

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

**NEPR**

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**IN RE:** PLAN PRIORITARIO PARA LA  
ESTABILIZACIÓN DE LA RED ELÉCTRICA

**CASE NO.:** NEPR-MI-2024-0005

**MOTION IN COMPLIANCE WITH THE JUNE 13, 2024, RESOLUTION AND ORDER**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

**COMES NOW** the Puerto Rico Power Authority ("PREPA"), through its counsel of record, and respectfully submits and prays as follows:

**I. Introduction**

On June 13, 2024, the Puerto Rico Energy Bureau ("Energy Bureau") issued a Resolution and Order requiring LUMA Energy, LLC, LUMA Energy ServCo, LLC (collectively "LUMA"), PREPA, and Genera PR, LLC ("Genera") to submit an aggressive improvement plan for the electric system.

PREPA is fully aware of the Energy Bureau's request and understands its significance. However, PREPA no longer holds the responsibility for the operation and maintenance of Puerto Rico's electric system inasmuch as this responsibility was contractually transferred to LUMA and Genera pursuant to their respective operation and maintenance agreements. Consequently, PREPA is not the entity responsible for submitting or providing the requested improvement plan. This responsibility now lies with LUMA and Genera, as stipulated in their agreements.

Notwithstanding the aforementioned, for nearly the past three (3) years, PREPA has made multiple suggestions to this Honorable Energy Bureau concerning improvements to Puerto Rico's electric system. PREPA has consistently underscored the unequivocal need for resilient and reliable energy generation, especially during the ongoing transition to renewable energy. To that extent, PREPA has submitted before this Bureau a number of maintenance and repair projects that would greatly improve the resiliency and reliability of the current energy system. Unfortunately, several of the major projects suggested by PREPA were denied approval, thus hindering and impeding the improvement of the generation system's reliability.

## **II. Transfer of Responsibility to LUMA and Genera**

As it is well known, on June 22, 2020, PREPA, the Puerto Rico Public-Private Partnerships Authority ("P3A"), and LUMA entered into an Operation and Maintenance Agreement ("OMA") under which PREPA transferred operational control of its transmission and distribution system ("T&D System") to LUMA. Accordingly, on June 1, 2021, LUMA took over the operation and maintenance of the T&D System.

Section I A of Annex I (Scope of Services) of the OMA provides that:

Operator shall be responsible for all electric transmission, distribution, load serving and related activities for the safe and reliable operation and maintenance of the T&D System, subject to the terms and conditions of the main body of the Agreement, including (1) expansions and replacements to meet the Contract Standards, including fleet, asset management, asset acquisition/procurement, IT infrastructure, as further provided in this document and preparation and implementation of required components of the Integrated Resource Plan, while

prioritizing expansion and replacement projects that improve the safe, reliable and economic dispatch of the T&D System's connected generating units; (2) management and performance of construction of improvements thereto, including compliance with approved FEMA scope of work for projects that are eligible for Federal Funding and required maintenance; (3) delivery of electricity to customers, including the implementation of the activities set forth in Sections II.A and II.B of this Annex I (*Scope of Services*); (4) billing and collections implementation and optimization; (5) maintenance and improvement of public lighting system; (6) maintenance of fiber optic cable structure infrastructure, as set forth in lease agreement between Owner and PREPA Networks, LLC, a wholly-owned subsidiary of Owner incorporated in April 2004 to execute the Optical Telecommunications Infrastructure Lease Agreement for dedicated provision of local wholesale telecommunication services (for the avoidance of doubt, the Parties acknowledge and agree that, except as specified in this item (6), Operator shall have no other responsibility relating to PREPA Networks, LLC); (7) compliance with interconnection of renewables in accordance with Applicable Law; (8) management of the System Operation Principles to meet safe and reliable system operations in accordance with Prudent Utility Practices and the System Operation Principles; and (9) recordkeeping and reporting in accordance with Applicable Law or Prudent Utility Practices.

Likewise, on January 24, 2023, PREPA, the P3A, and Genera executed the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement ("TGF-OMA"), under which PREPA transferred operational control of its generation system to Genera. As such, on July 1, 2023, Genera took over the operation and maintenance of the Generation System.

Section I A of Annex IX (*Scope of Services*) of the TGF-OMA stipulates that:

Operator shall be responsible for all management, operation, maintenance, repair and other related services with respect to the Legacy Generation Assets, subject to the terms and conditions of the Agreement, including (1) day-to-day operation and maintenance (including any major maintenance) services, including operation of the Legacy Generation Assets to generate electricity and deliver it into the T&D System; (2) identifying, justifying and managing any required maintenance capital expenditures; (3) providing routine inspections of

the Legacy Generation Assets; (4) providing annual operating tests (the Annual Performance Test) of the Legacy Generation Assets in coordination with T&D Operator; (5) establishing appropriate and customary safety work rules and practices; (6) developing an operation and maintenance training program; (7) provisioning, storing and maintaining the inventory of spare and consumable parts, including Capital Spare Parts, for the Legacy Generation Assets; (8) establishing and maintaining a computerized maintenance management system for the Legacy Generation Assets; (9) performing scheduled and emergency maintenance, repair and replacement of equipment, including any balance of plant equipment, painting, and cleaning, among others; (10) managing Planned Outages, Unplanned Outages and Forced Outages and restoration of power supply to the transmission grid; (11) coordinating business continuity and emergency planning and storm restoration and recovery in coordination with T&D Operator; (12) procuring and managing water or auxiliary power supply, as applicable; (13) maintaining and repairing fuel and water systems, including tanks, pumps, filters, and piping, as required; (14) procuring and managing the delivery and quality testing of fuel; (15) liaising with the T&D Operator or any of their assignees or successors regarding dispatch, dispatch planning and related T&D system matters and providing required information; (16) interfacing with and providing reports to regulators including PREB and with environmental compliance agencies such as the EPA, the Puerto Rico Department of Natural and Environmental Resources, the Occupational Safety and Health Administration and others, as may be required; (17) obtaining, complying with and maintaining licenses, permits, consents and the Consent Decree, as necessary; (18) providing periodic reports regarding programmed and non-programmed operations, maintenance, repairs, services and modifications performed and to be performed; (19) preparing for and assisting in, or subcontracting for and overseeing, the decommissioning of the relevant plants as outlined in the Integrated Resource Plan (including any future integrated resource plans) in coordination with PREPA/the T&D Operator, Owner and PREB; (20) participating in emergency planning and drills led by the T&D Operator, as needed; (21) conducting emergency planning and drills independent of T&D Operator; (22) assisting with the transition of the plants to third parties or to new uses (synchronous condensers, etc.) to the extent certain of the plants are removed from the O&M Agreement and (23) developing and maintaining a good neighbor program.

In accordance with the contractual obligations established in the OMA and TGF-OMA, and as the current operators of Puerto Rico's electric system,

LUMA and Genera are responsible for preparing and submitting the required improvement plan. Both of these entities have the operational budget, personnel, visibility of the information and the contractual obligation to provide an exhaustive analysis of the electric system's current state and propose necessary improvements.

### **III. History of Improvement Suggestions**

In October 2021, PREPA conducted an assessment of its generation fleet due to recent load-shedding events in August and September of 2021. The assessment identified that maintenance and major repairs on turbines, boilers, generators, and hangers was well overdue. PREPA immediately designed an action plan, including the estimated funds needed and the time it would take to bring the generation fleet up to date.

As a result of the above, on November 15, 2021, PREPA filed before the Energy Bureau a *Motion to Submit Fourth Group of Generation Projects* ("November 15 Motion"). Through the November 15 Motion, PREPA submitted one hundred-four (104) work descriptions ("Generation Projects") containing a general report of works of conservation, repairs, and retrofitting of generation units and their auxiliary equipment, including without limitation boilers, turbines, rotors, generators, motors, pumps, breakers, and control systems for their generation power plants. The works were to be performed in the San Juan Power Complex, Aguirre Power Plant and Combined Cycle, Costa Sur Power Plant, Palo Seco Steam Plant, Hydrogas Turbine Peaking Units, Cambalache, Mayagüez Gas

Turbines, and a list of tasks to be performed in all the power plants. PREPA prepared a comprehensive list of repairs, works, and projects of its generation assets and for which PREPA planned to seek reimbursement under several programs of the Federal Emergency Management Agency (“FEMA”) (i.e., Section 404, Section 428, Public Assistance, etc.).

On November 29, 2021, PREPA filed before the Energy Bureau a document titled *Motion to Clarify and Request for Technical Conference* (“November 29 Motion”), which presented further information to the request submitted on November 15.

On January 4, 2022, the Energy Bureau issued a *Resolution and Order* (“January 4 Order”) addressing the November 15 and November 29 Motions. Through the January 4 Order, the Energy Bureau conditionally approved some of the generation projects pending the submittal by PREPA of the Scope of Works (“SOWs”) of each project. In response, PREPA submitted all SOWs during the following month, from January 13 to February 14, 2022. Further, the Energy Bureau deferred for further evaluation fifteen (15) of the Proposed Generation Projects.

Thereafter and after various motions and procedural events, on June 4, 2022, the Energy Bureau entered a *Resolution and Order* (June 4 Order) denying ten (10) of the fifteen (15) Proposed Generation Projects. The Energy Bureau only approved five projects, grounding its decision on the following:

PREPA's Proposed IRP was evaluated by the Energy Bureau in an adjudicative proceeding under Case No.: CEPR-AP-2018-0001. On August 24, 2020, the Energy Bureau issued the IRP Final Order approving in part PREPA's Proposed IRP. The Approved IRP includes

a Modified Preferred Resource Plan ("Action Plan") considering, among others, specific planning parameters for the power generation capacity additions and retirements. The Approved IRP established a schedule for minimum quantities of renewable resources and battery energy storage resources to be procured through Request for Proposals ("RFP") processes. It also directed PREPA to submit a renewable resource and battery energy storage procurement plan ("Procurement Plan"). The Approved IRP included a program for six (6) tranches of procurement for renewable energy and battery storage resources from third parties in support of, among other things, meeting Act 17-2019 targets for renewable energy installations.

The implementation of the approved Procurement Plan is ongoing, and the Energy Bureau expects that a substantial number of renewable resources be integrated into the Puerto Rico Electric System by the end of 2025. Consistent with the foregoing, the Approved IRP determined that PREPA should retire its older, oil-fired steam and certain combined cycle turbine assets in order of the declining cost to operate when they are no longer necessary for system reliability during the period of 2021 and 2025.

Through the June 4 Order, the Energy Bureau also determined not to approve eight (8) projects (the "Denied Generation Projects"). The Energy Bureau expressed that they evaluated the Denied Generation Projects considering the extent of the proposed works in their corresponding power plants in relation to the Approved IRP. The Energy Bureau determined that some of the projects comprise major works at the San Juan Power Plant Units 7, 8, and 10 (collectively the "San Juan Power Plant Deferred Projects") and noted that some of those units were not even considered as available resources for the purposes of the Approved IRP while others are within the retirement schedule for years 2021-2025. As such, the Energy Bureau concluded that the San Juan Power Plant Deferred Projects were

not supported by the Approved IRP since these projects were directed at extending the units' useful life beyond such schedule.

Likewise, the Energy Bureau determined that the proposed projects at Aguirre Power Plant (Steam Unit #1) and Palo Seco Power Plant (Steam Unit #3) comprise major repair, rebuilding, rehabilitation, and/or replacement works. The Energy Bureau further stated that these power plants are not in acceptable operational conditions, do not comply with MATS, and would require a non-economically viable capital investment to reach MATS compliance and acceptable operational conditions. The Energy Bureau concluded that these projects at Aguirre Power Plant (Steam Unit #1) and Palo Seco Power Plant (Steam Unit #3) are aimed at extending the power plants beyond 2025 until 2028 and 2029, which is not supported by the Approved IRP. Regarding the project Cambalache Power Plant, the Energy Bureau determined that it comprises major works at Cambalache Plant (Gas turbine GT-1) and that it is inconsistent with the Approved IRP since it was excluded from the Proposed IRP as an available generation resource because it is not planned to be returned to operating condition in the foreseeable future.

In response to the June 4 Order, on June 24, 2022, PREPA filed an *Urgent Motion for Reconsideration of the June 4 Order* ("June 24 Motion"). Through the June 24 Motion, PREPA reiterated its request for approval of the Denied Generation Projects and included various exhibits demonstrating to the Energy Bureau that the generation shortfalls that had occurred during the period from



2019 through 2022 could be prevented through the implementation of the Generation Projects that had been denied. Specifically, PREPA asserted that the Denied Generation Projects were needed to prevent generation loss, reduce forced outages, increase availability, and, therefore, avoid load-shedding events, brownouts, and blackouts. In addition, PREPA stressed that the Denied Generation Projects were consistent and in accordance with the Approved IRP, which has provisions to maintain a safe and reliable electrical service while the integration of reliable new resources is completed.

PREPA also stated that with the Energy Bureau's approval, it would seek FEMA reimbursement of the costs associated with the Denied Generation Projects, and therefore, the People of Puerto Rico would have a more reliable generation system at no cost while renewable energy is integrated into the system. PREPA also insisted that its dependable available generation capacity was insufficient to comply with the minimum reserve requirements. Consequently, PREPA asserted that if one significant forced outage occurred, it may not have available generation to cover the demand and reserve requirements.

As a result of the above, through a *Resolution and Order* dated July 21, 2022 ("July 21 Resolution"), the Energy Bureau reevaluated certain portions of the June 4 Order, particularly its determination regarding the proposed projects in the Aguirre Power Plant and the Palo Seco Power Plant and approved the same. However, no mention was made regarding the deferred projects proposed for the San Juan and Cambalache power plants in the July 21 Resolution.

PREPA has repeatedly reiterated that the approval of the Generation Projects, among other works, are genuine efforts that are aligned with the Approved IRP as they are necessary for the integration of renewable energy sources and for maintaining the adequate reliability of the electric system while this transition occurs. However, given that the Energy Bureau has continuously stated that its denial of several Generation Projects is due to inconsistencies with the Approved IRP, PREPA requested an expedited amendment to the current IRP to proceed with the Denied Generation Projects and other works.

In furtherance of PREPA's continued efforts to seek approval of necessary projects for the resiliency and reliability of PREPA's generation fleet, on October 11, 2022, PREPA submitted to the Energy Bureau a document titled *Request to Amend PREPA's Integrated Resource Plan* ("October 11 Motion") through which it requested the Energy Bureau to grant leave to amend the Approved IRP and grant PREPA the authorization to convert Units 7, 8, 9, and 10 of the San Juan Power Plant (collectively the "San Juan Steam Units") to dual fuel burning capacity with the added capability of burning natural gas. Thereafter, on October 12, 2022, PREPA filed a document titled *Supplement to Request to Amend PREPA's Integrated Resource Plan* ("October 12 Motion") through which it restated the arguments set forth in the October 11 Motion and requested the Energy Bureau to: (i) note the schedule to convert the San Juan Steam Units; (ii) amend the Approved IRP and Modified Action Plan or grant dispensation of the Approved IRP and Modified Action Plan to allow Cambalache Power Plant Unit 1

to remain in operation; and (iii) grant PREPA leave to continue with the repair and maintenance of the San Juan Steam Units and Cambalache Power Plant Unit 1, granting leave to present those SOWs to the Central Office for Recovery Reconstruction and Resiliency (“COR3”) and FEMA.

On October 12, 2022, the Energy Bureau entered a *Resolution and Order* stating that it would not consider the October 11 Motion or the October 12 Motion because, pursuant to Section 5.6(f) of the OMA, it was now LUMA's responsibility to file amendments or waivers to the Approved IRP.

Thereafter, through a *Resolution and Order* dated October 21, 2022 (“October 21 Order”), the Energy Bureau approved previously Denied Projects about the San Juan Power Plant Unit 7 (collectively the “San Juan 7 Deferred Projects”), but it would not analyze any further or consider in any way the remaining San Juan Plant Deferred Projects.

In response to the October 21 Order, on October 22, 2022, PREPA submitted a *Request for Order Regarding Repairs, Request for Reconsideration, and Inform Regarding Batteries* in which PREPA requested the Energy Bureau to (1) grant PREPA leave to continue with the repair and maintenance of the San Juan Units 8 and 10 and the Cambalache Unit 1, (2) grant PREPA leave to continue with the Emergency Generation Units (Peakers & Blackstart) project, and (3) note that PREPA will proceed with a project to include energy storage with FEMA 404 funds.

PREPA also presented to the Energy Bureau various requests for the Conversion of San Juan Units 7, 8, 9, and 10 to dual burning capacity for Natural

Gas. Specifically, on February 11, 2022, PREPA filed *Petition for Leave to Conduct Works in PREPA's Steam Units to Achieve Environmental Regulatory Compliance* ("February 11 Petition"). Through the February 11 Petition, PREPA requested the Energy Bureau's approval to begin works aimed at converting the existing steam units of the San Juan Power Plant to dual-fuel units so they can also use natural gas as fuel and comply with the SO<sub>2</sub> NAAQS. PREPA explained that the conversion of the San Juan Steam Units to combust natural gas would be beneficial to the people of Puerto Rico because: (i) it is a step towards the compliance of the SO<sub>2</sub> NAAQS, which helps the Government of Puerto Rico to avoid sanctions; (ii) it would reduce emissions of SO<sub>2</sub> and other pollutants; (iii) it would achieve compliance with the Mercury and Air Toxics Standards ("MATS") required by the EPA; (iv) natural gas is cleaner than Bunker C; and (v) the fuel market prices of natural gas does not have as much fluctuation as those of petroleum derivatives. PREPA also reasoned that the conversion of San Juan Steam Units was feasible and that such conversion, along with certain repairs, would add 237 MW to the San Juan Power Plant. Lastly, PREPA stated it anticipated that the engineering procurement and construction of the San Juan Steam Units conversion and the completion of the environmental permits of all such units would take from five (5) to ten (10) years and that the conversion did not warrant an amendment to the Approved IRP.

On August 3, 2022, the Energy Bureau entered a *Resolution and Order* ("August 3 Order") denying the February 11 Petition as inconsistent with the

Approved IRP and reminding PREPA that any petition to modify or alter the Approved IRP must be evaluated and approved by the Energy Bureau. On August 18, 2022, the Energy Bureau issued a Resolution and Order (“August 18 Order”) in response to the August 2 Motion, reiterating its August 3 Order, and denying the fuel conversion of the San Juan Steam Units. On September 3, 2022, PREPA filed a motion titled *Partial Request for Reconsideration of the August 3 and 18 Orders* (“September 3 Motion”) in which PREPA requested the Energy Bureau to set aside the denial of the fuel conversion works and grant PREPA a technical conference to discuss the technical considerations and benefits of the proposed conversions.

On September 15, 2022, the Energy Bureau entered a *Resolution and Order* denying the September 3 Motion as the Approved IRP did not include the conversion of the San Juan Steam Units, and there was no pending proceeding before the Energy Bureau to modify the Approved IRP.

In addition to all the projects mentioned above, on December 7, 2020, PREPA submitted to FEMA a 10-Year Plan, which included the roadmap to secure the reconstruction and hardening of PREPA's infrastructure with a \$10.7 billion funding obligation by FEMA. The Energy Bureau required PREPA to submit the FEMA 10-Year Plan and scheduled a technical conference for PREPA to demonstrate the alignment of the 10-Year Plan with the IRP. After various procedural milestones PREPA filed a Revised 10-Year Plan required by the Energy Bureau. In addition, on May 12, 2022, PREPA presented a 5-Year Infrastructure

Projection providing an overview of PREPA's infrastructure strategy for generation and water assets; the context for the selection of projects included in the plan; a prioritized list of these proposed infrastructure projects; the expected benefits, projected costs, key project milestones, and the estimated time horizon for each project. Furthermore, 90-day revisions of the 10-Year Plan are also submitted to the Energy Bureau.

#### **IV. Order to Show Cause**

On July 5, 2024, the Energy Bureau issued a *Resolution and Order* denying PREPA's request for an extension of time to comply with the June 13 Order. Additionally, the Energy Bureau ordered PREPA to show cause as to why an administrative fine should not be imposed for the delay in complying with the order.

PREPA has consistently demonstrated its commitment to fully complying with all resolutions and orders issued by the Energy Bureau and at no point has PREPA willingly disregarded its directives. However, and as previously discussed, the entities contractually responsible for providing an improvement plan to the Energy Bureau are LUMA and Genera, as stipulated in the OMA and TGF-OMA.

The brief extension of time requested by PREPA was necessitated by the need to compile and summarize over three years' worth of procedural history regarding the specific suggestions and proposals submitted by PREPA to improve Puerto Rico's Energy System. Given the limited internal and external resources

available to PREPA, the task of gathering and organizing this extensive information took longer than the twenty days initially allocated by the Bureau.

It has never been PREPA's intention to delay any proceedings before the Energy Bureau. The request for an extension was made solely due to the practical constraints faced by PREPA, including budgetary and personnel limitations. Imposing a fine in this context would be unjust, as the delay was not a result of negligence or willful non-compliance but rather due to legitimate logistical challenges.

Therefore, considering PREPA's demonstrated commitment to compliance, the shift in responsibility to LUMA and Genera as per the contractual agreements, and the genuine difficulties faced in meeting the initial deadline, it is respectfully submitted that an administrative fine should not be imposed on PREPA.

## **V. Conclusion**

PREPA respectfully reiterates that the responsibility for providing the aggressive improvement plan, as directed by the Energy Bureau's June 13, 2024, Resolution and Order, lies with LUMA and Genera. These entities are currently responsible for the operation and maintenance of Puerto Rico's electric transmission-distribution and generation systems under the terms of the OMA and TGF-OMA.

Moreover, as evidenced by the procedural history, which includes motions filed by PREPA and resolutions and orders entered by this Bureau, PREPA has consistently advocated for the necessary maintenance and improvement

projects to ensure reliable energy generation. PREPA has done this despite facing significant regulatory, fiscal, and personnel challenges on a daily basis.

PREPA is committed to its role as the asset owner and will continue to collaborate with LUMA and Genera to achieve a stable and reliable electric system for the people of Puerto Rico. However, the primary obligation to develop and implement the improvement plan as mandated by the Energy Bureau should be borne by LUMA and Genera, who have the direct operational control and contractual responsibility for these tasks.

**WHEREFORE**, PREPA respectfully requests the Energy Bureau to (1) take NOTICE of the present Motion and (2) deem PREPA in compliance with the June 13 Order and July 5 Order.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 10<sup>th</sup> day of July 2024.

**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 at [margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com), [valeria.belvis@usdlapiper.com](mailto:valeria.belvis@usdlapiper.com) and to Genera PR, LLC through its counsels of record at [lrn@roman-negron.com](mailto:lrn@roman-negron.com).



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