

**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 Third Supplement
to September 8, 2023, and Response to
Resolution and Order Dated October 19, 2023

**MOTION TO SUBMIT THIRD SUPPLEMENT TO SEPTEMBER 8, 2023, MOTION
AND RESPONSE TO RESOLUTION AND ORDER DATED OCTOBER 19, 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:

1. On August 16, 2023, Genera, acting as agent of PREPA, filed a document titled *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* (“August 16th Motion”). In this motion, among other things, Genera submitted recommendations for changes to the RFP processes. Genera contended that these changes would lead to significant cost savings and a reduction in time.

2. On August 23, 2023, the Energy Bureau issued a Resolution and Order titled *Bi-Monthly Reports on the Status of Emergency Generation and Black-Start Generation Procurement for the Periods from July 15 to July 31, 2023, and August 1 to August 15, 2023, filed by Genera*

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.

PR, LLC (“August 23rd Order”). Pursuant to this order, the Energy Bureau (i) **allowed** the RFP process to continue in the manner described by Genera in Exhibit A of the August 16th Motion and (ii) **ordered** Genera to submit a draft RFP for review and approval within ten days of the notification of the August 23rd order, which was September 4, 2023.

3. On September 1, 2023, Genera submitted a document titled *Motion to Submit Bi-Monthly Report on the Status of Emergency Generation and Black-Start Generation Procurement for the Period of August 16 to August 31, 2023, and to Request of Time*. In this motion, Genera requested an extension until September 8, 2023, to submit the draft RFP, in accordance with the August 23rd Order. This request for an extension of time was made on the grounds of the scale and complexity associated with the equipment acquisition process, which constitutes the primary focus of the RFP.

4. On September 8, 2023, Genera filed a document titled *Motion to Submit Draft RFP in Compliance with Resolution and Order Dated August 23, 2023, and Request for Extension of Time to Supplement* (“September 8th Motion”). Through this motion, Genera submitted a Technical Specification for Power Generation Equipment document (“Draft Scope”) detailing the requirements and scope of the RFP that Genera will issue to purchase the units. Additionally, Genera requested an extension until September 29, 2023, to submit a supplement to the Draft Scope submitted in the September 8th Motion, which aims to complete the RFP Package to be submitted for the approval of the Energy Bureau.

5. On September 15, Genera filed a document titled *Memorandum of Law in Support of Confidential Treatment of RFP Draft Scope Submitted in Compliance with Resolution and Order Dated August 23, 2023* (“September 15th Memorandum of Law”). Through the September 15th

Memorandum of Law, Genera requested confidential designation and treatment of the Draft Scope submitted on September 8, 2023, as Exhibit A.

6. On September 21, 2023, the Energy Bureau issued a Resolution titled *Memorandum of Law in Support of Confidential Treatment of RFP Draft Scope Submitted in Compliance with Resolution and Order Dated August 23, 2023*. Through this Resolution, and after reviewing the September 15th Memorandum of Law, the Energy Bureau granted the confidential designation and treatment to Exhibit A of the September 8th Motion.

7. On September 29, 2023, Genera filed a document titled *Motion to Submit Supplement to September 8, 2023, Motion in Compliance with Resolution and Order Dated August 23, 2023* (“September 29th Motion”). Through this motion, Genera submitted certain supplemental documents under seal of confidentiality – attached therein as Exhibit A through Exhibit Q – to the Draft Scope initially presented in the September 8th Motion. Additionally, Genera requested an extension until October 13, 2023, to prepare and file additional supplement technical documents to the Draft Scope, whose inclusion will enable Genera to provide a fully comprehensive and compliant RFP Package.

8. On October 6, 2023, Genera submitted a document titled *Memorandum of Law in Support of Confidential Treatment for the Supplement to Genera’s September 8 Motion, Submitted in September 29, 2023, in Compliance with Resolution and Order Dated August 23, 2023* (“October 6th Memorandum of Law”). This memorandum was submitted in alignment with the September 15th Memorandum of Law and aimed to support Genera’s request to maintain the confidentiality of the supplemental documents included in the September 29th Motion.

9. On October 13, 2023, Genera filed a document titled *Motion to Submit Second Supplement to September 8, 2023, Motion in Compliance with Resolution and Order Dated August*

23, 2023 (“October 13th Motion”), through which Genera submitted a second set of supplemental documents to the Draft Scope and requested an extension until October 20, 2023, to submit the finalized RFP package.

10. On October 16, Genera filed a document titled *Motion to Submit Bi-Weekly Report on the Status of Emergency Generation and Black Start Generation Procurement for October 1 to October 15, 2023 in Compliance with Resolution and Order Dated January 23, 2023* (“October 16th Motion”). In the October 16th Motion, Genera submitted its Bi-Weekly Report, which indicated that Genera “[a]greed with [Central Office for Recovery, Reconstruction and Resiliency] (“COR3”) to move the peaker units to 406 FEMA Hazard Mitigation Grants and keep the black start units under 404 FEMA Hazard Mitigation Grants.”

11. Consequently, on October 19, 2023, the Energy Bureau issued a Resolution and Order titled *September 29, 2023, Motion to Submit Supplement to September 8, 2023, Motion in Compliance with Resolution and Order Dated August 23, 2023 – Genera Competitive Procurement of Black Start and Emergency Generation; October 13, 2023, Motion to Submit Second Supplement to September 8, 2023, Motion in Compliance with Resolution and Order Dated August 23, 2023* (“October 19th Order”).

12. In the October 19th Order, the Energy Bureau acknowledged LUMA's August 25th Motion² filed before this Energy Bureau. The August 25th Motion detailed LUMA’s planned Scope of Work for submission to COR3 and the Federal Emergency Management Agency (“FEMA”), which included a request for 100 MW of Battery Energy Storage System (“BESS”) resources. The Energy Bureau contends that these resources could meet some of the same needs that Genera seeks

² See LUMA’s Motion Submitting One Scope of work, Request for Confidentiality, and Supporting Memorandum of Law, *In re: Review of the Puerto Rico Electric Power Authority's 10-Year Infrastructure Plan - December 2020*, case no. NEPR-MI-2021-0002, August 25, 2023.

to address through its RFP for black standard emergency generation. In light of LUMA's August 25th Motion, the Energy Bureau ordered Genera to address several specific issues on or before submitting the complete RFP package. Furthermore, the October 19th Order also approved Genera's request to submit the remaining supplements to the September 8th Motion by October 20, 2023, and granted confidential treatment upon the confidential exhibits attached to the September 29th and October 13th Motions.

13. Genera hereby informs the Energy Bureau that it has decided to withdraw the battery requirements from the RFP. Therefore, it is respectfully submitted that the majority of the questions posed in the October 19th Order have become moot. Genera will present a separate BESS project to the Energy Bureau, and the submittal will address the questions included in the October 19th Order.

14. Regarding the order to respond to differences in funding sources, Genera respectfully informs that under 406 FEMA Hazard Mitigation Grants Program, Genera can use the Long Lead Items PW (Equipment Project #67369) to purchase equipment and request up to 50% of the cost in advance. The A&E runs in parallel using the obligated A&E Project #335168. The change from 404 to 406 positively impacts the implementation by reducing the project timeline significantly. Currently, 404 FEMA Hazard Mitigation Grants Program does not allow equipment to purchase in Phase 1.

15. In compliance with the August 23rd and October 19th Order and the October 13th Motion, Genera respectfully submits the third and final set of supplemental documents related to the Draft Scope under seal of confidentiality.

16. Genera respectfully informs the Energy Bureau that this third supplement to the September 8th Motion fulfills all the requirements outlined for Genera's RFP package. Therefore,

Genera considers its RFP package to be complete and ready for final review and approval by the Energy Bureau.

17. Additionally, Genera advises the Energy Bureau that this third set of supplemental documents to the Draft Scope submitted as Exhibits to this motion are submitted under seal of confidentiality, as they include sensitive commercial information. Genera also respectfully requests the Energy Bureau to maintain the supplemental documents to the Draft Scope submitted as Exhibit herein under seal of confidentiality pursuant to 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 that this third set of supplement documents merits confidential treatment based on the same legal arguments raised in the September 15th and October 6th Memorandum of Law. Therefore, Genera respectfully requests that the Energy Bureau maintains the Exhibits attached herein under seal of confidentiality.

WHEREFORE, Genera respectfully requests the Energy Bureau to **take notice** of the above for all purposes and **deem** Genera in compliance with the August 23rd Order and October 19th Order.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 20th day of October 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 PREPA, Lionel Santa Crispín, at lionel.santa@prepa.pr.gov.

In San Juan, Puerto Rico, this 20th day of October 2023

/s/ Alejandro López-Rodríguez
Alejandro López-Rodríguez

(RFP and Supplemental Documents Submitted Under Seal of
Confidentiality)