

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

IN RE: LUMA'S RESPONSE TO HURRICANE
FIONA

CASE NO.: NEPR-MI-2022-0003

SUBJECT: Resolution and Order regarding *Informative Motion and in Compliance with the February 14th Resolution and Order and 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").¹ Further, it indicated that FEMA would provide funding for the acquisition of the Temporary Units.² 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.³ PREPA also requested that Exhibits 1-14 filed with the January 14 Motion be considered confidential.⁴

Upon review of the January 14 Motion, on January 19, 2024, the Energy Bureau issued a Resolution and Order whereby it ordered the PREPA to notify the Puerto Rico Public-Private Partnerships Authority ("P3") of its intent to acquire the two-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 could take place. The Energy Bureau also ordered LUMA⁵ 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.

The Energy Bureau further granted 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.

¹ January 14 Motion, p. 11.

² *Id.*

³ *Id.*, p. 21.

⁴ *Id.*, pp. 21 – 22.

⁵ LUMA Energy, LLC and LUMA Energy ServCo, LLC (referred to jointly as "LUMA").



Last, the Energy Bureau granted PREPA, LUMA, and GENERA ten (10) business days to collaborate and inform the Energy Bureau if the acquisition of the Temporary Units alters projects previously approved by the Energy Bureau and to specify how they would be affected.

The Energy Bureau determined that PREPA's request for confidentiality would be resolved in a separate Resolution.

M
On January 22, 2024, PREPA filed a document titled *Motion in Compliance with the January 19th, 2024 Resolution and Order* (January 22 Motion"). Through the January 22 Motion, PREPA informed that on January 22, 2024 it notified P3 of its intent to acquire the referenced emergency power generation units. PREPA attached the letter sent to P3 as Exhibit 1 of the January 22 Motion. PREPA further stated that acquiring those units would only require amending Annex I (Legacy Generation Assets) of the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement*. PREPA maintained that the emergency power generation units would be acquired with federal funds allocated to the reconstruction of Puerto Rico's electrical infrastructure through the Central Office for Recovery, Reconstruction, and Resiliency ("COR3"), Puerto Rico Governor's Authorized Representative ("GAR"), and the sub-recipient, PREPA. PREPA also requested that Exhibit 1 of the January 22 Motion be considered confidential.

On January 26, 2024, the Energy Bureau took notice of the January 22 Motion.

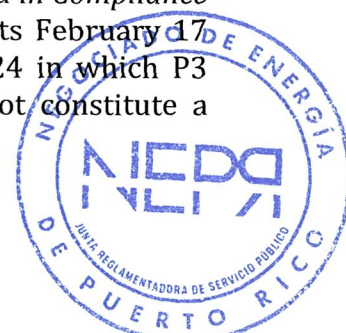
JAB
On January 26, 2024, LUMA filed a document titled *Informative Motion on Updated Version of the Second Report on Demobilization of FEMA Generation, In Compliance with Resolution and Order Dated January 19, 2024* ("January 26 Motion"). Through the January 26 Motion, LUMA submitted an updated version of the Second Demobilization Report, addressing the potential transfer and ownership of the Temporary Units to PREPA.

SLB
On February 2, 2024, LUMA filed a document titled *Informative Motion with Resolution and Order Dated January 19, 2024* ("February 2 LUMA Motion"). LUMA informed that FEMA had not yet issued a formal notification regarding the specific funding sources to acquire the Temporary Units. LUMA asserted that LUMA, PREPA, and GENERA have not been able to move forward with their analysis of how using the funds for the Temporary Units would affect other planned federally funded projects already approved by the Energy Bureau.

LM
On February 2, 2024, PREPA filed a document titled *Second Motion in Compliance with the January 19th Resolution and Order* ("February 2 PREPA Motion"). PREPA informed that FEMA had issued a notification regarding the specific sources of funding to be used to acquire the Temporary Units. According to PREPA, FEMA specifically informed that it had agreed to approve a new project under Section 428 of the Stafford Act. It further stated the acquisition would not impact the existing \$9.5B 428 FFAST project for the power grid. PREPA submitted as Exhibit 1 to the February 2 Motion a letter FEMA attesting to the foregoing. PREPA maintained that none of the projects approved by the Energy Bureau would be affected by the acquisition of the Temporary Units. In its February 2 Motion, PREPA referenced as part of footnote no. 1 in p. 2, that Exhibit 1 was being submitted under seal in compliance with FEMA instructions that all communications between FEMA, COR3, and PREPA should be kept confidential at this stage of the proceedings.

PREPA's request for confidentiality pertaining the January 14 and January 22 Motions was decided in a separate Resolution and Order issued on February 14, 2024 ("February 14 Resolution"). Through the February 14 Resolution, the Energy Bureau also requested PREPA to submit a redacted version for the public record omitting critical energy infrastructure information from Exhibits 10 and 11 of the January 14 Motion and Exhibit 1 of the January 22 Motion.

On February 17, 2024, PREPA filed a document titled *Informative Motion and in Compliance with the February 14th Resolution and Order* ("February 17 Motion"). In its February 17 Motion, PREPA indicated that it received a letter dated February 16, 2024 in which P3 informed that the acquisition of the temporary generation units does not constitute a



1 transaction under Act 120-2018.⁶ PREPA attached P3's letter as Exhibit 1 to the February 17 Motion. Particularly, PREPA maintained that, as indicated by P3, the referenced transaction does not entail the delegation of PREPA's functions, services, or facilities to a private entity, nor the sale of PREPA's power generation assets to a private entity, since the temporary generation units are not owned by PREPA.⁷ It is P3's position that the purchase of the temporary units does not fall under its purview.⁸ P3 further suggested PREPA to request the Energy Bureau a clarification to that effect.⁹ Moreover, P3 also suggested that PREPA request the Energy Bureau to conclude that, once the transaction of the temporary units is finalized, they be considered part of PREPA's Legacy Generation Assets.¹⁰ This, considering that the temporary units will substitute some of the PREPA's Legacy Generation Assets in Annex 1 of the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement*.¹¹ P3 further asserted that PREPA should request the Energy Bureau's approval of such transaction as part of the Stabilization Plan being carried out in the instant case.

The Energy Bureau **HIGHLIGHTS** that the aforementioned motions and resolutions were filed under *In Re: Review of the Puerto Rico Electric Power Authority's 10-Year Infrastructure Plan – December 2020*, Case No.: NEPR-MI-2021-0002.

The Energy Bureau **TAKES NOTICE** of the January 26 Motion through which LUMA submitted an updated version of the Second Demobilization Report, which was filed in the instant case and under *In Re: Review of the Puerto Rico Electric Power Authority's 10-Year Infrastructure Plan – December 2020*, Case No.: NEPR-MI-2021-0002.

7# The Energy Bureau also **TAKES NOTICE** of PREPA's February 2 Motion whereby it informed the specific sources of funding from FEMA to be used to acquire the Temporary Units and that this acquisition will impact **none** of the existing projects approved by the Energy Bureau.

SRN Regarding PREPA's request for confidentiality of Exhibit 1 to its February 2 Motion, the Energy Bureau **REMINDS** PREPA that footnotes are **not** the proper vehicles for this request. The Energy Bureau **REITERATES** that any party that believes that a specific document to be produced has confidential information and has the right to such treatment, must follow the requirements listed in the Energy Bureau's Policy in Management of Confidential Information.¹² Nonetheless, the Energy Bureau considers that Exhibit 1 to the February 2 PREPA Motion does not include confidential information, nor does it contain information that warrants protection from GENERA. The Energy Bureau is cognizant that GENERA, as a subsidiary of NFE, must be excluded from discussions and/or information shared between Puerto Rico and the Federal Government concerning the potential acquisition of NFE equipment, and any negotiations with NFE for the acquisition of that equipment. However, the referenced Exhibit does not include confidential communications regarding discussions and/or negotiations about the acquisition of the temporary units that could give GENERA an unfair competitive advantage. The Energy Bureau **DENIES** PREPA's request for confidentiality as it pertains to Exhibit 1 of the February 2 Motion.

DM Pertaining the February 17 Motion, the Energy Bureau **DEEMS** that PREPA complied with the February 14 Resolution regarding the submission of a redacted version of Exhibits 10 and 11 of the January 14 Motion and Exhibit 1 of the January 22 Motion.

⁶ February 17 Motion, pp. 2 – 3, ¶ 5.

⁷ *Id.*, p. 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*, p. 3, ¶ 6.

¹¹ *Id.*

¹² See Resolution, *In Re: Policy on Management of Confidential Information in Procedures Before the Commission*, Case No. CEPR-MI-2016-0009, August 31, 2016.



The Energy Bureau **TAKES NOTICE** of the forthcoming acquisition by PREPA of the emergency temporary generation units (350MW) installed in San Juan and Palo Seco to respond to the emergency in the aftermath of Hurricane Fiona.

The emergency generation units installed at San Juan and Palo Seco sites are to be used temporarily through December 31, 2025.¹³

On September 23, 2016, the Energy Bureau approved PREPA's first IRP.¹⁴ The first IRP became enforceable on March 13, 2017 and is considered the approved IRP.¹⁵ Due to the effects Hurricanes Irma and María had on the electric power system, on March 14, 2018 the Energy Bureau determined that a revision of PREPA's Approved IRP was warranted.¹⁶ Therefore, the Energy Bureau initiated a proceeding to review PREPA's Approved IRP.¹⁷ As part of the current IRP review process, on June 7, 2019, PREPA filed before the Energy Bureau a new proposed IRP ("PREPA's Proposed IRP").¹⁸ The filing was deemed complete by the Energy Bureau on July 3, 2019.¹⁹ PREPA's Proposed IRP was evaluated by the Energy Bureau in a comprehensive adjudicative proceeding under *In re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No.: CEPR-AP-2018-0001. Evidentiary hearings were held on February 2020. On August 21, 2020, the Energy Bureau issued a Final Resolution and Order, approving in part the Proposed IRP. The Approved IRP included a Modified Preferred Resource Plan ("Action Plan") considering, among others, specific planning parameters for the power generation capacity additions and retirements.²⁰

An IRP considers all reasonable resources needed to supply demand over the planning horizon, which in our case is twenty (20) years. Therefore, the use of temporary emergency generation due to unexpected or emergency situations is not normally considered a resource planning action in an IRP. PREPA's Approved IRP is no different.

Due to its temporary nature, actions that may result from unexpected situations or emergencies, are not specifically identified as a resource planning action during the evaluation of an IRP. The purpose of the IRP is to identify **the permanent resources** needed to supply demand over the planning horizon, at least cost. All permanent resources are assumed to be available to provide service. If one asset is lost due to a prolonged emergency, the effect this loss can have on the system could be detrimental to the point of compromising service reliability. Under certain circumstances, the acquisition or development of a **temporary resource** to supply a need that arises as the result of an emergency not contemplated in the IRP analysis, could be not inconsistent with such IRP.

For example, the **temporary acquisition** of a generation asset to make up for the temporary loss of a **permanent asset** due to *force majeure*, could be considered one of such

¹³ See email from Nancy Casper (FEMA) to Manuel Laboy Rivera (COR3), which was attached to the February 2 PREPA Motion.

¹⁴ See *Final Resolution and Order on the First Integrated Resources Plan of the Puerto Rico Electric Power Authority*, Case No. CEPR-AP-2015-0002, notified September 26, 2016.

¹⁵ See *Resolution on the Verified Motion for Reconsideration of Puerto Rico Electric Power Authority*, Case No. CEPR-AP-2015-0002, dated February 10, 2017 and; *Resolution*, Case No. CEPR-AP-2015-0002, dated February 10, 2017 (the aforementioned resolutions and orders collectively referred to as "PREPA's Approved IRP").

¹⁶ See *Resolution and Order on Commencement of Review Proceeding and Order Establishing Initial Submission Timeline, In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, March 14, 2018, p. 2.

¹⁷ *Id.*, pp. 3 - 4.

¹⁸ See PREPA's Cover Filing for Accompanying Compliance IRP Filing Due June 7, 2019, Case No. CEPR-AP-2018-0001, June 7, 2019.

¹⁹ *Resolution and Order, In Re: Completeness Determination of PREPA'S IRP Filing and Procedural Calendar*, Case No. CEPR-AP-2018-0001, July 3, 2019.

²⁰ See *Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan, In re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, August 24, 2020 ("IRP Order").



circumstances. In these circumstances, the analysis regarding consistency should include, at least, (1) if the permanent asset is part of the identified resources on the IRP (including the expected retirement date), (2) the effect the loss of the asset has on the system, (3) the time the temporary asset would be in service (i.e. the temporary nature of this asset), and (4) the purpose of the acquisition of the temporary asset is to temporary replace, in total or in part, the permanent asset.

The emergency generation units installed at San Juan and Palo Seco sites are to be used temporarily through December 31, 2025. The purpose of the referenced transaction is not to acquire a permanent asset, but to install temporary units to supply part of the generation deficiency caused by Hurricane Fiona, as identified in the Stabilization Plan carried out under the instant case.

Therefore, under these circumstances, the Energy Bureau **DETERMINES** that the acquisition of the temporary generation units **is not inconsistent with the Approved IRP.**

The Energy Bureau **APPROVES** the initial Scope of Work²¹ for the acquisition of the temporary generation units (350MW) **through December 31, 2025.**²² The Energy **WARNS** PREPA that, once approved by FEMA, the final Scope of Work, shall be submitted before the Energy Bureau for its review and approval.

Hence, as previously mentioned, this project **need not be consistent with the requirements set forth of the Approved IRP.** As stated in the February 17 Motion, the potential transfer and ownership of the temporary generation units' particularities distinguishes it from transactions that shall be conducted under P3's establishment process specified in Act 29-2009. Since the acquisition of the temporary units is not considered a PREPA Transaction, it shall not require an Energy Compliance Certificate issued by the Energy Bureau as defined in Act 120-2018.

To the extent that the emergency temporary generation units will replace existing Legacy Generation Assets, once such units are acquired, the Energy Bureau **FINDS** these units shall be considered as part of the Legacy Generation Assets. GENERA will be responsible for the operation and maintenance of the temporary generations units as part of its generation fleet, in accordance with its contractual obligations. The Energy Bureau **HIGHLIGHTS** that **the emergency generation units installed at San Juan and Palo Seco sites are to be used temporarily through December 31, 2025.** GENERA will administer such units only during the referenced period.

Since emergency temporary generation resources are part of the efforts to assure the completion of the Stabilization Plan, the Energy Bureau **ORDERS** its Clerk to include the Motions referenced in this Resolution and Order and related motions and resolutions that were filed under *In Re: Review of the Puerto Rico Electric Power Authority's 10-Year Infrastructure Plan – December 2020*, Case No.: NEPR-MI-2021-0002, in the instant case.

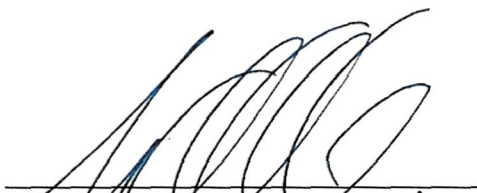
The Energy Bureau further **ORDERS** its Clerk to notify the present Resolution and Order in the instant case and under *In Re: Review of the Puerto Rico Electric Power Authority's 10-Year Infrastructure Plan – December 2020*, Case No.: NEPR-MI-2021-0002, where the totality of the motions and previous resolutions regarding this transaction have been filed.

Be it notified and published.

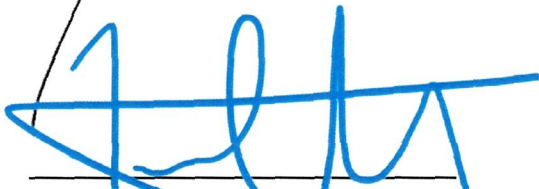
²¹ As per referenced and requested by PREPA in its January 14 Motion.


²² A similar analysis was made by the Energy Bureau when it approved a proposed RFP, though which PREPA intended to award a contract for temporary emergency generation to respond to the emergency in the aftermath of the seismic events that caused physical damage to Puerto Rico's electric infrastructure. See Resolution and Order issued on March 3, 2020, Case No.: NEPR-AP-2020-0001, *In Re: Request for Proposal for Temporary Emergency Generation*.




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 February 21, 2024. Associate Commissioner Antonio Torres Miranda did not intervene. I also certify that in February 21, 2024 a copy of this Resolution and Order was notified by electronic mail to arivera@gmlex.net; mvalle@gmlex.net; valeria.belvis@us.dlapiper.com; margarita.mercado@us.dlapiper.com; laura.rozas@us.dlapiper.com; Yahaira.delarosa@us.dlapiper.com; julian.angladapagan@us.dlapiper.com; alopez@sbgblaw.com; jfr@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 February 21, 2024.


Sonia Seda Gaztambide
Clerk

