

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

NEPR

Received:

Feb 20, 2026

8:58 PM

IN RE: REVIEW OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY'S 10-YEAR
INFRASTRUCTURE PLAN – DECEMBER 2020

CASE NO.: NEPR-MI-2021-0002

SUBJECT: Reconsideration of
February 5 and February 11, 2026
Resolutions and Orders

**MOTION FOR RECONSIDERATION OF THE RESOLUTIONS AND ORDERS
OF FEBRUARY 5 AND 11, 2026, AND REQUEST FOR EXTENSION OF TIME**

TO THE HONORABLE ENERGY BUREAU,

COMES NOW the Puerto Rico Electric Power Authority ("PREPA") through its undersigned legal representation and, very respectfully, informs and requests as follows:

I. INTRODUCTION

PREPA respectfully seeks reconsideration of the Puerto Rico Energy Bureau of the Public Service Regulatory Board's ("Energy Bureau") Resolutions and Orders issued on February 5 and February 11, 2026, in the above-captioned proceeding. PREPA does so with full recognition of, and deference to, the Energy Bureau's statutory mandate to oversee compliance with Puerto Rico's energy public policy and to ensure that reconstruction efforts advance reliability and protect ratepayers. PREPA likewise acknowledges that FEMA has expressly required that plans and investments related to PREPA be approved by the Energy Bureau as consistent with public policy before submission, and PREPA has consistently acted in conformity with that framework.

At the same time, both resolutions and orders impose immediate obligations upon PREPA, including directives to reactivate certain projects and to amend the Consolidated

Project List, before the completion of the necessary technical validation, scope confirmation, and cost reconciliation processes conducted by the Federal Emergency Management Agency (“FEMA”). PREPA respectfully submits that implementing such amendments at this juncture, prior to FEMA’s final review and confirmation, would be premature and could create unintended compliance risks.

Specifically, directing modifications to the Consolidated Project List before requiring LUMA Energy, LLC (“LUMA”) to submit the data necessary to complete the reconciliation process with FEMA creates a material risk of inconsistency with FEMA requirements and with the allocation framework established under the FEMA Accelerated Award Strategy (“FAAST”), which is grounded in documented damages, approved scopes of work, and defined funding parameters. Altering project designations in advance of FEMA’s validation and eligibility determinations may compromise compliance, disrupt the orderly administration and prioritization of available FAASt resources, and ultimately expose the reconstruction process --and, by extension, ratepayers-- to avoidable financial and operational risks.

Finally, PREPA respectfully submits that the directive to “resubmit” certain projects “for FEMA reactivation,” while well-intentioned, enters an area governed by federal law and by PREPA’s responsibilities as the Subrecipient. Under the Stafford Act framework, PREPA bears the legal and financial consequences of any deobligation, disallowance, scope reduction, or adverse eligibility determination by FEMA. For that reason, PREPA is the entity with the power to determine, based on technical, financial, and compliance considerations, which projects are appropriate for submission or resubmission to FEMA at

any given time. This allocation of responsibility does not diminish the Energy Bureau's recognized oversight role; rather, it reflects the distinct and complementary functions assigned to each entity within the federal reconstruction framework.

II. PROCEDURAL BACKGROUND

1. On February 5, 2026, the Energy Bureau issued a Resolution and Order (“February 5 Resolution”) related to the FEMA Consolidated Project Plan and FFAST Settlement. In the February 5 Resolution, the Energy Bureau determined:

- (i) The current allocation framework materially deviated from the original FEMA disaster funding allocation.
- (ii) An initial reallocation of reserve funds should be directed to transmission and distribution (“T&D”) projects, and it identified a subset of inactive projects, listed in Attachment A to the February 5 Resolution, that must be resubmitted to FEMA for reactivation using such reserve funds identified in the Consolidated Project List.
- (iii) Established an *Updated Allocation Framework* intended to increase funding availability for inactive priority projects and contemplated reconciliation actions, including reclassification of mitigation costs between Sections 406 and 428 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, known as the Stafford Act.

2. Therefore, in the February 5 Resolution, the Energy Bureau ordered several actions from PREPA, Genera PR, LLC, and LUMA. Specifically, PREPA was ordered: (i) to

submit within fifteen (15) calendar days of the notification of the February 5 Resolution an implementation plan identifying the estimated project timeline (design and construction) for each project, and (ii) confirmation that the estimated mitigation costs remain as submitted in the Consolidated Project Plan; and (iii) amend the Consolidated Project List to include projects identified in Attachment A.

3. On February 11, 2025, the Energy Bureau issued a Resolution and Order (“February 11 Resolution”) partially modifying its February 5 Resolution. The Energy Bureau determined that further refinement of the project selection was warranted and replaced the Attachment A project list from the February 5 Resolution, which prioritized projects with higher incurred costs, purportedly to reduce potential exposure to ratepayers associated with delayed implementation. Accordingly, the Energy Bureau ordered PREPA to amend the Consolidated Project List to incorporate the projects identified in the revised Attachment A within ten (10) calendar days, due February 23, 2026¹.

III. DISCUSSION

4. PREPA respectfully emphasizes that reconsideration of the February 5 and 11 Resolutions is warranted, because the directives to reactive projects under the FAASt Consolidated Project Plan were issued without a complete, reliable, and proper assessment of the actual availability of federal funds and without resolving material financial, technical, and eligibility issues that directly impact compliance with FEMA requirements.

¹As the last day of the term falls on Saturday, February 21, and the next day is a Sunday, the term expires the next business day, February 23, 2026.

5. As FEMA's designated Subrecipient for Public Assistance ("PA") funding, PREPA bears the legal responsibility for ensuring that all projects submitted for obligation comply with the Stafford Act, FEMA regulations, and applicable policy guidance. Any premature reactivation of projects without accurate funding reconciliation risks exposing PREPA --and ultimately ratepayers-- to unreimbursed costs, disallowances, or recoupment actions by FEMA.

6. Time and time again, PREPA has shown in this administrative record the need for verified financial data before additional projects are advanced, a prerequisite that has not been satisfied by LUMA at the time of issuance of the February 5 and 11 Resolutions.

7. Moreover, the Energy Bureau's reliance on the apparent availability of approximately \$600 million in reserve funds previously retained under the FAASt Consolidated Project List fails to account for unresolved cost overruns, unsubmitted expenditures, and uncertain reimbursement status associated with numerous projects.

8. Many Project Worksheets ("PWs") were formulated using preliminary estimates, and actual construction costs have already exceeded the originally obligated amounts. Until these discrepancies are reconciled, the remaining FAASt balance reflected in the Consolidated Project Plan may be materially overstated. Reactivating projects based on an inaccurate funding baseline could exceed the donor allocation and jeopardize federal eligibility for the entire portfolio.

9. PREPA has repeatedly requested detailed reconciliation information from LUMA to determine the true funding availability, yet the limited information supplied by LUMA has been incomplete or inconsistent across submissions.

10. The February 5 and 11 Resolutions are further problematic because they appear to rely on data reflecting material inconsistencies in the reported costs incurred for the two hundred and eighty-nine (289) inactive projects. Specifically, differing representations concerning the same portfolio reflect substantially divergent figures. In its submissions before the Energy Bureau, LUMA represented that the total incurred costs associated with the inactive projects amounted to approximately \$401 million. However, during the January 15, 2026, interagency meeting with the Financial Oversight and Management Board for Puerto Rico ("FOMB"), LUMA indicated that detailed information had been provided to the FOMB reflecting approximately \$225 million in incurred and unreimbursed costs.

11. This significant variance raises serious concerns regarding the accuracy and reliability of the underlying data and creates substantial uncertainty as to the actual financial exposure associated with the inactive portfolio. In the absence of a reconciled and validated cost baseline, any directive predicated upon those figures risks being founded upon incomplete or inconsistent information.

12. Without a verified and reconciled accounting of incurred and reimbursed costs, including costs potentially financed through global PWs, any decision to reactivate projects risks funding duplication, inaccurate reporting to federal authorities, and exposure to recoupment. These unresolved discrepancies alone warrant reconsideration of the February 5 and 11 Resolutions to prevent actions that could undermine the integrity of the federal funding program.

13. Additionally, the February 5 and 11 Resolutions raise serious concerns regarding compliance with FEMA eligibility rules. Certain projects are presented entirely under Section 406 Hazard Mitigation of the Stafford Act despite prior FEMA determinations that similar activities must be partially funded under Section 428 of the Stafford Act. Misclassification of costs between Sections 406 and 428 materially distorts funding availability and may result in ineligible expenditures. Likewise, PREPA notes that four (4) Battery Energy Storage System ("BESS") projects included in the revised Attachment A project list lack confirmed eligibility under Section 406, yet the February 5 and 11 Resolutions contemplate advancing them without a formal FEMA determination. PREPA reiterates that proceeding under these circumstances could result in substantial unreimbursed expenditures and undermine the integrity of the FAASf funding framework.

14. In addition to the above, PREPA wishes to clarify two matters for the administrative record. Firstly, the reference to the 289 inactive projects should not be construed as discretionary abandonment by PREPA. The record demonstrates that many of these projects were administratively withdrawn by FEMA (224 projects) due to funding constraints, as these projects represented approximately \$5.5 billion in estimated costs that materially exceeded the funding capacity available at the time of submission. The remaining sixty-five (65) projects were withdrawn by FEMA not as a consequence of the FAASf Consolidated Plan, but rather due to the absence of submitted Detailed Scopes of Work ("DSOWs"), insufficient measurable progress, or the lack of a projected formulation schedule, deficiencies attributable to LUMA's failure to advance or properly document the projects in accordance with FEMA requirements.

15. Secondly, all projects included in the FAASt Consolidated Project List submitted to the Energy Bureau were previously reviewed and expressly authorized by it before their submission to FEMA for eligibility review or obligation. Accordingly, both the active and inactive projects reflected in the FAASt Consolidated Project Plan constitute projects that have already received the Energy Bureau's approval, and none were included unilaterally by PREPA or without prior regulatory authorization.

16. Moreover, PREPA's review of the projects identified for reactivation indicates material misalignment with the PREB-approved Priority Stabilization Plan and LUMA's Project Prioritization framework. PREPA & FEMA have consistently emphasized that project prioritization should be driven by considerations of system stability, resiliency, and overall grid impact, as failure to advance projects addressing the highest system-level risks may result in significantly greater long-term consequences. Deferral or deprioritization of projects critical to system stability has the potential to impose substantially greater financial and operational impacts on the ratepayers of Puerto Rico over time.

17. As stated in the February 5 Resolution, project activation has been driven primarily by the level of costs already incurred. However, this approach is not fully aligned with the PREB-approved Priority Stabilization Plan, which was established to prioritize projects that deliver the greatest near-term benefits to system stability, reliability, and operational resilience.

18. Of the seventy-four (74) projects identified for reactivation in the February 5 Resolution, only **twenty-six (26)** projects were identified by LUMA as part of the PREB-approved Priority Stabilization Plan. Moreover, in the February 11 Resolution and Order

amending the project list, alignment with stabilization priorities was further reduced, with only **twenty-three (23)** projects remaining aligned with the PREB-approved Priority Stabilization Plan.

19. When evaluated against LUMA's Project Prioritization List submitted in prior compliance filings, only **twenty-five (25) of the seventy-four (74)** projects identified for reactivation under the February 5 Resolution fall within Priority Group 1, designated as "High Impact Grid Improvement" projects. This discrepancy reflects a material disconnect between the projects selected for reactivation and those identified by LUMA as having the highest system-level impact.

20. Under the February 11 Resolution, the revised Attachment A project list's alignment with stabilization priorities was further reduced. Specifically, only nine (9) of the seventy (70) projects identified for reactivation under the amended list fall within Priority Group 1 (High Impact Grid Improvement). This amendment further weakens alignment with the prioritization frameworks previously established by both the Energy Bureau and LUMA.

21. The amended list reflects the removal of twenty-seven (27) high-priority projects, which were replaced with two (2) automation projects and twenty-one (21) street lighting projects. Street lighting projects are categorized by LUMA as Priority Group 5 and are not part of the PREB Priority Stabilization Plan.²

² **Attachment A – PREPA Comments on Project Activation List** is submitted as part of this filing and contains the detailed information and observations referenced herein for the Energy Bureau's review and consideration.

22. PREPA further notes that, for several projects identified for reactivation, the costs presented as incurred are substantially higher than the total project estimated amounts reflected at the time of project formulation. This condition raises material concerns regarding the accuracy and sufficiency of Section 428 PA funding allocations, as the original estimates no longer reflect the actual financial exposure associated with project execution. As a result, the amount of Section 428 funding allocated to such projects may be understated, thereby distorting the assessment of remaining available FAASf balances and increasing the risk of funding shortfalls, disallowances, or future recoupment.

23. Nonetheless, PREPA acknowledges that the Energy Bureau states in its February 5 Resolution that ultimately, all amounts and project submissions under Section 428 and Section 406 remain subject to FEMA review, including eligibility, allowability, scope approval, and costs reasonableness determinations. However, reactivating projects without resolving their underlying reasons for their withdrawal creates a substantial risk that such projects will again fail to advance or be deemed ineligible by FEMA. Sound administrative decision-making requires that these threshold issues be addressed before imposing mandatory reactivation directives.

24. For these reasons, reconsideration is necessary to ensure that any future project activation decisions are based on accurate financial information, consistent prioritization criteria, and full compliance with federal requirements. PREPA remains committed to advancing reconstruction efforts in coordination with the Energy Bureau, FEMA, and other stakeholders; however, such efforts must proceed in a manner that

protects federal funding integrity, avoids unnecessary financial exposure, and ensures that limited resources are directed to projects with the greatest impact on system reliability and resiliency.

25. PREPA respectfully requests that the Energy Bureau reconsider its February 5 and 11 Resolutions to ensure that the necessary reconciliation processes, particularly the ones required to verify funding availability and project data, are completed before project activation.

26. PREPA stands ready to proceed on an expedited basis and, as LUMA submits complete reconciliation information for individual projects, will amend the Consolidated Project List on a rolling basis and keep the Energy Bureau timely and appropriately informed.

27. Finally, PREPA respectfully submits that the directive requiring PREPA to “resubmit” certain projects “for FEMA reactivation,” while undoubtedly motivated by the Energy Bureau’s legitimate concern for advancing reconstruction and protecting ratepayers, implicates an area governed principally by federal law and by PREPA’s obligations as the designated Subrecipient under the Stafford Act and the FEMA PA Program.

28. Under that federal framework, PREPA bears the direct legal and financial consequences of any FEMA action, including deobligation of funds, disallowance of costs, scope reductions, audit findings, or adverse eligibility determinations. Any such determination is binding upon PREPA as Subrecipient and may result in unreimbursed expenditures, repayment obligations, or other financial exposure. For that reason,

decisions regarding whether, when, and under what technical and financial posture a project should be submitted or resubmitted to FEMA necessarily require PREPA's exercise of informed discretion, grounded in compliance considerations, documentation readiness, funding reconciliation status, and risk assessment. A premature or procedurally incomplete submission may inadvertently prejudice FEMA's review, complicate reconciliation efforts, or increase the likelihood of adverse determinations. PREPA must therefore retain the ability to ensure that any resubmission is fully supported, technically validated, and aligned with FEMA's requirements before proceeding.

29. PREPA emphasizes that this allocation of responsibility does not diminish the Energy Bureau's recognized oversight authority, including its role, acknowledged within the FEMA framework, to review plans and investments for consistency with Puerto Rico's public energy policy. Rather, it reflects the distinct and complementary functions assigned to each entity within the federal reconstruction structure: the Energy Bureau exercises regulatory and public policy oversight, while PREPA, as Subrecipient, executes and administers the federal grant in accordance with FEMA's legal requirements and bears the compliance risk. Respectfully maintaining this delineation of roles ensures both regulatory integrity and adherence to federal law, while safeguarding public funds and the interests of ratepayers.

30. Furthermore, PREPA has been diligently working on preparing the implementation plan, identifying (i) the estimated project timeline (design and construction) for each project and (ii) confirmation that the estimated mitigation cost

remains as submitted in the Consolidated Project Plan. Given the scope, detail, and historical nature of the information requested, PREPA's evaluation remains ongoing.

31. To complete this endeavor and submit an accurate and complete implementation plan, PREPA respectfully requests until Friday, February 27, 2026.

32. This request is made in good faith and not for purposes of unnecessary delay. The requested extension is brief and necessary to ensure that PREPA fully complies with the February 5 Resolution and, therefore, submits an accurate and complete implementation plan.

WHEREFORE, PREPA very respectfully requests that the Energy Bureau: (i) **RECONSIDER** its Resolutions and Orders issued on February 5 and February 11, 2026 to modify the directives contained therein regarding project reactivation and amendment of the Consolidated Project List to provide that the completion of all necessary funding reconciliations, FEMA eligibility determinations, scope confirmations, and technical validation processes shall occur before, and as a condition precedent to, the inclusion of any such project in the Consolidated Project List by PREPA; and (ii) **GRANT** PREPA the brief extension of time until February 27, 2026, to comply with the February 5 Resolution.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 20th day of February 2026.

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 copies were sent via email to

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