

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

NEPR

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IN RE: REVIEW OF LUMA'S INITIAL
BUDGETS

CASE NO.: NEPR-MI-2021-0004

**MOTION FOR BUDGET REVISION TO PAY SETTLEMENT OF THE
MALDONADO-LAUREANO CASE**

TO THE HONORABLE ENERGY BUREAU,

COMES NOW the Puerto Rico Electric Power Authority ("PREPA") through its undersigned legal representation and, very respectfully, informs and requests as follows:

I. Introduction

1.1 PREPA very respectfully request the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") to revise the FY2024 PREPA HoldCo Non-Labor Budget to include an increase to the *Other Income* line item by \$635,000.00, to cover the post-judgment settlement reached in the Maldonado-Laureano Case (as defined below). As explained in the ensuing paragraphs, the settlement reached by PREPA in this case is in the best interest of both PREPA and the rate payers.

II. Relevant Procedural Background

a. Fiscal Year 2024 ("FY 24") HoldCo Budget – Case No. NEPR-MI-2021-0004

2.1 On June 25th, 2023, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a *Resolution and Order* ("June 25th

Resolution") whereby it modified and approved the *Consolidated Annual Budgets for Fiscal Year 2024*,¹ subject to compliance with various orders.

2.2 After other procedural incidents, on September 22nd, 2023, the Energy Bureau entered a *Resolution and Order* ("September 22nd Order") whereby it, among other things, revised the FY24 HoldCo Non-Labor Budget and increased it by \$3.673MM, from \$11.772MM to \$15.445MM, subject to certain reporting requirements. Per the September 22nd Order, the foregoing budget increase was to be used for: (a) "reimbursement to Genera for EPA required remedial work," and (b) "external contracts, and other work considered necessary and prioritized by PREPA."²

2.3 On September 27th, 2023, the Energy Bureau entered a *Resolution and Order* ("September 27th Order") whereby it, *inter alia*, approved the McGuire Woods contract in an amount not to exceed \$1.495MM. The September 27th Order specifically stated that the "funds for this contract [were] 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."

2.4 After other procedural incidents, on December 8th, 2023, the Energy Bureau issued a *Resolution and Order* whereby it increased the HoldCo Non-Labor

¹ The *Consolidated Annual Budgets for Fiscal Year 2024*, submitted by LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly hereafter, "LUMA"), were comprised of the following: (i) the proposed T&D budget developed by LUMA, (ii) the proposed generation budget developed by Genera PR, LLC ("Genera") on behalf of the PREPA, for the PREPA subsidiary GENCO LLC ("GenCo"), and (iii) the proposed Budget developed by PREPA for its holding company, HoldCo, and its subsidiaries PREPA HydroCo LLC ("HydroCo") and PREPA PropertyCo, LLC ("PropertyCo").

² See September 22nd Resolution, p. 22.

Budget ("December 8th Resolution") from \$11.772MM, as approved in the June 25th Resolution, to \$18.072MM. Further, the Energy Bureau distributed the additional \$6.3MM approved between the following line-items:

Utilities and Rent Budget	\$25k
Legal Services	\$2,960MM
Professional and Technical Outsourced Services	\$1.591MM, with \$780k specifically allocated for the Oracle ERP
Regulation and Environmental Expenses	\$848k
External Audit Services	conditionally approved \$751k, subject to a subsequent filing
Equipment, Inspection, Repairs & Other O&M	\$125k
Total	\$6.3MM

2.5 On December 12th, 2023, the Fiscal Oversight and Management Board ("Oversight Board") certified the HoldCo Non-Labor Budget approved by the Energy Bureau in the December 8th, 2023 Resolution.

b. *Alberto Maldonado Laureano and Others v. PREPA*, case no. BY2019CV02797³

2.6 On May 24th, 2019, plaintiffs Alberto Maldonado Laureano ("Maldonado-Laureano") and his wife Iriamys Maldonado Diaz ("Maldonado-Díaz"), filed a Complaint against PREPA for purported damages caused to them as a result of the electrical shock that Maldonado-Laureano suffered when he contacted detached electrical cable in Vega Alta, Puerto Rico. The case was captioned

³ The law firm responsible for litigating and settling the Maldonado-Laureano Case was PREPA's former legal representations, Díaz & Vázquez Law Firm, P.S.C.

Alberto Maldonado Laureano and Others v. PREPA, case no. BY2019CV02797 (hereinafter, the “Maldonado-Laureano Case” or “Case”). The events date back to August 18, 2018, while Maldonado-Laureano intended to harvest some yams with his brother when he suddenly slipped, fell to the ground, and made contact with an electrical cable which operated at 4,800 volts. The power line cable had detached from the wooden poles that held it and fallen onto the ground among the local vegetation. As a result of the incident, Maldonado-Laureano was hospitalized for more than two months, underwent extensive skin transplant treatments, and lost his left arm. His wife, Maldonado-Díaz, claimed to have suffered damages and mental anguish because of her husband's condition.

2.7 The bench trial in the Maldonado-Laureano Case was held between May 22nd-24th, 2023.

2.8 On September 15th, 2023, the Puerto Rico Court of First Instance entered Judgment against PREPA, whereby it ordered PREPA to pay **\$830,000.00**, to the plaintiffs with interest accruing at **9.25%**, until payment in full (“September 15th Judgment”).⁴

2.9 Following the September 15th Judgment, PREPA entered settlement negotiations with the plaintiffs and agreed to make a one-time payment of **\$635,000.00** to settle the Case (hereinafter, the “Settlement”).

⁴ The September 15th Judgment was comprised of the following amounts: \$550,000.00 for Maldonado Laureano; \$25,000.00 for his wife Maldonado Díaz; \$15,000 in costs and expenses of the plaintiff; and interest at 9.25% from the date of filing of the Complaint until its final payment; \$10,000.00 in attorneys' fees.

2.10 In reaching the Settlement, PREPA estimated that the appeal process, including the Court of Appeals and the Supreme Court, could extend up to three (3) years and cost at least \$175,000. Moreover, if the appeal were to prove unsuccessful, the September 15th Judgment would total over one million dollars (\$1MM), considering the 9.25% interest rate per imposed by the Court.

2.11 PREPA's Governing Board understood the Settlement was in the best interest of PREPA and the rate payers, and approved it by way of Resolution 5100 on November 15, 2023. See **Exhibit A** – Resolution 5100.

2.12 On December 27th, 2023, PREPA's Director of Legal Affairs sent a letter to the Oversight Board requesting authorization to use cash in hand to cover the Settlement reached in the Maldonado-Laureano Case (hereinafter, the "Request").

2.13 On January 16th, 2024, the Oversight Board approved the Request (hereinafter, the "Approval Letter"), subject to the following conditions:

The Oversight Board's approval is conditioned on the Puerto Rico Energy Bureau's approval of the proposed use of funds and PREPA's reply to this letter agreeing to a jointly developed revised FY2024 PREPA budget to be certified by the Oversight Board upon receipt of PREPA's reply. The jointly developed revised FY2024 PREPA budget shall include an increase to the Other Income line item by \$635,000 and a new Litigation settlement expense line item for the same amount, as shown on Appendix A. Moreover, PREPA should include in its proposed budget for FY2025 a litigation reserve to address similar unforeseen legal expenses, promoting transparency and fiscal responsibility.

See **Exhibit B** – Oversight Board's Approval Letter.

2.14 In compliance with the Approval Letter, PREPA very respectfully requests the Energy Bureau to authorize the use of cash in hand to cover the Settlement reached in the Maldonado-Laureano Case for a one-time payment of \$635,000.00

in favor of the Plaintiffs, to settle the case in its entirety.

2.15 Finally, PREPA very respectfully submits that it sought approval of the Settlement from the Oversight Board, prior to seeking authorization from the Energy Bureau, because it believed that the Settlement was not a “contract,” for purposes of the *Resolutions and Orders* entered in this case.

2.16 Specifically, the September 15th Judgment imposed an obligation against PREPA of \$830,000.00, plus interests accruing at a 9.25% rate until payment in full. Said obligation, which became final and unappealable in October 2023, was enforceable against PREPA. By entering the Settlement, PREPA renegotiated and reduced its obligation. No new obligations were entered. As such, PREPA believed it only needed to obtain approval from the Oversight Board to use the cash available at hand to cover the Settlement.

2.17 After reviewing the Oversight Board's Approval Letter, along with the Energy Bureau's pronouncements in its *Resolutions and Orders* in this case, it has become clear that the prelation order in all matters concerning both forums (not only contracts or amendments) is to first obtain Energy Bureau's approval, and then obtain Oversight Board's approval. Accordingly, PREPA will follow this prelation order in all future matters requiring approval by both regulatorily bodies (i.e. Energy Bureau and then Oversight Board).

WHEREFORE, PREPA respectfully requests the Energy Bureau to **GRANT** the instant motion and, consequently, **REVISE** the FY2024 PREPA HoldCo Non-Labor Budget to include an increase to the *Other Income* line item by \$635,000.00 and a new Litigation Settlement Expense line item for the same amount, as shown in Exhibit B,

Appendix A.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 5th day of February 2024.

CERTIFICATE OF SERVICE: We hereby certify that this document was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, which automatically notifies all attorneys of record with copy of the filed motion.

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GOBIERNO DE PUERTO RICO

AUTORIDAD DE ENERGÍA ELÉCTRICA

Junta de Gobierno | jgob@prepa.com

RESOLUCIÓN 5100

Aprobación de Transacción Judicial en el caso de Demandante vs. AEE y otros, Civil Núm. BY2019CV02797

POR CUANTO: La Autoridad de Energía Eléctrica de Puerto Rico (Autoridad) es una corporación pública y entidad del Gobierno de Puerto Rico creada por la Ley 83 del 2 de mayo de 1941, según enmendada (Ley 83), con personalidad jurídica propia y facultad para demandar y ser demandada.

POR CUANTO: Los hechos del caso Demandante vs. AEE y otros, Civil Núm. BY2019CV02797, se remontan al 18 de agosto de 2018, cuando el demandante hizo contacto con un cable eléctrico.

POR CUANTO: En el momento del accidente, el cable que afectó al señor XXXX se describe como un cable "spacer" 3/0 operado a 4,800 voltios, el cual se desprendió de 2 postes que se encontraban a la orilla de la carretera y estaban sobre superficie de terreno con pastizal, por lo que no era visible.

POR CUANTO: Según informó la representación legal de la Autoridad para este caso, *Díaz & Vázquez Law Firm, PSC* (Bufete), a juicio del tribunal, los demandantes probaron que el señor Demandante sufrió daños físicos, morales e impedimentos físicos permanentes por negligencia de la Autoridad. *msy*

POR CUANTO: Según la demanda, los demandantes basaron su reclamación en tres (3) teorías de negligencia, las cuales se indican a continuación:

- El tendido eléctrico estaba instalado de forma inadecuada.
- La Autoridad tuvo conocimiento del desprendimiento del cable aproximadamente una semana antes del incidente y no tomó acción al respecto.
- La Autoridad no había llevado a cabo desganche en el área del accidente.

POR CUANTO: Según indicó el Bufete, la parte demandante logró probar por preponderancia de la prueba las tres (3) teorías de responsabilidad mencionadas anteriormente.



- POR CUANTO: El tribunal acogió la prueba presentada por la parte demandante concluyendo que la Autoridad había sido negligente y responsable por los daños ocasionados a la parte demandante, imponiendo una sentencia de \$XXXX.
- POR CUANTO: El Bufete estima que un proceso apelativo entre el Tribunal de Apelaciones y el Tribunal Supremo podría extenderse por 3 años y de no prevalecer en la apelación, la sentencia aumentaría en un 27.75% lo cual se traduce en \$965,527 más el costo de apelación, aproximadamente de \$175,000, para una cantidad total estimada de \$1.2 millones.
- POR CUANTO: El Bufete recomienda, en protección de los mejores intereses de la Autoridad, que el caso se transija por una cantidad, la cual equivale, representa aproximadamente a un 50% de la sentencia total que la Autoridad tendría que pagar de no prevalecer en un proceso apelativo y un 23.5% menos de la sentencia que tendría que pagar actualmente.
- POR CUANTO: Luego de un análisis de los fundamentos provistos en el Informe de Transacción del 24 de octubre de 2023, preparado por el Bufete, el Director de Asuntos Jurídicos de la Autoridad entiende que en aras de proteger los mejores intereses de la Autoridad se debe transigir el caso por la cantidad recomendada por dicho Bufete. *MB*
- POR CUANTO: Conforme a la Norma sobre Niveles de Aprobación de Documentos de la Autoridad de Energía Eléctrica en su sección V. Desembolsos, le corresponde a la Junta de Gobierno autorizar esta transacción judicial.
- POR CUANTO: El Director Ejecutivo endosó la recomendación del Director de Asuntos Jurídicos, sujeto a la aprobación de la Junta de Gobierno.
- POR TANTO: La Junta de Gobierno de la Autoridad resuelve autorizar al Director Ejecutivo a transigir el caso antes mencionado y firmar el Acuerdo de Transacción, por la cantidad discutida, como pago total por los daños ocasionados a los demandantes.

Aprobada en San Juan, Puerto Rico, 15 de noviembre de 2023.


Maricarmen Boria Goitía
Secretaria Corporativa



David A. Skeel Jr.
Chair

Members

Andrew G. Biggs
Arthur J. González
John E. Nixon
Betty A. Rosa

Robert F. Mujica Jr.
Executive Director

BY ELECTRONIC MAIL

January 16, 2024

Mr. Lionel Santa Crispín
Legal Affairs Director
Puerto Rico Electric Power Authority

Re: Access to Cash at Hand for Payment of Post-Petition Civil Case

Dear Mr. Santa Crispín,

This letter serves as a response to the request submitted by the Puerto Rico Electric Power Authority (“PREPA”) on December 27, 2023.

As outlined in PREPA’s request, PREPA agreed to make a one-time payment of \$635,000 to settle a post-petition torts claim. Due to the absence of a line item in PREPA’s FY2024 budget to cover settlements of post-petition civil cases, PREPA requested approval from the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) to access available cash at hand for payment of the settlement.

After careful review of PREPA’s request, the Oversight Board hereby approves the use of available cash to settle the relevant case with a one-time payment in the amount of \$635,000. The Oversight Board’s approval is conditioned on the Puerto Rico Energy Bureau’s approval of the proposed **use** of funds and PREPA’s reply to this letter agreeing to a jointly developed revised FY2024 PREPA budget to be certified by the Oversight Board upon receipt of PREPA’s reply. The jointly developed revised FY2024 PREPA budget shall include an increase to the Other Income line item by \$635,000 and a new Litigation settlement expense line item for the same amount, as shown on **Appendix A**.

Moreover, PREPA should include in its proposed budget for FY2025 a litigation reserve to address similar unforeseen legal expenses, promoting transparency and fiscal responsibility.

Mr. Santa Crispín
January 16, 2024
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We look forward to continuing working with you for the benefit of the people of Puerto Rico.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Mujica Jr.", is positioned above the printed name.

Robert F. Mujica Jr.
Executive Director

CC: Mr. Josué A. Colón Ortiz
Hon. Omar J. Marrero Díaz
PREPA Governing Board
Mr. Edison Avilés Deliz

APPENDIX A

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I. EXHIBIT 1 - BUDGET – REVENUES

PUERTO RICO ELECTRIC POWER AUTHORITY

\$ Thousand	FY24 Budget
Basic Revenue	
Residential	373,933
Commercial	569,457
Industrial	103,381
Public Lighting	60,989
Agricultural	1,880
Others	<u>2,161</u>
Total	\$ 1,111,801
Fuel & Purchased Power	
Residential	994,178
Commercial	1,156,334
Industrial	301,179
Public Lighting	41,039
Agricultural	3,467
Others	<u>5,838</u>
Total	\$ 2,502,035
CILT	
Residential	39,209
Commercial	45,296
Industrial	11,851
Public Lighting	1,609
Agricultural	136
Others	<u>230</u>
Total	\$ 98,331
Subsidies	
Residential	85,823
Commercial	99,147
Industrial	25,942
Public Lighting	3,522
Agricultural	299
Others	<u>503</u>
Total	\$ 215,236
Energy Efficiency	
Residential	8,189
Commercial	9,461
Industrial	2,476
Public Lighting	336
Agricultural	29
Others	<u>48</u>
Total	\$ 20,539
Total Gross Revenue	\$ 3,947,942
CW Loan Proceeds ^[1]	300,000
Other Income	<u>189,082</u>
Total Unconsolidated Revenue	\$ 4,437,014
Bad Debt Expense	(59,450)
CILT, Subsidies, & EE	<u>(339,268)</u>
Total Consolidated Revenue	\$ 4,038,296

APPENDIX A

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II. EXHIBIT 1 BUDGET - EXPENSES (cont'd)
PUERTO RICO ELECTRIC POWER AUTHORITY

\$ Thousand	FY24 Budget
A. Fuel & Purchased Power	
Fuel	1,920,067
Purchased Power - Conventional	481,101
Purchased Power - Renewable	95,704
Total Fuel & Purchase Power Expenses	\$ 2,496,872
B. GenCo - Operations & Maintenance Expenses	
Genco Labor Operating Expenses	75,404
Genco Non-Labor / Other Operating Expenses	71,103
Shared Services Agreement Impact	63,826
Operator Service Fees	22,500
Maintenance Projects Expenses	96,645
Generation Reserve	12,266
Total GenCo Operating & Maintenance Expenses	\$ 341,744
C. HoldCo (PropertyCo) – Operating & Maintenance Expenses	
Labor	
Salaries & Wages	6,502
Pension & Benefits	2,692
Overtime Pay	361
Overtime Benefits	43
Total HoldCo Labor Operating Expenses	\$9,598
Non-Labor / Other Operating Expenses	
Materials & Supplies	29
Transportation, Per Diem, and Mileage	26
Retiree Medical Benefits	7,950
Security	797
Utilities & Rents	66
Legal Services	3,688
Litigation Settlement Expenses	635
Communications Expenses	6
Professional & Technical Outsourced Services	2,145
Regulation and Environmental Inspection	1,591
External Audit Services	1,108
Equipment, Inspections, Repairs & Other	666
PREPA Restructuring & Title III	30,150
FOMB Advisor Costs allocated to PREPA	32,821
Total HoldCo Non-Labor / Other Operation Expenses	\$81,678
Shared Services Agreement	1,993
Temporary PREPA Employee Retirement System Contribution^{[1] [2]}	300,000
Maintenance Projects Expenses	645
Total HoldCo Operating & Maintenance Expenses	\$393,914

APPENDIX A

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EXHIBIT 1 BUDGET - EXPENSES (cont'd)**PUERTO RICO ELECTRIC POWER AUTHORITY**

\$ Thousand	FY24 Budget
<i>D. HydroCo – Operating & Maintenance Expenses</i>	
Labor	
Salaries & Wages	2,543
Pension & Benefits	1,532
Overtime Pay	288
Overtime Benefits	35
Total HydroCo Labor Operating Expenses	\$4,398
Non-Labor / Other Operating Expenses	
Materials & Supplies	724
Transportation, Per Diem, and Mileage	269
Security	1,712
Utilities & Rents	80
Professional & Technical Outsourced Services	187
Regulation and Environmental Inspection	731
Equipment, Inspections, Repairs & Other	1,892
Total HydroCo Non-Labor / Other Operating Expenses	\$5,595
Shared Services Agreement	1,181
Maintenance Projects Expenses	2,471
Total HydroCo Operating & Maintenance Expenses	\$13,645
<i>E. GridCo - Operating & Maintenance Expenses</i>	
GridCo Labor Operating Expenses	254,172
GridCo Non-Labor / Other Operating Expenses	295,125
Operator Service Fees	129,162
2% Reserve	10,986
Maintenance Projects Expenses	91,144
Energy Efficiency	11,531
Total GridCo Operating & Maintenance Expenses	\$ 792,120
Total Operating & Maintenance Expenses	\$ 4,038,296
Surplus / (Deficit) Before Legacy Pension and Debt Obligations	\$ 0

[1] The Commonwealth Loan Proceeds and its proportional Temporary PREPA Employee Retirement System Contribution may only be disbursed after the execution of the related loan agreement and only under terms and conditions specified in the agreement. See details in Section 2 of the Enforcement of the Puerto Rico Electric Power Authority FY24 Budget below.

[2] Expenses for the Temporary PREPA Employee Retirement System Contribution are subject to the restrictions contained in footnote 1 above and in Section 2 of the Enforcement of the Puerto Rico Electric Power Authority FY24 Budget below.

APPENDIX A
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