

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

NEPR Received: Aug 16, 2023 6:24 PM
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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 August 1 to August 15, 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 AUGUST 1 TO AUGUST 15, 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 Genera, PREPA, and the Puerto Rico Public-Private Partnerships Authority, 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 (defined in the LG OMA) provided by Genera under the LGA 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 at the Jobos site, up to 60 MW 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 quarterly intervals thereafter until installation.²

5. Effective July 1, 2023, responsibility for O&M Services for the Legacy Generation Assets transitioned from PREPA to Genera, in accordance with the provisions of the LGA OMA.

² See January 23 Order, p. 5.

From that point forward, Genera has assumed exclusive responsibility for managing, leading, and deciding on RFP 3784 and RFP 3800 matters. The Energy Bureau recognized and affirmed this shift in responsibilities in their Resolutions and Orders dated July 13, 2023,³ and July 17, 2023.⁴

6. Pursuant to Genera's obligation under the LGA OMA, and as recognized by this Energy Bureau in the July 13th Order and July 17th Resolution, Genera hereby submits a redacted document titled *Bi-Weekly Report – Period of August 1 – 15, 2023* ("Bi-Weekly Report"), attached as *Exhibit A* herein, detailing Genera's recent progress from August 1 to August 15, 2023, regarding the RFPs process in compliance with the January 23rd Order.

7. Genera respectfully further informs that an unredacted version of the Bi-Weekly Report is submitted under seal of confidentiality as it includes confidential information during the ongoing competitive procurement process. Therefore, 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, Genera respectfully submits this memorandum of law, which explains the legal basis for the confidential treatment of the Bi-Weekly Report submitted herein as *Exhibit A*.

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

³ See, Resolution and Order, *In re: 10-Year Plan Federally Funded Competitive Process*, Case No.: NEPR-MI-2022-0005, July 13, 2023 (July 13th Resolution).

⁴ See, Resolution and Order, *In re: 10-Year Plan Federally Funded Competitive Process*, Case No.: NEPR-MI-2022-0005, July 17, 2023 (July 17th Resolution).

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.”⁵ Notably, Article 4.2 further provides that this [complete sentence] should remain confidential while the administrative competitive procurement process is ongoing.⁶

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.⁷

⁵ See Article 4.2 of the Energy Bureau's Regulation 8815.

⁶ *Id.*

⁷ See Section V, ¶ 13, of the Energy Bureau's Regulation 6285.

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 information aligns with the nature of documents classified as confidential under Regulation 8815. Releasing this information would not serve the public interest. Rather, it could compromise the transparency and integrity of the ongoing procurement process, potentially prejudicing Genera's position.

Additionally, it is important to highlight that prior to August 1, 2023, PREPA was responsible for submitting these reports in accordance with the January 23rd Order. Such reports filed by PREPA were maintained confidential and under seal by the Energy Bureau. Therefore, Genera maintains that *Exhibit A* should be granted the same level of confidentiality and protected status that this Energy Bureau previously 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.

C. Identification of Confidential Information

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 August 1–15, 2023	Section III on pp. 2-4, Section IV on pp.4-5, and Section V on pp. 5 – 7.	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.

WHEREFORE, for the reasons stated above, Genera respectfully requests the Energy Bureau to (i) **take notice** of the above; (ii) **accept** Genera's Bi-Weekly Report regarding the Status of RFP 3784 and RFP 3800 for the period of August 1, 2023, to August 15, 2023, submitted herein as *Exhibit A* to this Motion; (iii) **deem** Genera in compliance with the January 23rd Order; and (iv) **grant** this request for confidential treatment.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 16th 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, Joannely Marrero-Cruz, at jmarrero@diazvaz.law; and Maralíz Vázquez-Marrero, at mvazquez@diazvaz.law.

In San Juan, Puerto Rico, this 16th day of August 2023

/s/ Alejandro López-Rodríguez
Alejandro López-Rodríguez

Exhibit A
Bi-Weekly Report – Period of August 1 – 15, 2023
(Unredacted version submitted under seal of confidentiality)

CONFIDENTIAL

Docket Number: NEPR-MI-2022-0005

In Re: 10 Year Plan Federally Funded Competitive Processes

Re: Bi-weekly Report for the Period of August 1 – 15, 2023

I. Introduction

On December 23, 2022, and January 27, 2023, two events called "Black Start" and "Peaker" were created under the profile of PowerAdvocate at PREPA. PREPA was in the process of procuring four (4) Black Start units and seven (7) Peaker units through RFPs no. 3784 and 3800, respectively, before the Service Commencement Date. As ordered by PREB, the requirements for the RFPs are:

Black Start

RFP no. 3784, issued on December 23, 2022, requested EPC proposals for:

- up to 60MW nameplate capacity at Costa Sur
- up to 60 MW nameplate capacity at Yabucoa
- two (2) units per site
- same output capacity
- capable of firing natural gas and diesel fuel
- ability in the future to fire biodiesel and a minimum of 30% hydrogen blended with natural gas as well
- peak capacity or reduction
- fast ramping
- load-following services
- open to all resources that can provide black start capability

Peaker

RFP No. 3800, issued on January 27, 2023, requested EPC proposals for:

- up to 50MW nameplate capacity at Jobos
- up to 60MW nameplate capacity at Daguao
- up to 90MW nameplate capacity at Palo Seco

- total generation for the seven (7) units shall not exceed 200 MW nameplate capacity.
- at least three (3) of the seven (7) units must be mobile
- capable of firing natural gas and diesel fuel
- ability in the future to fire biodiesel and a minimum of 30% hydrogen blended with natural gas as well
- fast ramping
- black start
- synchronous condensing when offline
- provide load following services

II. Summary of RFP 3784 and 3800 bids received

A summary of the bids received for both RFPs is attached as **Annex A-1**.

III. Genera's proposed path forward

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Once PREB evaluates and enters an order regarding addressing Genera’s proposal, Genera will prepare and submit the draft RFP for PREB’s evaluation and approval.