

**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 PREPA Urgent Motion for Approval of US Geological Survey Agreement and Modification of Requirement for Contract Review and Approval.

RESOLUTION AND ORDER

I. Introduction

On May 16, 2023, LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly referred to as "LUMA") filed, for the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") review and approval, 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"). The May 16 Motion included the following budget components: (i) the proposed T&D budget developed by LUMA, (ii) the proposed generation budget developed by Genera PR, LLC ("Genera") on behalf of the Puerto Rico Electric Power Authority ("PREPA") for the PREPA subsidiary GENCO LLC ("GenCo"), and the proposed Budget developed by PREPA for its holding company, HoldCo, and its subsidiaries PREPA HydroCo LLC ("HydroCo") and PREPA PropertyCo, LLC ("PropertyCo").

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, and approved the modified budgets subject to compliance with various orders in the June 25 Resolution. The Energy Bureau further ordered 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.

On July 19, 2023 ("July 19 Resolution"), the Energy Bureau issued a Resolutions and Order through which it ordered PREPA to submit in all future filings a table reflecting the approved and proposed contracts, the amounts approved and proposed for those contracts, the line items from the category to which they correspond, and the remaining balance for that category considering said amounts.

On August 14, 2023, the Energy Bureau issued a Resolution and Order ("August 14 Resolution"), through which it emphasized that PREPA may not have funding available for all of the contracts it originally sought and that, therefore, in accordance with its reduced responsibilities, PREPA must effectively prioritize the contracts for which it seeks approval and demonstrate to the Energy Bureau that the contracts have been efficiently bid and negotiated, are the most cost effective contracts for necessary services and are not duplicative of work that should be done by LUMA or Genera in accordance with their respective OMAs or by PREPA's internal resources, among other requirements.

On September 27, 2023 the Energy Bureau issued a Resolution and Order ("September 27 Resolution") through which it required PREPA to file the totality of the contracts PREPA planned to execute in FY 2024.

On December 8, 2023, the Energy Bureau issued a Resolution and Order ("December 8 Resolution"), through which, it decided on PREPA's petition to revise the FY 2024 HoldCo and HydroCo Budgets.



On December 28, 2023, PREPA filed a document titled, *Urgent Motion for Approval of the U.S. Geological Survey Agreement* before Energy Bureau (“December 28 Motion”), through which PREPA requested the Energy Bureau to approve a *Joint Funding Agreement for Water Sources Investigations with the U.S. Geological Survey for their Cooperative Water Resources Investigations Programs* (Cooperative Agreement) for certain activities that qualify for support from the U.S Geological Survey for specialized services necessary to guarantee the proper operation and safety of the hydro-electric assets.

In the December 28 Motion, PREPA explains that the term of the Cooperative Agreement is the natural year 2024 for a total contract amount of \$854,210.00, of which the U.S. Geological Survey will pay \$169,533.00. PREPA will be responsible for \$342,338.50 of the total contract amount for work performed during the period of January to May 2024. PREPA states that \$312,483.50 of that amount will be paid from the Irrigation Budget, leaving \$29,855.00 to be paid from the HydroCo Budget, for which PREPA here seeks approval.¹ PREPA specifies that the funding would be allocated from the Professional & Technical Outsourced Services line item of the HydroCo Budget.²

PREPA states that in the December 8 Resolution, the Energy Bureau approved an increase of \$125,000 to the HydroCo Budget and that currently PREPA is evaluating the additional approved budget and has not made a final determination on its proposed allocation. PREPA therefore, relies on the Original Budget approved for HydroCo, which it sets forth in Addendum A, reflecting the Financial Oversight and Management Board for Puerto Rico (“FOMB”) Certified Budget as of June 30, 2023.³

II. ANALYSIS AND CONCLUSION

PREPA Request for Approval of USGS Contract

The Energy Bureau corrects PREPA’s apparent misunderstanding regarding the HydroCo Budget increase of \$125,000.00 approved by the Energy Bureau in its December 8 Resolution. Contrary to the implication by PREPA that the funds were not allocated by the Energy Bureau and are available to PREPA to allocate as it deems appropriate, in the December 8 Resolution, the Energy Bureau specifically allocated the additional budgetary funds it approved. In accordance with the December 8 Resolution, \$25,000.00 was allocated to the HydroCo Transportation, Per Diem & Mileage budget line and \$100,000 was allocated to the HydroCo Equipment, Inspection, Repairs & Other O&M budget line. The Energy Bureau approved no other additional funding for HydroCo.⁴

It is also not wholly accurate for PREPA to state that, “The irrigation budget falls outside the purview of the Energy Bureau’s jurisdiction.”⁵ As the Energy Bureau discussed in the 2017 Rate Order, when the Irrigation District’s water rates fail to cover its costs, the difference is collected from electric customers. As such, although it did not exercise jurisdiction over water rates, the Energy Bureau at that time cited the necessity of ensuring that any discounts granted to non-agricultural customers are no greater than necessary to retain the customer, thereby ensuring that PREPA’s revenue requirement, and therefore, the charges electric customers must pay, reflect an Irrigation District subsidy that is the minimum allowed by

¹ December 28 Motion, p. 4.

² December 28 Motion, p. 5.

³ December 28 Resolution, p. 2.

⁴ December 8 Resolution, pp, 11 – 13.

⁵ December 28 Motion, pp. 4 – 5.



statute.⁶ To ensure this would be the case, the Energy Bureau established a role for the *Oficina Independiente de Protección al Consumidor* ("OIPC" for its Spanish Acronym) in negotiations between the Irrigation District and its non-agricultural customers, to the extent the OIPC deemed appropriate. The rates for agricultural customers are established by statute.⁷

PREPA requests approval of the Cooperative Agreement, to be funded for \$29,855.00 from the Professional & Technical Outsourced Services line item of the HydroCo Budget. As required by the Energy Bureau, PREPA provided an accounting of the available and remaining funds in that Budget line associated with this Agreement. The available budgetary amount that PREPA cites is \$187,000.00⁸ under the budget approved by the Energy Bureau in its June 25 Resolution and certified by the FOMB. In the December 8 Resolution, the Energy Bureau did not approve additional funds for the Professional & Technical Outsourced Services line item of the HydroCo Budget. PREPA must plan and prioritize contracts so as not to over-spend its budget lines. With this exception, the Energy Bureau approves PREPA's request for funding of the Cooperative Agreement for \$29,855.00 from the \$187,000.00 Professional & Technical Outsourced Services line item of the HydroCo Budget.

Ratepayer Subsidization of Irrigation Districts Contradicts Established Statute

The Energy Bureau notes that a historical deficit of \$4.125 million for Irrigation District costs precipitated the incorporation of a subsidy within the "SUBA-NHH"⁹ rider levied on ratepayers under the 2017 Rate Order. Documentation reveals this represented a pass-through of expenses that PREPA was expected to fund directly given its inability to recover irrigation infrastructure costs.

However, these practices violate Section 24 of Act 83 of May 2, 1941¹⁰, as amended, and provisions within Act 58 of April 30, 1928, stating that PREPA must recover expenses directly from irrigation services and the Government of Puerto Rico must reimburse the regulated entity for any outstanding irrigation district obligations that are unable to be addressed through user fees or independent district budgets.

There exists no provision allowing the transfer of these funding mandates onto ratepayers. Yet the current SUBA-NHH construct does precisely that by socializing explicitly assigned irrigation financial responsibilities. The Energy Bureau requires PREPA to explain the current state of the statutorily required government funding for Irrigation District cost shortfalls and its activities to realize this source of funds.

Modification of Requirement for Contract Approval before Execution

The Energy Bureau has reviewed PREPA's requests for contract approval, since establishing the requirement for approval of PREPA's contracts before their execution in the June 25 Resolution.¹¹ The Energy Bureau emphasized to PREPA, the importance of conforming expenses to finite budget resources and making sure the contracts reflect PREPA's reduced responsibilities. The Energy Bureau emphasized the need for PREPA to make sure its contracts are efficiently bid and negotiated, that they are cost effective, and that PREPA must effectively monitor and oversee contractor performance.¹² The Energy Bureau strongly

⁶ *In Re: Puerto Rico Electric Power Authority Rate Review*, Case No. CEPR-AP-2015-0001, Final Resolution and Order, January 10, 2017 (2017 Rate Order), pp. 89 – 91.

⁷ 2017 Rate Order, p. 135.

⁸ December 28 Motion, Addendum A, p. 2 of 2.

⁹ Subsidy Adjustment Non-Help for Humans (SUBA-NHH) is a reconciliation mechanism that recovers the cost of certain subsidies that the Authority must levy on ratepayers.

¹⁰ *Puerto Rico Electric Power Authority Act*, as amended, 22 L.P.R.A. § 214.

¹¹ June 25 Resolution, p. 31

¹² See, August 14 Resolution.



urges PREPA to exercise its highest professional judgement and best effort to prioritize its contract needs and ensure that it complies with the above cited parameters for its upcoming contracts. With that admonition, the Energy Bureau will no longer require PREPA to submit contracts for approval. However, PREPA should have no expectation of exceeding its approved budgets absent a showing of extraordinary circumstances and need and be prepared to provide to the Energy Bureau upon request, documentation of effective contract prioritization, bidding, negotiation., and oversight.

The Energy Bureau **APPROVES** the *Joint Funding Agreement for Water Sources Investigations with the U.S. Geological Survey for their Cooperative Water Resources Investigations Programs* expenditure in the amount of \$29,855.00 as petitioned to be allocated from the Professional & Technical Outsourced Services line item of the HydroCo Budget.

The Energy Bureau **RECINDS** the requirement for it to approve PREPA contracts before their execution, under the foregoing discussion, however, expects PREPA to effectively assess the need for, prioritize, bid, negotiate, and oversee contracts and be ready to provide documentation of such to the Energy Bureau upon request.

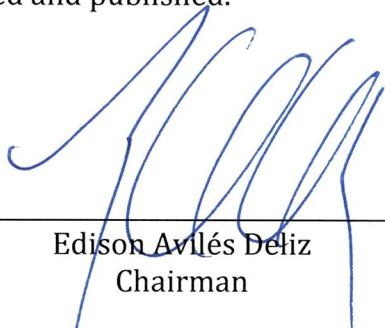
The Energy Bureau **ORDERS** PREPA to include in its Quarterly Reports, for each HoldCo and HydroCo Non-Labor Budget line, the allocated and actual spending amounts, and remaining balances.

The Energy Bureau **ORDERS** PREPA to disclose within **thirty (30) days** of publication of this Resolution and Order, reconciliations of irrigation district shortfalls with the Government of Puerto Rico payments toward mandated reimbursements pursuant to underlying Acts. Any gaps or deficiencies shall also be explained. PREPA must inform the Energy Bureau of its measures to unwind the current ratepayer SUBA-NHH subsidy and comprehensively conform to long-established laws providing for adequate revenue sources to cover irrigation funding obligations.

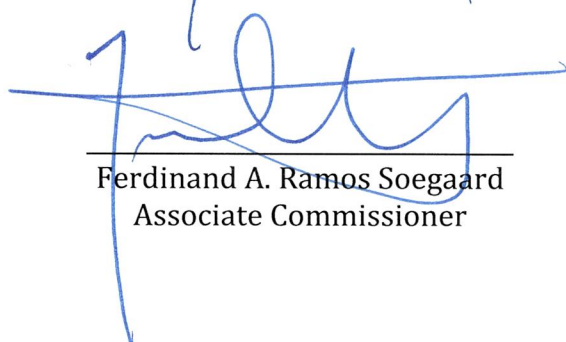
The Energy Bureau **WARNS** PREPA that:

- (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 notified and published.


Edison Avilés Deliz
Chairman


Lillian Mateo Santos
Associate Commissioner


Ferdinand A. Ramos Soegaard
Associate Commissioner


Sylvia B. Ugarte Araujo
Associate Commissioner



CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau have agreed on January 22, 2024. Associate Commissioner Antonio Torres Miranda did not intervene. I also certify that in January 23, 2024 a copy of this Resolution and Order was notified by electronic mail pre@promesa.gov; margarita.mercado@us.dlapiper.com; julian.angladapagan@us.dlapiper.com; mvalle@gmlex.net; arivera@gmlex.net; legal@genera-pr.com; regulatory@genera-pr.com; jfr@sbgblaw.com; alopez@sbgblaw.com; jlagu@sbgblaw.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 23, 2024.



Sonia Seda Gaztambide
Clerk

