

**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 of PREPA Motion in Compliance with December 8, 2024 Resolution and Urgent Motion for Approval of the Conditionally Authorized Budget for External Audit.

RESOLUTION AND ORDER

I. Introduction and Factual Background

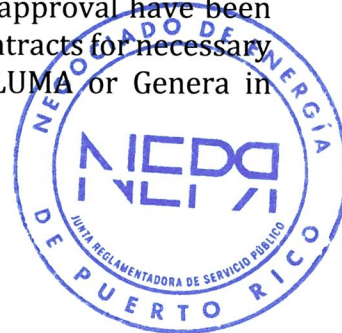
On May 16, 2023, LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly referred to as "LUMA") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau"), a document titled *Submission of Consolidated Annual Budgets for Fiscal Year 2024 and Proposed Annual T&D 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* ("July 7 Motion"), through which, PREPA submitted for Energy Bureau approval, a professional services contract for legal services.

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 for Energy Bureau approval, twenty-four contracts for legal, security, technical, and financial services it had entered into without Energy Bureau 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 for Energy Bureau approval, eight contracts for technical support services in connection with PREPA's day-to-day operational activities.

On August 14, 2023, the Energy Bureau issued a Resolution and Order ("August 14 Resolution"), through which it emphasized that PREPA may not have funding for the contracts it originally sought and 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 (Generation OMA and T&D OMA)¹ or by PREPA's internal resources, among other requirements.

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 for \$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.

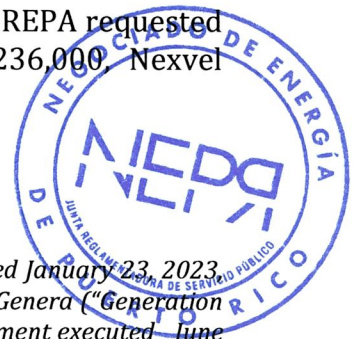
On November 7, 2023, PREPA filed a document titled, *Motion in Compliance with Orders and Request for Approval of Revised Proposed Budget* ("November 7 Motion") through which PREPA submitted for Energy Bureau review and approval several contracts PREPA proposed to execute in FY 2024 and requested that 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

¹ Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement executed January 23, 2023, between the Puerto Rico Public-Private Partnership Authority ("P3 Authority"), PREPA and Genera ("Generation OMA"). Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement executed June 22, 2020, between PREPA, P3 Authority and LUMA ("T&D OMA").

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.



Consulting, LLC (“Nexvel”) for \$58,000.00, and González & Martínez Law Offices P.S.C (“González & Martínez”) 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 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 González & Martínez 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 provides 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.

On April 18, 2024, the Energy Bureau issued a Resolution and Order (“April 18 Resolution”), through which, the Energy Bureau denied PREPA’s request for approval of budget allocations for the ScottMadden, Nexvel and González & Martínez contracts until PREPA provides further documentation from the entities that indicate they are funding FY 2022 and FY 2023 auditing services.

On April 29, 2024, PREPA filed a document titled, *Motion in Compliance with Resolution and Order of April 18th 2024* (“April 29 Motion”), through which PREPA certified that “...no contract with ScottMadden, Nexvel, or González & Martínez for PREPA’s FY 2022 or FY 2023 audited financial statements has or will be funded by the Department of Treasury, and as such, PREPA is strictly required to use the Conditionally Authorized Budget of \$751,000 for these purposes.”⁶ PREPA requests that the Energy Bureau grant final approval to increase the budget line-item of \$752,000 that was conditionally authorized by the Energy Bureau in the December 8 Resolution.

II. Analysis and Conclusion

The Energy Bureau review of the three contracts for support of the FY 2022 and FY 2023 certified audits that PREPA proposes for approval, considers, the Public Private Partnership Authority critically important approval of the expenditure of about \$25 million for FY 2022 and FY 2023 Audit services, with those funds to come from sources other than PREPA’s

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; \$300,00.00 from the External Audit Services line-item; and \$250,000.00 from the Restructuring & Title III line-item.”

⁴ *Id.* at p. 5.

⁵ February 12 Motion, pp. 5 - 8.

⁶ April 29 Motion, p. 3.



approved budget. PREPA's expenditure of its own funds for this purpose is unnecessary or prudent.

The FOMB⁷ emphasized the importance of PREPA's accounting system remediation, stating that "PREPA's accounting system has lacked accuracy and reliability, and any issues or deficiencies should have been addressed promptly and effectively." The FOMB further noted that the FY 2024 Commonwealth Budget assigned about \$25 million to the Puerto Rico Department of Treasury to lead the accounting system remediation efforts, with support from relevant stakeholders.⁸

The Energy Bureau acknowledges the FOMB's concern, and the funding allocated to the Department of Treasury for the accounting system remediation. The Department of Treasury, with the allocated resources and in collaboration with PREPA and other stakeholders, is well positioned to address the accounting system remediation and support the FY 2023 audit process within the timeframe set forth by PREPA. PREPA explained that the FY 2022 audit process has been completed.⁹

PREPA asserts that it was unable to retain the services of ScottMadden and Nexvel for the drafting and subsequent audit of its FY 2022 financial statements due to its lack of authorized budget, and that as a result, the issuance of FY 2022 financial statements was delayed¹⁰ This rationalization for delay is unavailing, given that the Department of Treasury has funded or will fund contractors for PREPA's drafting and auditing work for FY 2022 and FY 2023,¹¹ and PREPA has not adequately explained why it cannot use its internal resources to provide material requested by the auditor, an activity that may not covered by the Department of Treasury funding.

As explained in the April 18 Resolution, the Energy Bureau reviewed the public documents in which the FOMB approved¹² the transfer of funds for completion of the FY 2022 and FY2023¹³. The Energy Bureau determined that all necessary contracts for work on the FY 2022 and FY 2023 audited financial statements, including services for which PREPA initially seeks funding authorization in its February 12 Motion from Nexvel, ScottMadden and González & Martínez, were to be funded by the Department of Treasury rather than from PREPA's budget.

The scope of services provided by Nexvel adequately differentiates that contract from the services funded by the Department of Treasury. Funding for this contract through PREPA's budget does not conflict with funds for External Audit services provided by the Department of Treasury. Based on PREPA's certification that the services are not and will not be covered by the Department of Treasury and the availability of approved budget funds, the Energy Bureau authorizes PREPA to use \$58,000 from the External Audit Services budget-line to fund this contract.

⁷ Financial Oversight and Management Board ("FOMB").

⁸ Financial Oversight and Management Board for Puerto Rico. (2023, October 11). Letter to PREPA Executive Director Josué Colón Ortiz, <https://oversightboard.pr.gov/documents/> (last visit, May 10, 2024).

⁹ See, April 29 Motion, p. 4.

¹⁰ February 12 Motion, p. 4.

¹¹ *Id.* at p. 5.

¹² FY2022 Financial Statements:

https://docs.oversightboard.pr.gov/n/id6ek3qs8yrm/b/BUD_DOCS/o/PP+2024-28632+Cover_7452.pdf?gl=1*1eniiti*ga*MTY3MDI1ODgwMS4xNTk5NTk4NDA2*ga_LVK7G3FFVG*MTcxMzE4OTk3NC4yNTQuMS4xNzEzMTkxMjU4LjAuMC4w (last visit, May 10, 2024).

FY 2023 Financial Statements:

https://docs.oversightboard.pr.gov/n/id6ek3qs8yrm/b/BUD_DOCS/o/PP+2024-47237+Cover_8288.pdf (last visit, May 10, 2024).

¹³ February 12 Motion, p. 5.



PREPA has not adequately explained why the services provided by ScottMadden¹⁴ and González & Martínez, which PREPA seeks to fund from its approved External Audit Budget line, are not covered by the audit services being funded by Department of Treasury in support of the FY 2022 and FY 2023 certified audits. PREPA did not provide documentation from either the Department of Treasury or the Public Private Partnership Authority verifying those entities are not funding the requested contracts. This documentation was required by the Energy Bureau in its April 18 Resolution¹⁵ In its April 29 Motion, PREPA instead responded by submitting a Certification from its Finance Department confirming that no contract with ScottMadden, Nexvel or González & Martínez for PREPA's FY 2022 or FY 2023 audited financial statements has or will be funded by the Department of Treasury.¹⁶

PREPA stated in the February 12 Motion, that the services of González & Martínez covered by the proposed \$300,000 allocation for the Second Amendment was "to cover the legal services provided by González & Martínez in connection with PREPA's 2022 and 2023 audited financial statements." PREPA, also states, "Since the Collaboration Agreements were executed in December 2023, González & Martínez has been an integral part of PREPA's effort to complete the 2022 financial statements and their audit....and has been responsible for all legal matters pertaining to PREPA's 2022 audited financial statements. Further, González & Martínez will continue to provide the same legal services and support in connection with PREPA's audited financial statements."¹⁷ PREPA does not adequately explain why the services are now necessary when they were not within the González & Martínez's existing contract scope of work and why they are not duplicative of services provided by other contractors funded by the Department of Treasury or able to be provided by its internal resources.

To date, the Energy Bureau approved two contracts for González & Martínez, the Original Contract, and the First Amendment with a term end date of June 30, 2024. Audit Services in support of the preparation of the FY 2022 and FY 2023 certified audits were not among the services to be provided by González & Martínez under the scope of work covered by either the Original Contract or the First Amendment. PREPA's FY 2022 Financial statements were completed. The FY 2023 audit services should be able to be completed without having to fund from the HoldCo budget the González & Martínez services as well, using the services provided by the Department of Treasury and PREPA's own resources.

PREPA has also provided inadequate support for its contention that the services provided by ScottMadden are not duplicative of auditing services provided by contractors being funded by the Department of Treasury and cannot be performed by internal resources. The Energy Bureau notices that PREPA noted the successful completion of its FY 2022 audit without the support it asserts is necessary from ScottMadden. This demonstrates that PREPA, in collaboration with the Puerto Rico Department of Treasury and internal resources, has the capability to effectively manage and execute the audit process.

The Energy Bureau recognizes that the Department of Treasury has retained Cedrela CG LLC ("Cederela")¹⁸ to provide support for both the FY 2022 and FY 2023 audits. The services offered by Cedrela are likely to significantly overlap with the proposed project management services outlined in the ScottMadden contract. PREPA has not provided enough substantiation to justify the necessity of additional project management support from ScottMadden, given the existing support from the Department of Treasury, Cedrela, and PREPA's internal resources. PREPA's internal resources, together with the resources

¹⁴ *Id.* at p. 4 of 58.

¹⁵ April 18 Resolution, p. 5.

¹⁶ April 29 Motion, p. 3.

¹⁷ February 12 Motion, p. 7.

¹⁸ Cedrela CG LLC, Contract No. 2024-000123 (24-2024-0123), Government of Puerto Rico, Office of the Comptroller, <https://consultacontratos.ocpr.gov.pr/contract/details?contractid=5423997> (last visit May 13, 2024).



managed by the Puerto Rico Treasury Department for PREPA's FY 2023 financial audit should be adequate to ensure the timely and successful completion of the FY 2023 audit. Engaging ScottMadden would result in a duplication of efforts and an inefficient use of resources.

The Energy Bureau **APPROVES** the allocation of \$58,000.00 from the HoldCo External Audit Services budget-line for the Nexvel contract.

The Energy Bureau **DENIES** the allocation of \$300,000.00 from the HoldCo External Audit Services budget-line for the second amendment of the González & Martínez contract.

The Energy Bureau **DENIES** the allocation of \$236,000.00 from the HoldCo External Audit Services budget line for the ScottMadden contract.

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.


Lillian Mateo Santos
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 May 13, 2024. Chairman Edison Avilés Deliz and Associate Commissioner Ferdinand A. Ramos Soegaard did not intervene. Also certify that on May 13, 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, May 13, 2024.


Sonia Seda Gaztambide
Clerk

