

**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 on PREPA's
*Emergency Motion for Reconsideration of the
March 1st Resolution regarding Security
Budget.*

RESOLUTION AND ORDER

I. Introduction and Procedural Background

On May 16, 2023, LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly referred to as "LUMA") filed 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"), through which, LUMA submitted to the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") the proposed T&D Budgets developed by LUMA, the proposed GenCo Budgets developed by GENERA PR, LLC ("Genera"), and the proposed HydroCo and HoldCo Budgets developed by the Puerto Rico Electric Power Authority ("PREPA").

On June 25, 2023, the Energy Bureau issued a Resolution and Order ("June 25 Resolution"), through which it modified the proposed FY 2024 Budgets and approved the FY 2024 Budgets as modified, subject to compliance with orders and reporting requirements.

On June 30, 2023, LUMA filed a document titled, *Submission of Motions for Reconsideration by PREPA and Genera and Notice of Intent to Request Reconsideration of Resolution and Order of June 25, 2023* ("June 30 Motion"), through which, LUMA submitted motions for reconsideration of the June 25 Resolution on behalf of PREPA ("PREPA Reconsideration Motion")¹ and Genera ("Genera Reconsideration Motion")² and provided notice of its intention to request reconsideration on its own behalf.

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 to minimally comply with its responsibilities, including specific environmental obligations. PREPA requested that the August 16 Resolution³ 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, it increased the HoldCo Operating Budget for \$3.673M for certain specific uses, subject to reporting requirements. The Energy Bureau 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 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, "all existing contracts it has executed, plans to execute or plans to amend

¹ See, June 30 Motion, Exhibit 2

² See, *Id.*, Exhibit 3

³ Resolution and Order, *In re: Review of LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, August 16, 2023 ("August 16 Order").



during FY2024 that have not been previously approved by the Energy Bureau,"⁴ purportedly in compliance with the September 27 Resolution⁵. PREPA requested the Energy Bureau approval of a proposed revised budget.

On December 8, 2023, the Energy Bureau issued a Resolution and Order ("December 8 Resolution"), through which, the Energy Bureau, after a detailed analysis, increased the Non-Labor Operating Budget for HoldCo (PropertyCo) to a maximum of \$18.072M and maintained HydroCo's Operating Budget as approved in the September 22 Resolution.

On January 25, 2024, PREPA filed a document titled, *Urgent Request to Increase Budget for Security Contracts* ("January 25 Motion"), through which PREPA urgently requested an increase to the FY 2024 Budgets for security contracts with Genesis Security Services and its security system maintenance contract with Protective Security Systems. PREPA asserted that additional budget funding for HoldCo and HydroCo was necessary to cover these amended contracts through the rest of the fiscal year, to provide adequate security for facilities, assets, and employees. Specifically, PREPA requested an increase of \$404,000.00 to the Security line-item under the HoldCo Non-Labor Budget (for a total of \$1.201M), and an increase of \$942,000.00 to the Security line-item of the HydroCo Non-Labor Budget (for a total of \$2.654M).⁶ PREPA stated this constituted a reduction from previously requested levels, and that without this funding, no security would be available.⁷

On February 23, 2024, PREPA filed a document titled, *Motion Reiterating Urgent Request to Increase Budget for Security Contracts* ("February 23 Motion"), through which, PREPA stressed the urgency of its request for approval of an increase to the Security line-item of the HoldCo and HydroCo Non-Labor Budgets for \$404,000.00 and \$942,000.00 respectively, stating that without the additional funds, there would be no security measures in place as of March 1, 2024.⁸

On March 1, 2024, the Energy Bureau issued a Resolution and Order ("March 1 Resolution") in response to PREPA's January 25 Motion and its February 23 Motion. In the March 1 Resolution, the Energy Bureau partially approved PREPA's request by authorizing a reallocation of \$350,000 from the HydroCo Maintenance Projects Expenses budget line to the HydroCo Non-Labor/Other Operating Expenses Security budget line to cover security contract needs only for HydroCo facilities that directly contribute to the supply of electricity. However, the Energy Bureau denied PREPA's request for an increase to the HoldCo Security budget line, expressing concerns about potential overspending and the need for tighter financial controls.

On May 13, 2024, PREPA filed a document titled, *Emergency Motion for Reconsideration of the March 1st Resolution Regarding Security Budget* ("May 13 Motion"). In the May 13 Motion, PREPA urgently requests the Energy Bureau to reconsider its March 1 Resolution and authorize a total increase of \$407,657.60 to PREPA's FY 2024 budget for security services, divided: \$114,168.79 to the HoldCo Non-Labor Operational Budget and \$293,676.88 to the HydroCo Non-Labor Operational Budget.

PREPA asserts that the approved budgets are insufficient to cover its minimum-security needs and that various conclusions reached by the Energy Bureau in the March 1 Resolution are incorrect. PREPA provided detailed reports of its security job posts, explained the risks associated with leaving its sites without security presence, and rejected the Energy Bureau's assertion that it had severely mis-planned its security expenditures. PREPA states that before filing the May 13 Motion, it had exhausted other alternatives to address its budgetary needs, such as eliminating additional services and negotiating reduced fees with its security

⁴ November 7 Motion, p. 7.

⁵ Resolution and Order, *In re: Review of LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, September 27, 2023 ("September 27 Resolution").

⁶ January 25 Motion, p. 14.

⁷ January 25 Motion, p. 14.

⁸ February 23 Motion, p. 2.



contractor. However, PREPA asserts these measures did not fully resolve the issue, and PREPA continues to require additional budget for security services to guarantee the safety of its employees and property.

II. Discussion and Determinations

The Energy Bureau has carefully examined the arguments and budget requests made in PREPA's May 13 Motion related to security contracts and systems, as it has in earlier similar requests.⁹

PREPA once again displays its disregard for budgetary realities and the directives of the Energy Bureau. Despite the Energy Bureau's repeated admonitions, in its March 1 Resolution¹⁰ and other resolutions,¹¹ that PREPA must operate within its approved budgets in accordance with its reduced responsibilities, PREPA has steadfastly refused to do so. The Energy Bureau will not repeat the analysis it performed, and on which, were based its past resolutions in response to PREPA's repeated motions to increase its approved funding.¹²

PREPA filed the instant motion asserting that it considered the security funding approved by the Energy Bureau to be inadequate, over two months after the Energy Bureau's March 1 Resolution was issued denying the full increase in security budget PREPA requested in its January 25 Motion. On May 13, 2024, PREPA filed the May 13 Motion as an emergency motion warning of the consequences if it did not receive additional security funding within two days. PREPA seems to have severely mis-planned its security expenditures in view of its level of approved funding and the Energy Bureau admonitions¹³ that PREPA must operate within its approved budgets and should not expect the Energy Bureau to continue to grant additional funding to repeated requests. The assertion of this level of need, if accurate, reflects poor planning and failure to adjust to the approved budgets.

PREPA's actions are reminiscent of the circumstances addressed by the 2017 Rate Order, in which the Energy [Bureau] specifically stated, "...PREPA **shall have no expectation of readily spending more than its approved revenue requirement, then simply charging ratepayers for the excess.**" The Energy [Bureau]¹⁴ also noted that because PREPA is not an investor-owned utility, efficient performance cannot be induced by making shareholders absorb the cost of poor performance, and the costs must instead be borne by ratepayers or diverting funds from other purposes needed to serve ratepayers. It stated, "The challenge, therefore, is to design procedures for financial discipline that, rather than blocking recovery of imprudent costs already incurred, instead prevent imprudent costs from being incurred."¹⁵ This is precisely what the Energy Bureau has been working to achieve, through its directives, that PREPA must operate within its budgets, in accordance with its significantly reduced responsibilities.

Rather than conforming its operations to its decreased responsibilities, in accordance with its approved budget, PREPA repeatedly files motions to increase funding for various purposes. PREPA has now had nearly an entire fiscal year to conform with Energy Bureau directives and has not adequately done so. This will not be tolerated in FY 2025.

⁹ See, June 25 Resolution and December 8 Resolution.

¹⁰ March 1 Resolution, p. 4.

¹¹ See *inter alia*, December 8 Resolution and September 22 Resolution.

¹² See March 1 Resolution.

¹³ September 22 Resolution, p. 23.

¹⁴ The Energy Commission is the precursor of the Energy Bureau.

¹⁵ See Final Resolution and Order, *In Re: Puerto Rico Electric Power Authority Rate Review*, Case No.: CEPR-AP-2015-0001, January 10, 2017, pp. 147-148.



However, the Energy Bureau recognizes that PREPA's inability to properly manage funds should not result in the cessation of the security contracts, and as such the Energy Bureau will afford PREPA the opportunity to identify and utilize underspent funds from areas of PREPA's budget that will not affect the supply of electricity nor costs to ratepayers. An increase to the PREPA's budget is not authorized, however, the Energy Bureau allows PREPA to reallocate funds from underspent budget lines to cover the request to the extent that those funds are available, and the reallocation does not adversely affect its provision of service to ratepayers. PREPA's use of funds for security funding may not include available cash on hand.

The Energy Bureau **APPROVES** PREPA's use of funds from its approved FY2024 budget lines, which will not adversely affect its service to customers, of up to \$407,745.67 for the security services PREPA contends are urgently needed. Such funds **MAY NOT** be derived from any cash on hand.

The Energy Bureau **STRONGLY ADMONISHES** PREPA that it must adjust its expenditures in accordance with its approved budgets and not expect the Energy Bureau to repeatedly authorize budget reallocations and/or increases.

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 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@sbglaw.com; alopez@sbglaw.com.

I sign in San Juan, Puerto Rico, today, May 17, 2024.



Sonia Seda Gaztambide
Clerk

