

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

NEPR Received: Dec 12, 2023 4:00 PM
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IN RE:

REVIEW OF LUMA’S INITIAL BUDGET

CASE NO.: NEPR-MI-2021-0004

SUBJECT: Motion to Submit Act No. 8-2017
Report in Response to Resolution and Order
Dated September 22, 2023

**MOTION TO SUBMIT ACT NO. 8-2017 REPORT IN RESPONSE TO RESOLUTION
AND ORDER DATED SEPTEMBER 22, 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 state and request the following:

1. On September 22, 2023, the Energy Bureau of the Puerto Rico Service Regulatory Board (“Energy Bureau”) issued a Resolution and Order titled *Determination on the Request for Partial Revision on the FY 2023 Annual Budgets by LUMA, GENERA, and PREPA* (“September 22nd Resolution”), addressing the requests for reconsideration submitted by LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly referred to as “LUMA”), Genera, and PREPA, in response to the Energy Bureau’s Resolution and Order issued on June 25, 2023. Relevant to this motion, in the September 22nd Resolution, the Energy Bureau identified additional avenues through which Genera could supplement its labor budget. Among these, the Energy Bureau pointed to Act No. 8 of February 4, 2017, as amended, known as the *Government of Puerto Rico Human*

¹ Pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* (“LGA OMA”), dated January 24, 2023, executed by and among PREPA, Genera, and the Puerto Rico Public-Private Partnerships Authority (“P3A”), Genera is the sole operator and administrator of the Legacy Generation Assets (as defined in the LGA OMA) and the sole entity authorized to represent PREPA before PREB with respect to any matter related to the performance of any of the O&M Services provided by Genera under the LGA OMA.

Resources Administration and Transformation Act, 3 LPRA § 1469 et seq. (“Act No. 8-2017”), which allows for the use of government employees supporting other agencies and extends this benefit to Public-Private Partnerships. *See* September 22nd Resolution, p. 12.

2. Consequently, the Energy Bureau ordered Genera to submit a report that outlines its exploration of partnerships under Act No. 8-2017 (“Act No. 8-2017 Report”), detailing the agencies engaged, potential labor support, and expected timelines for implementation. *Id.*, on page 13.

3. On November 17, 2023, Genera submitted a document titled *Request for Extension to Comply with Resolution and Order Dated September 22, 2023*, through which it requested an extension, until December 1, 2023, to provide a comprehensive analysis of Act No. 8-2017’s applicability to the unique agreement governing the relationship between Genera, PREPA, and the Puerto Rico Public-Private Partnerships Authority (“P3A”) under the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement (“LGA OMA”).

4. On November 30, Genera filed a document titled *Motion to Inform and Request Extension to Comply with Resolution and Order Dated September 22, 2023* (“November 30th Motion”). Through the November 30th Motion, Genera informed the Energy Bureau that, in compliance with Section 6.2(a)(vii) of the LGA OMA², it sent a formal letter to P3A (“Genera’s November 30th Letter”) seeking its support procuring information from the Puerto Rico Office of

² Pursuant to Section 6.2(a)(vii) of the LGA OMA, the P3A, as Administrators, has a responsibility to:

(vii) (A) cooperate with [Genera] by providing [Genera] such information, data and assistance as may be reasonably necessary for [Genera] to perform its obligations hereunder and (B) from time to time, as and when requested by [PREPA], execute and deliver, or cause to be executed and delivered, all such documents and instruments and take, or cause to be taken, all such reasonable actions, as necessary for [Genera] to perform its obligations under this Agreement;

See Section 6.2(a)(vii) of the LGA OMA.

Human Resources Management and Transformation (“OATRH”). The information sought included: (i) an inquiry into whether OATRH has any mobility plans available for Genera, as per Section 5.2 of Act No. 8-2017, 3 L.P.R.A. § 1471a, which are distinct from the initial mobilization plan outlined under Section 4.2(g)-(h) of the LGA OMA; (ii) in the event that such a plan is in effect, Genera seeks a list of employees who may be available for mobilization under this plan; and (iii) any additional details regarding the implementation of the mobility plan that are pertinent to Genera’s operations and compliance with the LGA-OMA.

5. Additionally, in the November 30th Motion, Genera requested that the Energy Bureau grant an extension until December 15, 2023, to submit the Act No. 8-2017 Report. This extension was sought considering that Genera requested P3A’s response by December 8, 2023, thereby necessitating additional time for Genera to complete its assessment of P3A’s response.

6. In compliance with the September 22nd Resolution and in accordance with the November 30th Motion, Genera is herein submitting the response received from the P3A to Genera's November 30th Letter, dated December 8, 2023. This response from P3A addresses the relevance and application of Act 8-2017 and Act No. 120 of June 21, 20218, as amended, known as the “*Puerto Rico Electric Power System Transformation Act*” (“Act No. 120-2018”), to Genera’s labor situation in regard to the Energy Bureau’s September 22nd Resolution.

7. P3A's analysis examines the scope of Act 8-2017, specifically Section 5.2, which delineates that its stipulations are not directly applicable to entities functioning as private corporations or businesses. However, it asserts the applicability of the mobility concept and mechanism established by the OATRH to public entities, public-private partnerships, and agencies operating as private businesses or corporations, along with municipalities, whose underlying ownership or purpose is public in nature. It is emphasized that these provisions do not inherently

extend to independently operated private entities like Genera, which are engaged in service provision under a Public-Private Partnership Agreement with PREPA.

8. Furthermore, P3A's assessment underscores the implications of Act No. 120-2018 in the context of mobility and employment for PREPA. This Act reaffirms the applicability of OATRH's mobility mechanism to PREPA, stating that PREPA employees not transitioning to private companies under Public-Private Partnership Agreements will either maintain their existing roles at PREPA or be reassigned within PREPA or to other governmental entities. This clarification establishes that the mobility mechanism stipulated in Act 8-2017 is pertinent for PREPA employees not employed by a Partnership Private Company.

9. Lastly, P3A's analysis concludes that while Act 120-2018 facilitates the transition of PREPA employees to entities like Genera, there are no additional mobility plans specifically applicable to Genera under these Acts. This conclusion is drawn from the understanding that the mobility mechanisms delineated are primarily designed for government entities, public or public-private corporations, or agencies functioning as private companies or businesses within the framework of Public-Private Partnerships. Therefore, the mobility provisions outlined do not extend to private companies such as Genera, irrespective of their involvement in Public-Private Partnerships.

WHEREFORE, Genera respectfully requests that this Energy Bureau **take notice** of the above for all pertinent purposes and **deem** Genera in compliance with the September 22nd Resolution in regard to the Act No. 8-2017 Report.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 12th day of December 2023.

ECIJA SBGB

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CERTIFICATE OF SERVICE

I 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 I will send an electronic copy of this motion to PREPA, through its counsels of record: Juan M. Martínez-Nevárez, at jmartinez@gmlex.net, Alexis G. Rivera-Medina, at arivera@gmlex.net, Joselyn Rodríguez-Gonález, at jrodriguez@gmlex.net, and Mirelis Valle-Cancel, at mvalle@gmlex.net; and to LUMA, through its counsels of record: Margarita Mercado Echegaray, at margarita.mercado@us.dlapiper.com; Ana Margarita Rodríguez Rivera, at ana.rodriguezrivera@us.dlapiper.com; and Julian Anglada Pagan, at julian.angladapagan@us.dlapiper.com.

In San Juan, Puerto Rico, this 12th day of December 2023

/s/ Alejandro López Rodríguez
Alejandro López Rodríguez

Exhibit A

P3A's Letter Response to Genera's November 30th Letter



GOVERNMENT OF PUERTO RICO
PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY

December 8, 2023

BY ELECTRONIC MAIL

Brannen McElmurray

President and CEO

Genera PR

brannen@genera-services.com

with copy to:

Genera PR LLC

Attention: General Counsel

legal@genera-pr.com

**Re: Request for Information pursuant to PREB Order dated September 22, 2023
NEPR-MI-2021-0004 Determination on the Request for Partial Revision on the FY
2024 Annual Budgets by LUMA, GENERA and PREPA**

Dear Mr. McElmurray:

Reference is made to the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement ("LGA O&M Agreement") dated as of 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"). Reference is also made to that certain Puerto Rico Energy Bureau ("PREB") Resolution and Order, dated as of September 22, 2023, issued in connection with Case No. NEPR-MI-2021-0004 ("PREB_Resolution" or "Resolution"), ordering Genera, in its capacity as operator under the LGA O&M Agreement, to explore alternatives to human resource recruitment and compensation, among other budgetary control measures, in connection with the reconsideration of certain labor expenses under Genera's proposed budget. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Resolution.

Pursuant to the Resolution, PREB ordered Genera to submit a report that outlines the exploration of partnerships under Act 8-2017, known as the Government of Puerto Rico Human Resources Administration and Transformation Act, as amended (“Act 8-2017”), with respect to employee mobility plans implemented by the Office of the Administration and Transformation of Human Resources (“OATRH”, by its Spanish acronym) for governmental employees. However, we respectfully note that the foregoing order rests on an incorrect interpretation of the relevant mobility provisions set forth under Act 8-2017, as well as under Act No. 120-2018, known as the Puerto Rico Electric System Transformation Act, as amended (“Act 120-2018”).

As a threshold matter, Section 5.2 of Act 8-2017 states that its provisions are not applicable to corporations or public or public-private instrumentalities that function as private companies or businesses. However, the same section establishes that the concept of mobility and the mechanism established by the OATRH to implement the transfer of public employees shall apply to public or public-private partnerships, agencies that function as private companies or businesses, such as Participatory Public-Private Partnerships and municipalities, these examples relate to entities whose underlying ownership or purpose is public in nature, and does not necessarily extend to independent, privately-owned entities that provide services to a public entity through a Public Private Partnership Agreement, such as Genera.

In addition, Section 15 of Act No. 120-2018, reiterates that the concept of mobility and the mechanism established by the OATRH will apply to PREPA and that those PREPA employees that do *not* transfer over to the private companies entering into Public Private Partnership Agreements with PREPA (the “Partnership Private Company”) shall retain their job positions or will be transferred to other positions within PREPA or other government entities. However, these provisions simply clarify that the mobility mechanism set forth under Act 8-2017 will apply to PREPA employees that are *not* employed by the Partnership Private Company and, broadly speaking, that certain vested rights of PREPA employees must be honored by the Partnership Private Company that does employ them. In other words, although it clarifies certain terms and conditions applicable to Genera’s employment of former PREPA employees, Act 120-2018 does not provide a private entity with automatic access the mobility mechanism set forth under Act 8-2017, as the Resolutions appears to suggest.

As you know, Genera is a private company that entered into a Public-Private Partnership Agreement with a public corporation, PREPA. Other than the provisions governing the terms and conditions for PREPA employees to transfer to Genera under Act 120-2018, there are no other applicable mobility plans for Genera as this mechanism is only available to government entities that function as public or public-private corporations, agencies that function as private companies or businesses, such

as those that are under Public-Private Partnerships, or otherwise public corporations like PREPA. Therefore, the aforementioned mobility plans do not apply to private companies like Genera, regardless of whether they are a party to Public-Private Partnership.

Should you have any questions, please feel free to contact us.

Respectfully,



Rubén Lugo Mas
Compliance and Contract Manager
Puerto Rico Public-Private Partnerships Authority