

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

**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

**SUBJECT:** Resolution and Order in  
response to the URGENT Motion to Submit  
the Execution Version of the Asset Purchase  
Agreement.

**RESOLUTION AND ORDER**

On March 15, 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 to Submit the Execution Version of the Asset Purchase Agreement* ("March 15 Request"),<sup>1</sup> in which PREPA requested that the Energy Bureau evaluate and approve the Proposed Asset Purchase Agreement and designate and treat as confidential Exhibits A, B and C included with the March 15 Request.

The March 15 Request includes three Exhibits (i) Exhibit A which is a redline of the Execution version of the Asset Purchase Agreement between PREPA and NFE Power PR LLC ("NFE") ("APA"); (ii) Exhibit B of the March 15 Request illustrates a string of emails regarding the Borescope inspection of the FEMA Temporary Units which, among others, addresses the *serviceability* of seven equipment items. Exhibit B also addresses a regasification equipment lease. PREPA has made public these items in its March 15 Request in which it states "... *during this very evening, PREPA has been advised by COR3 of various issued that span from units that will need to be taken out of service for repairs, to NFE's refusal to sign a regasification equipment lease agreement critical to the operation of the units.*"<sup>2</sup>; and (iii) Exhibit C which is a clean copy (no redline) of the APA.

According to PREPA, NFE rejected all of PREPA's comments and proposed amendments<sup>3</sup> and the APA does not reflect such comments and proposed amendments. PREPA identifies twenty (20) items that NFE rejected and have not been incorporated in the APA.<sup>4</sup> The twenty items as presented in the March 15 Request are as follows:

1. PREPA: Add a Whereas indicating that the signing of the purchase contract is subject to: 1. Buyer Assessments and Report on the Internal Condition of the Compressor and Turbine Sections of each of the 17 TM500 Units – Any damages or deficiencies found that compromise the availability of the unit shall be addressed by FEMA or NFE. 2. Receipt of all operation and maintenance manuals from the original manufacturer of the auxiliary equipment, turbine and plant balance; designs and as-builts, maintenance reports and inspections, part lists, and vendors lists.
2. PREPA: The capacity of the equipment installed in Palo Seco, under ISO conditions, is 215 MW, and San Juan is 300 MW, for a total of 515 MW, ISO.
3. PREPA: PREPA suggests that COR3 and P3 be included as the parties in charge of the negotiations with NFE.
4. PREPA: The leasing agreement must be provided.

<sup>1</sup> The March 15 Request was filed by PREPA in the procedure *In re: Review of LUMA's Initial Budget*, Case No. NEPR-MI-2021-0004 ("Budget Case").

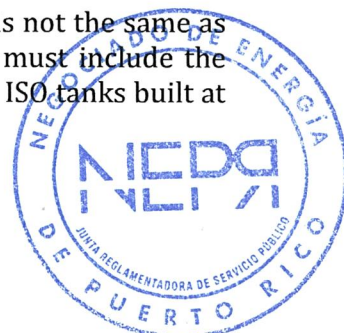
<sup>2</sup> March 15 Request, p. 4, ¶ 3.

<sup>3</sup> *Id.*, p. 2, ¶ 2.

<sup>4</sup> *Id.*, pp. 2-4, ¶ 2.



5. PREPA: Unit operation records, inspections, repairs, OEM manuals, as-built project designs, and acceptance tests of each of the components of the generation system installed in Palo Seco and San Juan must be part of the Contract.
6. PREPA: The amount due at signing/closing should be 25%.
7. PREPA: Any withholding is pending the inspection and reparation cost.
8. PREPA: NFE must provide a certification of payment for municipal taxes related to the project's construction and any other applicable tax.
9. PREPA: Some language should be included regarding the pending equipment inspection and the unit that is under repair.
10. PREPA: NFE must allow PREPA to verify all Maintenance Reports and Inspections.
11. PREPA: NFE shall be responsible for preexisting environmental conditions from the commencement of the Temporary Generation System in SJ and PS until March 15, 2024. -NFE must comply will all state and federal environmental regulations. -NFE shall assume the responsibility and cost of implementing equipment or technologies required by applicable regulations at the time of closing the contract or during its operation. -NFE is responsible for the use, maintenance and repair of their fleets, machinery, or equipment during the pre-closing period. Also, NFE will immediately notify PREPA of any defects, breaks, spills, or other problems related to their equipment or installation that may occur during the supply process. -The designated personnel shall be trained and equipped with containers, absorbent pads or materials, shovels, etc. to contain and/or mitigate any leakage of lubricants, oils or fuel from the ground fleet, machinery or equipment. -NFE will indemnify PREPA from any violations, claims, demands, penalties, physical, property, and environmental damages resulting from the operation, transportation, and supply of fuel activities to our power generating facilities, roads and surrounding lands during the pre-closing period.
12. PREPA: NFE should be responsible for the payment of municipal taxes.
13. PREPA: Clause 7.1 - Conduct of the Business. Clarify the meaning of "with respect to the Acquire Assets only". This clause was eliminated.
14. PREPA: Clause 7.7 (a) - This point requires clarification regarding the tax payment process since FEMA does not refund taxes. The taxes established in the transaction to be subsidized by the federal government must include evidence of payment of the applicable tax.
15. PREPA: The seller shall provide an affidavit declaring that all its suppliers and subcontractors received full payments for the goods and services rendered during the temp generation projects.
16. PREPA: "Parent" is not defined in the draft. Clause 11.5 (b).
17. PREPA: Please provide the draft for the nominal leasing agreement between NFE and Genera PR, LLC. The agreement must ensure that the efficient functioning of the temporary generation units is not compromised or affected at any time. PREPA strongly requests including language in the Agreement to ensure that the \$1.00 lease of the LNG System 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, thus eliminating any risk that the LNG System is removed from the units during the term of their temporary operation.
18. PREPA: The breakdown of equipment in the FEMA-approved PW is not the same as the breakdown of equipment included. The purchase agreement must include the liquefied natural gas regasification systems, the receipt bays of the ISO tanks built at





the PS and SJ plants, and the natural gas totalizer meter at both plants. ISO conditions are defined as 59°F/15°C ambient temperature, sea level, 60% relative humidity, and a pressure of 14.7 psia/1.013 bar.

19. PREPA: The natural gas totalizer meter, which defines the delivery point, must be included in the equipment breakdown. NFE must provide and install one for financial custody. This meter must be similar to the one installed in the measuring station of the SJ Power Station. It should be installed approximately 150ft downstream to the Emergency Block Red Valve.

20. PREPA: This valve defines the boundary of responsibility in maintenance and operation. The Contract must explicitly state that PREPA/Genera is responsible for the maintenance and operation of the downstream system from that valve. From that valve backward is NFE's responsibility.

PREPA states that it also identified that some material clauses from prior drafts were deleted and, thus, are not part of the Execution Version of the APA. PREPA informed that it has been advised by COR3 of various issues that span from units that will need to be taken out of service for repairs, to NFE's refusal to sign a regasification equipment lease agreement critical to the operation of the units. According to PREPA, regarding the regasification equipment, PREPA requested the inclusion of language in the APA to ensure that the \$1.00 lease of the regasification equipment survives regardless of whether or not: i) NFE continues as the gas supplier and ii) Genera continues as the operator of the Legacy Generation Assets, thus eliminating any risk that the regasification equipment is removed from the units during the term of their temporary operation.<sup>5</sup>

The above statements clearly reflect that PREPA maintains open items with the APA presented before the Energy Bureau.

The Energy Bureau notes that PREPA has raised what appear to be important concerns that remain unaddressed in the APA. Moreover, PREPA has not shown its agreement for the APA. Given the circumstances, the Energy Bureau is not, at this time, in a position to evaluate the APA. A final execution document reflecting the agreement of the parties should be submitted for the Energy Bureau's evaluation.

PREPA states that Exhibits A, B, and C, should be given confidential designation and treatment based that they are in a pre-decisional phase and is still subject to deliberations.<sup>6</sup>

The Energy Bureau **GRANTS** confidential treatment to Exhibit A, B and C of the March 15 Request and **ORDERS** PREPA to file, **within five (5) days** of the notification of this Resolution and Order, a redacted version of Exhibit A, B and C as required by Sections 1.4, 6.3 and 6.15 of Act 57-2014, as amended, and the Resolutions issued by the Energy Bureau regarding *Policy on Management of Confidential Information*.<sup>7</sup>

The Energy Bureau **ORDERS** the Clerk to remove the March 15 Request from the Budget Case and incorporate it to the instant proceeding.

Be it notified and published.

<sup>5</sup> *Id.*, p. 4, ¶ 3.

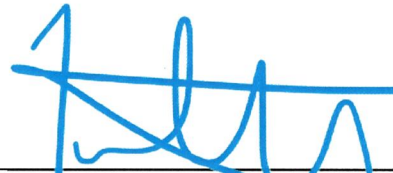
<sup>6</sup> *Id.*, p. 5, ¶ 5.


<sup>7</sup> Resolution, *In re: Policy on Management of Confidential Information in procedures before the Commission*, case no. CEPR-MI-2016-0009, August 31, 2016; and Resolution, *In re: Policy on Management of Confidential Information in procedures before the Commission*, case no. CEPR-MI-2016-0009, September 20, 2016.



  
Edison Avilés Deliz  
Chairman

  
Lillian Mateo Santos  
Associate Commissioner

  
Ferdinand A. Ramos Sotegua  
Associate Commissioner

  
Sylvia B. Ugarte Araujo  
Associate Commissioner

  
Antonio Torres Miranda  
Associate Commissioner

#### CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau have agreed on March 15, 2024. I also certify that in March 15, 2024 a copy of this Resolution and Order was notified by electronic mail to [arivera@gmlex.net](mailto:arivera@gmlex.net); [legal@genera-pr.com](mailto:legal@genera-pr.com); [regulatory@genera-pr.com](mailto:regulatory@genera-pr.com); [kbolanos@genera-pr.com](mailto:kbolanos@genera-pr.com); [brannen@genera-services.com](mailto:brannen@genera-services.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 March 15, 2024.

  
Sonia Seda Gaztambide  
Clerk

