

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

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IN RE:

10 YEAR PLAN FEDERALLY FUNDED
COMPETITIVE PROCESS

CASE NO.: NEPR-MI-2022-0005

SUBJECT: Motion to Submit Bi-monthly Report on the Status of Emergency Generation and Black-Start Generation Procurement for the Period of July 15 to July 31, 2023, in Compliance with Resolution and Order Dated January 23, 2023

MOTION TO SUBMIT BI-MONTHLY REPORT ON THE STATUS OF EMERGENCY GENERATION AND BLACK-START GENERATION PROCUREMENT FOR THE PERIOD OF JULY 15 TO JULY 31, 2023, IN COMPLIANCE WITH RESOLUTION AND ORDER DATED JANUARY 23, 2023

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW GENERA PR LLC (“Genera”), as agent of the Puerto Rico Electric Power Authority (“PREPA”),¹ through its counsels of record, and respectfully submits and prays as follows:

I. Procedural Background

1. On November 10, 2022, PREPA filed a confidential letter under seal to the Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) titled *Request for Approval to Proceed with Request for Proposals (“RFP”) for the New Black-Start Systems at Costa Sur and Yabucoa*, seeking approval for the launch of a Request for Proposal (“RFP”) for black-start generation units at Yabucoa and Costa Sur. The filing included a draft RFP for the black-

¹ Pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* (“LGA OMA”), dated January 24, 2023, executed by and among PREPA, the Puerto Rico Public-Private Partnerships Authority and Genera, Genera is the sole operator and administrator of the Legacy Generation Assets (defined in the LGA OMA”) the sole entity authorized to represent PREPA before the Energy Bureau with respect to any matter related to the performance of any of the O&M Services provided by Genera under the LG OMA.

start units, separate technical specifications for an Engineering, Procurement, and Construction contract, and draft contract forms for each location.

2. On December 5, 2022, the Energy Bureau issued a Resolution and Order titled *Resolution and Order regarding Motion Requesting Expedited Approval of the RFP Process for the New Black-Start Systems at Costa Sur and Yabucoa, filed by the Puerto Rico Electric Power Authority* approving PREPA's request of November 10, 2022, for an RFP process to procure black-start systems at Costa Sur and Yabucoa (“RFP 3784”).

3. On December 29, 2022, PREPA submitted to the Energy Bureau a confidential letter regarding a *Request for Approval to Proceed with Request for Proposals for New Emergency Generation Units at Jobos, Daguao and Palo Seco*. The request concerned an RFP for up to 50 MW of generation at the Jobos site, up to 60 MW of generation at the Daguao site, and up to 90 MW of generation at the Palo Seco site.

4. On January 23, 2023, the Energy Bureau issued a Resolution and Order titled *Determination for the Project Application Package for the Seven (7) Additional Peakers to be used as Emergency Generation* (“January 23rd Order”) through which it conditionally approved PREPA's RFP process for the procurement of emergency generation at Jobos, Daguao, and Palo Seco (“RFP 3800”). This approval was subject to various conditions, including that PREPA would report to the Energy Bureau on the status of emergency generation and black-start generation procurement, including interconnection study assumption consistency between contractors, at bimonthly intervals for the first year, and at quarterly intervals thereafter until installation.²

5. After several procedural events, on July 6, 2023, Genera filed before the Energy Bureau a document titled *Motion Requesting Order to Affirm Genera PR's Exclusive Responsibility*

² See January 23 Order, p. 5.

in Managing and Decision-Making for Ongoing Public Procurement Processes and Facilitation of Related Documentation Transfer ("July 6th Motion"). Through the July 6th 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 emergency units being procured, pursuant to Sections 4.7(b), 5.1, and 5.8(c) of the LGA OMA. Additionally, Genera requested the Energy Bureau to order HoldCo³ to transfer all documentation related to the RFPs to Genera promptly.

6. On July 13, 2023, upon review of the July 6th Motion, the Energy Bureau issued a Resolution and Order titled *Resolution and Order Regarding 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, Filed by Genera PR LLC* ("July 13th Order"). In the July 13th Order, the Energy Bureau determined that, given the LGA OMA provisions and the transition of responsibilities assumed on July 1, 2023, Genera is the sole entity responsible for managing, leading, and deciding on both RFPs. Among other things, the Bureau ordered 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 6th Motion.

7. 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 14th Motion"). In its July 14th Motion, PREPA stated that it disagreed with the expansive interpretation Genera was attributing to the terms and conditions of the LGA OMA and

³ 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.

that it is only the Legacy Generation Assets that Genera is obligated to provide operation and maintenance to.

8. Notwithstanding, on July 17, 2023, the Energy Bureau issued a Resolution titled *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* ("July 17th Resolution") whereby it reiterated that Genera is the sole entity responsible for managing, leading, and deciding on matters pertaining the black-start units and peaking units being procured.

9. As such, in accordance with Genera's obligation under the LGA OMA as recognized by this Energy Bureau in the July 13th Order and July 17th Resolution, and in compliance with the January 23rd Order, Genera hereby submits under seal of confidentiality as *Exhibit A* to this Motion a document titled *Bi-weekly Report – Period of July 15 – 31, 2023* ("Bi-weekly Report"), detailing Genera's recent progress from July 15 to July 31, 2023 regarding the RFPs process.

10. In compliance with the Energy Bureau's Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 2016, and partially amended on September 16, 2016 ("Energy Bureau's Policy on Management on Confidential Information"), Genera respectfully submits this memorandum of law that explains the legal basis for the confidential treatment of the Bi-Weekly Report submitted herein as *Exhibit A*.

Document Name and Filing Date	Confidential Information	Summary of Legal Basis for Confidential Designation	Summary of why each claim or designation conforms to the applicable legal basis for confidentiality
Bi-weekly Report – Period of July 15 – 31, 2023	Full document.	Confidential information during ongoing competitive procurement process.	The Bi-Weekly Report's information on the ongoing procurement process, which includes Genera's evaluation of offers, must stay confidential to protect the procurement process's transparency, integrity and avoid potential prejudice to Genera.

II. Memorandum of Law in Support of Confidential Treatment

A. Applicable Law and Regulations

The governing statute for the management of classified information submitted to this esteemed Energy Bureau is Section 6.15 of Act No. 57-2014, also known as the "Puerto Rico Energy Transformation and RELIEF Act." This section stipulates, "[i]f any person who is required to submit information to the Energy [Bureau] believes that the information to be submitted carries a confidentiality privilege, such person may request the [Bureau] to treat such information as confidential..." 22 L.P.R.A. § 1054n. If, after conducting a meticulous evaluation, the Energy Bureau determines that the information warrants protection, it is required to "grant such protection in a manner that minimally affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted." *Id.* at Section 6.15(a). Consequently, such information must be withheld from the public domain by the Energy Bureau and "must be duly safeguarded and provided exclusively to the personnel of the Energy [Bureau] who need to know such information under nondisclosure agreements." *Id.* at Section 6.15(c). Therefore, "[t]he Energy [Bureau] must swiftly act on any privilege and confidentiality claim made by a person under its jurisdiction through a resolution for such purposes before any potentially confidential information is disclosed." *Id.* at Section 6.15(d).

Additionally, the Energy Bureau's Policy on Management of Confidential Information detail the procedures a party should **follow to request confidential treatment for a document** or a portion of it. The Energy Bureau's Policy and Procedures on Confidential Information requires the identification of confidential information and the filing of a memorandum of law that explains the legal basis and support for a request to file information confidentially. *See* Section A of the Energy Bureau's Policy on Management of Confidential Information. The memorandum should also include a table that identifies the confidential information, a summary of the legal basis for the confidential designation, and an explanation of why each claim or designation conforms to the applicable legal basis for confidentiality. *Id.*

In conjunction with the aforementioned, Energy Bureau Regulation 8815, also known as the *Joint Regulation for the Procurement, Evaluation, Selection, Negotiation, and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation, and Award Process for the Modernization of the Generation Fleet and other Resources* (“Regulation 8815”), provides clear and explicit safeguards for confidential information during competitive bidding procedures, as delineated in Articles 4.2.

In its pertinent part, Article 4.2 of Regulation 8815 mandates that “prior to launching any public procurement process, and after receiving the approval of the [Board of Directors] from PREPA to proceed with the proposed Project and procurement process, the Executive Director [of PREPA] will notify in writing to the Energy [Bureau] the recommendation of the Project Committee with respect to: (i) the proposed Project, including all associated documents that explain the Project; (ii) the proposed parameters to determine such profit margin and price escalators; (iii) consistence with the Integrated Resource Plan approved by the Energy [Bureau];

and (iv) compliance with Regulation 8815, the Acts, and other applicable regulations.”⁴ Importantly, Article 4.2 further provides that this [complete sentence] should remain confidential while the administrative competitive procurement process is ongoing.⁵

Lastly, PREPA adopted Regulation 6285, also known as “*Regulation for the Program to Administer Documents of the Puerto Rico Electric Power Authority*, on January 10, 2001 (“Regulation 6285”). Pursuant to Regulation 6285, documents including information related to the evaluation of bids or requests for bids while the evaluation, adjudication and award processes are still ongoing, are confidential.⁶

B. Request for Confidentiality and Supporting Arguments

In accordance with Article 4.2 of Energy Bureau Regulation 8815, the information within the Bi-Weekly Report relating to an ongoing public procurement process must remain confidential. The Bi-Weekly Report contains details pertaining to Genera's evaluation of offers and the current state of the adjudication process. Such data aligns with the nature of documents classified as confidential under Regulation 8815. Releasing this information does not serve the public interest. Rather, it could compromise the transparency and integrity of the ongoing procurement process, potentially prejudicing Genera's position.

Moreover, this Motion marks Genera's first submission of the Bi-Weekly Report in compliance with the January 23rd Order. It is important to highlight that PREPA was previously responsible for submitting these reports. Therefore, Genera maintains that Exhibit A should be granted the same level of confidentiality and protected status that this Energy Bureau previously

⁴ See Article 4.2 of Regulation 8815.

⁵ *Id.*

⁶ See Section V, ¶ 13, of Regulation 6285.

accorded to reports submitted by PREPA. While this request for confidentiality finds support in the aforementioned laws and regulations, it is also important to emphasize that preserving the confidentiality of these reports will ensure that information previously provided by PREPA, deemed confidential by this Energy Bureau, will not be inadvertently disclosed. This is particularly important as Genera relies on the data and documents provided by PREPA to determine the most current status of the RFPs.

WHEREFORE, for the reasons stated above, Genera respectfully requests the Energy Bureau to **take notice** of the above; **accept** Genera's Bi-weekly Report regarding the Status of RFP 3784 and RFP 3800 for the period of July 15, 2023, to July 31, 2023, submitted herein as *Exhibit A* to this Motion; **deem** Genera in compliance with the January 23rd Order; and **grant** this request for confidential treatment.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 1st day of August 2023.

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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 the attorney for Puerto Rico's Electric Power Authority (PREPA), Joannely Marrero-Cruz, at jmarrero@diazvaz.law; and Maralíz Vázquez-Marrero, at mvazquez@diazvaz.law.

In San Juan, Puerto Rico, this 1st day of August 2023

/s/ Alejandro López-Rodríguez
Alejandro López-Rodríguez

Exhibit A

Bi-weekly Report – Period of July 15 – 31, 2023
(Submitted under seal of confidentiality)