

**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: Resolution and Order pertaining to *Urgent Motion to Submit the McGuire Woods Contract for the Energy Bureau's Review and Approval*, filed by the Puerto Rico Electric Power Authority.

RESOLUTION AND ORDER

I. FACTUAL 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 September 2, 2023, PREPA filed a document titled *Urgent Motion to Submit the McGuire Woods Contract for the Energy Bureau's Review and Approval* ("September 2 Motion"). In its September 2 Motion, PREPA submitted a proposed contract for professional services between PREPA and McGuire Woods, LLP for review and approval by the Energy Bureau.¹ McGuire Woods, LLP will assist and advise PREPA in, among others, the management of all aspects of the Hurricane María and earthquake insurance claims, including developing the coverage strategy, and advising on potential litigation strategy.²

PREPA indicated that the referenced proposed contract shall be in effect from the date of its execution until June 30, 2024 and shall not exceed a cumulative amount of \$2.6MM.³ PREPA stated that said amount was not part of the FY24 Approved Budget, as it is subject to compensation through the Federal Emergency Management Agency ("FEMA") assistance reimbursement account.⁴ PREPA also certified that the works to be executed by McGuire Woods, LLP are not duplicative of the scopes of work handled by LUMA and Genera PR, LLC.⁵ Hence, PREPA requested that the Energy Bureau take notice of the information provided and grant approval for PREPA to execute the McGuire Woods, LLP Contract.⁶

¹ September 2 Motion, p. 2, ¶ 6.

² *Id.*, pp. 2 - 3, ¶ 6.

³ *Id.*, p. 3, ¶ 7.

⁴ *Id.* It should be noted that PREPA was asked to reflect in the budget all funds, including reimbursements, to be received from the federal government.

⁵ *Id.*, p. 4, ¶ 10.

⁶ *Id.*, p. 4.



On September 13, 2023, the Energy Bureau granted PREPA one business day to clarify if the services to be rendered by McGuire Woods, LLP are to be reimbursed by FEMA; to specify the amount that will be refunded by FEMA and the expected timeline for such reimbursement. The Energy Bureau highlighted that it will only allow PREPA to draw money from the FEMA Reimbursement Account if compensation for such services is previously approved by FEMA and in a manner consistent with the FEMA approval. The Energy Bureau further warned PREPA that if the services to be rendered through the McGuire Woods, LLP Contract are not reimbursed by FEMA or are partially reimbursed, PREPA must identify the budgeted line item of the HoldCo Non-Labor/Other Operating Expenses Category Budget from which the amount not reimbursed will be deducted from.

On September 15, 2023, PREPA filed a document titled *Motion in Compliance with the September 13 Order* ("September 15 Motion") whereby it informed how FEMA treats insurance proceeds and its related expenses in pursuing an insurance claim. In essence, PREPA indicated that when it expends costs to pursue its insurance claim, FEMA offsets the insurance reduction with PREPA's reasonable costs to pursue the claim.⁷ PREPA deemed unfeasible the alternative to deduct from the Approved FY24 Budget any amount not reimbursed by FEMA.⁸

II. ANALYSIS AND CONCLUSION

In a Resolution and Order issued on August 14, 2023, the Energy Bureau stated the following:

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

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

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

The Energy Bureau also issued six ROIs regarding PREPA's process for contract determination of need, negotiation, and oversight. The ROIs were responded to by Motion of September 1, which the Energy Bureau will address by a separate Order.

In a Resolution and Order issued on September 22, 2023, the Energy Bureau re-emphasized the need for adequate support and justification of proposed contracts.

Inadequate supporting information required by the Energy Bureau is provided with PREPA's request for approval of the above cited contracts. PREPA is **WARNED** that any contracts that PREPA submits for approval **will not be approved without the requisite supporting information**.

With regard to the McGuire Woods contract, the Energy Bureau asked PREPA to clarify:

- (i) whether the services rendered through the contract are to be reimbursed by FEMA
- (ii) to specify amount to be refunded by FEMA

⁷ September 15 Motion, p. 4, ¶ 8.

⁸ *Id.*, pp. 4 – 5, ¶ 10.



- (iii) the expected timeline for reimbursement, and if the services to be rendered through the McGuire Woods Contract are not reimbursed by FEMA, or are partially reimbursed, to identify the budgeted line item of the HoldCo Non-Labor.⁹

PREPA does not adequately respond to these questions.¹⁰ PREPA seems to be confusing what may be eligible for FEMA reimbursement with its desire to employ potential available cash in the FEMA Reimbursement account as a funding source for this contract.

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 \$2.6 million for 2024. Near the upper end of the consultant hourly fee spectrum, one of the partners 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 increased similarly.


The increase in contract cost and hourly rates occurred **despite the fact that 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 \$1.495 million in 2023 to the proposed level of \$2.6 million in 2024. **This is particularly concerning when the scope of work in both contracts is identical.**

The Energy Bureau **ADMONISHES** PREPA for failing to negotiate the McGuire Woods hourly contract fees more effectively, where, for example, the hourly rate of a paralegal almost doubled from \$250 to \$425 in a period of less than 3 years.

The Energy Bureau **LIMITS ITS APPROVAL** of the McGuire Woods contract to the same level as 2023 **not-to-exceed amount of \$1.495 million**. The funds for this contract are to be allocated from the increase in the approved FY 2024 HoldCo Non-Labor/Other Operating Expenses Budget through the Resolution and Order issued on September 22, 2023.

Be it notified and published.


Edison Avilés Deliz
Chairman


Sylvia B. Ugarte Araujo
Associate Commissioner


Ferdinand A. Ramos Soegaard
Associate Commissioner


Antonio Torres Miranda
Associate Commissioner

⁹ September 13 Resolution, pp. 1 – 2.

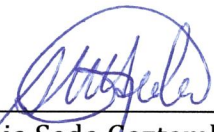
¹⁰ September 15 Motion, pp. 3 – 4.



CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau agreed on September 27, 2023. Associate Commissioner Lillian Mateo Santos dissented without written opinion. Also certify that on September 27, 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.rodriquezrivera@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 27, 2023.



Sonia Seda Gaztambide
Clerk

