table including 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 amounts.

On August 29, 2023, the Energy Bureau granted PREPA five (5) business days to file the amended Regulatory Compliance Services Corp. Contract to be proposed for the Energy Bureau's review and approval ("August 29 Order").

On September 5, 2023, PREPA filed a document titled *Motion to Submit List of Approved, Proposed, and Impending Contracts Including Operations Division and in Compliance with the August 29 Order* ("September 5 Motion"). Through the September 5 Motion, PREPA submitted three (3) proposed contracts for professional services between PREPA and multiple contractors for review and approval by the Energy Bureau for services to be rendered from execution until June 30, 2024. Particularly, PREPA seeks approval of the C2S Consulting, LLC Contract for professional services to PREPA in the form of updating the Plan of Classification and Remuneration of PREPA's Staff for \$29,000.¹ PREPA stated the C2S Consulting, LLC contract corresponds to the legal services line item in the HoldCo Non-Labor Expenses Category for the HoldCo Operating and Capital Expenditures portion of the approved FY24 Budget.²

PREPA also seeks approval of the Hogan Lovells US LLP Contract for \$150,000, for legal support, technical advice, and representation to PREPA for all environmental compliance activities.³ PREPA indicated that the referenced contract corresponds to the Regulation and

¹ September 5 Motion, p. 5.

² *Id.*

³ *Id.*, pp. 5 – 6.



Environmental Inspection budget line item from the HoldCo Non-Labor/Other Operating Expenses Category.⁴

Last, PREPA requested the approval of the Tetra Tech, Inc. Contract for \$100,000 for engineering and technical support for the Bonus Nuclear Power Plant.⁵ PREPA specified that the Tetra Tech, Inc. contract corresponds to the Regulation and Environmental Inspection budget line item from the HydroCo Non-Labor/Other Operating Expenses Category.⁶

PREPA also resubmitted the amended Regulatory Compliance Services Corp. contract to be proposed for the Energy Bureau's review and approval, in compliance with the August 29 Order.

Additionally, PREPA submitted the table previously referenced, in compliance with the Resolutions issued on July 19, August 3, and August 14, 2023.

II. ANALYSIS AND DISCUSSION

A. C2S Consulting LLC Contract

After reviewing the September 5 Motion, the Energy Bureau **APPROVES** the C2S Consulting, LLC contract for \$29,000. The remaining balance for legal services budget line item from the HoldCo Non-Labor Expenses Category/Other Operating and Capital Expenditures portion of the approved FY24 Budget is **\$0**.

B. Hogan Lovells Contract

It appears that virtually all of the services included in the proposed Hogan Lovells contract Scope of Services, as they relate to the Legacy Generation Assets, are designated to Genera in the Generation OMA. The Hogan Lovells contract provides for support, technical advice, and representation for all environmental compliance activities and assistance for PREPA to comply with Federal laws and regulations. In addition, it provides for representation of PREPA in negotiations with the Environmental Protection Agency ("EPA") regarding the 1999 Consent Decree and in coordination with PREPA, to work with the Department of Energy ("DOE"), the United States Corps of Engineers, the Federal Energy Regulatory Commission, and other governmental entities regarding PREPA's services and operations. The Hogan Lovells Scope of Services also includes identifying regulations that attach to retirement of PREPA generation assets, consistent with GAAP and GASB.

Specific examples of the activities included in the Scope of Services that are addressed in the Generation OMA include, Section 5.9 provides for the Operator to manage environmental, health, and safety programs for the legacy generation assets in accordance with ... prudent utility practices, coordinate, oversee, and maintain compliance of legacy generation assets with applicable Environmental Law, the requirements of Environmental Approvals issued and the Consent Decree, to monitor emerging Federal, State ... Environmental Law to manage future and ongoing compliance and to monitor proposed environmental law to prepare for future compliance. Annex IX provides among Genera's services, interfacing and providing reports to regulators... with environmental compliance agencies such as the EPA..., maintenance of environmental compliance program and Operator responsibility for compliance with Environmental Law (including Consent Decree) and with applicable regulatory requirements and prudent utility practice. The Generation OMA requires environmental compliance as a component of Prudent Utility Practice and states that Environmental Law includes the Consent Decree. Article 16 of the Generation OMA provides for issuance by the Administrator of Decommissioning Notice and Operator development of

⁴ *Id.*, p. 6.

⁵ *Id.*, pp. 6 – 7.

⁶ *Id.*, p. 7.



a Decommissioning Plan for the Legacy Generation Assets and out of service units. Mention of responsibility by Owner is notably absent. In accordance with Annex IX, the Operator is responsible for maintaining financial and accounting records with respect to Decommissioning Services, in accordance with GAAP and other applicable standards.

Despite the foregoing, the Energy Bureau recognizes PREPA's contention that it has necessary experience in these issues and that to delegate these services to another party at this time would be detrimental. The Energy Bureau also recognizes that the Hogan Lovells Contract cost has been reduced from that of previous years.

The Energy Bureau **APPROVES** the Hogan Lovells Contract in the amount of \$150,000 as proposed, but emphasizes its expectation that in FY 2025, no PREPA contracts will be duplicative of the responsibilities that the Generation OMA and T&D OMA delegate to other parties or that PREPA can perform internally. The remaining balance of the Regulation and Environmental Inspection budget line item from the HoldCo Non-Labor/Other Operating Expenses Category portion of the approved FY24 Budget is **\$394,000**.

The Energy Bureau takes very seriously PREPA's certification that the Scope of Services in this contract are not duplicative of those provided by others. Based upon the clear language of the Generation OMA, this is not accurate. The Energy Bureau **WARNS** PREPA to be more careful in its future certifications.

C. Tetra Tech Contract

With regard to the proposed contract for Tetra Tech, the Energy Bureau expresses its concern regarding PREPA's role in the maintenance of the BONUS facilities, especially because BONUS does not contribute to the safe and reliable operation of the electric grid. The Energy Bureau strongly encourages PREPA to engage in rigorous negotiations with the DOE to maximize DOE's financial and operational contribution to the maintenance and ancillary costs related to the BONUS facility as the DOE is the custodian of the radioactive material that remains in BONUS. Effective collaboration between PREPA and DOE is essential to ensure that public funds are used judiciously while maintaining compliance with regulatory standards.

The Energy Bureau **APPROVES** the Tetra Tech, Inc. Contract for \$100,000. The remaining balance of the Regulation and Environmental Inspection budget line item from the HydroCo Non-Labor/Other Operating Expenses Category portion of the approved FY24 Budget is **\$581,000**.

D. Regulatory Compliance Services Corp. Contract

The Energy Bureau **FINDS** PREPA complied with the August 29 Order and **APPROVES** the amended Regulatory Compliance Services Corp. Contract for \$200,000 which corresponds to the PREPA Restructuring & Title III budget line item from the HoldCo Non-Labor/Other Operating Expenses Category.

The Energy Bureau **TAKES NOTICE** of the table submitted with the September 5 Motion and **ORDERS** PREPA to submit an updated table such as the one provided with the September 5 Motion in its future filings related to approving new contracts or amendments to existing contracts.

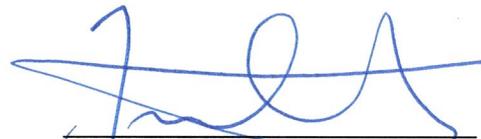
The Energy Bureau **WARNS** PREPA that, noncompliance with this Resolution and Order, **will result** in the imposition of fines pursuant to Article 6.36 of Act 57-2014.⁷ As such, the Energy Bureau will impose a fine of **one thousand dollars (\$1,000) per day of noncompliance until compliance is achieved**.

Be it notified and published.

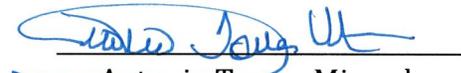
⁷ Puerto Rico Energy Transformation and RELIEF Act, as amended (Act 57-2014”).




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 September 21, 2023. President Edison Avilés Deliz did not intervene. Also certify that on September 21, 2023, I have proceeded with the filing of this Resolution and Order, 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; legal@genera-pr.com; regulatory@genera-pr.com; jfr@sbgblaw.com; alopez@sbgblaw.com.

For the record, I sign in San Juan, Puerto Rico, today, September 21, 2023.


Sonia Seda Gaztambide
Clerk

