

**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 IN COMPLIANCE WITH THE DECEMBER 8TH RESOLUTION

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. Relevant procedural background

1.1 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. Per the June 25th Resolution, the approved HoldCo Non-Labor Budget was \$11.772MM ("Original Budget").

1.2 Immediately after the Original Budget was approved, PREPA retained the services of Galindez, LLC, Guzmán & Co., CPA's LLC, KPMG, Scott Madden, and

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").

Nexvell Consulting, LLC to complete the drafting and auditing process of its 2022 financial statements. Unfortunately, and due to insufficient budget, PREPA was forced to stay the foregoing efforts.

1.3 On August 14th, 2023, the Energy Bureau issued a *Resolution and Order* ("August 14th Order") requiring PREPA, inter alia, to include robust policies and procedures for management of external consulting engagements, including but not limited to:

- a. Defined scopes of work, deliverables, timelines, and invoicing expectations within all contractor agreements.
- b. Designated internal supervisors responsible for approving work, monitoring progress, verifying satisfactory completion of deliverables, and authorizing payments for each contract.
- c. A formal process for reviewing invoices to confirm [compliance] with initial contract terms and documented work records before payment approval.
- d. Regular auditing of contractor relationships to identify any discrepancies in invoiced charges versus contracted rates and delivered services.
- e. 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"), including an itemized description of the specific expertise, workload capacity, or other factors that require supplementary external services.²

1.4 Aware of the urgency of this matter, on September 7th, 2023, the Fiscal Oversight and Management Board approved the reassignment of \$3,500,000.00 from the Puerto Rico Public-Private Partnerships Authority ("P3A") to the Puerto Rico Treasury Department, for the latter to directly retain the necessary contractors to complete PREPA's 2022 financial statements and their audit (hereinafter, the "Reassigned Funds"). To use the Reassigned Funds, the Puerto Rico Treasury

² See August 14th Order, p. 3.

Department was required to: (a) retain the services of the contractors needed to complete the audit of PREPA's 2022 financial statements; and (b) execute Collaboration Agreements with PREPA to establish the terms and conditions of PREPA's relationship with the contractors.

1.5 Consistent with the foregoing, on October 20th, 2023, the Puerto Rico Treasury Department executed contract number 24-2024-0165 with Galindez, LLC to provide services to the Government of Puerto Rico in connection with the audit of PREPA's 2022 financial statements.

1.6 On October 23rd, 2023, the Puerto Rico Treasury Department executed contract number 24-2024-0166 with Guzmán & Co., CPA's LLC to provide services to the Government of Puerto Rico in connection with the audit of PREPA's 2022 financial statements.

1.7 On November 2nd, 2023, the Puerto Rico Treasury Department executed contract number 24-2024-0152 with KPMG to provide services to the Government of Puerto Rico in connection with the audit of PREPA's 2022 financial statements (Galindez, LLC; Guzmán & Co., CPA's LLC; and KPMG will be jointly denominated the "Contractors").

1.8 However, by November 6th, 2023, the Collaboration Agreements between the Puerto Rico Treasury Department and PREPA had not been executed.

1.9 Considering both the urgency of completing PREPA's 2022 audited financial statements and the uncertainty surrounding the Collaboration Agreements, on November 7th, 2023, PREPA filed its *Motion in Compliance with Orders and Request for Approval of Revised Proposed Budget* ("November 7th Motion"), whereby it

requested an increase to the HoldCo Non-Labor External Audit line item of \$1,722MM to retain the Contractors directly, and comply with its duty to complete the drafting and auditing process of its 2022 financial statements.

1.10 On December 5th, 2023, that is, almost a month after the November 7th Motion was filed, the Puerto Rico Treasury Department executed the three (3) separate Collaboration Agreements with PREPA, setting forth the terms and conditions of PREPA's relationship with the Contractors in the drafting and/or auditing process of its financial statements. The foregoing enabled PREPA to restart its efforts with the Contractors to complete the drafting and auditing process of its 2022 financial statements.

1.11 A few days later, on December 8th, 2023, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a *Resolution and Order* whereby it increased the HoldCo Non-Labor Budget from its original amount of \$11.772MM to \$18.072MM. As part of its ruling, the Energy Bureau conditionally approved PREPA's request for an increase to the HoldCo Non-Labor External Audit budget line-item of \$751,000.00 ("Conditionally Approved Budget"), "pending the submittal of the renegotiated contracts as stipulated in the August 14th, 2023 Resolution and Order." Further, the Energy Bureau ordered PREPA to submit the new contracts pertaining to External Audit Services, noting that "[t]hese contracts must reflect the renegotiated terms as mandated in the August 14th Resolution and should come with comprehensive documentation justifying the costs involved" ("December 8th Resolution").³

³ December 8th Resolution, p. 10-11.

1.12 On January 31st, 2024, PREPA filed a *Motion for Extension of Time*, whereby it requested until February 12th, 2024, to comply with the December 8th Resolution.

1.13 On February 2nd, 2024, the Energy Bureau granted the extension of time sought by PREPA.

II. Discussion

2.1 As detailed in the preceding paragraphs, the Puerto Rico Treasury Department has retained the services of the Contractors to complete the drafting and auditing process of PREPA's 2022 financial statements. As such, PREPA need not retain their services for said endeavor.

2.2 The Puerto Rico Treasury Department has informed that it will also retain the services of the Contractors to carry out the drafting and auditing process of PREPA's 2023 financial statements. As such, PREPA need not retain their services for said endeavor.

2.3 Notwithstanding, there are other contractors whose services are needed by PREPA to complete both its 2022 and 2023 audited financial statements, that have not and will not be retained by the Puerto Rico Treasury Department.

2.4 In compliance with the December 8th Resolution, PREPA hereby requests the Energy Bureau to authorize PREPA to use the Conditionally Approved Budget to cover the following contracts:

- a. **ScottMadden, Inc.** ("ScottMadden"): PREPA seeks approval of its contract with ScottMadden, Inc. in the amount of **\$236,000.00**. This contractor will provide the following services:

- i. Project management services to coordinate the preparation of the 2022 and 2023 financial statements, and their auditing process.
- ii. Coordinate and align intricate requests and track key deliverables between KPMG, PREPA, and LUMA for the preparation of the financial statements.
- iii. Track important deliverables and coordinate intricate requests between KPMG, PREPA, LUMA and GeneraPR for the preparation of the audited financial statements.
- iv. This contract allows PREPA to comply with current industry standards (GAAP), relevant laws, corporate policies, and regulatory requirements.

In compliance with the August 14th Order, PREPA informs that the designated supervisors responsible for approving the work, monitoring progress, verifying satisfactory completion of deliverables, and authorizing payments under the Scott Madden Contract are Nelson Morales, Director of PREPA's Finance Department and Juan C. Adrover, PREPA's Comptroller. As part of the formal process for reviewing invoices to confirm compliance with the contract terms and documented work records before payment approval, the designated supervisors are required to review the invoices and sign the Certification of Work Performed/Services Rendered. See **Exhibit A** – *Certification of Work Performed/Services Rendered*. Once the invoice is sent to LUMA for payment, LUMA also reviews the invoice to ensure that the requested payment complies with the contract terms.

The ScottMadden Contract was renegotiated to reduce its maximum payment amount by almost 38% from \$378,000.00 to \$236,000.00. See **Exhibit B** - ScottMadden Contract.

b. Nexvel Consulting, LLC ("Nexvel"): PREPA seeks approval of its contract with ScottMadden, Inc. in the amount of **\$58,000.00**. This contractor will provide the following services:

- i. Support of the account reconciliations, supplementary schedules, entry and review of journals, and support of financial services to complete the external audits.
- ii. Accounting Closing Management.
- iii. Entry and Review of Journals.
- iv. Fixed Assets-Estimated Retirement.
- v. Audit Adjustments.
- vi. Support in the management of files and digitization of files.

In compliance with the August 14th Order, PREPA informs that the designated supervisors responsible for approving the work, monitoring progress, verifying satisfactory completion of deliverables, and authorizing payments under the Nexvel Contract are Nelson Morales, Director of PREPA's Finance Department and Juan C. Adrover, PREPA's Comptroller. As part of the formal process for reviewing invoices to confirm compliance with the contract terms and documented work records before payment approval, the designated supervisors are required to review the invoices and sign the Certification of Work Performed/Services Rendered. See **Exhibit A – Certification of Work Performed/Services Rendered**. Once the invoice is sent to LUMA for payment, LUMA also reviews the invoice to ensure that the requested payment complies with the contract terms.

The Nexvel Contract was renegotiated to reduce its maximum payment amount by almost 78% from \$259,200.00 to \$58,000.00; and reduce the human resources supplied by the contractor from three (3) to two (2) assistants. See **Exhibit C – Nexvel Contract**.

- c. González & Martínez Law Offices P.S.C.** (“González & Martínez”): PREPA seeks approval from the Energy Bureau to allocate **\$300,000.00** from the Conditionally Approved Budget to the second amendment to the González & Martínez Contract.⁴ The purpose of this allocation is to cover the legal services provided by González & Martínez in connection with PREPA's 2022 and 2023 **audited financial statements**. See **Exhibit D – Second Amendment González & Martínez**.⁵ Since the Collaboration Agreements were executed in December 2023, González & Martínez has been an integral part of PREPA's effort to complete the 2022 financial statements and their audit. González & Martínez has served as the liaison between the PREPA, the Puerto Rico Treasury Department, the Auditors, and has been responsible for all legal matters pertaining to PREPA's 2022 audited financial statements. Further, González & Martínez will continue to provide these same legal services and support in connection with PREPA's 2023 audited financial statements.

⁴ The total amount of the second amendment to the González & Martínez Contract is \$1,000,000.00 to be allocated as follows: \$450,000 from the Legal Services line-item; \$300,000.00 from the External Audit Services line-item; and \$250,000.00 from the Restructuring & Title III line-item.

⁵ On January 18th, 2024, PREPA filed its *Motion for Approval of Contracts or Amendments*. Following the January 23rd Resolution and Order rescinding the requirement to submit contracts for approval prior to their execution, PREPA moved to withdraw the January 18th Motion. It is worth noting that, following the January 23rd Resolution and Order, PREPA has made changes to the contracts and allocations submitted in the January 18th Motion. As such, there may be differences between the amounts discussed in the instant motion regarding the González & Martínez Contract, and the amounts proposed in the January 18th, 2024 Motion. These changes come as the result of PREPA's efforts to comply with all its obligations with the limited resources available.

In compliance with the August 14th Order, PREPA informs that the designated supervisors responsible for approving the work, monitoring progress, verifying satisfactory completion of deliverables, and authorizing payments for all services rendered by González & Martínez in connection with the 2022 and 2023 audited financial statements are Nelson Morales, Director of PREPA's Finance Department and Juan C. Adrover, PREPA's Comptroller. As part of the formal process for reviewing invoices to confirm compliance with the contract terms and documented work records before payment approval, the designated supervisors are required to review the invoices and sign the Certification of Work Performed/Services Rendered. See **Exhibit A – Certification of Work Performed/Services Rendered**. Once the invoice is sent to LUMA for payment, LUMA also reviews the invoice to ensure that the requested payment complies with the contract terms.

2.5 In compliance with the August 14th Order and the December 8th Resolution, PREPA informs that the services to be rendered by ScottMadden, Nexvel, and González & Martínez in connection with PREPA's 2022 and 2023 audited financial statements cannot be performed by PREPA's existing staff. Following the transformation process, there are only two (2) attorneys in PREPA's Legal Affairs Department. These two (2) attorneys are responsible for PREPA's everyday legal affairs and lack both the time and expertise to provide legal advice in connection with PREPA's 2022 and 2023 audited financial statements. These services cannot be rendered by LUMA, Genera, and/or the Puerto Rico Public-Private Partnership Authority (P3A") because it is PREPA's responsibility to generate and submit its own audited financial statements, as stated in current industry standards (GAAP), relevant laws, corporate policies, and regulatory obligations.

WHEREFORE, PREPA respectfully requests the Energy Bureau to **GRANT** the instant Motion and, consequently, deem the December 8th Resolution as **COMPLIED WITH** by PREPA.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 12th 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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