

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

NEPR
Received:
Mar 15, 2024
12:21 AM

IN RE: REVIEW OF LUMA'S INITIAL
BUDGETS

CASE NO.: NEPR-MI-2021-0004

**URGENT MOTION TO SUBMIT THE
EXECUTION VERSION OF THE ASSET PURCHASE AGREEMENT**

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 March 13th, 2024, PREPA filed an Urgent Motion for Budget Revision to Purchase the Temporary Generation System before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau"). Through said motion, PREPA requested the Energy Bureau to revise the HoldCo FY 2024 Budget and authorize an increase in the amount of \$30,659,875.65, to cover the 10% of the purchase price of the Temporary Generation System not contemplated in the PW 11628. Further, PREPA informed that it would submit the final draft of the Asset Purchase Agreement and any additional documents or information required by the Energy Bureau as soon as they become available.

2. This afternoon, COR3 notified PREPA with the Execution Version of the Asset Purchase Agreement (“APA”). After a preliminary review, PREPA identified that NFE rejected all of its comments and proposed amendments. These, are summarized as follows:

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.

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.

PREPA: PREPA suggests that COR3 and P3 be included as the parties in charge of the negotiations with NFE.

PREPA: The leasing agreement must be provided.

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.

PREPA: The amount due at signing/closing should be 25%.

PREPA: Any withholding is pending the inspection and reparation cost.

PREPA: NFE must provide a certification of payment for municipal taxes related to the project's construction and any other applicable tax.

PREPA: Some language should be included regarding the pending equipment inspection and the unit that is under repair.

PREPA: NFE must allow PREPA to verify all Maintenance Reports and Inspections.

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.

PREPA: NFE should be responsible for the payment of municipal taxes.

PREPA: Clause 7.1 - Conduct of the Business. Clarify the meaning of "with respect to the Acquire Assets only". This clause was eliminated.

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.

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.

PREPA: "Parent" is not defined in the draft. Clause 11.5 (b).

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.

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.

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.

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.

3. PREPA has also identified that some material clauses from prior drafts were deleted and, thus, are not part of the Execution Version of the APA. See Exhibit A. Moreover, during this very evening, PREPA 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. See Exhibit B. With regards to the regasification equipment, PREPA requested including 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, thus eliminating any risk that the regasification equipment is removed from the units during the term of their temporary operation.
4. Notwithstanding the above, and according to COR3 and P3 whom, as previously explained, are the entities in charge of the negotiations for the purchase of the Temporary Generation System, **NFE is only willing to sign the Execution Version of the APA as drafted.** Pursuant to the above, PREPA hereby submits the Proposed APA for the PREB's evaluation and approval. See Exhibit C.

5. The **Exhibits A, B and C**, are confidential given that it is pre-decisional, has yet to be executed, and is still subject to deliberations and approval of both the Energy Bureau and the Oversight Board. Permitting access to those deliberations through the Proposed APA disclosure would undermine the very interests that the deliberative process privilege is intended to protect: discouraging the free exchange of ideas among public officials by subjecting their private deliberations to public scrutiny. There is no need to intrude upon internal government deliberations to interpret those documents. Therefore, PREPA requests that the Proposed APA be treated as confidential pending its approval and execution.

WHEREFORE, for the reasons stated above, PREPA respectfully requests that the Energy Bureau evaluate and approve the Proposed Asset Purchase Agreement and treat it as confidential, Exhibit A, B and C.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 14th 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.

GONZÁLEZ & MARTÍNEZ
1509 López Landrón
Seventh Floor
San Juan, PR 00911-1933
Tel.: (787) 274-7404

s/ Mirelis Valle Cancel

Mirelis Valle-Cancel

TSPR No.: 21,115

E-mail: mvalle@gmlex.net

s/ Alexis G. Rivera Medina

Alexis G. Rivera-Medina

TSPR No.: 18,747

E-mail: arivera@gmlex.net