COMMONWEALTH OF PUERTO RICO PUBLIC SERVICE REGULATORY BOARD PUERTO RICO ENERGY BUREAU

NEPR

Received:

Jun 30, 2023

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IN RE: BUDGE	OF	LUMA'S	INITIAL	CASE N	10.]	NEPR-MI-20)21-00()4	
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SUBMISSION OF MOTIONS FOR RECONSIDERATION BY PREPA AND GENERA AND NOTICE OF INTENT TO FILE MOTION FOR RECONSIDERATION OF **RESOLUTION AND ORDER OF JUNE 25, 2023**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC ("ManagementCo"), and LUMA Energy ServCo,

LLC ("ServCo"), (jointly referred to as "LUMA"), and respectfully state and request the following:

I. Background

1. On May 15, 2023, LUMA submitted to this Honorable Puerto Rico Energy Bureau ("Energy Bureau") the proposed Budgets for the Puerto Rico Energy System (the "System"), which are comprised of the Proposed Annual T&D Budgets, developed by LUMA ("Proposed Annual T&D Budgets"); the budget proposal for the legacy thermal generation units (the "GenCo Budget"), the budget proposal for the hydroelectric generating units and the public irrigation facilities (the "HydroCo Budget") and the budget proposal for PREPA and its subsidiaries other than GenCo and HydroCo (the, "HoldCo Budget") (collectively referred to as the "System Annual Budgets"). See Submission of Consolidated Annual Budgets for Fiscal Year 2024 and Annual T&D Projections through Fiscal Year 2026 filed in this proceeding ("FY2024 Consolidated Budgets Submission").

2. On June 25, 2023, this Energy Bureau issued a Resolution and Order regarding the System Annual Budgets ("June 25th Order"). Among other determinations, this Energy Bureau modified the Proposed System Budgets.

3. At 10:47 p.m. AST of June 29, 2023, the Puerto Rico Electric Power Authority ("PREPA") filed a motion titled *Motion for Reconsideration of the June 25 Resolution and Order on the Determination of the FY24 Annual Budgets for the Electric Utility System-LUMA, Genera and PREPA*, whereby it requests that this Energy Bureau reconsider the determinations to reduce the proposed HoldCo and HydroCo Budgets ("PREPA's Motion for Reconsideration"). PREPA also submitted amended HoldCo and HydroCo Budgets. Prior to completing said filing, PREPA did not inform LUMA that it would submit proposed amended HoldCo and HydroCo Budgets. LUMA did not prepare or participate in the development of PREPA's Motion for Reconsideration nor the proposed amended HoldCo and HydroCo Budgets.

4. On June 30, 2023, Genera PR, LLC ("Genera") submitted an *Urgent Motion in Compliance with the Resolution and Order of June 25, 2023, and for Partial Reconsideration,* whereby it requests reconsideration of this Energy Bureau's determination to reduce the proposed labor expenses for FY2024 from \$79.5 million to \$55.03 million ("Genera's Motion for Partial Reconsideration"). Prior to completing said filing, Genera did not inform LUMA that it would submit the Motion for Partial Reconsideration. LUMA did not prepare or participate in the development of Genera's Motion for Partial Reconsideration.

5. In the evening of June 30, 2023, this Energy Bureau issued a Resolution and Order stating that it will not consider PREPA's Motion for Reconsideration nor Genera's Motion for

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Partial Reconsideration and returned the same to PREPA and Genera ("June 30th Order"). This Energy Bureau construed that "LUMA is the entity charged with the responsibility to represent PREPA and Genera before the Energy Bureau with respect to any regulatory or legal matters as they relate to the OMA including budget policy and carry out other tasks in connection thereto before the Energy Bureau." *See* June 30th Order p. 2. LUMA reserves the right to separately address the June 30th Order.

6. At 7:45 p.m., on June 30, 2023, LUMA received a request from PREPA's legal representatives to submit on June 30, 2023, PREPA's Motion for Reconsideration. *See* Exhibit 1. LUMA received a similar request from Genera's legal representatives at 8:14 p.m., on June 30, 2023, to file with this Energy Bureau, Genera's Motion for Partial Reconsideration. *See* Exhibit 1.

II. Submission of PREPA's Motion for Reconsideration as Requested by PREPA

7. In attention to the request received from PREPA today, LUMA hereby submits PREPA's Motion for Reconsideration in identical form as it was filed by PREPA on June 29, 2023. *See* Exhibit 2. Because LUMA did not prepare or participate in the development of PREPA's Motion for Reconsideration nor PREPA's Proposed Amended HoldCo and HydroCo Budgets, this filing should not be construed as an endorsement by LUMA of the substance of PREPA's requests. LUMA makes no representation whatsoever on the appropriateness of the Proposed Amended HoldCo and HydroCo Budgets and reserves all rights, including the right to file its own position for the record with this Energy Bureau under separate cover.

III. Submission of Genera's Motion for Reconsideration as Requested by Genera

8. In response to Genera's request, LUMA is hereby submitting Genera's Motion for Partial Reconsideration in identical form as it was filed by Genera today, June 30, 2023. *See* Exhibit 3. LUMA did not prepare or participate in the development of Genera's Motion for Partial Reconsideration.

IV. Genera's request that the PREB approve a GenCo budget consistent with the budget and allocation submitted as part of the original Annual System Budgets.

9. In its Motion for Partial Reconsideration, Genera "urges that the **proposed revenue allocated to GenCo remain unaltered** and that the labor budget remain unchanged." *See* Genera's Motion for Partial Reconsideration p. 5. Genera further states that it is requesting "the Energy Bureau approve the labor expenses proposed by Genera <u>with a reallocation of the</u> **revenues already allocated to GenCo**." *See* Genera's Motion for Partial Reconsideration p. 11.

10. LUMA understands Genera's request to be for the Energy Bureau to establish a budget for GenCo that is consistent with the budget and revenue allocation reflected in the System Annual Budgets as submitted by LUMA on May 16th, 2023. LUMA believes that the budgets and allocations resulting from the revenue allocation exercise conducted pursuant to Section 7.3(a) of the T&D OMA,¹ Section 3.1(b) of the PGHOA² and the LGA OMA,³ and the allocation approved by the Puerto Rico Public-Private Partnerships Authority ("P3A"), *see* May 12th, 2023 letter included as Appendix B: P3A Budget Allocation of LUMA's Proposed Annual T&D Budgets, provide the bare minimum needed for LUMA to perform the Operation and Maintenance Services ("O&M Services") under the T&D OMA. Accordingly, should the Energy Bureau elect to

¹ The Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("T&D OMA") executed on June 22, 2020, among the Puerto Rico Electric Power Authority ("PREPA"), the Puerto Rico Public-Private Partnerships Authority ("P3A") and LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively, "LUMA").

² The Puerto Rico PREPA-GenCo-HydroCo Operating Agreement ("PGHOA") executed on June 19, 2023 by and among the Puerto Rico Electric Power Authority ("PREPA"), PREPA Genco LLC ("GenCo"), PREPA Hydroco LLC ("HydroCo"), LUMA Energy ServCo, LLC ("LUMA"), and the Puerto Rico Public-Private Partnerships Authority ("P3A").

³ The Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement ("LGA OMA") executed on January 24, 2023 by and among the Puerto Rico Electric Power Authority ("PREPA"), the Puerto Rico Public-Private Partnerships Authority ("P3A"), and Genera PR LLC ("Genera").

reconsider its June 25th Order and approve a budget that maintains the revenue allocations originally proposed by LUMA and Genera (that is, a total of \$651 million for T&D, \$301 million for GenCo, and \$15 million for HydroCo), such an outcome would address a majority of the determinations for which LUMA intends to seek reconsideration. Notwithstanding, LUMA reserves any and all rights to request reconsideration of any of the determinations made by the Energy Bureau in its June 25th Order, including, but not limited to, those related to reductions in the Proposed Annual T&D Budget filed by LUMA on May 16th, 2023.

V. Notice of Intent to file Motion for Reconsideration

11. LUMA respectfully informs that it intends to file a request for the Energy Bureau to reconsider or amend certain portions of the June 25th Order, including the approved modification of the Proposed Annual T&D Budgets.⁴

12. The time to move for reconsideration in connection with the June 25th Order has not expired. Considering the importance of the June 25th Order approving amended System Budgets, LUMA is working diligently to file its motion without undue delay.

WHEREFORE, LUMA respectfully requests that the honorable Bureau **take notice** of the aforementioned for all purposes and of LUMA's Intent to file a Motion for Reconsideration.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 30th day of June, 2023.

We hereby certify that this motion was filed using the electronic filing system of this Energy Bureau. I also certify that copy of this motion will be notified to the Puerto Rico Electric Power Authority, through attorneys of record: jmarrero@diazvaz.law and

⁴ Specifically, the determination by this Energy Bureau to reduce by \$6.8 million the budget allocated for Customer Experience and by \$7.7 million the budget allocated for Support Services. *See* June 25th Order, pp. 9-10 and Attachment C.

mvazquez@diazvaz.law; and to Genera PR LLC, through counsels of record, Jorge Fernandez-

Reboredo, jfr@sbgblaw.com and Alejandro López Rodríguez, alopez@sbgblaw.com.



DLA Piper (Puerto Rico) LLC 500 Calle de la Tanca, Suite 401 San Juan, PR 00901-1969 Tel. 787-945-9107 Fax 939-697-6147

/s/ Margarita Mercado Echegaray Margarita Mercado Echegaray RUA NÚM. 16,266 margarita.mercado@us.dlapiper.com Exhibit 1

Mercado, Margarita

From:	Alejandro López Rodríguez <alopez@sbgblaw.com></alopez@sbgblaw.com>
Sent:	Friday, June 30, 2023 8:14 PM
То:	Mercado, Margarita; Rodriguez Rivera, Ana Margarita
Cc:	jfr@sbglaw.com; Genera PR Legal; regulatory@genera-pr.com
Subject:	NEPR-MI-2021-0004 Urgent: Representation of LUMA in Regulatory Legal Matters
Attachments:	Urgent Motion in Compliance with Resolution and Order of June 25, 2023 and for
	Partial Reconsideration_FILED.pdf

EXTERNAL MESSAGE

Dear Margarita and Ana,

I hope this message finds you well.

Following the Energy Bureau's order dated June 30, 2023, and the stipulations of the Transmission and Distribution Operation Maintenance Agreement (T&D OMA), Genera urgently require the representation of LUMA in this matter before the Energy Bureau as they pertain to the T&D OMA.

Therefore, we kindly request your immediate assistance in filing the attached date stamped motion before 11:59 PM tonight.

Thank you in advance for your swift attention to this matter.

Regards,

Alejandro.



Alejandro López Rodríguez

Abogado Asociado | Associate



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PUERTO RICO

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Most innovative law firm in continental Europe (Financial Times)

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EXHIBIT 1

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Mercado, Margarita

From:	Joannely Marrero <jmarrero@diazvaz.law></jmarrero@diazvaz.law>			
Sent:	Friday, June 30, 2023 7:45 PM			
То:	Mercado, Margarita; Rodriguez Rivera, Ana Margarita			
Cc:	Maralíz Vázquez; Giuliano Vilanova			
Subject:	NEPR-MI-2021-0004- Reconsideración PREPA			
Attachments:	0157-20230629- Motion for Reconsideration of June 25 2023 Resolution and			
	Order.final.1.pdf; Annex B-PREPA HydroCo FY24 Budget (2023.06.29).xlsx; Annex B-			
	PREPA HydroCo FY24 Budget (2023.06.29).xlsx; 20230630 MI20210004 Resolution.pdf			
Importance:	High			

EXTERNAL MESSAGE

Estimadas compañeras,

En atención a la Resolución del Negociado de Energía acabada de recibir, en representación de la Autoridad solicitamos que por favor presenten la moción y los anejos adjuntos hoy como un anejo ante el NEPR en el caso NEPR-MI-2021-0004, tan pronto les sea posible y antes de que expire la fecha del 30 de junio de 2023.

Es sumamente importante para la Autoridad que esta reconsideración forme parte del récord administrativo.

Cualquier asunto me pueden llamar al 787-402-2797. Gracias!

Lcda. Joannely Marrero-Cruz



290 Jesús T. Piñero Ave. Oriental Tower, Suite 803 San Juan, PR 00918 e: <u>jmarrero@diazvaz.law</u> t: (787) 395-7133 f: (787) 497-9664

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Exhibit 2 PREPA's Motion for Reconsideration Excel spreadsheets to be submitted via email

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

	CASE NO.: NEPR-MI-2021-0004
IN RE: REVIEW OF LUMA'S INITIAL BUDGETS	SUBJECT : Motion for Reconsideration of the June 25 Resolution and Order on the Determination of the FY24 Annual Budgets for the electric utility system-LUMA, Genera and PREPA

MOTION FOR RECONSIDERATION OF THE JUNE 25 RESOLUTION AND ORDER ON THE DETERMINATION OF THE FY24 ANNUAL BUDGETS FOR THE ELECTRIC UTILITY SYSTEM-LUMA, GENERA AND PREPA

COMES NOW the Puerto Rico Electric Power Authority ("PREPA"), through its counsel

of record, and respectfully submits and requests as follows:

I. Introduction and Discussion

1. Through this motion for reconsideration PREPA hereby states that the FY24 budgets approved for HoldCo and HydroCo by the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau" or "PREB") will have the devastating effect of making PREPA unable to operate and meet its responsibilities and obligations, including putting at risk the general safety of Puerto Rico residents that rely on PREPA's remaining assets and operations. As will be discussed below and as explained to the Financial Oversight and Management Board (FOMB) in a letter dated June 29, 2023 (attached for reference), PREPA strongly disagrees with the PREB and the Oversight Board's assessments and statements regarding HoldCo and HydroCo budgets. Accordingly, PREPA hereby adopts by reference and incorporates fully all of its filings, motions responses and justifications¹ in the case of caption and reiterates the need for a FY24

¹ See, <u>0157-PREPA- PREB FY2024 Budget Submissions</u>

budget that will allow PREPA to fully comply with its obligations, and again attaches the responses to the PREB's Requests for Information (ROIs).

2. On June 25, 2023, the Energy Bureau entered *Resolution and Order* making a determination related to the FY24 Annual Budgets for the electric utility system including the budgets for LUMA Energy, LLC and LUMA ServCo, LLC (collectively, "LUMA"), Genera-PR, LLC ("Genera") and PREPA (the "June 25 Order").

3. The June 25 Order stems from the requirements of the 2017 Rate Order² which establishes yearly procedures that enable the Energy Bureau to the overall revenue requirements for proposed annual budgets must not result in a change to the base rates or rate structure approved in the 2017 Rate Order, unless the proposed budget is subject to the rate review process under Section 6.25(c) of the *Puerto Rico Energy Transformation and RELIEF Act.*³ Thus, the Energy Bureau must determine whether the proposed budgets comply with the rate conditions set forth in the 2017 Rate Order.

4. In furtherance of the above and to evaluate the proposed budgets for PREPA, LUMA and Genera, on May 3, 2023, the Energy Bureau issued a procedural calendar to be followed during the case of caption. Thereafter, on May 8, 2023, the procedural calendar was modified whereby a Virtual Technical Conference was scheduled for Friday, June 9, 2023.

5. On May 16, 2023, LUMA filed a document titled *Submission of Consolidated Annual Budget for Fiscal Year 2024 and Annual T&D Projections through Fiscal Year 2026* ("May 16 Motion") before the Energy Bureau. The May 16 Motion included the FY2024 Budget Proposal

² See In Re: Puerto Rico Electric Power Authority Rate Review, Case No. CEPR-AP-2015-0001, Final Resolution and Order, January 10, 2017 ("2017 Rate Order").

³ Section 6.25(c) of Act 57-2014, known as *Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014"), states that any electric service company may request a change in the rate approved by the Energy Bureau or the Energy Bureau may initiate, *motu proprio*, or at the request of the Independent Consumer Protection Office or any other interested party, the rate review process when it is in the best interest of customers.

for the Puerto Rico Energy System.

6. The FY2024 Budget Proposal for the Puerto Rico Energy System is comprised of the proposed budget for the Transmission and Distribution System ("Proposed T&D Budgets"), developed by LUMA; the budget proposal for the legacy thermal generation units (the "Proposed GenCo Budget"), developed by Genera PR LLC ("Genera"); the budget proposal for the hydroelectric generating units and the public irrigation facilities⁴ (the "Proposed HydroCo Budget"), and the budget proposal for PREPA and its subsidiaries other than GenCo and HydroCo (the, "Proposed HoldCo Budget"), both developed by PREPA.⁵

7. After a series of procedural events, submissions, and answers to the Energy Bureau's requirements of information (ROIs), on June 9, 2023, the Virtual Technical Conference was held. As part of the Technical Conference, the Energy Bureau issued a series of bench orders ("June 9 Bench Orders"). Furthermore, the Technical Conference concluded at approximately 7:00 pm, before the Energy Bureau's questioning of PREPA's witnesses was completed. Upon conclusion of the Technical Conference, the Energy Bureau indicated it would issue additional ROIs to address the remaining questions.

8. On June 12, 2023, the Energy Bureau issued a *Resolution and Order* ("June 12 Order"). Through the June 12 Order, the Energy Bureau expressed that additional information was required for its review and evaluation of the HoldCo and HydroCo proposed budgets and ordered PREPA to submit answers to PREB's Third ROI (36 ROIs).

9. On June 14, 2023, PREPA filed a document titled *Motion to Submit the Puerto Rico Electric Power Authority's Updated Employee Roster in Compliance with the June 9 2023 Bench Order*

⁴ Hydroelectric generating units and the public irrigation facilities ("Hydroelectric Assets")

⁵ Proposed HydroCo Budget and Proposed HoldCo Budget, (together, "PREPA's Proposed Budgets").

with the Energy Bureau and answered the first of the June 9 Bench Orders. Furthermore, since the June 9 Technical Conference PREPA's officials from the regulatory, legal, finance, environmental, human resources, hydroelectric, irrigation and other divisions have been working tirelessly exchanging information and documents to comply with the Energy Bureau's June 9 Bench Orders and subsequently provide responses to PREB's Third ROIs as included in the June 12 Order.

On June 21, 2021, PREPA submitted the responses to the June 9 Bench Orders as Exhibit
 A. Furthermore, PREPA submitted its responses to the Energy Bureau's Third Request for
 Information in compliance with the June 12 Order as Exhibit B.

11. In response to the above as well as to submittals by LUMA and Genera, PREB entered the

June 25 Order. In general, the June 25 Order revised the proposed budgets for FY24 as follows:

- a. T&D's budgets (Operating Expenditures plus Non-Federally Funded Capital Expenditures) were reduced from \$651.428 MM as submitted by LUMA to \$636.591 MM.
- b. GenCo's budgets (Operating and Capital Expenditures) were increased from \$301.274
 MM, as submitted by LUMA, to \$324.029 MM.
- c. HoldCo (which includes PropertyCo) budgets were reduced from the \$29.538 MM submitted by LUMA and the \$53.367 MM proposed by PREPA to \$21.975 MM.
- d. HydroCo's budgets (Operating and Capital Expenditures) were reduced from the \$14.527
 MM submitted by LUMA and the \$18.325 MM proposed by PREPA to \$13.520 MM.

12. As relevant to PREPA, the Energy Bureau made the following specific determinations which PREPA will respond to accordingly:

II. <u>HoldCo</u>

a. <u>Personnel</u>

While PREPA agrees with PREB's comparison of LIPA and HoldCo, PREPA disagrees with PREB's stance that in accordance with the LIPA Reform Act, HoldCo labor figures "stand in stark contrast" with LIPA labor figures in accordance with the LIPA Reform Act. As PREB should be

aware, the LIPA Reform Act was signed in July 2013, which was over 10 years ago.

As reported in LIPA's 2014 Annual Financial report⁶, the first under the LIPA Reform Act, LIPA was required to reduce their workforce from approximately 90 positions to 50 positions, an approximate 44% decrease, as of May 31, 2014.

PREPA's June 14th FY24 proposed HoldCo budget included 87 employees (not 86 the PREB quoted). Of these 87 employees, only 50 employees are designated HoldCo operations, while the remaining 37 are attributed to PropertyCo and the Retirement System. LIPA's operations do not include a defined benefit pension plan administration function, so the Retirement System employees should not be included in the comparison. The 50 HoldCo employees proposed by PREPA for FY24 represent an approximate 76% reduction in the workforce when compared to the FY23 Certified HoldCo budget (certified with 210 employees).

Furthermore, since the initial FY2024 budget submission on May 15, 2023, PREPA has reduced the FY24 proposed total labor count, including PropertyCo and the Retirement System, from 162 to 87 employees, representing an approximately 46% reduction. Both these efforts put forth by PREPA represent a greater reduction in personnel than LIPA's 2013 approximate 44% reduction. Moreover, LIPA's headcount has increased over time and as of 2021 stands above with 64 employees⁷ with a payroll of \$13.5 million⁸ which is approximately 29% higher than PREPA's FY24 proposed labor expenses, inclusive of PREPA's Retirement System (approximately 51% higher excluding PREPA's Retirement System).

⁶ "Annual Report of the Long Island Power Authority and the Long Island Lighting Company d/b/a LIPA For The 2013 Fiscal Year" report dated March 2014, pg. 5.

⁷ LIPA's letter to the LIPA Board titled "Recommendation to Approve of the Annual Report and Amendments to the Board Policy on Staffing and Employment" dated June 23, 2021.

⁸ LIPA 2023 Annual Budget (<u>https://www.flipsnack.com/lipower/lipa-s-2023-proposed-budget/full-view.html</u>).

For an accurate comparison, PREPA compared LIPA's FY14 budget and more recent LIPA labor budgets to PREPA's proposed FY24 budget. PREPA's FY24 proposed budget for HoldCo, PropertyCo, and Pension Administration is approximately \$5.3 million lower (35%) than LIPA's FY14 budget for employee salaries and benefits expenses, and approximately \$6.5 million less (51%) than LIPA's FY14 budget for professional and technical outsourced services.

The below figures summarize PREPA's analysis for FY14, FY23 and FY24 when compared to LIPA for employee salaries and benefits expenses, and professional and technical outsourced services.



Employee Salaries & Benefits Expenses

* Does not include approximately \$25 million in OPEB and Pension deferrals.



PREPA also analyzed LIPA's accounting services/external audit services. While PREPA's FY24 proposed budget is approximately \$1.3 million higher than LIPA's FY24 proposed amounts, PREPA continues to stress the necessity for the proposed external audit services. While PREPA has successfully issued 10 audited financial statements over the last six years, significant effort is required to complete the fiscal year 2022 and 2023 audits within the schedule mandated by the Puerto Rico Treasury Department. Furthermore, PREPA has been required to adopt Governmental Accounting Standard Board (GASB) rulings that necessitate technical support from consultants. Up-to-date audited financial statements are required by the Puerto Rico Treasury Department for consolidation purposes at the Central Government level as well as a prerequisite for PREPA to exit Title III.



b. <u>Non-Labor</u>

In compliance with PREB's June 9, 2023's bench order⁹, PREPA has worked with its Governing Board and AAFAF in order to determine a reorganized and rightsized operation. The budget which PREPA submitted reflects the budget that was agreed upon with AAFAF and approved by PREPA's Governing Board on June 9, 2023.

PREPA disagrees with the PREB approved FY2024 HoldCo budget, as PREPA will not be able to operate and comply with the legally mandated obligations under the current PREB approved budget. PREPA's support and evidence of the full need for PREPA's proposed FY2024 HoldCo budget can be found in PREPA's responses to PREB ROIs and PREPA's response to PREB's June 9, 2023's Bench Orders¹⁰. Furthermore, an analysis of the PREB approved FY2024 HoldCo

⁹ PREB Bench Order during the June 9, 2023, Technical Conference and PREPA's corresponding *response Motion to* submit the Puerto Rico Electric Power Authority's Updated Employee Roster in Compliance with the June 9, 2023, Bench Order" filed on June 14, 2023.

¹⁰ See, Motion to Submit Responses to the Energy Bureau's June 9 2023 Bench Orders and Third Request for Information in Compliance with the June 12, 2023 Order filed on June 21, 2023.

budget (see table below) illustrates that PREPA's requested amount for three critical non-labor cost centers utilize 135% of PREB's allocated budget and the entire requested amount for non-labor costs utilizes over 349% of PREB's allocated budget.

(\$'s in thousands)	Cummulative Usage of PREB		
Description	Amount	Approved Budget	
Retiree Medical Benefits	\$7,950	68%	
External Audit Services	4,485	106%	
Regulation & Environmental Expenses	3,434	135%	
Subtotal	\$15,869		
Remaining Non-Labor Budget Requested	\$25,202	349%	
Total Non-Labor Budget Requested	\$41,071		

- <u>Retiree Medical Benefits</u> Under the PREB approved FY2024 budget, PREB determined that of the \$11.772 MM of Non-Labor Operating Expenses, \$7.95MM is obligated for Retiree Medical Benefits, or approximately 68% of the total Non-Labor Operating Expense budget. Furthermore, the \$7.95MM obligated for Retiree Medical Benefits represents approximately 36%, which is more than one-third of PREB approved HoldCo budget. PREPA understands that this may be reduced in accordance with the PREPA Plan of Adjustment. However, it would not be considered prudent of PREPA to rely on an unknown future event.
- External Audit Services PREPA has made significant progress to become current on its audited financial statements, and recently issued audited financial statements for fiscal years 2020 and 2021. PREPA is planning to issue audited financial statements for fiscal years 2022 and 2023 in the upcoming fiscal year. As the Oversight Board is aware, PREPA's Finance department does not have

adequate resources and as such, PREPA relies on various consulting firms to prepare schedules for financial statements, provide technical advisory services, and prepare actuarial reports. PREPA highlights the roles of the six consultants needed for its External Audit Services in its June 21, 2023 response to the PREB ROI and bench order. It should be noted that up to date audited financial statements are a requirement of the Puerto Rico Treasury and PREPA's Title III exit.

3. <u>Regulation & Environmental Expenses</u> – PREPA disagrees with the PREB's assertion that "The majority of the environmental services are now under the purview of the private operators." Neither environmental laws nor the respective OMAs allow for or transfer, respectively, the environmental liability/responsibility of an owner like PREPA without more. Such environmental liability/responsibility may be shared where there is an owner and an operator – though such scenario is fact sensitive and in the case of PREPA will likely revolve around those matters that are pre or post Commencement Date with respect to each operator (LUMA or GENERA PR). Environmental "services", in terms of periodic reports, recordkeeping and such, as may be required under pertinent enforcement agreement with PREPA may be the responsibility of the new operators, but PREPA's environmental responsibility or existing or potential liability is not shed or eliminated by the entrance of LUMA and GENERA PR. For example, according to discussions with USEPA representatives, PREPA would maintain an active role in the Consent Decree case after GENERA PR's commencement date, despite this civil case is related to PREPA's thermal power plants. PREPA further emphasizes that Environmental and Historic Preservation Compliance for FEMA funding is still a PREPA responsibility, specifically for HydroCo and PropertyCo projects. PREPA is also responsible for compliance with environmental regulations issued by USEPA, PR-DNER and other governmental entities, including federal statutes (and local counterparts) including the Clean Air Act (including SIP), Clean Water Act, Resource Conservation and Recovery Act, CERCLA, and solid waste management rules and regulations. In addition, as PREB knows, PREPA is also in charge of undertaking all actions needed for environmental permits and requests to comply with the Bonus Power Plan maintenance requirements, the Consent Decree with the federal Department of Justice, and PREPA's PRP status under CERCLA (Superfund) for past contamination. PREPA has detailed its additional environmental responsibilities in its June 21, 2023's response to the PREB bench order and ROI.

As alluded to previously, despite the transition of Operation and Maintenance services for PREPA's assets under both the T&D OMA and the Generation OMA, PREPA remains the owner of the assets, with all relevant consequences that carries. PREPA remains responsible for those environmental liabilities incurred prior to LUMA and GENERA PR's respective Service Commencement dates – and future incidents or issues that may arise will predictably involve the owner of the assets - PREPA. In addition to environmental compliance, PREPA is responsible for complying with PREB's mandates and requirements from the Puerto Rico Comptroller Office, the legislature, and the state and federal Office of the Inspector General, among others. As the Oversight Board is aware, PREPA's does not have adequate resources to respond to all these regulatory requirements and as such, PREPA relies on various consulting firms to comply with its obligations to these regulatory requirements.

4. Siemens - PREPA included \$1 million for Siemens that PREB erroneously alleges is for IRP related services, which is under LUMA's purview. In fact, PREPA, in the absence of sufficient HoldCo personnel resources, will rely on Siemens to provide necessary and appropriate professional technical advisory, engineering support, and consulting services to support PREPA for, among other things, (1) responding to regulatory requirements and requests, including preparing responses to requests from the USEPA and PREB's Resolutions and Orders; (2) complying with requirements related to previously issued studies, like the Integrated Resource Planning (IRP) and Renewable Integration Study; (3) responding and complying with different aspects of environmental compliance matters, especially those related to the reliability and safety of the electrical system and PREPA's water infrastructure; (4) preparing and revising specifications, scopes of work, competitive procurement documents, and contracts needed to develop specialized projects, including federally funded projects; (5) performing engineering studies, model improvements, system assessment and restoration projects at existing hydroelectric generation units to increase and restore its capacity, including reviewing the generating unit's

technical data and parameters to develop, validate and/or update models used to accurately represent these units in both PSS®E power flow and dynamic stability studies; (6) performing necessary load forecasting and dispatch simulation services to address HydroCo and HoldCo planning functions; (7) the separation of hydroelectric generation services from transmission and distribution services; and (8) the integration of renewable projects from the Tranche 1 RFP process.

c. <u>NME</u>

BONUS Facility Rincón

First and foremost, it is important to clarify that in ROI Response #10-B PREPA clarified to PREB that in fact the amounts for Genesis Security Services for the BONUS Rincon Plant was actually \$197,830.56 and not \$527,548.15. In particular, PREPA included the following response with the June 21, 2023 Motion to Submit:

Response ROI #10-B:

When evaluating the request for the FY2023-2024 annual Budget, 69% was contemplated for the Generation of all positions and contracts. Likewise, 8% was applied to PREPA Administration positions. The share for the Bonus plant is part of the South Region contract. The FY23-24 Budget amount would be \$4,879,820.38 for Generation and \$197,830.56 for Bonus. Therefore, \$329,717.59 will be subtracted from the \$527,548.15, which is for Genera and that will grant PREPA \$197,830.56 for Security of the Bonus facility. For further context of the services provided refer to the South Region Genesis Contact included in the supporting documents for Exhibit A. Additionally, PREPA hereby submits the operation and maintenance cost the of the Bonus plant, which consist of the following tasks and do not include the structural repairs necessary to maintain the building in optimal conditions:

Task	Description	Total	Comments
Task 0	Project Management		Coordination of survey, reports preparation and transmittal. DOE meetings, request for information of DOE or any other federal or state agency
Task 1	Equipment Calibration	\$4,000	Instrumentation use for the surveys
Task 2	RADWORKERII Training	\$10,000	Is a requirement that the survey personnel are certificate
Task 3	Annual Comprehensive Survey	\$55,000	Requirement
Task 4	Quarterly Surveys	\$45,000	Requirement
Task 5	Technical Advisory (as needed)		Visit coordination, speeches about the history and technology of BONUS.
Task 6	Facility Maintenance	\$43,000.00	Maintenance and monthly cleaning. Annual Cost - BONUS Plant Green and common areas.

PREPA further emphasizes that the NME for Planta BONUS is also retained by HoldCo and not transferred to Genera as it was not contemplated in the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement dated January 24, 2023. The NME for Planta BONUS supports the painting of the dome with highly specialized paint and relocation of the Planta BONUS perimeter fence uphill to address environmental concerns as well as the creation of an associated wall to prevent the incursion of water into the facility.

Additionally, PREPA highlights that it reduced its HoldCo NME budget by \$1.7 million, or 65%,

in its latest budget submission dated June 29, 2023. PREPA is now requesting \$0.3 million for Planta BONUS, \$0.5 million for facilities maintenance, and \$0.2 million for security systems.

III. <u>HydroCo</u>

a. <u>Personnel</u>

Given PREB's acceptance of PREPA's proposed FY24 HydroCo personnel costs, PREPA has no comments.

b. Non-Labor Operating Expenses

PREPA strongly disagrees with PREB's statement that "PREPA provided no analysis or support to justify...budget levels, particularly in the face of lower headcount and labor costs." PREPA provided robust, bottoms-up, needs-based budgets with supporting detail, supporting budget comparison analyses with each submission, and dedicated tremendous resources from its deeply diminished workforce to prepare for PREB's Technical Conference and respond to PREB's ROI's and bench orders.

Further, PREB's criticisms that the proposed amount for Security services "seems outsized given the scale of the operation" and that proposed amounts for NME expenditures are inappropriate because they represent "substantial increases... relative to budgets approved in the previous fiscal year" require further elaboration. If PREB prepared a benchmarking analysis in order to assess proposed amounts for Security services that indicates PREPA's proposal is "outsized given the scale of operations," PREPA would appreciate the opportunity to review said benchmarking analysis. However, if PREPA's proposal purely "seems" to be "outsized given the scale of operations," PREPA would ask PREB to defer to the expertise of the originators of PREPA's proposed FY2024 HydroCo budget, the current operators of the HydroCo system. PREPA recognizes that its proposed FY2024 HydroCo budget represents an increase over the prior year certified budget, however, PREPA's proposed FY2024 HydroCo budget was prepared on a bottoms-up, needs-based basis instead of developing its proposed FY2024 HydroCo budget based on the approved previous year budget, which PREPA argued was insufficient as well. The HydroCo facilities are essential to the life and property of hundreds of thousands of Puerto Rico residents, and PREPA reiterates the need for the requested FY24 budget amounts.

c. <u>NME</u>

PREPA understands and intends to comply with PREB's documentation requirements as laid out in Attachment I. However, PREPA fails to understand PREB's justification for a \$3 million decrease to PREPA's proposed HydroCo NME budget, particularly in light of PREB's strong criticism of PREPA's inclusion of "high level" estimates for NME projects.¹¹ It appears that PREB justifies the approval of reduced funds for HydroCo NME projects based on the premise that alternative funding may exist in the form of federal funds. PREPA, as a policy, is determined to utilize all available federal funding for the improvement of the electric system and its water assets, however, when drafting its proposed budget, PREPA did not rely on funds which are not reliably available for its FY24 operations. To the extent PREB has identified specific federal funding opportunities that PREPA is unaware of, PREPA respectfully requests PREB provide said opportunities supporting its \$3 million decrease to PREPA's proposed HydroCo NME budget.

¹¹ "For example, PREPA is proposing \$5.741 MM in HydroCo NME expenditures, but the three largest projects comprising that estimate each amount to \$1.5 MM each, which suggests the estimates were developed at a high level." (Page 26 of the PREB's Resolution and Order re: Determination on the FY24 Annual Budgets for the electric utility system – LUMA, Genera, and PREPA. (CASE NO.: NEPR-MI-2021-0004).

d. **PREPA Irrigation Facilities**

PREPA agrees that it shall take the necessary steps to achieve efficiencies, collect its revenues effectively, revise its irrigation revenue where possible, or scale operations so that operating costs are aligned with operating revenue.

IV. <u>Conclusion</u>

When establishing the budgets for HoldCo and HydroCo subsidiaries, PREPA rightsized those entities to reflect the levels of responsibility each will continue to have, in view of the assumption of responsibilities by LUMA and Genera for T&D and Legacy Generation respectively. Accordingly, PREPA disagrees with the Energy Bureau's FY2024 budget determination. In an effort to achieve PREB's approval, PREPA hereby submits further revised Proposed FY2024 Budgets for HoldCo and HydroCo that, while allowing minimum operational conditions, do not provide enough funds to operate in a low-risk environment. See, Annex A and B. PREPA's Proposed FY2024 HoldCo budget was prepared in compliance with PREPA's Enabling Act, the 2019 Puerto Rico Energy Public Policy Act, and PREB's Order & Resolution authorizing PREPA's reorganization into various subsidiaries. The Proposed FY2024 HoldCo budget enables PREPA to address responsibilities that include, but are not limited to, legacy environmental compliance and reporting activities, occupational health and safety compliance, pension fund management and oversight, payment of retiree medical obligations (OPEB), and operation of hydro/irrigation assets, among others. Furthermore, PREPA's Proposed FY2024 HydroCo budget was designed to ensure compliance with and avoid fines from the U.S. Environmental Protection Agency, provide plant, unit, and proactive mitigation management to improve reliability and performance (including hurricane season preparedness), help meet peak demand levels by maintaining an adequate reserve capacity, and ensure supply of water to

~700,000 users, power plants and agricultural uses. Pursuant to the above, PREPA respectfully requests the Energy Bureau to reconsider its order and approve the PREPA Proposed FY2024 budget as further revised with this motion.

WHEREFORE, PREPA respectfully requests the Energy Bureau to RECONSIDER the June 25 Order and approve the PREPA Proposed FY2024 budget as further revised with this motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 29th day of June 2023.

<u>/s Maralíz Vázquez-Marrero</u> Maralíz Vázquez-Marrero TSPR 16,187 <u>mvazquez@diazvaz.law</u>

<u>/s Joannely Marrero-Cruz</u> Joannely Marrero Cruz TSPR 20,014 <u>jmarrero@diazvaz.law</u>

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290 Jesús T. Piñero Ave. Oriental Tower, Suite 803 San Juan, PR 00918 Tel.: (787) 395-7133 Fax. (787) 497-9664

CERTIFICATE OF SERVICE

It is hereby certified that, on this same date, I have filed the above motion with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at https://radicacion.energia.pr.gov/login, and a courtesy copy of the filing was sent to LUMA through its legal representatives at margarita.mercado@us.dlapiper.com and laura.rozas@us.dlapiper.com and to Genera-PR, LLC through its legal representatives jfr@sbgblaw.com; alopez@sbgblaw.com; legal@genera-pr.com; regulatory@genera-pr.com.

In San Juan, Puerto Rico, this 29th day of June 2023.

<u>/s Joannely Marrero-Cruz</u> Joannely Marrero Cruz

Annex A

Revised Proposed FY2024 Budget for HoldCo

[Native version submitted to the Energy Bureau]

Annex B

Revised Proposed FY2024 Budget for HydroCo

[Native version submitted to the Energy Bureau]

Exhibit 3 Genera's Motion for Partial Reconsideration

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

NEPR

Received:

Jun 30, 2023

1:22 PM

IN RE:

CASE NO.: NEPR-MI-2021-0004

REVIEW OF LUMA'S INITIAL BUDGET

SUBJECT: Urgent Motion in Compliance with Resolution and Order of June 25, 2023 and for Partial Reconsideration

URGENT MOTION IN COMPLIANCE WITH RESOLUTION AND ORDER OF JUNE 25, 2023 AND FOR PARTIAL RECONSIDERATION

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW GENERA PR, LLC ("Genera"), through its counsels of record, and respectfully state and request the following:

I. Background

1. On May 16, 2023, LUMA Energy, LLC, and LUMA Energy ServCo, LLC (collectively, "LUMA") filed a document with the Energy Bureau of the Puerto Rico Service Regulatory Board ("Energy Bureau") titled *Submission of Consolidated Annual Budgets for Fiscal Year 2024 and Proposed Annual T&D Projections Through Fiscal Year 2026* ("May 16 Motion"), in which LUMA submitted to the proposed T&D Budgets developed by LUMA, the proposed GenCo Budgets revised by Genera on behalf of the Puerto Rico Electric Power Authority ("PREPA") for the PREPA subsidiary GenCo LLC ("GenCo"), and the proposed Budget developed by PREPA for its holding company, HoldCo, and its subsidiaries PREPA HydroCo LLC ("HydroCo") and PREPA Property Co, LLC ("PropertyCo").

2. The May 16 Motion included a document titled *Annual Budgets, Fiscal Years 2024 to 2026* ("Proposed Consolidated FY24 Budget") and a Revised Budget Allocation Determination as notified by the Public-Private Partnership Authority identified as Appendix B of the May 16 Motion. LUMA requested that the Energy Bureau review and approve the Proposed Consolidated FY24 Budget, which includes the foregoing budget components and other expenditures set forth in the May 16 Motion.

3. On May 18, 2023, the Energy Bureau issued a Resolution and Order, through which the Energy Bureau ordered PREPA and Genera to provide, through LUMA, the Proposed Consolidated FY24 Budget supporting information that reflects the LUMA Budget Request in Schedule 3.1 "Annual Budget Summary".

4. On May 23, 2023, this Energy Bureau issued a Resolution and Order with the subject *Second Requirement of Information* ("ROI") - *Review of LUMA's Proposed Consolidated FY2024 Budgets* ("May 23 Order"). In its pertinent part, the Energy Bureau ordered LUMA, Genera, and PREPA to respond to a Second Requirement of Information ("ROI") set forth in Attachment A and Attachment B to the May 23 Order.

5. On May 31, 2023, the Energy Bureau entered a Resolution and Order titled *Third Requirement of Information ("ROI") – Review of LUMA's Proposed Consolidated FY 2024 Budgets: GENERA's Necessary Maintenance Expenses ("NME")* ("May 31 Order") whereby it ordered Genera to provide responses to the ROI outlined in Attachment A to the May 31 Order.

6. On June 7, 2023, Genera filed a *Motion Submitting Responses to Request for Information in Compliance with May 31 Order,* whereby it submitted responses to the ROI in accordance with the May 31 Order.

7. On June 9, 2023, the Energy Bureau conducted a Technical Conference ("June 9 Technical Conference") to deliberate on the budget filings and ROI responses submitted by LUMA, Genera, and PREPA.

2

8. On June 12, 2023, the Energy Bureau issued a Resolution and Order (referred to as "June 12 Order"), in which it provided a Post June 9 Technical Conference ROI, reflecting the additional information required as a result of the June 9 Technical Conference.

9. On June 15, 2023, Genera filed a document titled *Motion to Submit Genera PR LLC Responses in Compliance with the June 12 Order* in response to Bench Orders issued at the June
9 Technical Conference.

10. Continuing its responses, on June 16, 2023, Genera filed a document titled *Motion to Submit Genera PR LLC's Supplemental Response to the June 12 Order* ("June 16 Motion"), addressing the Bench Orders issued at the June 9 Technical Conference.

11. Finally, on June 25th, 2023, the Energy Bureau issued a Resolution and Order titled *Determination on the FY24 Annual Budgets for the Electric Utility System – LUMA, Genera, and PREPA* ("June 25th Order"). Through this order, the Energy Bureau amended the Proposed Consolidated FY24 Budget submitted by LUMA, as detailed in Attachments B through F of the June 25th Order, and approved the revised budgets, provided they comply with the orders included in the Resolution and Order.

II. Request in Compliance with the June 25th Order

In accordance with the June 25th Order and pursuant to its mandates, Genera was duly ordered to "ensure that the legacy generation plants are adequately staffed to ensure reliable and efficient operations and to promptly report to any staffing shortages or difficulties in maintaining adequate personnel to staff the plants." *See* page 19 of the June 25th Order. For the reasons mentioned above and further explained below, Genera submits this motion in compliance with the referenced order.

In accordance with the June 25th Order, Genera hereby respectfully submits this urgent motion for the Energy Bureau to reconsider its decision to reduce Genera's proposed labor expenses for FY24 from \$79.5mm to \$55.03mm, amounting to an approximate 30% reduction. *See* page 19 of the June 25th Order. The Energy Bureau further explains that this determination was made to reflect actual labor operating expenses, taking into account less employees relative to the number of positions included in Genera's labor analysis based on employees hired *at the time* of the June 9 Technical Conference, which was 502.¹ However, Genera's labor analysis considers its requirement to fulfill its contractual obligation under the LGA OMA² and maintain the legacy generation plant operations in alignment with the directives of the Energy Bureau, the LGA OMA, and the Government of Puerto Rico's policy. Genera asserts that the labor operating expenses budget of \$79.5mm for FY24 is essential to secure the necessary workforce.

The Energy Bureau's proposed budget reduction to \$55.03mm exposes Genera to a staffing shortfall, compromising not only the efficient operation of the generation plants but also other vital supporting roles necessary for their maintenance and operation. Implementing the budget approved by the Energy Bureau pursuant to the June 25th Order will hinder staff retention, which is crucial in ensuring continued upkeep and efficient operation. In summary, Genera will not be able to operate under the provisions of the LGA OMA.

Genera respectfully clarifies and emphasizes that this request does not pertain to the entirety of the approved budget as outlined in the June 25th Order, nor does it imply a requirement for a base rate increase to cover the specific line item mentioned. Instead, Genera urges that the

¹ As of June 28, 2023 at 2 PM, there were **114 additional** and contractually binding offers acceptances, for a total of 634 accepted and binding employment contracts.

² See the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement ("LGA OMA"), dated January 24, 2023, executed by and among PREPA, the P3 Authority and Genera.

proposed revenue allocated to GenCo remain unaltered and that the labor budget remain unchanged. Genera further emphasizes the importance of preserving the currently proposed labor budget allocation, carefully planned to meet the company's critical needs. By maintaining the proposed labor budget allocation, Genera can guarantee the necessary resources to sustain its operations, meet the demands outlined in the contractual agreements and ensure that all projects can be executed according to plan. It is imperative that the Energy Bureau recognizes the significance of this request and refrains from diverting funds to matters that could compromise the company's ability to fulfill its responsibilities and maintain the stability of the power supply in Puerto Rico.

Therefore, as argued herein, Genera earnestly requests a reconsideration and revision of the June 25th Order's GenCo labor budget reduction to enable Genera to meet its commitments and ensure the continued efficient operation of the legacy generation plants.

III. Request for Reconsideration

i. Factual Considerations

In the June 25th Order, the Energy Bureau references that the current headcount of Genera is significantly less than the 952 positions used as a starting point to develop the labor operating expenses.³ The Energy Bureau then references the Genera testimony in which it was informed that it had 520 accepted positions, which included 280 positions in critical roles, *with active efforts to recruit additional employees in critical roles. See* page 19 at n. 76 of the June 25 Order. However,

³ The 952 positions were the positions included in PREPA's proposal of the GenCo budget, not the Genera revision to the FY24 GenCo budget.

the explanation was not a comprehensive breakdown of the \$79mm budget analysis. It was only a response to a *specific* question asked.

The proposed Genera \$79.5mm labor budget comprises job positions necessary to meet Genera's contractual obligation of providing O&M Services. This includes operating the power plants, providing proper maintenance and other supporting functions, like fuel procurement and purchase, developing federally funded projects, and providing legal representation in GenCo matters. If the Energy Bureau sustains its decision to reduce the labor budget significantly, it could put, for example, the maintenance and replacement programs of the power plants at risk.

Genera has **634 accepted job positions** as of June 28 at 2:00 PM. This amounts to \$49mm in payroll expenses (including base salary, overtime, benefits, taxes and 401K). The acceptances include former PREPA power plant employees,⁴ specifically those in critical positions such as electricians, instrument and controls technicians, shift supervisors, control room operators, work control center supervisors, laboratory workers, peakers operators, and combustion turbine technicians. The contracted positions include non-mandatory hires required to support power plant operations, such as legal, human resources, regulatory, procurement, finance, and fuel management staff. These positions *were not* included in previous GenCo rosters. The payroll for these already hired Genera employees amounts to \$64.3mm. Additionally, Genera is *actively* recruiting to ensure safe and reliable power plant and back-office operations. The budget for these positions, which Genera is currently interviewing, is \$15mm. Therefore, Genera requires the entire \$79.5mm budget to guarantee reliable operations.

⁴ As explained below, pursuant to the LGA OMA, Genera had to make offers to PREPA's power plant employees and, should they accept, hire them.

ii. Impact on Genera's Obligations under the LGA OMA

As previously stated, the determination by this Energy Bureau to reduce labor expenses by thirty percent (30%) of the original proposed labor budget also adversely affects Genera's ability to perform its obligations under the LGA OMA. Pursuant to Section 4.2(g) of the LGA OMA, Genera is contractually required to offer employment to PREPA's full-time plant employees who were employed and in good standing as of June 30, 2022. Additionally, pursuant to the LGA OMA, such offers are required to include a set of terms and conditions of employment for those PREPA employees that accepted Genera's offers. In its pertinent part, such offers must include:

(ii) Offers of employment shall provide for employment with Genera on terms and conditions that are set at the operator's sole discretion but shall in all cases provide for (A) a base salary or regular hourly wage rate at least equal to the base salary or wage rate provided by PREPA or its affiliates (as applicable) to the PREPA employee immediately prior to the service commencement date, (B) the employee fringe benefits established in Act 26, and (C) any other benefits required to be offered to PREPA employees pursuant to Act 120, as any such benefits may have been restricted, conditioned, modified, or annulled by Act 3, Act 26, and Act 66.

(iii) Pursuant to Section 21.19(b), Genera agrees that any Hired Former Employees of PREPA that receive and accept offers of employment from Genera shall enjoy the following additional protections: (A) his or her job will be guaranteed for a minimum period of two (2) years, and (B) Hired Former Employees of the owner may only be separated from the position during such period of two (2) years if he or she engages in behavior that warrants dismissal or constitutes just cause.⁵

As of June 29, 2023, Genera has committed \$64.3mm towards its labor expenses, thus already exceeding the budget that the Energy Bureau approved in the June 25th Order. As part of the Government of Puerto Rico's Public Policy, the Energy Bureau must recognize that Genera's primary objective during the Mobilization Period has been to attract and retain the existing workforce from the GenCo power plants. This is not merely a contractual obligation but a strategic

⁵ Pursuant to Section 4.2(g)(ii)-(iii) of the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement ("LGA OMA"), dated January 24, 2023, executed by and among PREPA, the P3 Authority and Genera.

necessity for ensuring the effective execution of the O&M Services under the LGA OMA⁶. To this end, Genera has 634 accepted offers. These individuals account for a commitment of \$64.3mm of Genera's current labor expenditure. Out of this total amount, \$48.9 is for employees that Genera had to hire in accordance with the LGA OMA. The remaining \$15.4mm has been dedicated to other personnel who, although not appointed as a part of mandatory contractual obligations, is still indispensable and constitute the additional plant employees and core support staff for generation fleet operations, like administrative and support personnel tasked with contract administration, finance and accounting, data management, regulatory compliance, logistics, procurement strategy analysis, and human resources. Their roles are pivotal for the legacy generation plants' reliable and efficient operation. It's important to highlight that the administrative and support functions were previously at the HoldCo level, thus not previously accounted for in PREPA's prior fiscal year's GenCo budgets and neither in their FY24 proposal. Therefore, the PREPA proposed GenCo budget cannot be compared with the Genera revised budget.

This budgeted portion is necessary to ensure that Genera has the appropriate workforce to operate and maintain the power plants effectively. The open positions will play an immediate vital role in the reliable operation of the facilities, and their inclusion in the budget is essential for the company's success. By allocating the funds for these purposes, Genera is demonstrating its commitment to fulfilling its contractual obligations and ensuring the efficient and reliable operation of the power plants. It is imperative that the Energy Bureau recognizes the importance of this additional funding and approves the allocation to guarantee the success of Genera and the reliability of the power supply in Puerto Rico.

⁶ See Article 5 of the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement ("LGA OMA"), dated January 24, 2023, executed by and among PREPA, the P3 Authority and Genera.

Notwithstanding, the proposed reduction in the labor expenses budget by the Energy Bureau poses an imminent challenge to Genera's ability to meet its contractual responsibilities as stipulated in the LGA OMA. This projected budget cut threatens Genera's ability to maintain the commitments made to the former employees of PREPA - a group required by contract to be employed by Genera. These employees, crucial for the power plants' primary operations, are an invaluable asset for the company.

In light of the above, Genera respectfully requests that the Energy Bureau reconsider the labor expense reduction.

iii. Genera's Proposed Budget Accounts for a Significant Reduction in Comparison to PREPA's GenCo Proposed Budget

Genera respectfully submits this motion for the Energy Bureau's careful consideration, highlighting the distinct differences between the budget proposed by PREPA's GenCo and that of Genera's prudent financial plan.

It is imperative to note that PREPA's GenCo budget proposal did not account for various vital elements integral to efficient operations, including administrative support, logistics, human resources, and other back-office services. The personnel roster, as proposed by PREPA's GenCo, was limited in scope - it only encompassed roles from the Generation Director to the power plant employees and did not provide for the back-office personnel, whose roles are integral to efficient operations. In stark contrast, despite being significantly leaner than PREPA's GenCo's proposal, Genera's proposed budget encompasses a broader, more functionally effective roster.

Genera asserts that its proposal demonstrates both sound fiscal responsibility and operational acumen. It provides a broader range of services and personnel at a significantly reduced budget.

Genera's contention is that recognizing and understanding these differences between the proposed budgets will provide the Energy Bureau with a more comprehensive perspective on the proposed labor operational expense reduction and its potential impacts.

iv. Prioritizing Workforce Preservation and Adequate Funding for Critical Operations

Genera underscores the necessity of prioritizing the preservation of its existing and anticipated workforce, proposing that the allocated budget funds be directed towards this paramount facet of its operations rather than non-essential or optional concerns. The workforce of Genera forms the backbone of the company's operations, their consistent involvement being of critical significance. Genera urges the Energy Bureau to contemplate a fund reallocation that ensures this ongoing engagement, considered in the proposed labor budget, in executing the essential projects necessary to maintain and operate Puerto Rico's power plants.

As Genera is in the midst of its transition into the sole publicly-owned thermal generation plant operator in Puerto Rico, the focus, Genera posits, should remain firmly on these crucial projects. The requirement for adequate funding to perform these critical tasks should be of higher priority than, although important, discretionary projects at this juncture. Moreover, Genera wishes to highlight potential concerns that an imbalance in fund allocation could strain its workforce unnecessarily. This could undermine the efficiency and reliability of the power plant operations, which are of vital importance to the residents of Puerto Rico. Genera strongly urges the Bureau to prioritize the sustainability of the workforce and the continuous operation of these critical projects. In plain words, projects cannot be executed without personnel to execute them.

It must be stressed that Genera *is not* requesting an increase to the GenCo budget allocation, thus, it's not requesting an increase to the revenue allocation or base rate. Genera requests that the

Energy Bureau approve the labor expenses proposed by Genera with a reallocation of the revenues already allocated to GenCo. These funds may be reallocated from projects that Genera presented as, although important, optional and not considered in the budget proposal.

WHEREFORE, Genera respectfully requests that this Honorable Energy Bureau **take notice** of the above for all purposes, **reconsider** June 15th Order and **deem** Genera to be in partial compliance with the June 25th Order regarding appropriate staffing.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 30th day of June 2023.

ECIJA SBGB PO Box 363068 San Juan, Puerto Rico 00920 Tel. (787) 300.3200 Fax (787) 300.3208

<u>s/Jorge Fernández-Reboredo</u> Jorge Fernández-Reboredo jfr@sbgblaw.com TSPR 9,669

<u>s/ Alejandro López-Rodríguez</u> Alejandro López-Rodríguez <u>alopez@sbgblaw.com</u> TSPR 22,996

CERTIFICATE OF SERVICE

We hereby certify that a true and accurate copy of this motion was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System and that we will send an electronic copy of this motion to Joannely Marrero-Cruz, at jmarrero@diazvaz.law; Maralíz mvazquez@diazvaz.law; Margarita Vázquez-Marrero, at Mercado Echegaray, at margarita.mercado@us.dlapiper.com; Margarita Rodríguez and Ana Rivera, at ana.rodriguezrivera@us.dlapiper.com.

In San Juan, Puerto Rico, this 30th day of June 2023

<u>/s/ Alejandro López-Rodríguez</u> Alejandro López-Rodríguez