

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

IN RE: REVIEW OF LUMA'S INITIAL
BUDGETS

CASE NO.: NEPR-MI-2021-0004
SUBJECT: Determination for *Urgent Motion for Approval of the Conditionally Authorized Budget for External Audit and Motion in Compliance with December 8th Resolution.*

RESOLUTION AND ORDER

I. Factual Background

On May 16, 2023, LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly referred to as "LUMA") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau"), a document titled *Submission of Consolidated Annual Budgets for Fiscal Year 2024 and Proposed Annual T&D Projections Through Fiscal Year 2026* ("May 16 Motion"). The May 16 Motion included: (i) the proposed T&D budget developed by LUMA, (ii) the proposed generation budget developed by Genera PR, LLC ("Genera") on behalf of the Puerto Rico Electric Power Authority ("PREPA") for the PREPA subsidiary GENCO LLC ("GenCo"), and the proposed Budget developed by PREPA for its holding company, HoldCo, and its subsidiaries PREPA HydroCo LLC ("HydroCo") and PREPA PropertyCo, LLC ("PropertyCo").

On June 25, 2023, the Energy Bureau issued a Resolution and Order ("June 25 Resolution") through which it modified the Proposed Consolidated Fiscal Year 2024 ("FY24") Budget submitted by LUMA and approved the modified budgets subject to compliance with various orders in the June 25 Resolution. The Energy Bureau further ordered PREPA to file for review and approval, any new contract or amendment to an existing contract, before executing or making any award of such contract or amendment.

On July 7, 2023, PREPA filed a document titled, *Motion to Submit PREPA's Contract for Professional Services in Compliance with Portion of the June 25 Order and Urgent Request for Approval*, through which, PREPA submitted a contract for approval.

On July 7, 2023, PREPA filed a document titled, *Second Motion to Submit PREPA's Contract for Professional Services in Compliance with Portion of the June 25 Order and Urgent Request for Approval* ("Second July 7 Motion"), through which, PREPA submitted several contracts for approval.

On July 7, 2023, PREPA filed a document titled, *Third Motion to Submit PREPA's Contract for Professional Services in Compliance with Portion of the June 25 Order and Urgent Request for Approval* ("Third July 7 Motion"), through which, PREPA submitted several contracts for approval.

On August 14, 2023, the Energy Bureau issued a Resolution and Order ("August 14 Resolution"),¹ through which it emphasized that PREPA may not have funding for the contracts it originally sought and therefore, in accordance with its reduced responsibilities, PREPA must effectively prioritize the contracts for which it seeks approval. The Energy Bureau required PREPA to demonstrate that the contracts for which it seeks approval have been efficiently bid, negotiated, and monitored, are the most cost-effective contracts for necessary services and are not duplicative of work that should be done by LUMA or Genera in accordance with their respective OMAs or by PREPA's internal resources, among other requirements.

¹ See, Resolution and Order, *In Re: Review of LUMA's Initial Budgets*, Case No.: NEPR-MI-2021-0004, August 14, 2023 (August 14 Resolution).



On July 19, August 3, and August 14, 2023 (July 19, August 3, and August 14 Resolutions),² the Energy Bureau issued Resolutions and Orders, through which, it ordered PREPA to submit in all future filings a table reflecting the approved and proposed contracts, the amounts approved and proposed for those contracts, the line items from the category to which they correspond, and the remaining balance for that category considering said amounts. The August 14, 2023

Resolution and Order ("August 14 Resolution") specifically directs PREPA to demonstrate that the contracts for which it seeks approval are the most cost-effective contracts for necessary services.

On August 16, 2023, the Energy Bureau issued a Resolution and Order ("August 16 Order"), in which it ordered PREPA to file a table regarding the totality of the approved and proposed contracts for FY2023.

On August 29, 2023, the Energy Bureau issued a Resolution and Order ("August 29 Order"), in which it granted PREPA's request for extension until September 1, 2023, to comply with the August 14, 2023 Request of Information and the August 16 Order.

On September 5, 2023, PREPA filed a document titled, *Motion to Submit a List of Approved, Proposed, and Impending Contracts Including Operations Division and in Compliance with the August 29 Order* ("September 5 Motion"), through which, PREPA submitted an updated list of approved and proposed contracts.

On September 22, 2023, the Energy Bureau issued a Resolution and Order ("September 22 Resolution"), through which, the Energy Bureau increased the HoldCo Operating Budget in the amount of \$3.673 MM for certain specific uses, subject to reporting requirements. The Energy Bureau warned PREPA it must prioritize its expenditures and adhere to the approved budgets, and that it must not resubmit without new supportive material, budgets which are essentially the same or similar to budgets that the Energy Bureau has reviewed and for which it has issued a determination.

On November 7, 2023, PREPA filed a document titled, *Motion in Compliance with Orders and Request for Approval of Revised Proposed Budget* ("November 7 Motion") through which PREPA submitted for Energy Bureau review and approval several contracts PREPA proposed to execute in FY 2024 and requested that the approved FY 2024 budget be amended to increase its allocation. PREPA noted that the list of contracts it presented for approval was not complete and would be supplemented as additional information became available.

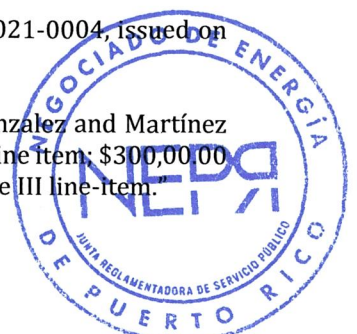
On December 8, 2023, the Energy Bureau issued a Resolution and Order ("December 8 Resolution") through which, it partially approved PREPA's request for an increase to the HoldCo Non-Labor budgets, subject to several conditions, and required submittal of renegotiated contracts and newly submitted contracts to reflect the requirements ordered in the August 14 Resolution.

On February 12, 2024, PREPA filed a document titled, *Motion in Compliance with the December 8th Resolution* ("February 12 Motion"), through which, PREPA submitted for approval, three contracts in compliance with the December 8 Resolution. PREPA requested approval for contracts with ScottMadden, Inc. (ScottMadden) for \$236,000, Nexvel Consulting, LLC ("Nexvel") for \$58,000.00, and Gonzalez & Martinez Law Offices P.S.C ("Gonzalez & Martinez") for a second amendment of \$300,000.00.³

In the February 12 Motion, PREPA explains that the Puerto Rico Treasury Department retained the services of contractors to complete the drafting and auditing process of PREPA's 2022 and 2023 financial statements and PREPA need not retain the services of contractors

² See, Resolution and Order, *In re: Review of LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, Issued on July 19, August 3, and August 14, 2023.

³ February 12 Motion, p. 7, fn. 4, "The total amount of the second amendment to the Gonzalez and Martínez Contract is \$1,000,000.00 to be allocated as follows: \$450,000.00 from the Legal Services line item; \$300,000.00 from the External Audit Services line-item; and \$250,000.00 from the Restructuring & Title III line-item."



for that purpose, however, other contractors are necessary for PREPA to complete the 2022 and 2023 financial statements that will not be retained by the Puerto Rico Treasury Department.⁴ PREPA requests that in compliance with the December 8 Resolution, the Energy Bureau authorize PREPA to sign the subject contracts, to be funded through the conditionally approved budget.

PREPA further describes the services to be provided by ScottMadden, Nexvel, and Gonzalez and Martinez and in compliance with the August 14 Resolution explains the oversight and certification that will be accorded to each contract. PREPA also describes the review that invoices will receive. For the ScottMadden and Nexvel contracts, PREPA describes its success in renegotiating the contracts at a lower cost. Further to the August 14 Resolution, PREPA explains that the work to be performed by each contractor cannot be performed by PREPA's existing staff or rendered by LUMA, Genera, and/or the Puerto Rico Public Private Partnership Authority. PREPA provides the certification form it will use and copies of the contracts for which approval is requested. PREPA notes that the contracts for which approval is requested may differ from the contracts it previously submitted, as a result of PREPA's efforts to meet its obligations using existing resources.⁵

PREPA requests approval of the contracts and that it asserts has complied with the December 8 Resolution.

On April 3, 2024, PREPA filed a document titled, *Urgent Motion for Approval of the Conditionally Authorized Budget for External Audit* ("April 3 Motion"), through which, PREPA requests that the Energy Bureau grant final approval to increase the HoldCo Non-Labor External budget line item of \$751,000.00 that was conditionally approved in the December 8 Resolution, as described in the February 12 Motion.

II. Analysis and Conclusion

The Energy Bureau reviewed PREPA's Motions and notes that although in the February 12 Motion, PREPA complied with certain aspects of the December 8 Resolution, it did not comply with the Energy Bureau's specified requirements for contract approval. Through resolutions issued on July 19, August 3, and August 14, 2023, the Energy Bureau ordered PREPA to submit in all future filings for contract approval, a table reflecting the approved and proposed contracts, the amounts approved and proposed for those contracts, the line items from the category to which they correspond, and the remaining balance for that category considering said amounts. This information was not included in the February 12 Motion. Except for the Gonzalez & Martinez Contract, the specific budget line from which PREPA intends the requested funding to come is not clearly specified. PREPA's omission of information based on longstanding requirements such as this is frustrating.

The Energy Bureau specified in the August 14 Resolution, several procedures with which it required PREPA to comply, regarding justification of external contract need, cost effectiveness and oversight.⁶ In its February 12 Motion, PREPA cites its compliance with these policies as justification for Energy Bureau approval for the conditionally approved budget for the cited contracts.

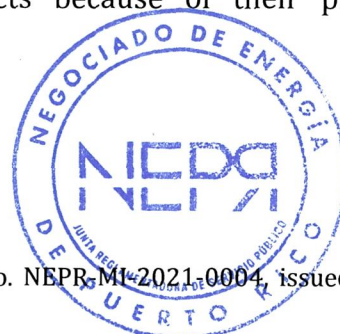
The Energy Bureau notes its determination in the January 23 Resolution and Order,⁷ "With that admonition, the Energy Bureau will no longer require PREPA to submit contracts for approval." PREPA is urged to heed the admonition and advisory statements in that Resolution and Order. The Energy Bureau understands that PREPA **resubmitted** the ScottMadden, Nexvel, and Gonzalez and Martinez contracts because of their prior

⁴ February 12 Motion, p. 5.

⁵ February 12 Motion, pp. 5 - 8.

⁶ August 14 Resolution, p. 4.

⁷ Resolution and Order, *In re: Review of LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, issued on January 23, 2024 ("January 23 Resolution"), pp. 3-4.



submission and resulting Energy Bureau determination that PREPA **was required to provide additional supportive material in accordance with the December 8 and August 14 Resolutions.**

The Energy Bureau is aware that the FOMB transferred funds to the Department of Treasury to complete the PREPA 2022 and FY 2023 Financial Statements, as- referenced by PREPA in its February 12 Motion.⁸ PREPA asserts that certain contractors related to the FY 2022 and FY 2023 audited financial statements have not and will not be retained by the Puerto Rico Treasury Department,⁹ however, PREPA does not explicitly state that the contractors for which it seeks funding authorization fall within that category.

The Energy Bureau has reviewed the public documents in which FOMB approved¹⁰ the transfer of funds for completion of the FY 2022 and FY 2023 PREPA audited financial statements and views their terms as encompassing all relevant contracts for the 2022 and 2023 audited financial statements, notwithstanding PREPA's indications to the contrary.¹¹ The Energy Bureau, accordingly, determines that all contracts for work on the FY 2022 and FY 2023 audited financial statements, including those for which PREPA seeks funding authorization in its February 12 Motion, are to be funded by the Department of Treasury rather than from PREPA's budget.

The Energy Bureau notes the availability of \$1.108 MM in the HoldCo External Audit Budget Line,¹² for PREPA to fund contractors for work on other than the FY 2022 and FY 2023 financial statements. The Energy Bureau strongly urges PREPA to ensure, that any contracts it enters into, fully comply with the Energy Bureau Requirements regarding justification of external contract need, cost effectiveness and oversight as set forth in the August 14 Resolution.

The Energy Bureau **TAKES NOTICE** that PREPA **COMPLIED** with the August 14 Resolution requiring PREPA to include robust policies and procedures for management of external consulting engagements.

Until further documentation justifying from the agencies that indicate they are proving such FY2022 and FY2023 PREPA auditing services, the Energy Bureau **DENIES** PREPA's request for approval of budget allocations for the ScottMadden, Nexvel and Gonzalez & Martinez contracts.

The Energy Bureau **ORDERS** PREPA to file within ten (10) days of the notification of this Resolution and Order full documentation¹³ to support any contention PREPA may assert

⁸ February 12 Motion, pp. 2 – 5.

⁹ February 12 Motion, p. 5.

¹⁰ FY2022 Financial Statements:

https://docs.oversightboard.pr.gov/n/id6ek3qs8yrm/b/BUD_DOCS/o/PP+2024-28632+Cover_7452.pdf?_gl=1*1eniitj*_ga*MTY3MDI1ODgwMS4xNTk5NTk4NDA2*_ga_LVK7G3FFVG*MTcxMzE4OTk3NC4yNTQuMS4xNzEzMTkxMjU4LjAuMC4w (last verified April 17, 2024).

FY 2023 Financial Statements:

https://docs.oversightboard.pr.gov/n/id6ek3qs8yrm/b/BUD_DOCS/o/PP+2024-47237+Cover_8288.pdf?_gl=1*zjipqp*_ga*MTY3MDI1ODgwMS4xNTk5NTk4NDA2*_ga_LVK7G3FFVG*MTcxMzE4OTk3NC4yNTQuMS4xNzEzMTkxMjU4LjAuMC4w (Last verified April 17, 2024).

¹¹ February 12 Motion, p. 5.

¹² December 8 Resolution, p. 10.

¹³ This includes any documentation from the Puerto Rico Treasury Department and/or the Puerto Rico Office of Management Budget.



that a contract for the FY 2022 or FY 2023 audited financial statements has not and will not be funded by the Department of Treasury and therefore is strictly required to be utilized from the \$1.108 MM in the HoldCo External Audit Budget Line as approved in the December 8 Resolution.

The Energy Bureau **WARNS** PREPA that:

- (i) noncompliance with this Resolution and Order, regulations and/or applicable laws may carry the imposition of fines and administrative sanctions of up to \$25,000 per day;
- (ii) any person who intentionally violates Act 57-2014, as amended, by omitting, disregarding, or refusing to obey, observe, and comply with any rule or decision of the Energy Bureau shall be punished by a fine of not less than five hundred dollars (\$500) nor over five thousand dollars (\$5,000) at the discretion of the Energy Bureau; and
- (iii) for any recurrence of non-compliance or violation, the established penalty shall increase to a fine of not less than ten thousand dollars (\$10,000) nor greater than twenty thousand dollars (\$20,000), at the discretion of the Energy Bureau.

Be it notified and published.

	
Edison Aviles Deliz Chairman	
	
Lillian Mateo Santos Associate Commissioner	Ferdinand A. Ramos Soegaard 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 agreed on April 18, 2024. Also certify that on April 18, 2024, I have proceeded with the filing of this Resolution and Order and was notified by email to pre@promesa.gov; margarita.mercado@us.dlapiper.com; julian.angladapagan@us.dlapiper.com; mvalle@gmlex.net; arivera@gmlex.net; legal@genera-pr.com; regulatory@genera-pr.com; jfr@sbgblaw.com; alopez@sbgblaw.com.

I sign in San Juan, Puerto Rico, today, April 18, 2024.

	 Sonia Seda Gaztambide Clerk
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