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:** Motion in Compliance with December 8 Order Regarding HoldCo's Rightsizing

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, for the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") review and approval, 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 the following budget components: (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 (iii) 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 stated 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 28, 2023, PREPA filed a document titled, *Informative Motion and Request for Remedy* ("July 28 Informative Motion"), through which, PREPA explained that the FY 2024 Budget approved by the Energy Bureau would leave PREPA unable to operate efficiently and manage its day-to-day activities. PREPA related that its Governing Board approved Resolution 5076 granting authorization to use funds deposited into the FEMA reimbursement account to cover budgetary gaps. PREPA included a revised budget and a list of contracts it considers necessary to enable PREPA to operate and meet all its obligations. PREPA requested that the Energy Bureau approve the amended budget and authorize the use of funds from the FEMA Reimbursement Account.

On August 16, 2023, the Energy Bureau issued a Resolution and Order ("August 16 Order"), through which it required that PREPA file a table including the totality of the approved and proposed contracts for FY 2024, the amounts proposed and approved for those contracts, the line items from the category to which they correspond, and the remaining balance for that category and reminded PREPA that all executed contracts that were not approved by the Energy Bureau nor included in the referenced table must be terminated and that no services about those contracts could be rendered.

On September 1, 2023, PREPA filed a document titled, *PREPA's Motion for Reconsideration of Portions of the August 16 Order and in Compliance with the August 14 Request for Information and the August 16 Order* ("September 1 Motion"), through which PREPA reiterated its request for funds it asserted were necessary for PREPA to minimally comply with its responsibilities, including specific environmental obligations. PREPA requested that the August 16 Resolution be stayed and reconsidered regarding the requirement that contracts which were not approved were to be terminated.

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

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$3.673MM for certain specific uses, subject to reporting requirements. The Energy Bureau also warned PREPA it must adhere to the approved budgets, and 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 September 27, 2023, the Energy Bureau issued a Resolution and Order ("September 27 Order"), through which the Energy Bureau ordered PREPA to submit to the Energy Bureau for review and approval, any contracts for FY 2024 it had not resubmitted for review and which it intended to execute but were not yet submitted to the Energy Bureau.[1]

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, "all existing contracts it has executed, plans to execute or plans to amend during FY24 that have not been previously approved by the Energy Bureau," purportedly in compliance with the September 27 Resolution. In addition, PREPA requested Energy Bureau approval of a proposed revised budget.

In the November 7 Motion, PREPA described its efforts to identify additional sources of funding for its budgetary needs, including bad debt recoveries, FEMA reimbursements and insurance claim settlements, which PREPA asserted had resulted in the recovery and accrual of millions of dollars which could be used for annual budgets. PREPA asserted that the budgets approved by the Energy Bureau were insufficient for PREPA's basic operations and responsibilities. PREPA explained and requested approval for allocation of the increased funding of $3.673MM the Energy Bureau provided through the September 22 Resolution.

In addition, in the November 7 Motion, PREPA requested that the Energy Bureau authorize an increase to the approved budget of $23.7MM, comprised of $19.6MM for HoldCo and $4.1MM for HydroCo, to be funded from the alternative funding sources it identified.

On December 8, 2023, the Energy Bureau issued a Resolution and Order ("December 8 Resolution"), through which, the Energy Bureau approved PREPA's request for additional funding for HoldCo Labor for the amount of $2,033,000 to increase from its June 25 Resolution and ordered PREPA 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 mandate and associated approved budgets as originally approved in the June 25 Resolution. The Energy Bureau 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 achieve the desired results by July 1, 2024.[2]

On March 22, 2024, PREPA filed a motion titled, *Motion in Compliance with December 8th Order Regarding HoldCo's Rightsizing* ("March 22 Motion"), through which PREPA notified the Energy Bureau that, in compliance with Resolution 5064 issued by PREPA's Governing Board, PREPA's FY2024 labor operating headcount for HoldCo, PropertyCo, Pension Administration and HydroCo totaled 255 full-time employees as of November 28, 2023. However, PREPA emphasized this headcount is insufficient for its operations and responsibilities. PREPA also indicated that due to the ongoing transition process, the employee headcount could not be reduced to the required 255 full-time employees on day 1 of FY 2024 and extended between July and November 2023. PREPA stated that in its upcoming FY2025 budget submission, it will request an increase in headcount and labor budget, as it has identified more personnel needs in various directorates.

[1] September 27 Resolution, p. 2.

[2] December 8 Resolution, p. 6.

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II. Discussion and Conclusion

In the June 25 Resolution, the Energy Bureau discussed the analysis it performed in determining the proper allocation for PREPA's HoldCo and HydroCo budgets. It emphasized those budgets must reflect PREPA's decreased responsibilities, in view of the assumption of responsibilities by LUMA and Genera for T&D and Generation, respectively. Specifically, regarding the HoldCo personnel budget, the Energy Bureau explained that it determined the proper employee count, considering the remaining responsibilities of HoldCo and considering the proper number of employees to enable PREPA to fulfill its remaining responsibilities, only at those levels strictly necessary to enable PREPA to timely and efficiently fulfill those responsibilities. In its analysis, the Energy Bureau compared PREPA's circumstances to the analogous circumstances of LIPA in New York. LIPA underwent a similar reduction in responsibilities and a corresponding reduction in personnel.[3] The Energy Bureau concluded, based on its analysis, that PREPA's HoldCo employees should be reduced from the PREPA proposed employee count for HoldCo of 86 employees including 35 in Pension Administration Capacity and its budget allocation reduced accordingly.[4]

The Energy Bureau ordered PREPA to submit "a Detailed Plan with action items, expected result, 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 mandate and associated approved budgets as it was originally approved in the June 25 Resolution. 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, shall be submitted as well."[5]

PREPA's March 22 Motion is non-compliant with and unresponsive to the Directive set forth by the Energy Bureau in the December 8 Resolution. PREPA demonstrates a marked reticence to comply with Energy Bureau directives intended to bring PREPA's labor force into line with PREPA's reduced responsibilities and the corresponding approved budget. PREPA's comparison of its personnel numbers with the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF") designated total headcount is misplaced. As emphasized in earlier Resolutions, the Energy Bureau review of the proposed consolidated budgets must make sure the funding allocation is appropriate to meet the needs of the multiple entities to which budgetary funding is allocated and that this determination is made based on its evaluation of the needs of each entity on a bottom-up basis.[6] The Energy Bureau carefully analyzed PREPA's necessary expenditures and allocated its budget. This is contrasted with the top-down budget review done by AAFAF, on which PREPA bases its contention that additional personnel and correspondingly, funding, is necessary. PREPA's arguments regarding the number of employees it contends are necessary, as compared with the number developed by AAFAF, is unavailing. The Energy Bureau, not the AAFAF, is the body equipped with specialized knowledge and charged with determining the operational funding needs of the electric utilities it regulates. PREPA must conform its labor force and budgets, with the funds allocated by the Energy Bureau.

The Energy Bureau notes that in the FY 2024 Consolidated budget proposal submitted by LUMA, Labor Operating Expenses for HoldCo in the amount of \$9.598MM were petitioned and the Energy Bureau approved \$7.565MM.[7] PREPA requested additional funds for HoldCo Labor Operating Expenses for \$2.033MM which the Energy Bureau approved, thereby, bringing the total HoldCo Labor Operating Expenses to \$9.598MM, which was the amount initially petitioned. That approval was accompanied with the directive that PREPA contends it meets with the March 22 Motion and with the directive that PREPA "reflect in the FY2025

[3] June 25 Resolution, pp. 22–23.

[4] June 25 Resolution, p. 24.

[5] December 8 Resolution, p. 6.

[6] June 25 Resolution, p. 5.

[7] June 25 Resolution, p. 41.

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budget an adaptation of both staffing levels and business operations to correctly correspond to its substantially downsized mandate and associated approved budgets as it was originally approved in the June 25 Resolution. The Energy Bureau will require PREPA to reduce its headcount footprint to the FY2025 budget for labor expenses to achieve reasonable and prudent labor costs aligned with the reduced operational obligations by HoldCo. Attachment to legacy approaches must give way to strategic realignment of labor, assets, and activities befitting the new operational reality."[8] Despite the Energy Bureau admonition, PREPA asserts that it will need 83 additional employees in FY 2025 for HydroCo and an unspecified number of additional employees or increased budget to outsource required services for HoldCo.[9] This shows either significant misunderstanding or disregard of the Energy Bureau Orders.

It appears from the March 22 Motion that PREPA has not modified its labor force in agreement with its approved budgets. The March 22 Motion does not provide the support necessary for the Energy Bureau to determine whether PREPA has satisfactorily complied with the December 8 Resolution.

The Energy Bureau **ORDERS** PREPA, to respond **within ten (10) business days of notification of this Resolution and Order**, to the order contained in the December 8 Resolution, and submit, "a Detailed Plan with action items, expected result, 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 mandate and associated approved budgets as it was originally approved in the June 25 Resolution. 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, shall be submitted as well". Until the Energy Bureau indicates otherwise, PREPA is **NOT** relieved of the requirement to provide the required Monthly Status Update.

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.

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[8] December 8 Resolution, p. 6 of 20.

[9] March 22 Motion, p 7 of 9.

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 17, 2024. Chairman Edison Avilés Deliz and Associate Commissioner Ferdinand A. Ramos Soegaard did not intervene. Also certify that on May 17, 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; jan.albinolopez@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 17, 2024.

Sonia Seda Gaztambide
Clerk

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