

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

**IN RE:** REVIEW OF THE PUERTO RICO  
ELECTRIC POWER AUTHORITY'S 10-YEAR  
INFRASTRUCTURE PLAN – DECEMBER  
2020

**CASE NO.:** NEPR-MI-2021-0002

**SUBJECT:** Resolution and Order regarding  
*Urgent Motion Submitting for Review and  
Approval of the Scope of Work for the  
Transfer/Ownership to PREPA of the  
Temporary Generation Units*, filed by the  
Puerto Rico Electric Power Authority.

**RESOLUTION AND ORDER**

On January 14, 2024, the Puerto Rico Electric Power Authority ("PREPA") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *Urgent Motion Submitting for Review and Approval of the Scope of Work for the Transfer/Ownership to PREPA of the Temporary Generation Units* ("January 14 Motion"). Through the January 14 Motion, PREPA informed that on January 5, 2024, the Federal Emergency Management Program ("FEMA") sent a letter to the Puerto Rico Central Office for Recovery, Reconstruction, and Resiliency ("COR3") approving the negotiation of the acquisition of the temporary generation units installed in the Palo Seco Steam Plant (150MW) and the San Juan Power Plant (200MW) ("Temporary Units").<sup>1</sup> Further, it indicated that FEMA would provide funding for the acquisition of the Temporary Units.<sup>2</sup> PREPA seeks the Energy Bureau's approval of the initial Scope of Work for the acquisition and ownership to PREPA of the Temporary Units. Particularly, PREPA requested that the Energy Bureau evaluate and grant leave to conduct all tasks necessary to transfer ownership of the Temporary Units to PREPA; grant leave to continue working with all the associated permitting activities to continue dispatching the Temporary Units until the Integrated Resource Plan revision process makes a different determination; and grant leave to continue supporting COR3 with the federal processes available to have the costs of the Temporary Units reimbursed with federal funds.<sup>3</sup> PREPA also requested that Exhibits 1-14 filed with the January 14 Motion be considered confidential.<sup>4</sup>

Act No. 120-2018<sup>5</sup> creates the legal framework and the mechanism for the sale or transfer of PREPA assets related to electric power generation and for the establishment of a Public-Private Partnership ("P3") regarding any PREPA functions, service, or facility.<sup>6</sup> It is the public policy of the Government of Puerto Rico's (the "Government") to expedite a fair and transparent process for the establishment of P3s with any functions, services, or facilities of PREPA.<sup>7</sup>

A P3 couples the resources and efforts of the public sector with resources of the private sector with a joint investment that results in the benefit of both parties. Such Partnerships are sought to provide a service for citizens and building or operating a facility or project held in high priority by the Government, be it due to the urgency, the need or convenience for the citizens. These Partnerships shall be vested in high public interest, the Government is neither relinquishing its responsibility of protecting such interest, nor waiving its rights to receive

<sup>1</sup> January 14 Motion, p. 11.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*, p. 21.

<sup>4</sup> *Id.*, pp. 21 – 22.

<sup>5</sup> *Puerto Rico Electric Power System Transformation Act* ("Act 120-2018").

<sup>6</sup> *Id.*, Statement of Motives.

<sup>7</sup> *Id.*, § 3.



an efficient service, nor renouncing to the ownership of the public assets included into the Partnership Contract.<sup>8</sup>

The establishment of P3s calls for a legal and administrative framework that incorporates processes to foster purity and transparency in the development of projects. This process should elicit transparency from the Government in the negotiation and agreements for executing contracts, while still protecting the confidentiality of the so-called “trade secrets” of private business from possible harm from competitors. Such process should promote competition in the request for proposals and afford access to available information to attract the best proponents to ensure the primacy of the free market and of free competition.<sup>9</sup>

P3s allow for the development of projects and the rendering of some services more efficiently and in a less costly manner by delegating the risks inherent to such development or service onto the party best capable of assessing and managing such risks. Likewise, these Partnerships enable the Government to make infrastructure projects feasible when the funds needed to set a project are not available in the public treasury.<sup>10</sup>

Section 4 of Act 120-2018 states all Act No. 29-2009<sup>11</sup> shall apply to PREPA Transactions.<sup>12</sup> Concerning PREPA Transactions, Section 5 of Act 120-2018, specifically provides that PREPA may conduct any PREPA Transaction and enter into Partnerships or Sales Contracts in relation thereto. Any PREPA transaction shall be conducted in accordance with the Public Private Partnership’s establishment process in Act No. 29-2009.<sup>13</sup>

The Puerto Rico Public-Private Partnerships Authority (“P3 Authority”)<sup>14</sup> is designated as the sole Government Entity authorized to and responsible for (1) implementing the public policy on PREPA Transactions conducted under Act 120-2018; (2) determining the functions, services, or facilities for which such Partnerships shall be established, subject to the priorities, objectives, and principles established in the energy policy and the regulatory framework to be developed under Section 9 of this Act; and (3) determining which PREPA Assets related to electric power generation shall be sold or transferred through Sales Contracts.<sup>15</sup>

PREPA may only sell and dispose of PREPA Assets related to electric power generation through the process established in this Act and may only conduct transactions related to electric power generation, distribution, and transmission, metering, and any other PREPA function, service, or facility through Partnership Contracts.<sup>16</sup>

The P3 Authority shall designate a Partnership Committee, pursuant to Act 29-2009, to evaluate and select qualified persons and the PREPA Transaction Proponents, and to

<sup>8</sup> *Public Private Partnership Act* (“Act 29-2009”), Statement of Motives.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> PREPA Transaction is defined as: Any and all transactions carried out in accordance with the provisions of Act 29-2009 and this Act, whereby PREPA or the Government of Puerto Rico establishes one or more Partnerships on connection with any of PREPA’s functions, services, or facilities, or executes a Sales Contract for PREPA Assets related to electric power generation.

<sup>13</sup> Act 120-2018, § 5(a).

<sup>14</sup> The Public-Private Partnership Authority was created by Act 29-2009 for the purpose of implementing the public policy of the Government of Puerto Rico concerning Public-Private Partnerships, as set forth under the Act.

<sup>15</sup> Act 120-2018, § 5(b).

<sup>16</sup> *Id.*





establish and negotiate the terms and conditions it deems appropriate for the pertinent Partnership or Sales Contracts under Act 120-2018 and Act 29-2009.<sup>17</sup>

Since PREPA Transactions may have particularities that distinguish them from other transactions conducted by the P3 Authority, the P3 Authority is empowered to create and approve one or more specific regulations for any PREPA Transaction, pursuant to Section 6(b)(ii) of Act No. 29-2009.<sup>18</sup>

Any contract related to a PREPA Transaction shall include a clause enforcing full compliance with the energy policy and the regulatory framework, except for those excluded by this Act or those authorized by the Legislative Assembly.<sup>19</sup>

Additionally, any contract related to a PREPA Transaction shall require an Energy Compliance Certificate, as defined by Act 120-2018. The Partnership Committee shall submit to the Energy Bureau the Report drafted pursuant to Section 9(g) of Act 29-2009 before submitting it to the Board of Directors of the P3 Authority and PREPA. The Energy Bureau shall evaluate the Report and the Preliminary Contract and issue an Energy Compliance Certificate if they follow the energy public policy and the regulatory framework. The Energy Compliance Certificate or the resolution to deny the issuance thereof shall state the basis for such determination. The Energy Bureau shall have fifteen (15) business days as of the date on which the Preliminary Contract was submitted to issue a Certificate of Compliance or the resolution to deny the issuance thereof. If a Certificate of Compliance or the resolution to deny the issuance thereof is not issued within the term, the PREPA Transaction shall be deemed approved by the Energy Bureau and it shall be understood that an Energy Compliance Certificate has been issued for such PREPA Transaction. Once the Energy Compliance Certificate has been issued, any amendments made to the Preliminary Contract shall require the issuance of a new Energy Compliance Certificate. The mere issuance of an Energy Compliance Certificate shall not constitute grounds for claiming any compensation, reimbursement, or payment because of any expectations arising in the stages, or for the expenses incurred during the qualification process or the submission of proposals. Reviews in connection with the Energy Compliance Certificate issued by the Energy Bureau shall be filed with the Court of Appeals within a term of fifteen (15) days as of the notice thereof.<sup>20</sup>

The Energy Bureau **TAKES NOTICE** of the January 14 Motion and **ORDERS** LUMA<sup>21</sup> to, within **five (5) business days**, submit before the Energy Bureau an updated version of the *Second Demobilization Report*, filed on January 16, 2024, addressing the potential transfer and ownership of the Temporary Units in San Juan and Palo Seco.<sup>22</sup>

The Energy Bureau **REMINDS** PREPA that the P3 Authority is the **sole** Government Entity authorized to and responsible for: (1) implementing the public policy on PREPA Transactions conducted under Act 120-2018 (2) determining the functions, services, or facilities for which such Partnerships shall be established, subject to the priorities, objectives, and principles established in the energy policy and the regulatory framework to be developed under Section 9 of this Act; and (3) determining which PREPA Assets related to electric power generation shall be sold or transferred through Sales Contracts. Further, the Energy Bureau **HIGHLIGHTS** that PREPA may only conduct transactions related to

<sup>17</sup> Act 120-2018, § 5(c).

<sup>18</sup> *Id.*, § 5(d).

<sup>19</sup> *Id.*, § 5(f).

<sup>20</sup> *Id.*, § 5(g).

<sup>21</sup> LUMA Energy, LLC and LUMA Energy ServCo, LLC (referred to jointly as "LUMA").

<sup>22</sup> Through a Resolution and Order issued on November 14, 2023, the Energy Bureau released LUMA from the requirement to file additional bi-weekly reports to the Stabilization. The Energy Bureau also ordered LUMA to inform of any work conducting to the decommissioning of the 350MW emergency generation resources, triggering LUMA to resume the bi-weekly reporting requirement. On December 18, 2023, LUMA submitted the *First Demobilization Report*.



electric power generation, distribution, and transmission, metering, and any other PREPA function, service, or facility through Partnership Contracts.

If PREPA seeks to purchase the Temporary Units using FEMA funds, such a transaction shall be in accordance with the Public Private Partnership's establishment process in Act 29-2009.

At this time, the Energy Bureau is in no position to entertain PREPA's petition for approving the Scope of Work to transfer ownership of the Temporary Units to PREPA. In its place, to **ensure compliance** with the legal framework previously set forth concerning "PREPA Transactions", the Energy Bureau **ORDERS** PREPA to notify the P3 Authority of its intent to acquire the emergency power generating units with a combined 350MW capacity in the Palo Seco and San Juan sites, **within five (5) business days**, so applicable procedures can take place.

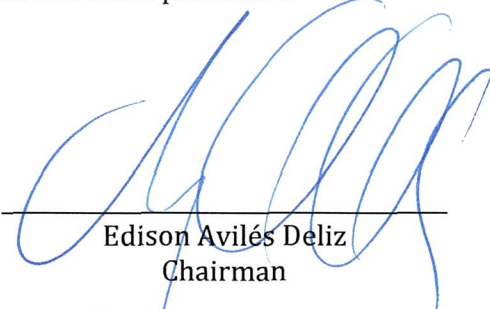
The Energy Bureau **GRANTS** PREPA, LUMA, and GENERA PR, LLC ("GENERA") **ten (10) business days** to, in a collaborative manner, identify and inform the specific sources of funding for the acquisition of such equipment and/or outline potential funding scenarios.

The Energy Bureau **GRANTS** PREPA, LUMA, and GENERA **ten (10) business days** to collaborate and inform the Energy Bureau how the acquisition of the Temporary Units alters the federally funded projects previously approved by the Energy Bureau. If the answer is in the affirmative, please identify those projects, explain the criteria used to identify them, and specify in what ways they will be affected.

PREPA's request for confidentiality will be resolved in a separate Resolution.

The Energy Bureau **WARNS** PREPA, LUMA and GENERA that, pursuant to Article 6.36 of Act 57-2014,<sup>23</sup> noncompliance with the Energy Bureau's orders or applicable legal requirements may carry the imposition of administrative fines of up to twenty-five thousand dollars (\$25,000.00) per day, per violation and/or other sanctions that the Energy Bureau may deem appropriate.

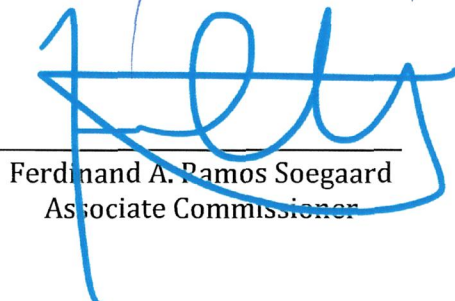
Be it notified and published.



Edison Avilés Deliz  
Chairman



Lillian Mateo Santos  
Associate Commissioner



Ferdinand A. Ramos Soegaard  
Associate Commissioner



Sylvia B. Ugarte Araujo  
Associate Commissioner

<sup>23</sup> Puerto Rico Energy Transformation and RELIEF Act ("Act 57-2014").





**CERTIFICATION**

I certify that the majority of the members of the Puerto Rico Energy Bureau have agreed on January 19, 2024. Associate Commissioner Antonio Torres Miranda did not intervene. I also certify that in January 19 2024 a copy of this Resolution and Order was notified by electronic mail to the following: arivera@gmlex.net; laura.rozas@us.dlapiper.com; margarita.mercado@us.dlapiper.com, Yahaira.delarosa@us.dlapiper.com; julian.angladapagan@us.dlapiper.com; alopez@sbgblaw.com; jfr@sbgblaw.com; jlago@sbgblaw.com, legal@genera-pr.com; regulatory@genera-pr.com; and I have moved forward with filing the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today January 19, 2024.

  
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Sonia Seda Gaztambide  
Clerk

