

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

IN RE: 10-YEAR PLAN FEDERALLY
FUNDED COMPETITIVE PROCESS

CASE NO.: NEPR-MI-2022-0005

SUBJECT: Resolution and Order regarding *PREPA's Response to Motion Requesting Order to Affirm Genera PR's Exclusive Responsibility in Managing and Decision-Making for Ongoing Public Procurement Processes and Facilitation of Related Documentation Transfer and Motion to Submit Executive Summary RFP 3784 and RFP 3800 (Confidential) and to Supplement PREPA's Response to Motion Requesting Order*, filed by Puerto Rico Electric Power Authority.

RESOLUTION AND ORDER

On July 6, 2023, Genera PR, LLC ("Genera") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *Motion Requesting Order to Affirm Genera PR's Exclusive Responsibility in Managing and Decision-Making for Ongoing Public Procurement Processes and Facilitation of Related Documentation Transfer* ("July 6 Motion"). Through its July 6 Motion, Genera requested that the Energy Bureau issue an order clarifying its exclusive responsibility in managing, leading, and deciding on matters pertaining the Black-Start and Peaking Units being procured in requests for proposals 3784 and 3800 ("RFPs"), pursuant to Sections 4.7(b), 5.1, and 5.8(c) of the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* ("LGA OMA").¹ Additionally, Genera requested the Energy Bureau to order HoldCo² to transfer all documentation related to the RFPs to Genera promptly.³

Upon review of the July 6 Motion, the Energy Bureau determined that, given the LGA OMA and the transition of responsibilities assumed on July 1, 2023, Genera was the sole entity responsible for managing, leading, and deciding on RFP 3784 and RFP 3800. The Energy Bureau warned Genera that, as these are ongoing RFPs in advanced stages, it must move forward with completing this process without delay. The Energy Bureau further warned Genera it could not issue new RFPs nor amend existing RFPs, unless a duly justified request to that effect was approved by the Energy Bureau. In addition, the Energy Bureau ordered the Puerto Rico Electric Power Authority ("PREPA") to transfer on or before Thursday, July 20, 2023, all documentation related to both RFPs to Genera's designated representative as per identified in the July 6 Motion.

On July 14, 2023, PREPA filed a document titled *PREPA's Response to Motion Requesting Order to Affirm Genera PR's Exclusive Responsibility in Managing and Decision-Making for Ongoing Public Procurement Processes and Facilitation of Related Documentation Transfer* ("July 14 Motion to Respond"). In its July 14 Motion to Respond, PREPA stated that it disagreed with the expansive interpretation Genera was attributing to the terms and conditions of the LGA OMA.⁴ PREPA argued that since RFPs 3784 and 3800 represent new generation units not

¹ July 6 Motion, pp. 7, 10, ¶¶ 19, 27.

² HoldCo (term used to refer to the PREPA -end state after the reorganization is completed) supports the administrative functions of the following subsidiaries: PREPA HydroCo LLC, PREPA Holding LLC, and PREPA PropertyCo LLC.

³ July 6 Motion, p. 10, ¶ 27.

⁴ July 14 Motion to Respond, p. 2, ¶ 7.



included in the LGA OMA, these units cannot be considered as part of the Legacy Generation Assets, which are defined in Annex I of the LGA OMA as “the base load generation plants and combustion turbine peaking units” owned by PREPA.⁵ PREPA further maintained that it is only the Legacy Generation Assets that Genera is obligated to provide operation and maintenance to.⁶

M Notwithstanding, PREPA indicated that it agreed with allowing Genera to conclude the RFP process, since the RFPs are currently in the adjudication stage; more so, considering Genera’s assurance that the units would be purchased at a lower cost and be commissioned earlier than expected.⁷ PREPA also conceded that the best use of public resources is to allow Genera to complete the RFP process.⁸

Jim On July 14, 2023, PREPA also filed a document titled *Motion to Submit Executive Summary RFP 3784 and RFP 3800 (Confidential) and to Supplement PREPA’s Response to Motion Requesting Order*, through which it provided an executive summary and actual status of the referenced ongoing RFPs processes (“July 14 Motion to Submit”).

PREPA’s understanding that Genera is obligated to provide operation and maintenance only to the Legacy Generation Assets, excluding the new generation subject to RFPs 3784 (Black Start Units) and 3800 (Peaking Units) is misconstrued.

7/14 The Energy Bureau **REMINDS** PREPA that the four (4) *new* Black Start Units are **replacing** four (4) legacy generation assets (peaking units) listed in Annex I of the LGA OMA; particularly: Costa Sur GT Unit 1, Costa Sur GT Unit 2; Yabucoa CT Unit 1; and Yabucoa CT Unit 2.⁹ Therefore, to the extent that the referenced Black Start units are merely replacing existing Legacy Generation Assets, contrary to PREPA’s reasoning, these units are considered part of the Legacy Generation Assets.

ADN Pertaining the *new* Peaking Units, on November 4, 2022, in accordance with the IRP Order,¹⁰ the Energy Bureau issued a Resolution and Order through which it conditionally approved **seven (7) additional peaking facilities supporting the Minigrid planning approach** (“November 4 Resolution”). The Energy Bureau determined that the MiniGrid Optimization process will consider the use of the Seven Additional Peakers at the proposed locations or at preferred alternative locations determined based on the Optimization Process since their main purpose is to be used in emergency situations. In its November 4 Resolution, the Energy Bureau further determined that, as part of the Optimization Proceeding (Case No.: NEPR-MI-2020-0016), PREPA shall evaluate the use of the Seven Additional Peakers to optimize the development of the Minigrids strategy contemplated in the Proposed IRP. The Energy Bureau also highlighted that approving the Seven Additional Peakers shall not be construed and/or interpreted as an acceptance at large of the rejected eight (8) Minigrids proposal advanced by PREPA as part of the Proposed IRP, including the replacement of all the fossil-fuel GT peakers considered in the Proposed IRP.

⁵ *Id.*, pp. 2 - 3, ¶ 8.

⁶ *Id.*, p. 3, ¶ 9.

⁷ *Id.*, p. 2, ¶ 7.

⁸ *Id.*, p. 3, ¶ 10; p. 4, ¶ 12.

⁹ On March 26, 2021, the Energy Bureau determined that, only to the extent that PREPA acquired the Black Start Units for Aguirre and Costa Sur as part of the remaining 81 MW of gas fired peakers that form part of the Approved IRP and Modified Action Plan, these two projects were aligned with the IRP Order and the Modified Action Plan. On June 8, 2021, the Energy Bureau issued a Resolution and Order in which, among others, it approved the Costa Sur and Aguirre Black Start Projects. In a Resolution and Order issued on September 28, 2021, the Energy Bureau approved PREPA’s request to substitute the location of the New Black Start System from Aguirre to Yabucoa.

¹⁰ See Final Resolution and Order on the Puerto Rico Electric Power Authority’s Integrated Resource Plan, *In re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, August 24, 2020 (“IRP Order”).



Section 5.1 of the LGA OMA states: “Commencing on the Service Commencement Date, and in exchange for Owner’s payment to Operator of all amounts owing to Operator under this Agreement, Operator shall (i) provide management, operation, maintenance, repair, restoration, replacement and other related services for the Legacy Generation Assets, as well as any optimization (including fuel and efficiency) approved by PREB, in each case that are customary and appropriate, or as required by Applicable Law, including the services in this Article 5 (O&M Services) and Annex IX (Scope of Services) . . . ”

M
In its July 14 Motion to Respond, PREPA maintained that Genera is only responsible over the Legacy Generation Assets in Annex I of the LGA OMA. According to PREPA, as of today, Genera is not responsible for the operation, maintenance, and other related matters regarding the Seven Additional Peakers because they are *new* units.

Jim
The LGA OMA states otherwise. The LGA OMA specifies that on commencement date Genera shall provide operation and maintenance related services for Legacy Generation Assets, **as well as any optimization approved by the Energy Bureau**. Therefore, considering that approving the Seven Additional Peakers was part of an optimization plan approved by the Energy Bureau, the Energy Bureau **DETERMINES** that, pursuant to the LGA OMA, Genera is the **sole entity** responsible for the operation and maintenance of the Seven Additional Peakers, as part of its responsibilities assumed on July 1, 2023.

JAB
The Energy Bureau **REITERATES** that Genera is the **sole entity** responsible for managing, leading, and deciding on matters pertaining the Black Start units and Peaking units being procured in RFPs 3784 and 3800.

SMN
The Energy Bureau **REMINDS** PREPA that Section 4 of Act 120-2018¹¹ states all Act No. 29-2009 shall apply to PREPA Transactions.¹² Concerning PREPA Transactions, Section 5 of Act 120-2018, specifically provides that PREPA may conduct any PREPA Transaction and enter into Partnerships or Sales Contracts in relation thereto. **Any PREPA transaction shall be conducted in accordance with the Public Private Partnership’s establishment process in Act No. 29-2009.**¹³

ADM
The Puerto Rico Public-Private Partnerships Authority¹⁴ is designated as the sole Government Entity authorized to and responsible for (1) implementing the public policy on PREPA Transactions conducted under Act 120-2018 (2) determining the Functions, Services, or Facilities for which such Partnerships shall be established, subject to the priorities, objectives, and principles established in the energy policy and the regulatory framework to be developed under Section 9 of this Act; and (3) determining which PREPA Assets related to electric power generation shall be sold or transferred through Sales Contracts.¹⁵

PREPA may only sell and dispose of PREPA Assets related to electric power generation through the process established in this Act and **may only conduct transactions related to electric power generation, distribution, and transmission, metering, and any other PREPA function, service, or facility through Partnership Contracts.**¹⁶

¹¹ Puerto Rico Electric Power System Transformation Act, (“Act-120-2018”).

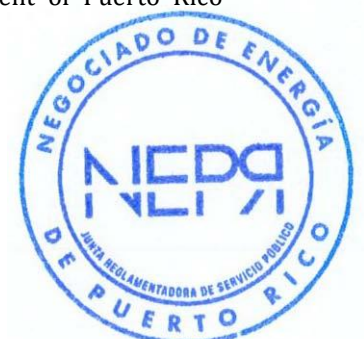
¹² PREPA Transaction is defined as: Any and all transactions carried out in accordance with the provisions of Act No. 29-2009 and this Act, whereby PREPA or the Government of Puerto Rico establishes one or more Partnerships on connection with any of PREPA’s functions, services, or facilities, or executes a Sales Contract for PREPA Assets related to electric power generation.

¹³ Act 120-2018, § 5(a).

¹⁴ The Public-Private Partnership Authority was created by Act 29-2009, also known as the *Public-Private Partnerships Act*, for the purpose of implementing the public policy of the Government of Puerto Rico concerning Public-Private Partnerships, as set forth under the Act.

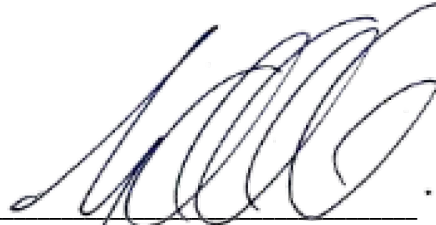
¹⁵ Act 120-2018, § 5(b).

¹⁶ *Id.*



The Energy Bureau **GRANTS** confidential designation and treatment to the document titled Executive Summary RFP 3784 and RFP 3800 filed with the July 14 Motion to Submit, as requested by PREPA.

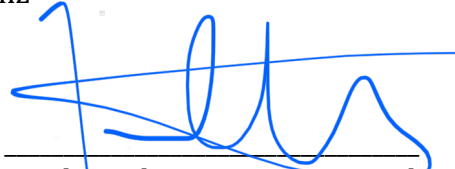
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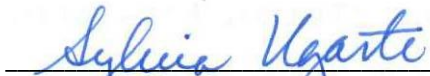
Edison Avilés Deliz
Chairman



Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegaard
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 July 17, 2023. Also certify that on July 17, 2023, I have proceeded with the filing of this Resolution and Order and was notified by email to mvazquez@diazvaz.law; jmarrero@diazvaz.law; brannen@genera-services.com; kbolanos@genera-pr.com; regulatory@genera-pr.com; jfr@sbgblaw.com; alopez@sbgblaw.com. I also certify that on July 17, 2023, I have -moved forward with filing the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign in San Juan, Puerto Rico, today, July 17, 2023.



Sonia Seda Castambide
Clerk

