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Received:

# GOBIERNO DE PUERTO RICO JUNTA REGULADORA DE SERVICIOS PÚBLICOS DE PUERTO RICO Jul 19, 2024 NEGOCIADO DE ENERGÍA DE PUERTO RICO

2:38 PM

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

# MOCIÓN EN CUMPLIMIENTO DE ORDEN

# AL NEGOCIADO DE ENERGÍA DE PUERTO RICO:

**COMPARECE** la Autoridad de Energía Eléctrica de Puerto Rico ("AEE"), a través de su representación legal que suscribe, y muy respetuosamente expone y solicita:

# INTRODUCCIÓN Y TRASFONDO PROCESAL

El 13 de junio de 2024, el Negociado de Energía de la Junta Reglamentadora de Servicio Público de Puerto Rico ("Negociado de Energía") emitió una Resolución y Orden para la apertura del caso de epígrafe. En la misma el Negociado de Energía solicitó a LUMA Energy, LLC y LUMA Energy ServCo, LLC (conjuntamente "LUMA"), a Genera PR, LLC ("Genera") y a la Autoridad de Energía Eléctrica de Puerto Rico ("AEE") a desarrollar un plan de mejoras al sistema eléctrico que "mitigue las fallas recurrentes y elimine los puntos débiles que afectan la calidad del servicio eléctrico."<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> Véase página 1 de la Resolución y Orden emitida el 13 de junio de 2024.

La Resolución del 13 de junio de 2024, no operó en el vacío, sino que fue emitida como consecuencia de los recientes eventos que provocaron apagones masivos en el país. Como bien conoce el Honorable Negociado, el 12 de junio de 2024, se reportaron dos averías en el sistema eléctrico. La primera ocurrió en la Central San Juan, en horas de la tarde, evento que provocó que las unidades 5 y 6 salieran de servicio, lo que desencadenó en la interrupción del servicio a una cantidad de alrededor de 180,000 clientes de la Autoridad de Energía Eléctrica (AEE o Autoridad). El segundo evento se reportó a eso de las 9:00 pm, provocando en esta ocasión la interrupción del servicio a una cantidad en exceso de 350,000 clientes de la Autoridad, como consecuencia de unas fallas en dos líneas de transmisión y distribución.

Los eventos ocurridos el 12 de junio de 2024, no estuvieron relacionados con ninguna de las plantas hidroeléctricas que opera la AEE. El Negociado de Energía expresamente indicó que el plan a ser elaborado es con la intención de manejar y resolver la situación energética actual.

LUMA, Genera y la AEE solicitaron, cada una de manera independiente, extensiones del término concedido para someter los planes solicitados. Mediante Resolución y Orden del 5 de julio de 2024, el Negociado de Energía denegó todas las prórrogas solicitadas y concedió hasta el 10 de julio de 2024, para que LUMA, Genera y la AEE mostraran causa por la cual no se les debía imponer una multa por el incumplimiento con la Resolución del 13 de junio de 2024.

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El 10 de julio de 2024, la AEE presentó una moción en cumplimiento de orden en la que detalló todos los proyectos de generación que fueron sometidos al Negociado de Energía y sobre los cuales ciertos proyectos de gran importancia no fueron aprobados. De igual forma, se indicó al Negociado de Energía que LUMA y Genera eran las entidades en mejor posición, y con la obligación contractual, de someter el plan de mejoras solicitado, debido a que la AEE ya no operaba el sistema de distribución ni de generación, partes del sistema eléctricos involucrados en los eventos del 12 de junio de 2024.

El 11 de julio de 2024, el Negociado de Energía emitió una Resolución y Orden en la que denegó la moción presentada por la AEE el 10 de julio de 2024. En esta ocasión el Negociado indicó que el plan de la AEE debía circunscribirse a su área de operación, esto es, las plantas hidroeléctricas.

La AEE comparece mediante la presente moción para cumplir con lo ordenado, aclarando que no fue su intención hacer caso omiso a la orden emitida por este Honorable Negociado, sino que su interpretación de la orden estuvo basada en los eventos ocurridos el 12 de junio de 2024, con los cuales las unidades hidroeléctricas no tienen ninguna relación. Como hemos mencionado anteriormente, tampoco ha sido la intención de la AEE retrasar ningún trámite ante el Negociado de Energía. La imposición de una multa en este contexto sería injusta, ya que la demora no fue el resultado de una negligencia o un incumplimiento deliberado. Siendo así, solicitamos muy respetuosamente al Negociado de Energía que no imponga la multa indicada.

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Por último, es importante destacar que el plan prioritario preliminar de mejoras al sistema eléctrica de la AEE en aras de mitigar las fallas recurrentes y eliminar los puntos débiles que afectan la calidad del servicio, debe estar fundamentado en las mejoras y reparaciones de las unidades de combustibles fósiles. Precisamente en la moción del 10 de julio de 2024, la AEE detalló todos los proyectos sometidos sobre generación, lo que representa el plan que la AEE considera debe mantenerse para mitigar las fallas recurrentes.

## PROYECTOS DE MEJORAS DEL SISTEMA HIDROELÉCTRICO

La AEE tiene en su plan rehabilitar y mejorar dieciséis facilidades hidroeléctricas con tecnología del Siglo 21. Conforme a lo anterior, el 11 de octubre de 2023, este Honorable Negociado emitió una Resolución y Orden, en el caso NEPR-MI-2021-0002, en la que autorizó los proyectos para rehabilitar las unidades, y a solicitar los fondos para ejecutar los mismos a la Agencia Federal para el Manejo de Emergencias ("FEMA" por sus siglas en inglés).<sup>2</sup>

Dicha Resolución define el Plan de la AEE, que consiste en las mejoras de aproximadamente 29 unidades, con el objetivo de aumentar la capacidad de generación del sistema hidroeléctrico a 125MW. Sin embargo, FEMA declinó otorgar fondos para los proyectos mencionados.<sup>3</sup> El 10 de junio de 2024, la AEE apeló la determinación de FEMA, a través de la Oficina Central de Recuperación, Reconstrucción y Resiliencia ("COR3")<sup>4</sup>. Así las cosas,

<sup>2</sup> Véase anejo 1.

<sup>&</sup>lt;sup>3</sup> Véase anejo 2.

<sup>&</sup>lt;sup>4</sup> Véase anejo 3.

actualmente la AEE se encuentra en espera de la determinación de FEMA con relación a los fondos para realizar los proyectos de mejoras del sistema hidroeléctrico. Además de estos proyectos, la AEE contempla la construcción de nuevas plantas hidroeléctricas con fondos de mitigación de FEMA: una en la represa Guayabal, en Patillas y en Guajataca.

En la actualidad el sistema hidroeléctrico cuenta con 30 MW de capacidad de generación disponible y distribuido en las unidades de Garzas 1-1, Garzas 1-2, Yauco 2-1, Yauco 2-2, Dos Bocas 2, Dos Bocas 3, Toro Negro 1-1, Tor Negro 1-2, y Toro Negro 1-3. Al final del 2024, la AEE espera recuperar la disponibilidad de las unidades Dos Bocas 1, Toro Negro 2-1, Toro Negro 1-4, y Garzas 2-1, lo que representarían 16 MW adicionales. Los trabajos para lograr la recuperación de estas unidades se realizan con los empleados de la AEE y como parte del presupuesto operacional.<sup>5</sup>

Conforme a lo antes expresado, la AEE ha identificado los puntos débiles del sistema hidroeléctrico y desarrolló un plan de mejoras que cuenta con la aprobación del Negociado de Energía. Es la intención de la AEE ejecutar dicho plan una vez reciba la aprobación de los fondos por parte de FEMA.

El sistema hidroeléctrico aporta voltaje reactivo a la red eléctrica por tener la capacidad de operar como generador sincrónico, ofreciendo un servicio ancilar (Ancilliary Service). De igual forma, dicho sistema es la única fuente de

<sup>&</sup>lt;sup>5</sup> La disponibilidad de Garzas 2-1 está condicionado a que LUMA complete la reparación de una línea de 38 KV.

energía renovable no intermitente, no ocasiona fluctuaciones en voltaje y frecuencia, por lo que contribuye a la integración de más sistemas fotovoltaicos y aerogeneradores. Además, es el único sistema de energía renovable que puede predeterminar y anticipar la producción de energía diariamente ya que no está sujeto a las condiciones atmosféricas, siendo un sistema de energía estable y confiable. La fuente de generación es 100% limpia al tener cero emisiones, contribuyendo a reducir la huella de carbono.

El sistema hidroeléctrico tiene la capacidad de operar en modo isla y como una Microred ante cualquier evento que afecte el sistema eléctrico, protegiendo con efectividad cargas críticas, la salud y seguridad a una población de aproximadamente 275,000 personas. Con un costo de producción de energía más económico entre las fuentes de energía renovable en Puerto Rico. Por último, los proyectos de mejoras del sistema hidroeléctrico contribuyen a lograr la meta y política pública de 100% de energía renovable para el 2050.

**POR TODO LO CUAL**, la Autoridad solicita respetuosamente al Negociado de Energía que tome conocimiento de lo anterior, y de por cumplida la orden emitida el 13 de junio de 2024.

## **RESPETUOSAMENTE PRESENTADO.**

En San Juan, Puerto Rico, a 19 de julio de 2024.

**CERTIFICO:** Por la presente certificamos que este documento fue presentado ante la Oficina del Secretario de la Oficina de Energía utilizando su Sistema de Presentación Electrónica en <u>https://radicacion.energia.pr.gov/login</u>,

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y se ha enviado copia de cortesía mediante correo electrónico a LUMA Energy,

LLC a margarita.mercado@us.dlapiper.com, valeria.belvis@usdlapiper.com y a

Genera PR, LLC a Irn@roman-negron.com.

# **GONZÁLEZ & MARTÍNEZ**

1509 López Landrón Séptimo Piso San Juan, PR 00911-1933 Tel.: (787) 274-7404

# f/ Alexis G. Rivera Medina

RUA Núm.: 18.747 E-mail: <u>arivera@gmlex.net</u>

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

IN RE: REVIEW OF THE PUERTO RICO CASE NO.: NEPR-MI-2021-0002 ELECTRIC POWER AUTHORITY'S 10-YEAR INFRASTRUCTURE PLAN – DECEMBER 2020 SUBJECT: Determination on

**SUBJECT:** Determination on PREPA's September 28, 2023, Motion for the Resubmission of PREPA's Hydroelectric Fleet Application, and Request for Confidential Designation and Treatment.

#### **RESOLUTION AND ORDER**

#### I. Introduction

On March 26, 2021, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("March 26 Resolution") in the instant case, through which it ordered the Puerto Rico Electric Power Authority ("PREPA") to submit each specific capital investment project for approval to avoid potential noncompliance with the Approved Integrated Resource Plan ("IRP") and Modified Action Plan.<sup>1</sup> To streamline the process, the Energy Bureau requested PREPA to submit the specific projects to the Energy Bureau at least thirty (30) calendar days before their submittal to the Puerto Rico Central Office for Recovery, Reconstruction and Resiliency ("COR3") and the Federal Emergency Management Agency ("FEMA"), and any other federal agency,<sup>2</sup> and to continue reporting to the Energy Bureau and FEMA, within the next five (5) years, the progress of all ongoing efforts related to the final approval of the submitted projects not yet approved by the Energy Bureau.

On July 10, 2023, PREPA filed a document titled *Motion to Submit PREPA's Hydroelectric Fleet Application Package and Request for Confidential Designation* ("July 10 Motion"). As Exhibit 1 to the July 10 Motion, PREPA included a document titled 4339-HM-HMGP-001966 PREPA Hydroelectric Fleet Application including the proposed mitigation activities to retrofit and upgrade the hydroelectric plants in Puerto Rico.

On August 1, 2023, the Energy Bureau issued a Resolution and Order ("August 1 Resolution") through which determined that the filing was premature since it was still in the preliminary stage to determine eligibility under the 404 Program for Hurricane Fiona and ordered PREPA to submit the <u>final version</u> of the Hydro Application Package to the Energy Bureau, once eligibility was determined, and before their submittal to COR3 and FEMA, in accordance with the March 26 Order.

On September 28, 2023, PREPA filed a document titled *Motion to Resubmit PREPA's Hydroelectric Fleet Application and Request for Confidential Designation* ("September 28 Motion"). As Exhibit 1 to the September 28 Motion, PREPA included the *PREPA Hydroelectric Fleet Application* including the proposed mitigation activities to retrofit and upgrade the hydroelectric plants in Puerto Rico ("Hydroelectric Fleet Application Package"), and as Exhibit 2, a letter dated on August 29, 2023, from COR3 to the Energy Bureau, indicating that COR3 assisted PREPA in the preparation of the Hydroelectric Fleet Application Package and concluding it is complete and pending the Energy Bureau's approval.

On the September 28 Motion, PREPA requested confidential designation and treatment to the unredacted version of Exhibit  $1.^3$ 

<sup>3</sup> September 28 Motion, pp. 3-6.



Anejo 1

<sup>&</sup>lt;sup>1</sup> Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan, *In re: Review of the Integrated Resource Plan of the Puerto Rico Electric Power Authority*, Case No. CEPR-AP-2018-0001, August 24, 2020 ("IRP Order").

<sup>&</sup>lt;sup>2</sup> March 26 Resolution, pp. 14-15.

#### II. Evaluation of the September 28 Motion

Through the September 28 Motion, as Exhibit 1, PREPA submitted PREPA's Hydroelectric Fleet Application Package which includes the proposed mitigation activities to retrofit and upgrade sixteen (16) hydroelectric plants. The project if approved, would be covered under the 2021 Puerto Rico State Natural Hazards Mitigation Plan, and will include the hydroelectric plants: Caonillas 1 and 2; Carite 1, 2 and 3; Dos Bocas; Garzas 1 and 2; Isabela 1, 2 and 3; Rio Blanco; Toro Negro 1 and 2; Yauco 1 and 2.

The project objectives are: (i) to increase the capacity factor of each hydroelectric plant, (ii) to increase the contribution of hydroelectric generation to the grid, and (iii) to support Puerto Rico's clean energy transition.

PREPA states that hydroelectric contributes significantly to the avoidance of greenhouse gas ("GHG") emissions, to the mitigation of global warming and to the energy supply security; and that compared to conventional coal power plants, hydroelectric prevents the emission of about 3 GT CO<sub>2</sub> per year, which represents about 9% of global annual CO<sub>2</sub> emissions.

PREPA is exploring options to update their sixteen (16) hydroelectric facilities as stated in the IRP, as part of their requirement to increase the use of renewable energy. Most of the hydroelectric plants were built between the years 1920's to 1950's with a total design capacity of over 120 MW.

The project proposes to increase the capacity factor of each plant by common facility upgrades that include, but not limited to, mechanical and electrical systems, generators, turbines and controls, penstock (pipes and/or channels), water conveyance, transmission and communication, governors (speed and power controllers), flood control and drainage systems.

Also, the project proposes a full retrofit of its structures that includes a wind retrofit of each window, doors, and roofs.

Due to the number of sites to be mitigated in the project and the diverse activities required to refine the detailed scope of work and technical specifications, PREPA is proposing to phase the project into Phase One and Phase Two.

Phase One of the project will include all required studies, surveys and assessments, initial permitting and coordination, engineering design, finalization of the scope of work and schedule and the Environmental and Historic Preservation ("EHP") compliance activities, as needed. The duration of Phase One is expected to take 40 weeks and is estimated at \$33,000,000.00.

Phase Two of the project will be focused on any additional procurement and final design activities, consultation with agencies, construction activities at all hydroelectric plants, including demolition and removal of equipment as needed, fabrication and installation of wind retrofit and upgraded equipment, electrical works, commissioning, testing and inspections among other works. The duration of Phase Two is expected to take 116 weeks and is estimated at \$287,790,000.00.

The total cost of the project for Phase One and Phase Two is estimated to be **\$320,790,000.00**, based on PREPA's existing reports and RS Means.

PREPA states that all deliverables from Phase One will be submitted to COR3 and FEMA for review and approval and once approved, Phase Two will begin.

The project is aligned with the goal of repairing, improving, and sustaining the reliability, capacity, and resiliency of the Puerto Rico electric system. All these reconstruction efforts on the island need to be aligned with local and federal regulations, and actual codes and standards.

Upon review of the Exhibit #1 in the September 28 Motion, the Energy Bureau **DETERMINES** that the project is necessary to improve the reliability and resiliency of the electrical system while the impact to the environment is reduced and the safety of the personnel and the equipment is increased. The Energy Bureau **APPROVES** the project in **Attachment** to this Resolution and Order. This approval represents **\$320,790,000,00** based on existing reports of the hydroelectric plants and the RS Means Cost Estimates as informed by PREPA.

#### III. PREPA's Request for Confidential Information Designation and Treatment of parts of Exhibit 1 of the September 28 Motion

In the September 28 Motion, PREPA requested confidential designation and treatment of Exhibit 1 for certain global positioning system ("GPS") information for the projects. PREPA alleged that the Exhibit 1 of the September 28 Motion has GPS coordinates of the power plants, which is confidential information in the form of CEII that garners protection from public disclosures pursuant to federal statutes and regulations<sup>4</sup> and the Energy Bureau policy on management of confidential information,<sup>5</sup> that therefore is also protected under Act 57-2014.<sup>6</sup> PREPA requests the Energy Bureau to grant confidential designation and treatment to the referred part of Exhibit 1.

#### Table 1: PREPA's Request for Confidential Information Designation and Treatment, of parts of Exhibit 1

A	Document	Description	Confidential Information	Request for Confidentiality	Date Filed
fron any	Exhibit 1	4339-HM-HMGP- 001966 PREPA Hydroelectric Fleet Application	GPS Location Page 5-Project Locations	CEII	September 28, 2023

C

#### IV. **Energy Bureau Determination**

The Energy Bureau **APPROVES** the projects in **Attachment A** to this Resolution and Order. which shall be presented to FEMA and COR3 to finalize their approval process for the request of federal funds. The Energy Bureau approved these projects based on the information from PREPA. Should the scope of the project change or the request for the federal funds are not approved for such projects, PREPA SHALL immediately seek the Energy Bureau's approval of such changes.

The Energy Bureau ORDERS PREPA to (i) submit to the Energy Bureau copy of the approval by COR3 and/or FEMA of the project in Attachment A, for Phase One and Phase Two, which shall have the costs obligated for each individual facility in the project, within ten (10) days of receipt of this approval; (ii) provide the Energy Bureau the actual contracted cost to construct each individual facility of the project in Attachment A, within ten (10) days from the execution of the contract; and (iii) inform the Energy Bureau once the projects are completed.

The directive established in the March 26 Resolution regarding the submission of projects before the Energy Bureau at least thirty (30) calendar days before submitting such projects to FEMA and/or COR3 remains unaltered.

Act 57-2014<sup>7</sup> establishes that any person having the duty to submit information to the Energy Bureau, can request privilege or confidential treatment to any information that the party



<sup>&</sup>lt;sup>4</sup> 6 U.S.C. §§ 671-674; 18 C.F.R. §388.113 (2020).

<sup>&</sup>lt;sup>5</sup> See, Resolution, In re: Política sobre Manejo de Información Confidencial en los Procedimientos ante la Comisión, Case No. CEPR- MI-2016-0009, issued on August 31, 2016.

<sup>&</sup>lt;sup>6</sup> Known as Puerto Rico Energy Transformation and RELIEF Act, as amended.

submitting understands deserves this protection.<sup>8</sup> Specifically, Act 57-2014 requires the Energy Bureau to treat as confidential the submitted information stated that "the Energy Bureau, after the appropriate evaluation, believes such information should be protected".<sup>9</sup> In such case, the Energy Bureau "shall grant such protection **in a manner that least affects the public interest, transparency**, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted."<sup>10</sup>

Upon review of PREPA's arguments and the applicable law, the Energy Bureau **GRANTS** confidential designation and treatment to the parts of Exhibit 1 as described in Table 1 above, pursuant to Article 6.15 of Act 57-2014.

The Energy Bureau **WARNS** PREPA that, noncompliance with any provision of this Resolution and Order, may result in the imposition of fines pursuant to Act 57-2014 and applicable Energy Bureau's regulations and any other appropriate administrative sanctions, as deemed appropriate by the Energy Bureau.

Be it notified and published.

Edison Avilés Deliz Chairman Lillian Mateo Santos Ferdinand A. Ramos Soegaard Associate Commissioner 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 October <u>//</u>, 2023. Also certify that on October <u>//</u>, 2023, I have proceeded with the filing of this Resolution and Order and was notified by email to lionel.santa@prepa.com; laura.rozas@us.dlapiper.com; margarita.mercado@us.dlapiper.com, Yahaira.delarosa@us.dlapiper.com; jmarrero@diazvaz.law; mvazquez@diazvaz.law, julian.angladapagan@us.dlapiper.com.

For the record, I sign in San Juan, Puerto Rico, today, October <u>1</u>, 2023.

Sonia Seda Gaztambide Clerk ADOD

<sup>8</sup> Section 6.15 of Act 57-2014.

9 Id.

<sup>&</sup>lt;sup>10</sup> Id. (Emphasis added).

#### Attachment A

## Project Approved by the Energy Bureau

Damage Number	Project name	Phases	Presented Estimate
4339-HM-	PREPA Hydroelectric Fleet Applications	Phase One	\$33,000,000.00
HMGP-001966		Phase Two	\$287,790,000.00
	\$320,790,000.00		





March 14, 2024

Mr. Manuel Laboy Rivera Executive Director Central Office for Recovery, Reconstruction and Resiliency, COR3 Governor's Authorized Representative Commonwealth of Puerto Rico P.O. Box 195014 San Juan, PR 00918-5014

 Re: FEMA-4671-DR-PR Hazard Mitigation Grant Program Project #: 4671-0011 Sub-recipient: Puerto Rico Electric Power Authority (PREPA) Retrofit of the Hydroelectric Turbines Fleet – 6 Plants Project Eligibility Determination

Dear Mr. Laboy:

FEMA has reviewed the Central Recovery, Reconstruction and Resiliency Office of Puerto Rico's (COR3 or Recipient) sub-application submitted on behalf of the Puerto Rico Electric Power Authority (PREPA or Subrecipient) for Hazard Mitigation Grant Program (HMGP) funding under FEMA-4671-DR-PR (Project).

The proposed mitigation activity involves a full retrofit of six (6) hydroelectric plants (or Facilities), including a wind retrofit of each Facility's windows, doors, roofs, load path, and upgrades of the existing equipment to increase the capacity factor of each plant. The proposed hydroelectric Facility upgrades will protect the Facilities during a hurricane to ensure resiliency and expedite recovery, as well as provide resources to the Commonwealth of Puerto Rico's (Puerto Rico or Island) power grid for energy generation resources during storm recovery, and increase the overall production of each hydroelectric plant, thus, reducing the overall reliance on fossil fuel generation by adding 120 Megawatts of renewable generation to Puerto Rico's grid capacity mix.

FEMA conducts eligibility reviews for a project to ensure compliance with federal regulations and program requirements. After reviewing the application and supporting documents, FEMA has determined that the Project does not meet the HMGP program requirements.

FEMA has determined that the Project does not meet the following requirements per Code of Federal Regulations (C.F.R.) and FEMA's Hazard Mitigation Assistance (HMA) Guidance:

- Activities necessitated as a result of negligence or intentional actions that contributed to the conditions to be mitigated.
- Projects that address, deferred or future maintenance, rehabilitation, restoration, or replacement of existing structures, facilities, or infrastructure. (e.g. replacing obsolete utility system, maintenance/rehabilitation of facilities).

Mr. Manuel Laboy Project #: 4671-0011 Project Denial Determination March 14, 2024 Page 2 of 2

Please see the enclosed sub-application Review Summary for additional details regarding this project review and determination.

Based on the reasons outlined above, FEMA has determined that the Project does not meet the eligibility requirements for project approval and is not eligible for funding. Therefore, FEMA denies the project under HMGP FEMA-4671-DR-PR.

The Recipient or Subrecipient may appeal this determination to the Regional Administrator in accordance with the requirements and procedures set forth in 44 C.F.R. § 206.440. If the Recipient or Subrecipient files an appeal, the appeal must:

Contain documented justification supporting the appellant's position;
Specify the monetary figure in dispute;
Cite the provisions in federal law, regulation, or policy with which the appellant believes the initial action is inconsistent.

The Subrecipient has 60 days from the date of receipt of this letter to submit an appeal to the Recipient. The Recipient then has 60 days from the date of receipt of the Sub-recipient's appeal to forward the appeal with recommendation to the Regional Administrator at FEMA Region 2, 26 Federal Plaza, New York, New York 10278 copying William McDonnell, Mitigation Division Director. If sending appeal by UPS/FedEx (Overnight Services), send to FEMA Regional Administrator, FEMA Region 2, One World Trade Center, 52nd Floor – Mail Room, New York, NY 10007 copying William McDonnell, Mitigation Division Director, or via email to William.McDonnell@fema.dhs.gov.

Should you have any questions or require additional information, please contact Sharon Edwards, Hazard Mitigation Assistance Branch Chief at (212) 680-3633 or by email at <u>Sharon.Edwards@fema.dhs.gov</u>.

Sincerely,

William McDonnell Mitigation Division Director FEMA Region 2

Enclosure: Sub application Review Summary

cc: Ms. Marlena V. Riccio-Paniagua, State Hazard Mitigation Officer, COR3 Mr. Orlando Olivera, Caribbean Area Office – Puerto Rico Coordinator, FEMA Region 2

#### **Project Summary**

The proposed mitigation activity involves a full retrofit of six hydroelectric plants, including a wind retrofit of each Facility's windows, doors, roofs, load path, and upgrades of the existing equipment to increase the capacity factor of each plant. The proposed hydroelectric plant upgrades will add needed protection to the facilities during a hurricane to ensure resiliency and expedite recovery, provide resources to the island's power grid for islanding generation resources during storm recovery, and increase the overall production of each hydroelectric plant, reducing the overall reliance on fossil fuel generation, adding 120 Megawatts of renewable generation to Puerto Rico's grid capacity mix.

#### **Hydroelectric Systems**

#### A. Isabela System

1. Isabela 1

Location: Municipality of Isabela Status: Inoperable

#### Site Summary

**Built**: 1972

**Current Power Generation Level**: 0 Megawatts – Facility is offline. **Current Conditions**: The Facility is offline and inactive.

**Proposed Site Scope of Work**: The upgrade of 18 windows, 1 exterior door with hurricane wind-resistant equipment that can provide adequate protection against Risk Category IV wind speeds of 186 mph. Ensure adequate load path for the building. The roof structure meets current codes and standards. Update/install equipment to allow for maximum output, efficiency, and reliability.

- Provide prime generator for standby power.
- Upgrade two turbines, transformers, water conveyance system and penstocks, equipment controls and remote/automated communications, and electrical/mechanical equipment identified during Phase One of the project.

## **Eligibility Analysis**

The Facility and its infrastructure were inoperable during and following this disaster event, there is no infrastructure to mitigate. The need for upgrades on all electrical and mechanical equipment appears to be related to maintenance/upkeep. The application does not provide details on if/when the electrical and mechanical equipment has been maintained or upgraded since installation.

Based on information provided for this Facility, mitigation measures are deemed ineligible activities due to the following:

• Activities required as a result of negligence or intentional actions that contributed to the conditions to be mitigated.

• Projects that address, deferred or future maintenance, rehabilitation, restoration, or replacement of existing structures, facilities, or infrastructure. (e.g. replacing obsolete utility system, plant maintenance/rehabilitation).

#### 2. Isabela 2

Location: Municipality of Isabela Status: Inoperable

Site Summary Built: 1940 Current Power Generation Level: 0 Megawatts – Facility is offline. Current Conditions: The Facility is offline and inactive.

**Proposed Site Scope of Work**: The upgrade of 56 windows, one (1) exterior door with hurricane wind-resistant equipment that can provide adequate protection against Risk Category IV wind speeds of 177 mph. Ensure adequate load path for the building. The roof structure meets current codes and standards. Upgrade/install equipment to allow for maximum output, efficiency, and reliability.

- Provide prime generator for standby power.
- Upgrade two turbines, transformers, water conveyance system and penstocks, equipment controls and remote/automated communications, and electrical/mechanical equipment identified during Phase One of the project.

## **Eligibility Analysis**

The Facility and its infrastructure were inoperable during and following this disaster event, there is no infrastructure to mitigate. The need for upgrades on all electrical and mechanical equipment appears to be related to maintenance/upkeep. The application does not provide details on if/when the electrical and mechanical equipment has been maintained or upgraded since installation.

Based on information provided for this Facility, mitigation measures are deemed ineligible activities due to the following:

- Activities required as a result of negligence or intentional actions that contributed to the conditions to be mitigated.
- Projects that address, deferred or future maintenance, rehabilitation, restoration, or replacement of existing structures, facilities, or infrastructure. (e.g. replacing obsolete utility system, plant maintenance/rehabilitation).

#### 3. Isabela 3

Location: Municipality of Isabela Status: Inoperable

Site Summary Built: 1947

**Current Power Generation Level**: 0 Megawatts – Facility is offline. **Current Conditions**: The Facility is offline and inactive.

**Site Scope of Work**: The upgrade of 19 windows, one (1) exterior door with hurricane wind-resistant equipment that can provide adequate protection against Risk Category IV wind speeds of 177 mph. Ensure adequate load path for the building. The roof structure meets current codes and standards. Upgrade/install equipment to allow for maximum output, efficiency, and reliability.

- Provide prime generator for standby power.
- Upgrade two turbines, transformers, water conveyance system and penstocks, equipment controls and remote/automated communications, and electrical/mechanical equipment identified during Phase One of the project.

## **Eligibility Analysis**

The Facility and its infrastructure were inoperable during and following this disaster event, there is no infrastructure to mitigate. The need for upgrades on all electrical and mechanical equipment appears to be related to maintenance/upkeep. The application does not provide details on if/when the electrical and mechanical equipment has been maintained or upgraded since installation. Implementing the proposed scope of work at this Facility will not increase the level of protection for people, structures, or infrastructure.

Based on information provided for this Facility, mitigation measures are deemed ineligible activities due to the following:

- Activities required as a result of negligence or intentional actions that contributed to the conditions to be mitigated.
- Projects that address, deferred or future maintenance, rehabilitation, restoration, or replacement of existing structures, facilities, or infrastructure. (e.g. replacing obsolete utility system, plant maintenance/rehabilitation).

## B. Carite System

#### 4. Carite 1

Location: Municipality of Guayama Status: Partially Operable and not connected to the electrical grid

#### <u>Site Summary</u>

## Built: 1915-1924

**Current Power Generation Level**: 0 Megawatts – Facility is offline. **Current Conditions**: The tunnels, canals and forebays are partially deteriorated. Obstructions and damage from landslides have been reported by PREPA personnel. The current systems are not automated, it is not possible to provide ECC remote startup, shutdown controls of the units, the manual startup, shutdown sequences or synchronization. The mechanical governor impacts efficiency and out and does not

support automatic sequencing. The outdated voltage regulator does not support automatic sequencing and remote voltage control. Frequency response and reactive power are not optimal. The hydroelectric plant does not operate at full capacity due to the condition and age of the transformers, penstocks, water conveyance structures, generators, turbines, and turbine controls. The current SCADA system is not automated, so communication with ECC is impacted.

**Proposed Site Scope of Work**: The upgrade of 45 windows, 4 exterior doors with hurricane wind-resistant equipment that can provide adequate protection against Risk Category IV wind speeds of 185 mph. Ensure adequate load path for the building. The roof structure meets current codes and standards. Upgrade/install equipment to allow for maximum output, efficiency, and reliability.

- Provide prime generator for standby power.
- Upgrade two turbines, transformers, water conveyance system and penstocks, equipment controls and remote/automated communications, and electrical/mechanical equipment identified during Phase One of the project.

#### **Eligibility Analysis**

The Facility and its infrastructure were partially operable, but not connected to the electrical grid during and following this disaster event, there is no infrastructure to mitigate. The need for upgrades on all electrical and mechanical equipment appears to be related to maintenance/upkeep. The application does not provide details on if/when the electrical and mechanical equipment has been maintained or upgraded since installation.

Based on information provided for this Facility, mitigation measures are deemed ineligible activities due to the following:

- Activities required as a result of negligence or intentional actions that contributed to the conditions to be mitigated.
- Projects that address, deferred or future maintenance, rehabilitation, restoration, or replacement of existing structures, facilities, or infrastructure. (e.g. replacing obsolete utility system, plant maintenance/rehabilitation).

### 5. Carite 2

**Location:** Municipality of Guayama **Status:** Partially Operable and not connected to the electrical grid

## Site Summary

#### **Built**: 1922

**Current Power Generation Level**: 0 Megawatts – Facility is offline. **Current Conditions**: The equipment is not sufficient to provide maximum output including generators, turbines, auxiliary systems including the governor and automated valve system, colling system, switchgear and protective relays, breakers,

controls, service and step-up transformers and the switchyard and other required equipment for plant operation. Frequency response and reactive power are not optimal. The hydroelectric plant does not operate at full capacity due to the condition and age of the transformers, penstocks, water conveyance structures, generators, turbines, and turbine controls. The current SCADA system is not automated, so communication with ECC is impacted.

**Proposed Site Scope of Work**: The upgrade of 41 windows, one (1) exterior door with hurricane wind-resistant equipment that can provide adequate protection against Risk Category IV wind speeds of 186 mph. Ensure adequate load path for the building. The roof structure meets current codes and standards. Upgrade/install equipment to allow for maximum output, efficiency, and reliability.

- Provide prime generator for standby power.
- Upgrade two turbines, transformers, water conveyance system and penstocks, equipment controls and remote/automated communications, and electrical/mechanical equipment identified during Phase One of the project.

#### **Eligibility Analysis**

The Facility and its infrastructure were partially operable, but not connected to the electrical grid during and following this disaster event, there is no infrastructure to mitigate. The need for upgrades on all electrical and mechanical equipment appears to be related to maintenance/upkeep. The application does not provide details on if/when the electrical and mechanical equipment has been maintained or upgraded since installation.

Based on information provided for this Facility, mitigation measures are deemed ineligible activities due to the following:

- Activities required as a result of negligence or intentional actions that contributed to the conditions to be mitigated.
- Projects that address, deferred or future maintenance, rehabilitation, restoration, or replacement of existing structures, facilities, or infrastructure. (e.g. replacing obsolete utility system, plant maintenance/rehabilitation).

### 6. Carite 3

**Location:** Municipality of Guayama **Status:** Partially Operable and not connected to the electrical grid

## Site Summary

#### Built: 1936

**Current Power Generation Level**: 0 Megawatts – Facility is offline. **Current Conditions**: The equipment is not sufficient to provide maximum output. The outdated equipment includes generators, turbines, auxiliary systems including the governor, automated valve system, cooling system, switchgear, protective relays,

breakers, controls, service and step-up transformers, and the switchyard. The current SCADA system is not automated, so communication with ECC is impacted.

**Proposed Site Scope of Work**: The upgrade of 12 windows, 2 exterior doors with hurricane wind-resistant equipment that can provide adequate protection against Risk Category IV wind speeds of 186 mph. Ensure adequate load path for the building. The roof structure meets current codes and standards. Upgrade/install equipment to allow for maximum output, efficiency, and reliability.

- Provide prime generator for standby power.
- Upgrade two turbines, transformers, water conveyance system and penstocks, equipment controls and remote/automated communications, and electrical/mechanical equipment identified during Phase One of the project.

#### **Eligibility Analysis**

The Facility and its infrastructure were partially operable, but not connected to the electrical grid during and following this disaster event, there is no infrastructure to mitigate. The need for upgrades on all electrical and mechanical equipment appears to be related to maintenance/upkeep. The application does not provide details on if/when the electrical and mechanical equipment has been maintained or upgraded since installation.

Based on information provided for this Facility, mitigation measures are deemed ineligible activities due to the following:

- Activities required as a result of negligence or intentional actions that contributed to the conditions to be mitigated.
- Projects that address, deferred or future maintenance, rehabilitation, restoration, or replacement of existing structures, facilities, or infrastructure. (e.g. replacing obsolete utility system, plant maintenance/rehabilitation).

#### Anejo 3



June 10, 2024

To: Mr. David Warrington Regional Administrator FEMA Region II U.S. Department of Homeland Security 26 Federal Plaza, Room 1807 New York, NY 10278-0001

And

William McDonnell, Mitigation Division Director. 26 Federal Plaza, New York, New York 10278

- Through: Mr. José G. Baquero Federal Disaster Recovery Coordinator Federal Emergency Management Agency (FEMA) GFR Media Building PR-165 Buchanan Sector Industrial Park Guaynabo, Puerto Rico 00908
- Re: FEMA-4671-DR-PR Hurricane Fiona First Appeal re: Puerto Rico Electric Power Authority Applicant/Subrecipient: Puerto Rico Electric Power Authority PR Hazard Mitigation Grant Program Project # 4671-0011 PREPA Hydroelectric Fleet Application – 6 Plants Date of FEMA's Decision: March 14, 2024 Date of Receipt of Decision by Applicant: March 14, 2024 Last Date to Submit 1<sup>st</sup> Appeal by Applicant to COR3: May 13, 2024 Date of Receipt of First Appeal by COR3: May 10, 2024 Last Date for COR3 to Submit appeal to FEMA: July 9, 2024

Dear Messrs. Warrington and McDonnell:

## I. INTRODUCTION

The Puerto Rico Central Office for Recovery, Reconstruction, and Resiliency ("COR3" or the "Recipient") has received the attached First Appeal from the Puerto Rico Electric Authority ("PREPA" or "Subrecipient"), regarding the Federal Emergency Management Agency's ("FEMA") determination to deny the Subrecipient's Sec. 404 Hazard Mitigation proposal which includes six (6) hydroelectric plants ("Facilities"). An operational part of the mitigation proposal included a wind retrofit of each Facility's windows, doors, roofs, load path, and upgrades of the existing equipment to increase the capacity factor of each Facility.

After a review of PREPA's First Appeal (See Exhibit B – PREPA First Appeal and Exhibit C – Supporting Documentation), the Recipient hereby submits the same for FEMA's consideration, as requested by the Subrecipient.

#### A. Historical Background

As mentioned in COR3's April 5, 2024, letter to FEMA (Exhibit C to PREPA Appeal), on February 8, 2024, and March 8, 2024, COR3 and FEMA Region 2 leadership met and discussed the Sec. 404 Hazard Mitigation proposal at issue. During the February 8 meeting the parties discussed only the Island-Wide Benefit Cost Analysis to be applied to the proposal. During the March 8 meeting FEMA advised of its intention to issue determination letters denying the Hazard Mitigation proposal. Notwithstanding, monthly meetings had been scheduled by FEMA and COR3, and no discussions regarding any Request for Information ("RFI") or a denial determination for the project took place before March 8, 2024.

On March 8, 2024, COR3 expressed its dissatisfaction that no RFI was ever issued by FEMA regarding this project. COR3 additionally advised that the failure to do so materially deviated from FEMA's Hazard Assistance Guidance. This concern was reiterated to FEMA through COR3's letter dated April 5, 2024 (Exhibit C to PREPA Appeal).

The Mitigation Proposal at issue pertains to the protection of 275,000 residents located in 2 Hydroelectric systems (*Isabella* consisting of 3 hydroelectric plants and *Carite* consisting of 3 hydroelectric plants). The Isabela system serves the Northwest section of the island and Carite serves a portion of the southeast. The current condition of the Facilities is as follows: Isabella 1, 2 and 3 are offline and inactive; and Carite 1, 2 and 3 are partially operable but not connected to the electrical grid.

The activities relating to the Facilities to effectuate and complete the mitigation proposal at issue generally includes the following: Upgrading windows and exterior doors for wind protection; Insuring roofs meet codes and standards; Providing prime generators for standby power; Upgrading turbines, transformers, water conveyance systems and penstocks, equipment controls and remote/automated communications, and electrical/mechanical equipment. The Mitigation Proposal, which includes the upgrading of the six (6) Facilities is estimated to cost \$93,608,646 and would take 156 weeks to complete.

In its determination letter dated March 14, 2024, FEMA denied the Hazard Mitigation proposal which included the six (6) Facilities. FEMA's denial asserted that the Project failed to meet the requirements of the Federal Code of Regulations and FEMA's Hazard Mitigation Assistance Guidance. FEMA specifically advised that the Project was ineligible because it fell under the following prohibitions:

- Activities necessitated as a result of negligence or intentional actions that contributed to the conditions to be mitigated.
- Projects that address, deferred or future maintenance, rehabilitation, restoration, or replacement of existing structures, facilities, or infrastructure. (e.g. replacing obsolete utility system, maintenance/rehabilitation of facilities).

#### II. ANALYSIS

#### General

COR3 and PREPA continue to assert that FEMA's failure to submit RFI's represents a failure to comply with its own Hazard Assistance Guidance and therefore represents a failure to consider all relevant factors in this project. (See Exhibit C to PREPA Appeal). The issuance of an RFI would have

afforded both COR3 and the Subrecipient the opportunity to consider and address any concerns FEMA noted in their review, as well as an opportunity to amend or revise the project applications to resolve these concerns. FEMA's failure to submit any RFIs leads the Recipient to believe that FEMA has not given itself the opportunity to fully understand the Project and recommends it utilize the existing tools, processes and procedures currently in place to best move forward and through the application review process, prior to prematurely denying projects as critical as the one at issue.

Contrary to FEMA's determination, PREPA, through its First Appeal, asserts that the Hazard Mitigation proposal should be accepted. Alternatively, PREPA suggests that FEMA retract its Denial Determination, follow the prescribed RFI process for Section 404 HMGP Applications, and make a final correct eligibility determination after reconciliation is achieved between Section 406 and Section 404 eligibility for the work at issue.

COR3 agrees with the Subrecipient and respectfully requests FEMA reconsider its decision and accept the Hazard Mitigation proposal at issue, thereby finding it eligible for funding, based on the forthcoming arguments.

#### The Mitigation Proposal

Based upon FEMA's March 14, 2024, Determination Letter and Analysis, it appears that FEMA believes the hazard mitigation pertains to mitigation related to each of the six (6) Facilities. However, each of these Facilities is merely a device to accomplish the larger mitigation task upon which the proposal focuses. FEMA may be confusing the requested Sec. 404 HMGP (long-term hazard mitigation protecting the broad community) with Sec. 406 hazard mitigation which relates to an individual Facility.

To properly explain, PREPA Hazard Mitigation proposal utilizes the six (6) Facilities, after upgrading, to protect approximately 275,000 residents from disaster-related and non-disaster related power interruptions. Essentially this protection would avoid jeopardizing critical systems like telecommunications, hospital facilities, water supplies, and transportation networks. As PREPA explains, the Hazard Mitigation Proposal would effectively protect the health and safety of 275,000 people during intermittent and disaster-related power outages.

PREPA provides an example in its Appeal, whereby the Hazard Mitigation Proposal could be lifesaving for municipalities such as Utuado (and areas adjacent to Utuado), which contains a hospital (Hospital Metropolitano de la Montaña) that would likely experience an increase in the number of patients and severity of injury during or directly after storm events. Further, loss of power during an event creates an unnecessary and additional burden to a facility that may not be able to divert patients elsewhere due to loss of roadway access or damage to flight vehicles. (See Exhibit E to PREPA Appeal, pg. 8).

Again, PREPA's Hazard Mitigation proposal does not focus on mitigation of each of the six (6) Facilities. Rather, the Facilities are devices to accomplish the larger hazard mitigation task of providing electric power to areas of the country adversely disrupted by interruption of electric power. To clarify, the Facilities are existing hydroelectric plants, utilizing water to produce electricity. Unlike existing electric plants currently providing electricity in the areas occupied by 275,000 residents, the Facilities would be less affected by disasters which produced heavy rainfall. As PREPA explains in its Appeal, excess precipitation generated by a hurricane could actually assist in producing hydroelectric power. (See Exhibit B to PREPA Appeal, pg. 14)

Importantly, any perceived mitigation relating to the individual Facilities, are mere changes to further protect the Facility from interruption of services during natural disasters. Clearly the Hazard Mitigation Proposal could be achieved by building new hydroelectric facilities with those improvements. However, because the six (6) Facilities exist and with upgrades can provide the

hydroelectric power needed for the Mitigation Proposal, it only makes sense to utilize and upgrade those Facilities rather than build anew.

Further, the Project independently addresses a multitude of problems, including the instability of a power system reliant on a singular integrated grid and prolonged and frequent outages, especially during extreme weather events. Should portions of Puerto Rico's Integrated Grid Infrastructure become disconnected from primary power sources, hydroelectric facilities can quickly begin generating power within a microgrid, reducing the length and extent of power outages for remote regions. (See Exhibit E to PREPA Appeal, pg.8).

#### III. CONCLUSION AND RECOMMENDATION

Consistent with PREPA's appeal, COR3 asserts that:

- 1. FEMA failed to follow its own Hazard Assistance Guidance and therefore represents a failure to consider all relevant factors in this project. Specifically, FEMA declined to issue any RFI prior to making its ineligibility determination.
- 2. FEMA's failure to issue any RFI relating to the Proposal led to FEMA's failure to understand the Proposal.
- 3. Contrary to FEMA's belief that the Proposal's primary purpose was to provide mitigation upgrades to each of the six (6) Facilities, the primary purpose of the Proposal was to respond to intermittent and disaster-related electric interruptions in the NW and SE areas of the Puerto Rico.
- 4. That which was referred to as mitigation within the Facilities was only designed to protect and ensure continued operation of the Mitigation plan to respond to intermittent and disaster-related electric interruptions in other areas of Puerto Rico in the event of severe weather.
- 5. The Hazard Mitigation Proposal at issue could also be accomplished by building new hydroelectric plants. However, it only makes sense to use and improve/protect the existing six (6) Facilities.

Based upon the above assertions, the Applicant concludes, and the Recipient concurs, that FEMA's March 14, 2024 determination, pertaining to the six (6) Facilities was both premature and without merit. Accordingly, COR3 respectfully requests that FEMA reconsider its determination and approve the Hazard Mitigation Proposal, Project # 4671-0011, as an acceptable and eligible project.

If you have any questions concerning this matter, please contact us via email at appeals@cor3.pr.gov.

Thank you for your continued support of Puerto Rico's recovery efforts.

Cordially,

*ashira M.Vega Montalvo* ashira M. Vega Montalvo, Esq. Legal Director

Enclosures (8)

Attachments:

Appendix A – FEMA's Determination Memo Appendix B – PREPA First Appeal

Appendix C – Supporting Documentation

### Supporting Documentation (Appendix A)

- 1. PREPA's Appeal Exhibit A FEMA's Denial Determination dated March 14, 2024
- 2. PREPA's Appeal Exhibit B PREPA's Hydroelectric Fleet Application 6 Plants
- 3. PREPA's Appeal Exhibit C FEMA's Denial Determination for PREPA's 10 Plant Application
- 4. PREPA's Appeal Exhibit D COR3's Letter to FEMA Region 2 dated April 5, 2024
- 5. PREPA's Appeal Exhibit E PREPA's Hydroelectric Fleet Microgrid Application 6 Plants
- 6. B &V Reports