

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

**NEPR**

**Received:**

**Mar 15, 2024**

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**IN RE:** REQUEST FOR APPROVAL OF THE ASSET PURCHASE AGREEMENT BETWEEN NFE POWER PR LLC AND THE PUERTO RICO ELECTRIC POWER AUTHORITY

**CASE NO.:** NEPR-AP-2024-0001

**MOTION IN COMPLIANCE WITH THE MARCH 15<sup>TH</sup> RESOLUTION AND ORDER  
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:

1. On January 14<sup>th</sup>, 2024, the Puerto Rico Electric Power Authority ("PREPA"), filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau" or "PREB"), an *Urgent Motion Submitting for Review and Approval of the Scope of Work for the Transfer/Ownership to PREPA of the Temporary Generation Units* (the "Urgent Motion"). Through the Urgent Motion, PREPA sought the Energy Bureau's approval of the initial scope of work for the acquisition, be it through purchase or lease, of the temporary generation units installed in the Palo Seco Power Plant (150MW) and the San Juan Power Plant (200MW).

2. On February 21st, 2024, the Energy Bureau issued a Resolution and Order approving the initial scope of work ("SOW") submitted by PREPA, and further requiring that PREPA file the final SOW once approved by FEMA.
3. On March 5th, 2024, PREPA filed a motion to submit PW11628 approved by FEMA before the Energy Bureau and informed of significant changes in the equipment to be acquired by PREPA. Further, PREPA listed the excluded equipment and requested that the Energy Bureau take notice of the changes in the SOW.
4. As a result of the March 5th Motion, the Energy Bureau issued a Resolution and Order requiring PREPA to submit a final SOW approved by FEMA for its review and approval. However, PREPA will not be able to comply with the Bureau's Order since FEMA cannot issue a final SOW in light of the recent developments that arose with New Fortress Energy ("NFE").
5. Specifically, NFE informed COR3 that it does not possess three (3) of the seven (7) Gen 8 Model generators at the Palo Seco temporary generation site, and their current owner is unwilling to sell these three (3) units to NFE. NFE offered to switch out those three (3) Gen 8 Model generators with three (3) Gen 6 Model generators but, given that the exchange would not be for identical models, FEMA only authorized the acquisition of the fourteen (14) onsite units that are part of the existing seventeen (17) generator system. The aforementioned was confirmed by FEMA through an email sent to Sebastián Bastista, legal counsel of COR3. See Exhibit 1.

6. On March 13<sup>th</sup>, 2024, PREPA filed an *Urgent Motion for Budget Revision to Purchase the Temporary Generation System* before the Energy Bureau. Through said motion, PREPA requested the Energy Bureau revise the HoldCo FY 2024 Budget and authorize an increase of \$30,659,875.65 to cover the 10% of the purchase price of the fourteen (14) temporary generation units not contemplated in the PW 11628.
7. On March 15<sup>th</sup>, 2024, PREPA filed a *Motion to Submit the Execution Version of the Asset Purchase Agreement* before the Energy Bureau, in which PREPA requested that the Energy Bureau evaluate and approve the Proposed Asset Purchase Agreement ("APA").
8. On that same day, the Energy Bureau issued a Resolution and Order indicating that it was not in a position to evaluate the APA since PREPA raised important matters that remain unaddressed in the APA and PREPA had not shown its agreement to the APA. As such, the Energy Bureau requested that "a final execution document reflecting the agreement of the parties should be submitted for the Energy Bureau's evaluation".
9. In compliance with the Energy Bureau's Resolution and Order, PREPA hereby reiterates that Exhibit C, filed with the March 15<sup>th</sup> Motion, is the final execution document as negotiated by the Puerto Rico Public-Private Partnerships Authority ("P3 Authority") and the Central Office for Recovery Reconstruction and Resiliency ("COR3").

10. As early as today, and laying to rest one of the principal concerns of PREPA, COR3 has informed PREPA that all 14 borescopes reports have been received. After the evaluation of the reports it has been identified that (a) FIVE (5) turbines are already scheduled to undergo Hot Section maintenance before the end of 2024, (b) the unserviceable compressor of Palo Seco Unit #2, that unit (which is not scheduled for maintenance during 2024) will require Hot Section maintenance very soon, and c) that Palo Seco Unit #4 that has been identified with non-serviceable damage due to compressor damages. In light of this, the GPR has requested that NFE should cover seven (7) Hot Section maintenance free-of-charge and NFE has agreed. See Exhibit 2.

11. The second concern raised by PREPA, regarding the inclusion of language in the APA to ensure that the \$1.00 lease of the regasification equipment survives 1) regardless of whether or not NFE continues as the gas supplier and 2) regardless of whether or not Genera continues as the operator of the Legacy Generation Assets, is currently being negotiated between COR3 and NFE. Moreover COR3 has already confirmed that NFEnergia will be supplying the acquired units with fuel/regasification services starting at 12:01 am on March 16th under the newly issued fuel agreement. See Exhibit 3.

12. Finally, PREPA would also like to direct the Energy Bureau's attention to the fact that PREPA and Genera PR received a No Action Assurance Letter and

Agreement from Mary E. Greene, Director of the Air Enforcement Division, Office of Enforcement and Compliance Assurance of the United States Environmental Protection Agency (EPA). The letter ensures that the Temporary Units can be operated under the same parameters that USACE has operated them to date. See Exhibit 4.

13. Considering the importance of the vital importance of temporary generation units to safeguard the well-being of the people of Puerto Rico, and the fact that COR3 was able to negotiate important issues with NFE, PREPA is in a position to acquiesce to the signature of the APA. As such, PREPA requests the Energy Bureau to evaluate the Execution Version of the APA pursuant to the Puerto Rico Energy Transformation and RELIEF Act, as amended ("Act 57-2014") and Puerto Rico Energy Public Policy Act ("Act 17-2019").

14. Finally, and considering the March 15<sup>th</sup> deadline from FEMA to conclude the acquisition process, it is respectfully requested that the present motion be approved by this Bureau in an expedited fashion.

**WHEREFORE**, for the reasons stated above, PREPA respectfully requests that the Energy Bureau **TAKES NOTICE** of the above and **EVALUATE** the Proposed Asset Purchase Agreement.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 15<sup>th</sup> day of March 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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