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 the Request for Partial Revision on the FY 2024 Annual Budgets by LUMA, GENERA and PREPA

RESOLUTION AND ORDER

I. Introduction

On May 16, 2023, LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly referred to as, "LUMA") 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"), pursuant to which, LUMA submitted to the Energy Bureau the proposed T&D Budgets developed by LUMA, the proposed GenCo Budgets developed by Genera PR, LLC ("Genera"), and the proposed HydroCo and HoldCo Budgets developed by the Puerto Rico Electric Power Authority ("PREPA"). LUMA requested that the Energy Bureau review and approve the Consolidated System Annual Budgets for FY2024, including the T&D Operating and Capital Budgets, the GenCo Budget, the allocation of the HydroCo Budget and HoldCo Budget, as well as other expenditures in the May 16 Motion.

The May 16 Motion included a document titled, *Annual Budgets, Fiscal Years 2024 to 2026* ("Proposed FY 2024 Budgets") which presents the proposed Fiscal Year 2024 to 2026 Annual Budgets referenced by LUMA in the May 16 Motion.[1]

On June 9, 2023, the Energy Bureau conducted a virtual Technical Conference ("June 9 Technical Conference") to obtain further information on the Proposed FY 2024 Budgets.

On June 12, 2023, the Energy Bureau issued a Resolution and Order ("June 12 Resolution") with requirements of information ("ROI") to assist its review and evaluation of the HoldCo and HydroCo proposed budgets.

On June 25, 2023, the Energy Bureau issued a Resolution and Order ("June 25 Resolution") through which it modified the Proposed FY 2024 Budgets and approved the Budgets as modified, subject to compliance with directives and reporting requirements, except for the HydroCo Budget which the Energy Bureau conditionally approved subject to compliance with certain documentation requirements.

On June 29, 2023, PREPA filed a document titled *Motion for Reconsideration of the June 25 Resolution and Order on the Determination of the FY24 Annual Budgets for the Electric Utility System -LUMA, Genera, and PREPA* ("PREPA June 29 Motion").

On June 30, 2023, Genera filed a document titled *Urgent Motion in Compliance with Resolution and Order of June 25, 2023 and for Partial Reconsideration* ("Genera June 30 Motion").

On June 30, 2023, the Energy Bureau issued a Resolution and Order ("June 30 Resolution"), through which it notified that it would not consider and returned the PREPA June 29 Motion and Genera June 30 Motion because their submission did not comply with provisions of the T&D OMA[2] which stated that LUMA is the entity charged with the responsibility to represent

[1] May 16 Motion, Exhibit 1 ("Proposed FY 2024 Budgets").

[2] *Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement* ("T&D OMA"), dated June 22, 2020, executed by and among PREPA, the Puerto Rico Public-Private Partnerships Authority ("P3 Authority"), LUMA Energy LLC as ManagementCo, and LUMA Energy Servco, LLC as ServCo.

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PREPA and Genera before the Energy Bureau regarding any regulatory or legal matters as they relate to the OMA including budget policy and carry out other tasks in connection thereto before the Energy Bureau.

On June 30, 2023, LUMA filed a document titled, *Submission of Motions for Reconsideration by PREPA and Genera and Notice of Intent to Request Reconsideration of Resolution and Order of June 25, 2023* ("June 30 Motion"), through which LUMA submitted Motions for Reconsideration of the Energy Bureau's FY 2024 Budget Determination on behalf of PREPA ("PREPA Reconsideration Motion") and Genera ("Genera Reconsideration Motion") and provided notice of its intention to request reconsideration on its own behalf. LUMA specified that it had no part in the development of PREPA's and Genera's Reconsideration Requests, made no representation as to their appropriateness and reserved its rights to file its own position under separate cover.

On July 5, 2023, the Energy Bureau issued a Resolution and Order ("July 5 Resolution") through which it took notice of LUMA's June 30 Motion and granted LUMA until Monday, July 10, 2023, to file i) LUMA's position pertaining the June 25 Resolution, including proposed amendments, and ii) LUMA's position regarding Exhibits 2 and 3 of LUMA June 30 Motion. The Energy Bureau specified that any proposed amendments by LUMA to the June 25 Resolution must consider the amendments proposed in Exhibit 2 and Exhibit 3 of LUMA June 30 Motion.

On July 10, 2023, LUMA filed two responsive motions to the July 5 Resolution:

- *Motion for Partial Reconsideration of Resolution and Order of June 25, 2023 on Fiscal Year 2024 System Budgets* ("July 10 Motion for Partial Reconsideration") through which LUMA provided its position regarding the June 25 Resolution and asserted its request for Partial Reconsideration; and.

- *Motion in Compliance with Resolution and Order of July 5, 2023* ("July 10 Motion in Compliance") through which LUMA expressed its position regarding the June 25 Resolution and provided its position regarding Exhibits 2 (PREPA Reconsideration Motion) and 3 (Genera Reconsideration Motion) of LUMA's June 30 Motion. As for its position on the July 5 Resolution, LUMA references the concurrent July 10 Motion for Partial Reconsideration. Regarding its position on Exhibits 2 and 3 of the June 30 Resolution, LUMA requests the Energy Bureau to reconsider the June 25 Resolution and approve the System Annual Budgets for FY 2024 consistent with the Puerto Rico Public Private Partnership Authority ("P3 Authority") approved revenue allocation and budget determinations reflected in LUMA's FY 2024 Consolidated Budgets Submission. LUMA views that allocation as adequate and reasonable, given financial and operational constraints.[3] LUMA asserts this allocation provides it with the "bare minimum funding amount needed to perform operation and maintenance Services under the T&D OMA."[4]

On July 28, 2023, PREPA filed a document titled, *Informative Motion and Request for Remedy* ("July 28 Informative Motion"), through which, PREPA explained that the FY 2024 Budget approved by the Energy Bureau would leave PREPA unable to operate efficiently and manage its day-to-day activities. PREPA related that its Governing Board approved Resolution 5076 granting authorization to use funds deposited into the FEMA reimbursement account to cover budgetary gaps. PREPA included a revised budget and a list of contracts it deems necessary to enable PREPA to operate and comply with all of its obligations. PREPA requested the Energy Bureau to approve the amended budget and authorize the use of funds from the FEMA Reimbursement Account.

On September 1, 2023, PREPA filed a document titled *PREPA's Motion for Reconsideration of Portions of the August 16 Order and in Compliance with the August 14 Request for Information*

[3] July 10 Motion in Compliance, p. 4.

[4] *Id.*, p. 7.

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and the August 16 Order ("September 1 Motion"), through which, PREPA reiterated its request for funds it asserts are necessary for PREPA to minimally comply with its responsibilities, including specific environmental obligations.

II. Petitions for Reconsideration – Discussion and Analysis

A. Determination of Budgetary Needs – Reliable Supply of Electricity

When LUMA, through the June 30 Motion, originally submitted PREPA Reconsideration Motion, it did so upon request of PREPA in compliance with the T&D OMA, as required by the Energy Bureau to file PREPA Reconsideration Motion. LUMA specified that its filing should not be considered an endorsement of the request and LUMA made no representation as to the appropriateness of the proposal. LUMA similarly filed Genera Reconsideration Motion with the statement that it did not prepare or participate in the development of the Genera Reconsideration Motion.[5]

The Energy Bureau **CAUTIONS** LUMA that in accordance with the T&D OMA, LUMA bears the responsibility under its obligation as agent of PREPA to do more than merely relay submissions by PREPA and Genera. In its June 30 Resolution, the Energy Bureau specified several pertinent sections of the T&D OMA with which LUMA is expected to comply in good faith.

Exhibits 2 and 3 of the LUMA June 30 Motion are requests by PREPA and Genera respectively for Reconsideration and Partial Reconsideration of the June 25 Resolution. LUMA expressed that the Energy Bureau should reconsider the June 25 Resolution and approve the System Annual Budgets for FY 2024 consistent with the P3 Authority approved revenue allocation and budget determinations reflected in LUMA's FY 2024 Consolidated Budgets Submission. LUMA views that allocation as adequate and reasonable, given financial and operational constraints[6] and asserts this allocation provides it with the "bare minimum funding amount needed to perform Operation and Maintenance Services under the T&D OMA."

LUMA stated that it initially understood Genera Reconsideration Motion as requesting the Energy Bureau to establish a budget consistent with the revenue allocation submitted by LUMA on May 16 Motion. However, Genera notified LUMA that this position was in error and requested LUMA to submit a proposal for the entire Labor Expense that Genera had submitted and for the total Genera Operating Budget of $324 million to be approved. LUMA asserts that the projects Genera believes should be funded from the incremental revenue allocation are "non-essential", "optional" and "discretionary."[7] Given the current state of the generation fleet, where forced outages affecting baseload units are a common occurrence that result in the interruption of electric supply to significant portions of the utility customer base, the Energy Bureau does not consider the projects in the Generation Fleet Outage Schedule filed by Genera[8] which incorporates the flexibility afforded by the temporary emergency generation under the federal generation stabilization mission to be non-essential. The Energy Bureau views the filed Planned Maintenance and Critical Component Replacement Program[9] to be a core component of the generation stabilization effort underway. The generation Necessary Maintenance Expenses ("NME")

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[5] June 30 Motion, pp. 3 – 4.

[6] July 10 Motion in Compliance, p. 4.

[7] *Id.*, pp. 4 – 7.

[8] *In re: LUMA's Initial Budget and Related Terms of Service*, Case No.: NEPR-MI-2021-0004, *Motion Submitting Information in Compliance with Resolutions and Orders Dated June 25, 2023 and July 14, 2023* filed by Genera on July 25, 2023, Annex F.

[9] *Id.*

activities funded with the approved budget specified in Attachment D of the June 25 Resolution, with the proposed federally funded Critical Component Replacement Program, will lower the percentage of forced outage % from 32% to 15% and increase the generation availability by 340MW by the end of calendar year 2024. [10] Raising the generation performance to industry standard levels is essential to ensure a reliable supply of electricity.

In the July 10 Motion in Compliance, LUMA states that PREPA Reconsideration Motion proposes budgets for HoldCo and HydroCo of $46 million and $16 million respectively, which it notes exceed LUMA's Proposed FY 2024 Budgets of $30 million and $15 million respectively and "exceed the revenues available to HoldCo and HydroCo for FY 2024 as determined by the P3 Authority."[11] The Energy Bureau notes that in accordance with the T&D OMA, the P3 Authority ensures that the budgets comply with the applicable 2017 Rate Order and allocates projected revenues between the T&D Operator, GenCo, HoldCo(PropertyCo), and HydroCo, based on the 2017 Rate Order[12]. The Energy Bureau is the entity equipped with the required specialized expertise to evaluate the budgetary needs of the utility to ensure the safe and reliable supply of electricity. As such, the Energy Bureau may modify P3 Authority allocations to reflect these needs. The Energy Bureau's evaluation in a one-year rate examination is more constrained than in a full rate examination, however, the Energy Bureau preserves its powers to address revenue allocation and rate design in the one-year budget examination.

B. LUMA

1. LUMA's July 10 Motion for Partial Reconsideration and Position Pertaining to the June 25 Resolution and Proposed Amendments

a. The FY 2024 Budget Determination

i. Summary of LUMA's Request

In the July 10 Motion, LUMA requests the Energy Bureau to reconsider the June 25 Resolution. LUMA contends that the Energy Bureau's reduction of the FY 2024 Budgets for $14.8 million, from $651 million to $636 million should be restored. The $14.8 million modification reduced the budget for Customer Experience by $7.7 million and the budget for Support Services by $6.8 million.[13] LUMA asserts that when accounting for inflation, the FY 2024 Budget is about $86 million lower in real terms than the FY 2022 Budget and that the $14.8 million reduction would mean that the approved budget is more than $100 million lower than LUMA's Initial Budgets. LUMA claims that the cuts will negatively affect its overall operations.[14]

In the July 10 Motion for Partial Reconsideration, LUMA also requests reconsideration of the portion of the June 25 Resolution requiring filing annual reports on financial activity within sixty (60) days after the close of FY 2024.[15]

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[10] Motion in Response to the Resolution and Order Dated July 14, 2023, *In re: LUMA's Initial Budget and Related Terms of Service*, Case No. NEPR-MI-2021-0004, August 2, 2023.

[11] July 10 Motion in Compliance, p. 7.

[12] Final Resolution and Order, *In r: Puerto Rico Electric Power Authority Rate Review,* Case No. CEPR-AP-2015-0001, January 10, 2017 (2017 Rate Order").

[13] July 10 Motion for Partial Reconsideration, p. 1.

[14] *Id.*, p. 2.

[15] *Id.*, p. 3.

LUMA disagrees with the portion of the June 25 Order that determined (1) the amount in Labor and Non-Labor/Other Operating Expenses for Customer Experience will be limited to $81.0 million which is the amount budgeted and approved in FY 2023, instead of the budget proposed by LUMA of $87.845 million; and (2) the proposed increase in Support Services funding for FY 2024 will be limited to $170.015 million,[16] instead of the budget proposed by LUMA of $177.715. LUMA asserts that it was deprived of due process because it did not receive prior notice of a possible budget reduction, it was not given the opportunity to be heard on the potential reduction, that the Energy Bureau's decision was arbitrary, did not include findings of fact and that its determination was not supported with data, information, or filings in the administrative record.[17] LUMA contends that "The $651 million petitioned in LUMA's Proposed Annual T&D Budgets represents the minimum funding reasonably needed to provide O&M Services under the T&D OMA and to operate the T&D System after prioritizing critical O&M Expenditures,[18] and "a further reduction in the Proposed Annual T&D Budgets upends the careful balance reached by LUMA per its expertise in designing the Proposed Annual Budgets."[19]

LUMA asserts several substantive reasons for the Energy Bureau Budget reductions to be restored. LUMA states that the proposed Annual T&D Budgets allocations must sustain the level of Customer Service achieved to date and that a reduction in the Customer Experience Budget would result in a reduction to existing service levels. LUMA asserts that based on its expertise and experience as T&D Operator, the requested funding increases over FY 2023 are required to sustain the current level of service.[20] Regarding Support Services, LUMA asserts that the FY 2024 Proposed Annual T&D Budgets for the Support Services Department O&M Expenditures encompasses additional activities for FY 2024 Ordered by the Energy Bureau including but not limited to the Rate Review and development of the Integrated Resource Plan ("IRP").[21] LUMA states that its ability to support the Rate Review and development of the IRP would be affected if the proposed budget is not approved and that a reduction could result in diminished physical security, improvements to Financial Systems and Controls, quarterly and annual financial reporting, increased scope of procurement services to support increased capital work, and customer communications.[22]

ii. *Discussion and Analysis*

The Energy Bureau is responsible for making sure electric utilities have the resources to meet their obligation to supply electricity safely and reliably. During each annual examination, the Energy Bureau considers current system conditions to prioritize various electric service components and may modify the proposed budgets to achieve those priorities. The Energy Bureau carefully examined the record of this proceeding and applied its specialized knowledge

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[16] *Id.*, p. 8.

[17] *Id.*

[18] *Id.*, p. 16.

[19] *Id.*, p. 17.

[20] *Id.*, p. 13.

[21] July 10 Motion for Reconsideration, p. 13.

[22] *Id.*, p. 14.

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in making determinations regarding the needs of LUMA, Genera, and PREPA in the FY 2024 Budget.

As LUMA acknowledges in the July 10 Motion for Partial Reconsideration, the 2017 Rate Order provides for the annual examination of proposed departmental budgets as compared to past year budgets, and based on that information, establishment of a just and reasonable revenue requirement for the upcoming fiscal year, with reasonable departmental budgets matching budgets that are reasonable, realistic and accurate.[23] Therefore, LUMA should not be surprised that the Energy Bureau, in its evaluation of the Department Budgets, determined to modify components of the proposed Budgets to have the electric utility safely and reliably supply electricity.

The Energy Bureau assessed the information provided in LUMA's May 16 Motion, responses to comprehensive Requirements of Information ("ROI"), and in the June 9 Technical Conference, as well as other components of the record in this proceeding. The Energy Bureau acknowledged the functions of Customer Experience and Support Services, however, in view of the finite funds available, the Energy Bureau determined that the levels of service currently being attained were adequate, for which the existing level of funding for Customer Experience would be maintained and the proposed increase for Support Services would be reduced, until these and other significant issues can be examined in the upcoming Rate Review. LUMA's procedural claims are without merit, however, the Energy Bureau will revisit the reductions to the proposed FY 2024 Budgets based on the substantive assertions LUMA made in its July 10 Motion as to why the Energy Bureau's reductions should be restored. The Energy Bureau based its decision on the administrative record and taking into consideration that maintaining such customer service directly benefits the ratepayers, the Energy Bureau reconsiders its June 25 Resolution and accepts LUMA's assertions that the full increase in the proposed FY 2024 Budgets in both Customer Service and Support Services are necessary to maintain current levels of service and to enable LUMA to support important activities such as the Rate Review and IRP.

iii. Revenue Collection from Pole (Third-Party) Attachment Fees

The Energy Bureau recognizes that pole (third-party) attachments fees are a common utility revenue source. During the Energy Bureau's examination, it was found that LUMA has estimated revenues from the collection of pole attachment fees,[24] however, pole (third-party) attachment fees are not currently being collected.[25]

It is unclear from LUMA's budget filing whether or to what extent revenues from pole (third party) attachment billing are being considered. The information in LUMA's Confidential ROI Response: TC-RFI-LUMA-MI-2021-0004-20230609-PREB-0002 clarifies this question but confirms LUMA's dilatory actions in response to this source of additional funding. In view of the current fiscal constraints, budgetary needs of the electric utility, and to provide customers with the lowest rates possible, LUMA's apparent failure to vigorously pursue this revenue source may be considered an imprudent course of action.

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[23] *Id*., p. 18.

[24] Confidential Response: TC-RFI-LUMA-MI-2021-0004-20230609-PREB-0002.

[25] June 9 Technical Conference at 1:59:23, Available at: https://youtu.be/K3smQeRgxyw?t=7163 (Last verified September 22, 2023).

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The Energy Bureau **ORDERS** LUMA to report to the Energy Bureau in its Quarterly and Year End Reports, beginning with the first quarterly report filed after issuance of this Resolution and Order, on the status of collection from pole (third-party) attachments, including amounts collected and how collected funds are accounted for in the budget.

iv. Conclusion

The Energy Bureau **APPROVES IN PART**, LUMA's request to reconsider the approved FY 2024 Budgets and restores the $7.7 million reduction in Customer Experience and the $6.8 million reduction in Support Services, based on information provided by LUMA in its Motion for Partial Reconsideration.[26]

b. Year-End Reports

i. Summary of LUMA's Request

LUMA asks the Energy Bureau to reconsider in the June 25 Resolution its order for LUMA to file Year End reports within sixty (60) days after the Fiscal Year. In support of this request, LUMA asserts that the 60-day[27] is not consistent with current reporting requirements and not compliant with requirements imposed on other utilities. LUMA also asserts that the Energy Bureau acknowledged in its August 26, 2022 Resolution that LUMA would file its year-end report one hundred and twenty (120) days after the end of the Fiscal Year and that the OMA requires unaudited financial statements to be filed within 120 days after the end of the Fiscal Year ("August 26 Resolution").[28]

LUMA misconstrues the Energy Bureau's August 26 Resolution.[29] The Energy Bureau emphasized that LUMA did not adequately explain the unavailability of a preliminary year-end report until one hundred and twenty (120) days after the Fiscal Year and that a year-end report provided one hundred and twenty (120) days after the end of Fiscal Year would be expected to be audited. In addition, the Energy Bureau ordered in its June 25 Resolution on Reporting Requirements, that LUMA "...report annually within sixty (60) days after the end of each fiscal year, on the use of funds within the budget for that timeframe. In this report, explain any differences between accounts expenses and approved budgets,"[30] demonstrated that the Energy Bureau has not accepted the 120-day timeframe for filing of a year-end report.

Rather than determine the time within which LUMA must file its year-end report as requested in its July 10 Motion for Partial Reconsideration, the Energy Bureau will require LUMA to file in the upcoming Rate Review, a full explanation of the specific reasons it asserts that prevent it from filing a year-

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[26] The Energy Bureau notes that T&D Operating Budget levels are adequate to fund Tranche 2 and Tranche 3 Facilities Studies and System Impact Studies efforts associated with Renewable Resource Procurement, to the extent such studies are not fully funded by fees collected from project developers. The Energy Bureau notes that LUMA's proposed budget included $660,000 for studies related to renewable integration. See, ROI Response *20230526 REDACTED-ROI-LUMA-MI-2021-0004-20230523-PREB-000 Attachment 2_Capital Expenditures.xlsx.*

[27] *Id*., pp. 19 – 23.

[28] July 10 Motion for Partial Reconsideration, p. 20.

[29] Resolution and Order, *In re: LUMA's Initial Budget and Related Terms of Service*, Case No. NEPR-MI-2021-0004, August 26, 2022 ("August 26 Resolution").

[30] July 10 Motion for Partial Reconsideration, p. 19.

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end report at an earlier time of the 120-day timeframe LUMA is requesting and is in the T&D OMA.

The Energy Bureau **ORDERS** LUMA to file in the upcoming Rate Review, a full explanation of the specific reasons it asserts that prevent it from filing a year-end report at an earlier time than 120 days after each Fiscal Year. The assertion that this reporting does not conform with LUMA's other reporting requirements will not be accepted as an adequate reason.

The Energy Bureau **MAINTAINS** its requirement that LUMA file the Q4 Report, as the Q1, Q2 and Q3 Reports, within forty-five (45) days after each Fiscal Year including all actual costs funded by the Base Rate in the Budgets to Actual Reporting. For the avoidance of doubt, LUMA must submit the Budget to Actual for GridCo, GenCo, and HoldCo and other expenses in the Report, not just the T&D Budget portion of the System.

2. Energy Efficiency Budget for Fiscal Year 2024

In fulfillment of its ministerial duty and by mandate of law, the Energy Bureau begins to implement energy efficiency programs in the pursuit of guiding Puerto Rico toward the goal of achieving a 30% reduction in electricity consumption through energy efficiency programs, as established by Section 6.29B of Act 57-2014.[31]

On March 25, 2022, Regulation No. 9367 titled "*Energy Efficiency Regulation*" came into effect, in compliance with the requirements of LPAU[32], Section 1.03 of the Energy Efficiency Regulation underscores the pivotal role that energy efficiency plays in the reconstruction of a robust energy system responsive to the needs of its customers. The Government of Puerto Rico's commendable focus on achieving the target of a 30% reduction in electricity consumption by the year 2040 through energy efficiency programs is noteworthy. These programs significantly reduce electricity consumption at the residential, commercial, and industrial levels, thereby lowering the electricity bills for consumers while using more efficient equipment and programs. Energy efficiency programs help reduce electrical system costs by decreasing the need for fossil fuel-based power plants, whether they are base-load or emergency power plants, to provide electricity.

a. Financial Overview

The energy efficiency programs, which will also include education, outreach, and administrative expenses, have a total budget requirement of $15,375,000 for fiscal year 2024.[33] This amounts to a monthly cost of $1,281,250. Excluding July, August, and September, the remaining months of fiscal year 2024 require an investment of $11,531,250.

b. Funding Determination

Given the established needs of the energy efficiency programs, the public policy mandate, and the duty of the Energy Bureau to ensure the most prudent use of resources, the Energy Bureau has evaluated the options for funding these

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[31] *The Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014").

[32] *Government of Puerto Rico Uniform Administrative Procedure Act*, as amended ("Act 38-2017").

[33] Motion to Submit EE Rider, *Inre: Energy Efficiency and Demand Response Transition Period Plan*, Case No. NEPR-MI-2022-0001, April 11, 2023 ("EE Rider").

important initiatives. While an EE rider was considered and even evaluated under a past Resolution Order, the Energy Bureau has chosen a different course. After thorough analysis, the Energy Bureau deems it in the best interest of ratepayers and in alignment with public policy objectives to allocate the necessary funds for energy efficiency programs directly from the available monies in the FY 2024 budget.

The Energy Bureau is conducting a proceeding on Energy Efficiency in docket NEPR-MI-2022-0001, where LUMA presented its energy efficiency plans and activities, as well as its budget requirements. On a prorated basis, the Energy Bureau **FINDS** that $11,531,250 will be needed for the rest of FY24. Referring to the July 17 Motion, file "EE Rider Factor Calculation," Tab "Attachment 2," where LUMA laid out its proposal for calculating the factor for the Energy Efficiency Clause, including the energy efficiency programs and demand response programs, along with their costs.[34]

The Energy Bureau **APPROVES** funding for $11,531,250 from the FY 2024 budget for energy efficiency programs. This amount is to be used for the remaining months of FY24.

Genera

Genera requests that the Energy Bureau reconsider the labor expense reduction that was ordered in the June 25 Resolution because, Genera contends, the proposed Genera $79.5MM budget comprises job positions necessary to meet its contractual obligation of providing O&M Services and that if the Energy Bureau sustains the decision to reduce this amount, important programs could be put at risk.[35]

Genera explains that as of June 28, 2023 it had 634 accepted positions, amounting to $49MM in payroll expenses, for former PREPA power plant employees in critical positions and contracted positions that include non-mandatory hires required to support power plant operations for $15.4MM. Genera states these positions were not included in earlier GenCo rosters. Genera states that the payroll for already hired Genera employees amounts to $64.3MM and that the budget for pivotal positions that positions for which it is recruiting amount to $15MM. Genera states that it requires the entire $79.5MM that it requested to guarantee reliable operations.

Genera states that the Energy Bureau decision to reduce labor expenses also adversely affects Genera's ability to perform its obligations under the Generation OMA. Genera cites provisions of the Generation OMA requiring Genera to offer employment to certain PREPA full time plant employees and that certain terms and conditions of employment are prescribed. Genera states that as of June 29, 2023, it has committed $64.3M towards its labor expenses, thus already exceeding the budget that the Energy Bureau approved in the June 25 Resolution.[36] In defense of this action, Genera urges the Energy Bureau to recognize Genera's action pursuant to its contractual obligation and strategic necessity for ensuring the effective execution of the O&M Services under the Generation OMA and to guarantee Genera's success and the reliability of the power supply in Puerto Rico.

Genera also contends that its proposed budget accounts for a significant reduction compared to PREPA's GenCo Proposed Budget. Genera asserts that PREPA's GenCo budget did not account for various vital elements integral to efficient operations, including administrative support, logistics, human resources, and other back-office

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[34] Motion Submitting Reconciliations for May and June 2023, Submission of FCA, PPCA, and FOS Calculated Factors, and Request for Confidential Treatment, *In re: Puerto Rico Electric Power Authority Permanent Rate,* Case. No. NEPR-MI-2020-0001, July 17, 2023.

[35] Genera Motion for Reconsideration, pp. 6 - 8.

[36] *Id.*, p. 7.

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services. Genera asserts that its budget is significantly leaner than PREPA's GenCo proposal and that it encompasses a broader, more functionally effective roster.[37]

Genera re-emphasizes the necessity of prioritizing its existing and anticipated workforce and asserts that funds must be allocated to "this paramount facet of its operations rather than non-essential or optional concerns."[38] Genera goes on to state, "These funds may be reallocated from projects that Genera presented as, although important, optional, and not considered in the budget proposal."[39]

The Energy Bureau finds Genera's contentions to be unavailing. Foremost, Genera has allocated more funds for labor than the Energy Bureau approved for that purpose. This is **UNACCEPTABLE** and may be considered imprudent and non-compliant with Energy Bureau June 25 Resolution. In its argument for reconsideration, Genera disregards certain details regarding its hiring of PREPA employees and the asserted support of its need for the proposed level of funding falls short in a number of areas.

Based on its argument, Genera seems to represent that the primary driver for the level of funds it has committed for labor, is the requirement of the Generation OMA for it to hire PREPA employees. Genera's justification for the labor expense based on this requirement is faulty.

The employee information submitted in this record by Genera on June 2 indicated a salary increase of about 10% for GenCo employees relocating to Genera, based on the then current evaluation of open positions.[40] It was that level of increase that the Energy Bureau considered in its determination. However, with its reconsideration request, Genera provided a roster of accepted and vacant positions with much larger salary increases, with some as high as 200%. In addition, bonuses are included which range from $600 Christmas bonuses for most employees to other bonuses of as much as $200,000.[41] This is not an exception, rather a trend across the entire Genera roster. This is an alarming departure from what was initially represented to the Energy Bureau and constitutes a material change that should have been promptly reported. Genera failed in its duty to inform the Energy Bureau of these significant deviations, and this came to light only after the Energy Bureau took the step of reducing Genera's labor budget and requesting additional information.

Genera provided no data, such as salary benchmarks used, to justify the levels of salaries reflected in its July 25, 2023 submittal.[42] Similarly, no such data were presented by Genera in the actual record.

The Energy Bureau acknowledges Genera's responsibility to offer employment to certain PREPA employees in accordance with the Generation OMA and that PREPA employees have important knowledge and experience as it relates to the GenCo power plants.[43] In this regard, among the requirements of the Generation OMA Section 4.2(g)(ii) is that

[37] *Id.*, p. 9.

[38] *Id.*, p. 10.

[39] *Id.*, p. 11.

[40] See, Roster Tab, Annex-A-1-GeneraPR-FY2024-Revised-Budget-Model-Post-P3A-Allocation-for-PREB-5.31.2023-1, Available at: https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fenergia.pr.gov%2Fwp-content%2Fuploads%2Fsites%2F7%2F2023%2F06%2FAnnex-A-1-GeneraPR-FY2024-Revised-Budget-Model-Post-P3A-Allocation-for-PREB-5.31.2023-1.xlsx&wdOrigin=BROWSELINK (Last verified September 21, 2023).

[41] *Id.*

[42] Motion Submitting Information in Compliance with Resolutions and Orders Dated June 25, 2023, and July 14, 2023, *Inre: Review of LUMA's Initial Budget*, Case No. NEPR-MI-2021-0004, July 15, 2023.

[43] *Id.*, p. 7.

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"offers of employment shall provide for employment with Genera…for a base salary or regular hourly wage at least equal to the base salary or wage rate provided by PREPA or its affiliates (as applicable) to the PREPA employee immediately prior to the service commencement date. A review of the salaries and benefits Genera is providing to its employees reveals exorbitant increases in the salaries as compared with their former salaries at PREPA. In some cases, salaries have increased by 200%.[44] Genera has increased most salaries in excess of 10 – 20% and in most instances makes an additional allowance for annual bonuses, some as high as $200,000.[45] This level of salary increases is not required by the Generation OMA and has not been justified, especially now when base rates are constrained by the 2017 Rate Order and PREPA's Title III bankruptcy.

The Energy Bureau notes that the 2017 Rate Order specifies Debt Service Coverage amounts[46] that are to be used to repay the debt obligation as determined by the Title III Bankruptcy Court.

Genera also contends that any comparison of its budgets with that of PREPA's GenCo proposed budget is not valid. Without commenting on Genera's vague assertions regarding the PREPA proposed GenCo Budget including the assertion that "PREPA's GenCo budget proposal did not account for various vital elements integral to efficient operations,"[47] the Energy Bureau notes that as frequently stated in the course of its budget review, the conclusions reached by the Energy Bureau are based on an assessment of the needs of the various parties, as reflecting their respective responsibilities in accordance with the ultimate goal of safe and reliable electric service at reasonable rates.

1. Misuse of Ratepayer Funds

The Energy Bureau sternly reminds Genera it must exercise responsible administration of public funds. Salary increases of the magnitude observed not only demonstrate a lack of financial prudence but also set a concerning precedent that could have a multiplier effect on salary expectations and negotiations throughout the entire industry. This could lead to inflationary pressures on operational costs, which could ultimately be passed on to the ratepayers—something the Energy Bureau cannot and will not tolerate.

2. Consequences and Expectations Moving Forward

The Energy Bureau expresses its severe concern and dissatisfaction with Genera's actions. It is imperative that Genera takes immediate corrective action to align its hiring and salary policies with the principles of responsible financial management. Failure to do so may lead to further regulatory actions, including but not limited to, penalties, stricter oversight, or even reconsideration of Genera's operational privileges concerning the LGAs.

Finally, the Energy Bureau will address Genera's position regarding what it asserts is prioritizing the labor budget over what it characterizes as "non-essential or optional concerns."[48] Genera states it is not requesting an increase to the GenCo budget allocation but rather that the Energy Bureau approve the labor expenses proposed by

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[46] Commission Attachment 3, p.1, *March 31, 2017 Resolution and Order* in CEPR-AP-2015-0001.

[47] Genera Motion for Reconsideration, p. 9.

[48] *Id.*, p. 10.

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Genera with a reallocation of the revenues already allocated to Genera for expenditures it considers to be, although important, optional.[49]

In the June 25 Resolution, the Energy Bureau discussed, the reasons for its allocation of additional funds for NME activities that Genera characterized as high and medium priority NME projects that Genera did not include in its revision to the PREPA proposed FY 24 GenCo Budget. The allocation of additional funds is to facilitate the operation and maintenance of the Generation Fleet for dependable service and leverage the benefit of the temporary generation being provided by FEMA, thus reducing the likelihood of potential failures of major equipment and ensuring that the extra capacity being provided by the temporary emergency generation can fully perform comprehensive maintenance and repairs during this window of opportunity. Without the availability of a dependable source of electric supply, all other components of electric service are moot. To address these concerns, in the June 25 Resolution, the Energy Bureau allocated additional funds to Genera to enhance its NME capabilities. Genera does not provide new information, pursuant to which, the Energy Bureau will change its position.

a. Additional Avenues for Labor Budget Supplementation

The Energy Bureau points out that there are additional avenues through which Genera can supplement its labor budget:

- **Federally Funded Projects**: A significant portion of Genera's budget comes from Federally Funded Projects. Despite the reasonable expectation that internal resources would be used for such projects, Genera has contemplated no projections on labor reimbursements. This is an area that justifies immediate exploration and use.
- **Act 8-2017 - Law on Administration and Transformation of Human Resources**: This Act allows for the use of government employees supporting other agencies and extends this benefit to Public-Private Partnerships. Genera could benefit significantly from exploring partnerships under this framework to supplement its labor force.

b. Corrective Actions and Future Expectations

The Energy Bureau expects Genera to take immediate corrective measures to align its labor costs with responsible financial management principles. Genera should explore the avenues mentioned above among other options and should report back to the Energy Bureau on its progress in these areas.

To ensure transparency and accountability, the Energy Bureau **ORDERS** these reporting requirements for Genera:

- **Corrective Action Plan**: Within 30 days from issuing this Resolution and Order, Genera must submit a detailed Corrective Action Plan outlining the steps it intends to take to align its labor costs with the approved budgets. This plan should include a timeline for each action, responsible parties, and expected outcomes.
- **Federally Funded Projects Labor Reimbursement Projections**: Genera must submit, within 45 days from issuing this Resolution and Order, a detailed report outlining the potential labor reimbursements from Federally Funded Projects and how these will be allocated to supplement the labor budget.

[49] *Id.*, p. 11.

- **Exploration of Act 8-2017 Opportunities**: Within 60 days from issuing this Resolution and Order, Genera should submit a report that outlines its exploration of partnerships under Act 8-2017,[50] detailing the agencies engaged, potential labor support, and expected timelines for implementation.

The Energy Bureau **DENIES** Genera's request for partial reconsideration of the June 25 Resolution.

The Energy Bureau's decision is rooted in a comprehensive analysis of Genera's operational obligations and the financial resources assigned to it for fulfilling its labor commitments. The Energy Bureau remains confident that, based on the representations of required personnel to operate the Legacy Generation Assets ("LGAs"), Genera possesses sufficient monies to meet its labor obligations responsibly.

D. PREPA

1. June 30 Motion: HoldCo

a. Summary of PREPA's Request

In the PREPA Reconsideration Motion, PREPA contends that the FY 2024 budget approved by the Energy Bureau are not adequate for PREPA to fulfill its responsibilities and obligations and that it disagrees with the Energy Bureau's assessments of the HoldCo and HydroCo budgets. PREPA requests that the Energy Bureau reconsider its determination and approve the revised budget proposed by PREPA. In its June 25 Resolution, the Energy Bureau stressed the importance of rightsizing PREPA, in accordance with the reduced responsibilities resulting from its mandated restructuring. In addition to an analysis of PREPA's remaining responsibilities and commensurate labor needs, the Energy Bureau examined the level of PREPA's resulting need for outside services and NME for its remaining properties. The Energy Bureau here addresses PREPA's contentions.

b. Labor Budget

PREPA's Reconsideration Motion addresses Labor Budgets and the Energy Bureau comparison to the Long Island Power Authority ("LIPA"). PREPA asserts that although it agrees with the Energy Bureau's comparison of PREPA and LIPA, it disagrees with the conclusions that the Energy Bureau reached in comparing HoldCo's labor figures with those of LIPA, which reflected provisions of the LIPA Reform Act. PREPA states, "As PREB should be aware, the LIPA Reform Act was signed in July 2013 which was over 10 years ago."[51]

PREPA's apparent reference to the time that elapsed since enactment of the LIPA Reform Act as decreasing its applicability is misplaced. LIPA reduced its staffing in accordance with the LIPA Reform Act, specifically intended to reflect LIPA's reduced responsibilities commensurate with the higher level of responsibilities assumed by its Service Provider. LIPA under the LIPA Reform Act, reduced its staff to about 40 – 50 employees. The reduction in PREPA's responsibilities because of the introduction of Genera as Generation Service Provider, although 10 years after the LIPA Reform Act was enacted, makes this comparison appropriate.

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[50] Act 8-2017, as amended, known as the" Government *of Puerto Rico Human Resources Administration and Transformation Act.".*

[51] PREPA Reconsideration Motion, p. 5.

PREPA stresses the significance of the percentages by which the number of PREPA employees was reduced, as compared with the percentages by which the number of LIPA employees was reduced in accordance with the LIPA Reform Act, stating in part that, "…these efforts put forth by PREPA represent a greater reduction in personnel than LIPA's 2013 approximate 44% reduction."[52] This contention represents an apparent failure of PREPA to acknowledge the importance of having the correct number of employees in accordance with the responsibilities they must fulfill. The percentage of the reduction is not significantly relevant to that analysis.

Both LIPA and PREPA have contracted with service providers to be responsible for Transmission and Distribution. LIPA, however, is responsible for oversight of its service provider and administration of the contract pursuant to which the service provider operates, with coordination of certain efforts by the NYS Department of Public Service. In Puerto Rico, however, oversight and administration are the responsibility of the P3 Authority, rather than of PREPA. Another significant area of difference is administration of metrics and service provider performance in accordance therewith. LIPA is responsible for ongoing monitoring of metrics compliance, initial year-end review and assessment of the service provider performance, determination of appropriate level of incentive compensation, and for metrics modification and additions. The DPS has oversight responsibilities in these areas as well. PREPA does not have these responsibilities, nor the corresponding demand for resources. Although, as PREPA correctly points out, LIPA's employee numbers have increased since 2021,[53] this reflects LIPA's significantly increased responsibilities following the Service Provider deficient performance during and after Tropical Storm Isaias.

The Energy Bureau finds PREPA's contention that its labor budget should not be reduced in accordance with the Energy Bureau's June 25 Resolution to be without merit.

c. Non-Labor Budget

i. Retiree Medical Benefits

Regarding Retiree Medical Benefits, PREPA does little more than correlate the Energy Bureau's determinations with percentages of the proposed budget, drawing no specific comparisons with the asserted need for specific monetary amounts. PREPA states it understands that the amount may be reduced in accordance with the PREPA Plan of Adjustment but contends that "it would not be considered prudent of PREPA to rely on an unknown future event."[54]

The Energy Bureau does not rely on an unknown future event, as clearly stated in its June 25 Resolution, which states that the $7.95 million budget for Retiree Medical Benefits may be reduced in accordance with PREPA's Plan of Adjustment," and that it would "evaluate the appropriateness of including Retiree Medical Benefits as part of the proposed utility budgets if included in the forthcoming rate revision petition."[55]

The Energy Bureau **FINDS** PREPA's argument to be without merit.

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[52] *Id.*

[53] *Id.*

[54] PREPA Motion for Reconsideration, p. 9.

[55] June 25 Resolution, p. 24 of 47.

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ii. External Auditing Services

PREPA contends that although its proposed budget is higher than LIPA's for accounting/external audit services, this higher level of expenditure by PREPA is necessary.[56] PREPA cites the necessity of completing audits for FY 2022 and FY 2023 within the schedule mandated by the Puerto Rico Treasury Department, its required adoption of Governmental Accounting Standard Board (GASB) rulings and the need for updated financial statements as a prerequisite for PREPA to exit Title III. Based on the Contract Details and Justification for Increase/Decrease in Budget provided by PREPA,[57] it foresees no reduction of services or contract amounts in the External Audit Service contracts in FY 2024 due to PREPA's need to submit audited financial statements for FY 2022 and FY 2023 in FY 2024. PREPA's reduction in responsibilities, the Administrator's audit rights and responsibilities as stated in the Generation OMA, and projected Title III exit and the ability for PREPA to draw from the approved Bankruptcy Title III Advisor Costs[58] for necessary activities are expected to result in significantly reduced corresponding HoldCo budgets for FY 2024 and subsequent fiscal years.

As an example of cost mitigation available to PREPA, in the June 30 Resolution, the Energy Bureau notified PREPA that it declined to consider and returned to PREPA the Motions for Reconsideration that PREPA and Genera had filed, because their filing was inconsistent with provisions of the T&D OMA and Generation OMA, pursuant to which, "LUMA is the entity charged with the responsibility to represent PREPA and Genera before the Energy Bureau with respect to any regulatory or legal matters as they relate to the OMA, including budget policy and carry out other tasks in connection thereto before the Energy Bureau."[59] In the June 30 Resolution, the Energy Bureau referenced specific provisions of the T&D OMA providing for such representation by LUMA.[60] It is apparent that PREPA is not availing itself of LUMA's services regarding representation before the Energy Bureau, which is needlessly increasing PREPA's legal expenses for representation before the Energy Bureau, and preparation, presentation, and defending regulatory and legal matters. This is not acceptable, and the Energy Bureau will not acquiesce to increase PREPA's budgets when resource saving opportunities such as this and all others should be embraced by PREPA.

PREPA relates its progress in becoming current on its audited financial statements for FY 2020 and FY 2021 and relates its intention to issue audited financial statements for FY 2022 and FY 2023 in the upcoming year, for which PREPA asserts it does not have adequate internal resources. PREPA contends that it needs consulting firms to prepare financial statements, provide technical advisory services and prepare actuarial reports. PREPA cited the need for six consulting firms for External Audit Services to fulfill Energy Bureau Requirements of Information. PREPA also states that up to date

56 *Id*., p. 7.

57 See, 0157-20230621-Responses to June 9 Bench Order, PREPA HoldCo FY24 Budget Contracts.

58 June 25 Resolution, Attachment B.

59 June 30 Resolution, p. 2 of 3.

60 *Id*. pp. 1 – 2.

audited financial statements are required by the Puerto Rico Treasury and PREPA Title III exit.[61] External audit services are discussed above.

The Energy Bureau **ORDERS** PREPA to file, in the upcoming Rate Review, its projection as to the external audit resources and budgets that PREPA anticipates will be needed in FY 2025 and thereafter, considering its reduction in responsibilities, the increased responsibilities of the Administrator and expected conclusion of Title III.

iii. Regulation and Environmental Expenses

PREPA continues to challenge the Energy Bureau's determinations by contending that it is not relieved of responsibility for environmental liability/responsibility, as Owner, "without more." "More" is not explained. PREPA asserts that it may share environmental liability/responsibility with Operator[Genera] depending on the facts of the situation, and that some environmental services may be the responsibility of LUMA or Genera, but that PREPA is not relieved of ultimate responsibility. PREPA lists examples of where it would remain responsible for environmental and historic compliance. PREPA also states that Environmental and Historic Preservation compliance for funding is still a PREPA responsibility, specifically for HydroCo and PropertyCo projects, and that it is responsible for compliance with other governmental environmental regulations. PREPA explains that it remains responsible for past contaminations and that it is "in charge" of undertaking all actions needed for environmental permits and requests to comply with the Bonus Power Plant maintenance requirements.[62]

The Energy Bureau notes that although PREPA may maintain ultimate responsibility in certain circumstances for Environmental and Historic Preservation ("EHP") compliance, the responsibility to directly undertake such responsibility lies with others. For example, in PREPA's June 21 ROI Responses,[63] at No. 13, PREPA states that for Environmental and Historic Preservation, compliance for FEMA funding, obligations are a PREPA responsibility, however, "LUMA/Genera will be responsible for EHP compliance for the projects they are developing or will develop. For the HydroCo and PropertyCo projects that are submitted to FEMA, PREPA has the responsibility for EHP compliance." In these and other instances, although PREPA may remain responsible as owner of the assets, the system operators will be responsible for carrying out the responsibility, thereby, relieving PREPA of much of the workload. In addition, in accordance with the T&D and Generation OMAs, LUMA and Genera serve as agents of PREPA before governmental entities, also eliminating much of PREPA's responsibility.

PREPA asserts that it received a notice of pre-existing environmental conditions from Genera, relating to an Order for Records and Reports issued by the Environmental Protection Agency (EPA) to PREPA.[64] The Order alleged various violations identified during an EPA Spill Prevention Control and Countermeasure Inspection at various PREPA generation facilities, before Genera's commencement date. PREPA states it will be fined if the violations

[61] July 28 Informative Motion, pp. 9 – 10.

[62] PREPA Reconsideration Motion, pp. 10 -12.

[63] See, *Motion to Submit Responses to the Energy Bureau's June 9, 2023 Bench Orders and Third Request for Information in Compliance with the June 12, 2023 Order* ("June 21 PREPA ROI Responses").

[64] September 1 Motion, pp. 8 – 9.

NEGOCIADO DE ENERGÍA DE PUERTO RICO NEPR JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO are not corrected. PREPA reports it does not have personnel or environmental advisors to assist in the remedial actions required by the EPA. Genera has offered to perform the required remedial actions, subject to PREPA reimbursement for its expenditure of resources.

The Energy Bureau **FINDS** PREPA's assertions regarding the necessity of additional funding for reimbursement to Genera for it to perform the remedial actions required by the EPA to merit additional funding. This will be addressed further below, following the section addressing PREPA's July 28 Informative Motion.

iv. Siemens Contract

PREPA cites the Siemens contract as incorrectly attributed by the Energy Bureau to IRP services which is within LUMA's purview. PREPA provides in both its Motion for Reconsideration[65] and June 21 ROI Responses,[66] extensive lists of the activities for which it will rely on the Siemens contract. As for the IRP, PREPA clarifies that the Siemens contract addresses PREPA compliance with issued studies, like the IRP. Despite this distinction, however, because the upcoming IRP will be within LUMA's purview, a smaller expenditure of resources will be required from PREPA. Other areas of PREPA's purported reliance on the Siemens Contract, however, are the responsibility of others, for example, "planning and technical advisory support for the procurement of fuels currently used in Puerto Rico."[67] According to the Generation OMA, fuel procurement is the responsibility of the Operator and Administrator.[68] Another example is the broad responsibility for Engineering Studies and Advisory Services,[69] much of which is expected to be performed by the Operator according to the Generation OMA.[70]

The Energy Bureau **FINDS** PREPA's contentions regarding the Siemens contract to be without merit.

v. NME

PREPA raises concern regarding NME, particularly for the Bonus Facility in Rincón. PREPA clarifies that the amount for Genesis Security Services for the Bonus Rincón Plant was actually $197,830.56 and not $527,548.15. The June 12 Resolution identified the suspected $527,548.15 amount[71] to highlight the need for more care and analysis to be provided in PREPA's proposed budgets. Instead of showing the actual budgetary need required to provide an adequate level of security at the Bonus Facility, PREPA tries to address needs using remaining funds that may not accurately reflect the budget requirements of

[65] *Id*., pp. 12 – 13.

[66] 0157-20230621-Responses to June 9 Bench Order, PREPA HoldCo FY24 Budget Contracts, No. 8, pp. 24 - 25.

[67] June 30 Motion, No. 8(iv), p.24.

[68] Generation OMA, Section 5.7, p. 70 and Annex IX (I)(F), p. 2.

[69] June 30 Motion, No. 8(v), p.24.

[70] Generation OMA, Annex IX (I)(D), p. 2.

[71] June 12 Order, Attachment A, question 10(b).

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the considered activity.[72] In addition, PREPA asserts that it reduced its HoldCo NME budget by $1.7 million in its latest budget submission dated June 29, 2023 and provided adjusted expense needs for Planta BONUS facilities and security systems.[73] The Energy Bureau included an extensive discussion in the June 25 Resolution regarding the Bonus facility which need not be repeated here.[74]

The Energy Bureau **FINDS** PREPA's concerns regarding NME to be without merit.

2. July 28 Informative Motion: HoldCo

Although not part of PREPA's June 30 Motion for Reconsideration, the related July 28 Informative Motion will be addressed here. In the July 28 Informative Motion, PREPA contends that the budget approved by the Energy Bureau in its June 25 Resolution does not provide it with sufficient funds for its remaining functions and responsibilities.[75] PREPA cites as examples, contracts with external law firms it asserts are necessary for the procurement of federal funds and litigation of over 10,000 active cases. PREPA explains that its legal division consists of only three attorneys who provide a wide variety of legal services to PREPA and that the outside legal services are necessary.[76]

PREPA explains that its Engineering Division was dissolved due to the transition to Genera and that it needs at its disposal the services of external consultants to develop new projects or repair existing projects that are not FEMA reimbursable. PREPA also contends that several Federal Agencies continue to hold PREPA responsible for compliance with environmental laws, agreements, and responsibilities as owner of power plants and facilities as well as the BONUS reactor facility.[77]

PREPA also states it has no contracts with external auditors, which it contends is imperative to enable PREPA to operate and comply with all of its obligations. PREPA provided as Attachment A, a list of contracts it considers at risk of premature termination and other contracts that PREPA states relate to ongoing projects. PREPA states that the contracts that relate to ongoing projects are necessary for PREPA to finish the projects and avoid wasting the initial investment already made, and that those contracts are reimbursable by FEMA. PREPA certifies that the work handled by the contractors in contracts at risk of premature termination is not duplicative of the work handled by LUMA or Genera.[78] In Attachment A to the July 28 Informative Motion, PREPA also provides its proposed revised budgets along with its asserted justification for the contracts.

PREPA provided a Resolution passed by its Governing Board authorizing the use of funds deposited into the FEMA reimbursement account to cover budgetary gaps and to fulfill pending obligations under the OMA agreements. PREPA acknowledges that use of FEMA Reimbursement funds requires prior approval by the Energy Bureau.

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[72] *Motion to Submit Responses to the Energy Bureau's June 9, 2023 Bench Orders and Third Request for Information in Compliance with the June 12, 2023 Order* ("June 21 PREPA ROI Responses"), Exhibit B, p. 30.

[73] PREPA Motion for Reconsideration, p. 14.

[74] June 25 Resolution, pp. 19 - 20.

[75] July 28 Informative Motion, p, 1.

[76] *Id.*, p. 2.

[77] *Id.*, pp. 3 - 4.

[78] *Id.*, p. 4.

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Specifically, PREPA requests approval for $31.56 MM from the FEMA reimbursement account for HoldCo and $5.95 MM for HydroCo which PREPA asserts is necessary to counteract deficits in the approved FY 2024 Budgets as compared with its proposed budgets.[79]

The Energy Bureau notes that the FY 2024 PREPA Revised Proposed Budget for HoldCo as depicted in Exhibit A is $643 thousand less than originally proposed, at $53.367 MM and revised by PREPA to $52.724 MM. PREPA incorrectly compares its proposal to a FY 2024 FOMB certified budget of $21.164 MM. When in actuality, the Energy Bureau approved, and FOMB certified, total operating budget for HoldCo is $21.975 MM, this includes the Energy Bureau approved $1.993 MM for Shared Services.

The Energy Bureau specified in the June 25 Resolution, that "It is essential that in PREPA's establishment of subsidiaries HoldCo and HydroCo, and development of their budgets, those entities be "rightsized" to reflect the decreased levels of responsibility each has, in view of the assumption of responsibilities by LUMA and Genera for T&D and Generation respectively."[80] As a result of its review, the Energy Bureau determined that PREPA's HoldCo Labor and Non-Labor expenses should be reduced to reflect the reduced number of employees and diminished need for external services to reflect PREPA's reduced responsibilities.[81] Rather than prioritize the external contracts and staffing that continue to be needed and adjust its budget to reflect this determination, PREPA persists in resubmitting a budget that does not reflect the Energy Bureau's determination. PREPA does not provide new information or additional support for its position that would justify reconsideration by the Energy Bureau of its determination. In addition, although PREPA cites Appendix A as containing the contracts for which it asserts funding is necessary to prevent premature termination and to continue existing projects, these two categories of contract are not delineated.

PREPA has not provided adequate support for its contention that the contracts it cites in Appendix A are necessary and for many of the listed contracts, PREPA states it foresees no reduction in services or contract amounts in FY 2024. PREPA continues to resist modifying its contract needs to reflect the services provided by Genera regarding generation in accordance with the Generation OMA and its reduced responsibilities. For example, the Generation OMA specifies in salient part at Section 5.3[82] that the Operator shall act as agent of Owner, and at Owner's request, represent Owner before PREB and Governmental agencies, prepare all related filings and other submissions before PREB, represent Owner before any governmental body. Section 5.3 addresses Operator's timely provision of all data and information required to be supplied and actions to be taken in connection with governmental approvals required for O&M Services and preparation and submission of reports to governmental bodies.

Despite the foregoing provisions of the Generation OMA, however, PREPA continues to provide as justification for certain of its contracts, for example, interaction with federal agencies[83] and reports to the Energy Bureau.[84] In addition, among the duties that PREPA ascribes to its in-house Legal Division are handling requests for information from governmental agencies, which according to the Generation OMA

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[79] *Id*., Attachment B.

[80] June 25 Resolution, p. 21 of 47.

[81] *Id.*, p. 24 of 47.

[82] Generation OMA, Section 5.3.

[83] Appendix A, Baker Donelson Caribe.

[84] *Id.*, McGuire Woods.

may be handled by Operator and providing legal opinions to the PREPA Governing Board while according to Appendix A, providing oversight of federal funds to PREPA's Governing Board is among the responsibilities handled by contractor Regulatory Compliance.[85]

In addition, PREPA states that, "The only reduction in the Legal Division's workload after the transition of the Generation System to Genera, 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."[86] PREPA has not adequately supported this asserted level of required contract support, in view of the considerable level of work shifted to Genera as Operator. The same holds true for other types of contracts. Although PREPA may remain responsible for an engineering project or non-generation facility maintenance, such as the BONUS Facility, this does not justify maintaining the same level of contract support when the actual work is, or should be, done by or delegated to others.

PREPA has shown a lack of ability in failing to effectively negotiate its potential contracts. This is important because of the finite level of funding for the FY 2024 budget. An egregious example is PREPA's proposed McGuire Woods Contract. According to the information provided by PREPA, the overall cost and hourly rates of the named consultants referenced in the McGuire Woods Contract have significantly increased since 2021, which was the initial year of operation by McGuire Woods on behalf of PREPA. In 2021, the contract not-to-exceed cost was $248,000, rising to the proposed amount of $2.6MM for 2024. Near the upper end of the consultant hourly fee spectrum, one partner rates increased from $925/hour in 2021 to $1,030/hour proposed for 2024 and at the lower end of the cost spectrum, the assigned paralegal hourly rate rose from $250/hour in 2021 to $425/hour proposed for 2024. The hourly rates of other partners and associates assigned to this contract also increased.

The increase in contract cost and hourly rates occurred although the scope of services to be provided pursuant to the contract remained constant for 2023 and 2024. The not-to-exceed contract cost nearly doubled from last year to this year, from $1.495MM in 2023 to the proposed level of $2.6MM in 2024. This concerns when the scope of work in both contracts is identical and because of the significant time that has elapsed from the events from which the insurance claims, to which this contract pertains, originated.

The Energy Bureau finds merit in PREPA's arguments regarding the need for the services to be provided by outside contractors and increases the non-Labor budget. Cited herein, the Energy Bureau does not find justified, however, and does not approve, the full budget proposed by PREPA.

The Energy Bureau **REVISES** the FY 2024 HoldCo Non-Labor budget from $11.772MM to $15.445MM, to include reimbursement to Genera for EPA[87] required remedial work, external contracts, and other work considered necessary and prioritized by PREPA.

The Energy Bureau **DOES NOT APPROVE** the use of FEMA Reimbursement funds as provided for in the PREPA Board Resolution for expenditures over the approved FY 2024 Budget.

[85] *Id.*, Regulatory Compliance.

[86] July 28 Informative Motion, p. 3.

[87] Federal Environmental Agency.

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The Energy Bureau **WARNS** PREPA that it must operate within its approved budgets and not expect to receive more funds at ratepayer expense if it exceeds its budget as approved by the Energy Bureau.

The Energy Bureau **REMINDS** PREPA of its continuing requirement for Energy Board approval of contracts before their execution by PREPA and **ADMONISHES** PREPA to make sure all contracts are carefully negotiated and overseen.

The Energy Bureau **ORDERS** PREPA to report quarterly to the Energy Bureau its actual payments to Genera for EPA required remedial work, beginning with the first quarterly report filed after issuance of this Resolution and Order.

3. June 30 Motion: HydroCo

The Energy Bureau, in its June 25 Resolution, modified PREPA's proposed NME and Non-Labor Operating Expense budgets. In the June 30 Motion, PREPA argues that its proposed budget was completed based on bottom-up analyses and reiterates its budget request. PREPA "strongly disagrees" with the Energy Bureau's finding that the Non-Labor Expense Budget was not adequately supported but mischaracterizes the Energy Bureau's findings. In the June 25 Resolution, while PREPA's proposed HydroCo Labor Budget submitted following the Technical Conference was substantially less than HydroCo Labor Budgets submitted by PREPA in earlier filings, its Non-Labor Budget remained unchanged. PREPA offered no support to justify why the Non-Labor Budget would not change despite a reduced overall HydroCo workforce. The June 30 Motion similarly offers no additional support to justify increased HydroCo Security expenditures or to explain why such expenditures are not affected by proposed installation of automated security features at the HydroCo facility sites.

PREPA also offers no further evidence supporting its HydroCo NME budget. The Energy Bureau must balance the overall needs of the electric system. While NME projects such as automating and/or establishing remote monitoring at some of the Hydro sites may have benefits, in its determination the Energy Bureau finds that these activities are not critical to ensure the safe and reliable supply of electricity.

The Energy Bureau finds **UNAVAILING**, PREPA's contention that its HydroCo Non-Labor and NME budgets should not be reduced in accordance with the Energy Bureau's June 25 Resolution.

4. July 28 Informative Motion: HydroCo

In the July 28 Informative Motion, PREPA seeks authorization to use additional funds from the FEMA Reimbursement account, however, the Energy Bureau states that adequate justification for this request is not provided. Most contracts in Appendix A state that contract details are to be established in FY 2024 and that HydroCo is establishing new and separate contracts from GenCo in FY 2024. In addition, the material related to HydroCo that PREPA provides in Appendix A suffers from the same infirmity as that provided for HoldCo, in that the revised budgets provide comparisons with PREPA's past proposals rather than with the Energy Bureau approved budgets and expenses are not prioritized within the approved budget.

The Energy Bureau admonishes PREPA regarding HydroCo as with HoldCo. PREPA must prioritize its activities and spend within its approved budgets.

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E. Budget Lines Revision – TOTAL NON-FEDERALLY FUNDED ELECTRIC UTILITY EXPENDITURES

The Energy Bureau revised the Total Non-Federally Funded Electric Utility Expenditures[88] and made specific budget lines revisions, however, the total budget remained constant at $1,300.239MM. The funding for the increased Non-Federally Funded Electric Utility Expenditures will be derived from the Genera Incentive Payment, the amount of payment to Genera from which depends on Genera's performance, and which is not payable until FY 2025. The maximum payment, if Genera meets all of its incentive criteria in accordance with the Generation OMA, is $30.040MM. In an abundance of caution, the Energy Bureau determined in the June 25 Resolution, that it would be good practice to collect the incentive fee in FY 2024, the year before it is due and payable, however, in view of the need for critical services in FY 2024, the Energy Bureau has determined that these should be utilized for budgetary purposes in FY 2024 and will be budgeted and paid in FY 2025 from that Fiscal Year's Budget. This determination is supported by the relevant provision in the Generation OMA those states, "Owner and Administrator agree that an amount equal to the maximum amount of the Incentive Payments available in any given Contract Year shall be included in the Operating Budget or the Decommissioning Budgets as may be applicable, for such contract year (Emphasis added)."[89]

F. Operations and Maintenance Reserve

On March 24, 2023, the FOMB, in accordance with its fiscal oversight responsibilities pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA"), issued a Compliance Certification for the Revised FY 2023 PREPA Budget ("Compliance Certification"). Among other things, the Compliant Revised FY 2023 PREPA Budget fully funded a $46.4MM increase in Operational Expenses, NME and Capital Equipment, with expenditures from this Operations and Maintenance Reserve subject to review and approval by the Energy Bureau. [1] During FY 2023, the Energy Bureau reviewed and approved funding for various expenditures from the Operations and Maintenance Reserve. The entire Operations and Maintenance Reserve was not utilized in FY 2023 and $21,597,230 remains unexpended. Accordingly, the Energy Bureau may consider the use of this $21,597,230 to mitigate the bill impacts caused by unforeseen cost fluctuations in the purchase of fuel. To the extent required by the Compliance Certification, PREPA shall notify FOMB about the proposed use of the $21,597,230 during FY 2024.

III. Conclusion

The Energy Bureau has reviewed and evaluated the Requests for Reconsideration presented by LUMA, Genera, and PREPA. As explained above, the Energy Bureau considered the full record, including but not limited to motions, responses to comprehensive ROIs, and the June 9 Technical Conference. As a result of its review and evaluation, the Energy Bureau exercised its expert judgement in consideration of the full record and determined the budgetary needs of LUMA, Genera and PREPA in the public interest. The major concern the Energy Bureau addresses during its annual budgets examination is to ensure the safe and reliable electric supply over a spectrum of system conditions and probable contingencies.

The Energy Bureau **GRANTS IN PART** the substantive Request for Partial Reconsideration presented by LUMA and restores the $7.7 million reduction in Customer Experience and the $6.8 million reduction in Support Services as discussed herein.

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[88] Attachment A.

[89] Generation OMA, Section 7.1(c).

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The Energy Bureau **GRANTS** LUMA funding for $11.531MM for Energy Efficiency as discussed herein.

The Energy Bureau **FINDS WITHOUT MERIT** the procedural and due process arguments presented by LUMA as addressed herein and any arguments not specifically discussed herein.

The Energy Bureau **FINDS WITHOUT MERIT** the Request for Reconsideration presented by Genera.

The Energy Bureau **GRANTS IN PART** the Request for Reconsideration presented by PREPA and increases its Non-Labor Budget for HoldCo by $3.673MM with the additional reporting requirements as specified herein.

The Energy Bureau **FINDS WITHOUT MERIT** any arguments presented by PREPA not specifically discussed herein.

Sources of funds for each increase specified above are designated in Appendix A.

The Energy Bureau **WARNS** PREPA that it must adhere to the approved budgets, and not resubmit without new supportive material, budgets which are essentially the same or similar to budgets that the Energy Bureau has reviewed and for which it has issued a determination. Obstinacy by PREPA in complying with Energy Bureau Orders will not be tolerated.

The Energy Bureau **WARNS** LUMA, Genera, and 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.

Be it notified and published.

Lillian Mateo Santos
Associate Commissioner

Ferdinand A. Ramos Soegaard
Associate Commissioner

Sylvia B. Ugarte Araujo
Associate Commissioner

Antonio Torres Miranda
Associate Commissioner

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CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau agreed on September 22, 2023. President Edison Avilés Deliz did not intervene. Also certify that on September 22, 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 22, 2023.

____
Sonia Seda Gaztambide
Clerk

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ATTACHMENT A
REVISED FY 2024 Electric Utility Budgets

Revised FY 2024 Electric Utility Annual Budgets Summary
($ in 000s)

		APPROVED		REVISED[1]	
1	**TRANSMISSION AND DISTRIBUTION**		**$636,591**		**$662,958**
2	T&D Operating Expenditures	545,447		560,283	
3	T&D Non-Federally Funded Capital Expenditures	91,144		91,144	
4	Energy Efficiency Programs	0		11,531	
5	**GENERATION**		**$337,549**		**$337,549**
6	GenCo Operating and Capital Expenditures	324,029		324,029	
7	HydroCo Operating and Capital Expenditures	13,520		13,520	
8	**HOLDCO (PROPERTYCO) OPERATING AND CAPITAL EXPENDITURES**		**$21,975**		**$25,648**
9	**OPERATION AND MAINTENANCE FEES - PRIVATE OPERATORS**		**$181,702**		**$151,662**
10	LUMA Fees	129,162		129,162	
11	Genera Fees	52,540		22,500	
12	**BANKRUPTCY TITLE III ADVISOR COSTS**		**$30,150**		**$30,150**
13	**FOMB ADVISOR COSTS**		**$32,822**		**$32,822**
14	**BAD DEBTS**		**$59,450**		**$59,450**
15	**TOTAL NON-FEDERALLY FUNDED ELECTRIC UTILITY EXPENDITURES**		**$1,300,239**		**$1,300,239**

Notes
[1] $188,437 funded outside base rate revenues through directly allocated cost recovery income and additional available funding through surplus cash to maintain current permanent rates as set in the 2017 Rate Order.

	FEDERALLY FUNDED CAPITAL EXPENDITURES	APPROVED
16	T&D FEDERALLY FUNDED CAPITAL EXPENDITURES	$802,587
	GENERATION FEDERALLY FUNDED CAPITAL EXPENDITURES	
17	GenCo	$14,190
18	HydroCo[3]	$1,789,000

Notes
[3] Total federally funded capital expenditures approved by the Energy Bureau through May 23 for recovery work in dams and hydroelectric plants related to disasters impacting the Island since 2017.

ATTACHMENT B
REVISED FY 2024 T&D Operating Budget

Revised FY 2024 T&D Operating Budget

($ in 000s)

		Customer Experience	Operations[1]	Utility Transformation	Support Services	2024
1	SUBTOTOTAL LABOR AND NON-LABOR EXPENSES (DEPARTMENTS)	87,845	264,232	19,505	177,715	$549,297
2	2% Reserve for Excess Expenditures					$10,986
3	TOTAL OPERATING BUDGET					$560,283

		Customer Experience	Distribution	Transmission	Substations	Control Center & Buildings	Enabling	Support Services	2024
4	SUBTOTOTAL NON-FEDERALLY FUNDED CAPITAL BUDGET (PORTFOLIOS)	11,987	26,939	601	16,140	3,694	23,507	6,489	$89,357
5	2% Reserve for Excess Expenditures								$1,787
6	TOTAL NON-FEDERALLY FUNDED CAPITAL BUDGET								$91,144
7	ENERGY EFFICIENCY PROGRAMS								$11,531
8	TOTAL T&D OPERATING AND NON-FEDERALLY FUNDED CAPITAL BUDGET								**$662,958**

Notes

[1] Vegetation Management and Capital Clearing Implementation funding: $179,800 (OpEx portion $50,000).

ATTACHMENT C

REVISED FY 2024 HoldCo (PropertyCo) Operating Budget

Revised FY 2024 HoldCo (PropertyCo) Operating

($ in 000s)

1	LABOR OPERATING EXPENSES	$7,565
2	NON-LABOR	$15,445
3	NME	$645
4	SHARED SERVICES	$1,993
5	**TOTAL OPERATING BUDGET**	**$25,648**

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