

**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 DECEMBER 8TH ORDER
REGARDING HOLDCO'S RIGHTSIZING**

I. Introduction

1.1. On December 8th, 2023, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a *Resolution and Order* ("December 8th Order") whereby it ordered PREPA, *inter alia*, to prepare and submit for the Energy Bureau's review:

...a Detailed Plan with action items, expected results, responsible party(ies), and due dates needed to achieve the reduced headcount footprint and labor expenses, starting on July 1, 2024, to get the HoldCo Organization in line with both staffing levels and business operations that correctly correspond to its substantially downsized mandated and associated approved budgets as it was originally approved in the June 25 Resolution ("Detailed Plan").

1.2. It further ordered PREPA to submit, following the filing of the Detailed Plan, "a Monthly Status Update on the status of the defined actions and any added corrective actions needed to take to achieve the desired results by July 1, 2024." ("Monthly Status Update").

1.3. In compliance with the December 8th Order, PREPA informs as follows.

II. Relevant Background

2.1. With LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly hereafter, "LUMA") and Genera PR, LLC ("Genera") as the selected private operators of PREPA's T&D system and generation assets, HoldCo LLC's ("HoldCo") roles and responsibilities have been modified. Throughout the transformation and transition process, PREPA has been working diligently to establish clear guidelines and operating responsibilities to eliminate duplicity and redundancy with LUMA and Genera.

2.2. HoldCo is comprised of the following six (6) departments: 1) Finance Department, 2) Legal Affairs Department, 3) IT/OT Department, 4) Human Resources Department, 5) Asset Management and Regulations, and 6) Executive Office (which includes the Office for PREPA's Board of Directors). Pension Administration, PropertyCo LLC and HydroCo LLC are **not** part of HoldCo.

2.3. As part of PREPA's transformation process, the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF") performed an analysis of PREPA's organization.

2.4. In preparation for the Genera transition, PREPA performed a thorough analysis of its operation and responsibilities, to determine the necessary headcount for its subsidiaries. As a result, on April 12th, 2023, PREPA informed AAFAF that, to guarantee proper operation and compliance with its legal duties, HoldCo would require a **minimum** roster of **119 employees**.¹

¹ On April 12th, 2023, PREPA also informed AAFAF that it would need: 41 employees for the Pension Administration, two (2) employees for PropertyCo LLC, and 225 employees for HydroCo LLC. The

2.5. On April 27th, 2023, AAFAF prepared a report whereby it recommended an organization structure for PREPA (“AAFAF Report”). Shockingly, the AAFAF Report projected that HoldCo would only require a roster of **28 employees**.² It is unclear what analysis was conducted by AAFAF to reach said conclusion.

2.5 On May 3rd, 2023, PREPA notified AAFAF its comments to the AAFAF Report. PREPA’s most relevant comments can be summarized as follows:

- a. PREPA recommended function review and monitoring to take place prior to the Genera transition; not afterward. PREPA explained that during the LUMA transition, PREPA’s staff was significantly reduced, without first performing an analysis of the required functions and monitoring of PREPA’s workload. This caused a serious disruption in the execution of PREPA’s duties and responsibilities.
- b. PREPA emphasized that, following Genera’s commencement, PREPA would still be responsible for executing federally funded projects for the reconstruction of water assets (approximately \$2.8 billion). As such, it informed it would require an adequate technical and administrative structure. PREPA warned that it could lose federal funds assigned to the water assets reconstruction if it lacked enough employees to execute the required tasks.
- c. PREPA highlighted that, while the O&M of its thermal generation fleet would be transferred to Genera effective July 1st, 2023, PREPA would continue to have operational functions. Specifically, it would continue to be responsible for the operation of 28 hydroelectric units at 15 sites, 3 irrigation systems, and 20 dams and reservoirs. As such, PREPA clarified it was not correct for AAFAF to assert that, after the Genera transition, PREPA would only retain limited functions like “legally mandated core financial reporting and record keeping,

grand total of employees for Pension Administration, PropertyCo LLC, HydroCo LLC and HoldCo. is **387**.

² The AAFAF Report proposed 35 employees for Pension Administration, two (2) employees for PropertyCo and 160 employees for HydroCo.

resolution of legacy legal obligations, financing activities (as required) and reporting, compliance functions”.

- d. PREPA objected to AAFAF’s proposal for “Cross-Functional Resources”: PREPA explained that, due to the specialized nature of the utility’s duties and responsibilities, it was not possible to “[l]everage remaining resources through cross-functional sharing of personnel and responsibilities.” For example, an expert in environmental protection does not have the skills set needed for developing the scope of work of an engineering, procurement, and construction project, and vice versa. Hence, it was not possible, nor practical, to assign a single employee to execute many different functions that fell outside of his or her expertise area.
- e. PREPA disagreed with the total headcount proposed by AAFAF of 28 employees for HoldCo, which represented a reduction of 79.5% of the 119 employees suggested by PREPA. PREPA explained that the proposed 28 employees were not enough to comply with its duties and responsibilities after Genera’s commencement date. In addition, PREPA asserted that such significant reduction should be based on empirical data collected in Puerto Rico, particularly considering that Puerto Rico’s law system is much more complex and encompassing than other jurisdictions in the USA. PREPA stressed that it had to comply with many more laws and regulations than other utilities on the mainland.

See Exhibit A-1 – PREPA’s Comments to the AAFAF Report.

2.6 As part of its comments to the AAFAF Report, on May 3rd, 2023, PREPA also notified AAFAF with a document titled *PREPA’s Proposed Organizational Structure* (“PREPA’s May 3rd Proposal”) whereby it presented a revised proposed headcount. In PREPA’s May 3rd Proposal, PREPA explained that it was submitting the headcount required to **minimally** execute its obligations and responsibilities. See Exhibit A-2 - PREPA’s May 3rd Proposal. In other words, the revised headcount submitted in PREPA’s May 3rd Proposal would not enable optimal performance of its subsidiaries, but rather the bare minimum.

2.7 Considering all its responsibilities, PREPA's May 3rd Proposal proposed a minimum headcount of **71 employees**, subject to a monitoring process during the first semester of FY 2024 to determine whether additional employees were needed. PREPA warned that, under no circumstances, HoldCo's headcount should be less than 71 employees.³

2.8 Unfortunately, AAFAF failed to adopt PREPA's proposals for HoldCo.

2.9 On or about June 9th, 2023, AAFAF conferred with PREPA's Governing Board and recommended a total headcount of 255 employees for PREPA: 56 employees for HoldCo; two (2) employees for PropertyCo; 29 employees for the Pension Administration; and 168 employees for HydroCo.

2.10 During AAFAF's conferences with PREPA's Governing Board, PREPA's Executive Director and management tenaciously **opposed** AAFAF's proposed headcount of 255 employees. In essence, PREPA's Executive Director and management asserted that the 255 figure was arbitrary, would leave PREPA severely understaffed and, thus, unable to comply with its legal responsibilities and obligations.

2.11 On June 9th, 2023, via Resolution 5064, PREPA's Governing Board approved AAFAF's recommended headcount of 255 employees for PREPA, with a **56 headcount for HoldCo**. However, PREPA's Governing Board's decision was

³ The PREPA's May 3rd Proposal adopted the AAFAF's Report proposed thirty-five 35 employees for Pension Administration, two (2) employees for PropertyCo and 160 employees for HydroCo, subject to monitoring process of each subsidiary's workload during the first semester of FY 2024, to determine, with empirical information, whether any headcount adjustments were necessary.

not final, and was subject to subsequent analysis to determine whether additional personnel were required in any of PREPA's subsidiaries.

III. Headcount Reduction Action Plan Update

3.1. In compliance with the Energy Bureau's the December 8th Order, PREPA informs that its employee headcount could not be reduced to the required 255-full time employees **on day 1** of FY 2024. Attaining the 255-headcount threshold required two (2) primary efforts which extended between July and November 2023:

- (1) An orderly phase out of PREPA employees that resigned, retired, and/or mobilized during the first three months of FY 2024 ("Mobilization"), and
- (2) The reclassification of certain employees to positions that have expanded administrative and operations responsibilities, because of the reorganization after July 1st, 2023 ("Reclassification").

3.2. Under both scenarios, PREPA continued to be responsible for these employee's salaries and benefits until they officially exited PREPA's roster either through Mobilization or Reclassification.

3.3. As of November 28th, 2023, PREPA's FY24 labor operating headcount for **HoldCo was 56**; for PropertyCo two (2); for the Pension Administration 29; and for HydroCo 168, for a total of 255. As such, since November 28th, 2023, PREPA is in compliance with AAFAF's recommended organizational structure as approved by PREPA's Governing Board.

3.4. These rightsizing efforts have all been undertaken and led by PREPA's Finance Directorate.

3.5. Since PREPA is in compliance with the required headcount and will continue to be unless otherwise authorized, PREPA requests the Energy Bureau to rescind its requirement for a Monthly Status Update on this particular.

IV. Need for Headcount Increase in FY 25

4.1 While PREPA is in compliance with AAFAF's proposed total headcount of 255, it is respectfully informed that said headcount is **insufficient**.

4.2 After performing a preliminary analysis, PREPA has identified that to properly operate, maintain, and repair its hydroelectric plants, HydroCo will need approximately **57 additional employees**, including but not limited to, engineers, welders, office personnel, maintenance personnel, electricians, etc. This is consistent with PREPA's April 12th proposed headcount of 225 employees for HydroCo.

4.3 With regards to the Irrigation District (*Riego*), PREPA has identified, preliminarily, that it will need approximately **26 additional employees** to properly operate, maintain, and repair its irrigation canals.

4.4 With regards to HoldCo, various directorates are understaffed and, as a result, its employees overworked. This is particularly true in the Finance, Human Resources and Legal Affairs Directorates. To comply with its multiple legal duties and obligations, these directorates will also need additional employees or an increased budget to outsource the required services.

4.5 PREPA is currently preparing its FY 2025 labor and non-labor operating budget. Considering the need for additional headcount, PREPA is projecting that its labor budget will exceed that of the previous year.

4.6 As part of its submission for the FY25 budget, PREPA will substantiate its need to revise and increase the current headcount.

V. Request for Confidential Treatment

5.1 Exhibit A-2 PREPA's May 3rd Proposal contains information subject to the deliberative privilege, as it includes *predecisional* materials written as part of the decision-making process in PREPA in connection with its headcount rightsizing. Additionally, it includes financial information of PREPA's employees which is protected by the Right to Privacy established in the Puerto Rico Constitution. See, e.g., Const. ELA, Art. II, Sections 8 and 10, (which protect the right to control personal information and applies *ex proprio vigore* against private parties). See also Act 122-2019, Article 4(vi) (which provides, as an exception to the rule on public disclosure, information the disclosure of which could invade the privacy of third parties or affect their fundamental rights); and Article 3(c) of Act 122-2019 (stating that personnel files and similar information does not constitute public information subject to disclosure).

5.2 It is respectfully submitted that giving confidential treatment to Exhibit A-2 affects neither the public's nor the Energy Bureau's review of the instant motion.

5.3 As such, PREPA very respectfully requests the Energy Bureau to grant confidential treatment to Exhibit A-2.

5.4 In the event the Energy Bureau denies PREPA's petition for confidentiality, PREPA very respectfully requests authorization to withdraw Exhibit A-2.

WHEREFORE, PREPA very respectfully requests the Energy Bureau to take **NOTICE** of the information submitted herein, deem the December 8th Order as **COMPLIED WITH** by PREPA, **RESCIND** the requirement for a Monthly Status Update, and **GRANT** Exhibit A-2 confidential treatment.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 22nd day of March 2023.

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>, and courtesy copies were sent via e-mail to LUMA Energy, LLC through its counsels of record and to Genera-PR, LLC through its counsels of record.

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