

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

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IN RE:

REVIEW OF LUMA’S INITIAL BUDGET

CASE NO.: NEPR-MI-2021-0004

SUBJECT: Request for Clarification of Resolutions and Orders Dated September 22, 2023 & December 8, 2023

**REQUEST FOR CLARIFICATION OF RESOLUTIONS AND ORDERS DATED
SEPTEMBER 22, 2023 AND DECEMBER 8, 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:

I. Introduction

On December 8, 2023, the Puerto Rico Service Regulatory Board's Energy Bureau ("Energy Bureau") issued a Resolution and Order titled *Determination on PREPA’s Petition to Revise FY 2024 HoldCo (PropertyCo) and HydroCo Budgets and Genera’s Petition to Revise FY 2024 GenCo Budgets* (“December 8th Resolution”). While the December 8th Resolution addresses various budgetary aspects for Fiscal Year 2024 (“FY2024”), it notably sustains the omission of the allocation of funds for Genera’s Incentive Payment.²

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, 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.

² Regarding Genera’s Incentive Payment, Section 7.1(c)(i) of the LGA OMA provides the following:

This omission gains particular significance in the context of the Energy Bureau's Resolution and Order issued on September 22, 2023 (“September 22nd Resolution”),³ which altered its prior decision on the allocation of funds for Genera's Incentive Payment for FY2024, as initially set forth in the June 25, 2023, Resolution and Order (“June 25th Resolution”).⁴ Initially, the June 25th Resolution confirmed the allocation of funds for Genera's Incentive Payment for FY2024, recognizing as “good practice the inclusion of the potential maximum incentive payment to Genera in the budget the Energy Bureau is approving for FY24.”⁵ However, the September 22nd Resolution reallocated these funds to other budgetary purposes within FY2024, deferring the payment to Fiscal Year 2025 (“FY2025”).

In response, Genera filed a *Motion for Partial Reconsideration of the Resolution and Order dated September 22, 2023* (“October 12th Request for Reconsideration”), on October 12, 2023. This motion requested the Energy Bureau to reconsider its determination to eliminate the Genera’s Incentive Payment funds. To date, the Energy Bureau has not entered a decision regarding the

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- (i) Based on Operator’s performance with respect to the Incentives and Penalties described in Section III of Annex II (*Compensation – Incentives and Penalties*), Operator shall be eligible to receive Incentive Payments or be subject to Penalties as a deduction from the applicable Service Fee in any given Contract Year. For the avoidance of doubt, no Incentive Payments or Penalties shall be earned or incurred during the Mobilization Period or the Demobilization Period. The Incentive Payments or Penalties to be earned or incurred on any given Contract Year shall be calculated as set forth in Section III of Annex II (*Compensation – Incentives and Penalties*), as adjusted on a Pro Rata basis for a Contract Year that is more or less than three hundred and sixty-five (365) days. Owner and Administrator agree that an amount equal to the maximum amount of the Incentive Payments available in any given Contract Year shall be included in the Operating Budget or the Decommissioning Budgets, as applicable, **for such Contract Year.**(Emphasis added)

³ See, Resolution, *In re: Review of LUMA’s initial Budget*, Case No.: NEPR-MI-2021-0004, *Determination on the Request for Partial Revision on the FY 2024 Annual Budgets by LUMA, GENERA and PREPA*, September 22, 2023.

⁴ See, Resolution, *In re: Review of LUMA’s initial Budget*, Case No.: NEPR-MI-2021-0004, *Determination on the FY24 Annual Budgets for the electric utility system – LUMA, Genera, and PREPA*, June 25, 2023.

⁵ See, *Id.*, p. 21.

October 12th Request for Reconsideration. The December 8th Resolution is silent regarding the October 12th Request for Reconsideration. Nevertheless, it is consistent with the September 22nd Resolution, as it does not budget Genera's Incentive Payment for FY24.

Consequently, Genera respectfully seeks clarification and guidance from the Energy Bureau regarding the status of the allocation of the funds intended for the Incentive Payment, how Genera will recover the FY24 Incentive Payment and how the budgeting of the Incentive Payment will be addressed in subsequent fiscal years budgets.

II. Brief Summary of Procedural Background

1. On May 16, 2023, LUMA Energy, LLC, and LUMA Energy ServCo, LLC (jointly referred to as "LUMA") submitted to the Energy Bureau a motion titled *Submission of Consolidated Annual Budgets for Fiscal Year 2024 and Proposed Annual T&D Projections Through Fiscal Year 2026*. This Motion included the proposed Consolidated FY24 Budget composed of proposed T&D Budgets developed by LUMA, the proposed GenCo Budgets revised by Genera on behalf of PREPA for the PREPA subsidiary GenCo LLC ("GenCo"), and the proposed HydroCo Budget developed by PREPA for its holding company, HoldCo, and its subsidiaries PREPA HydroCo LLC ("HydroCo") and PREPA Property Co, LLC.

2. On June 25, 2023, the Energy Bureau issued the June 25th Resolution, which amended and approved the proposed Consolidated Budget for FY2024, provided that certain orders included in the June 25th Resolution were complied with. Additionally, the June 25th Resolution cut Genera's proposed labor expenses budget for FY 2024 from \$79.5 million to \$55.03 million, representing an approximate reduction of 30%. Relevant to this motion, the Energy Bureau also endorsed including the maximum potential incentive payment to Genera in the approved budget for FY2024 as good practice.

3. On September 22, 2023, the Energy Bureau issued the September 22nd Resolution in response to the requests for reconsideration submitted by LUMA, PREPA, and Genera following the June 25th Order. Relevant to this Motion, in the September 22nd Resolution, the Energy Bureau changed from its prior determination concerning Genera's budget for Fiscal Year 2024 (“FY2024”), as stated in the June 25th Order, and changed the stipulated framework by reallocating Genera’s Incentive Payment—initially set to be collected in FY2024—for other budgetary purposes in that year, to be collected in FY2025.

4. On October 12, 2023, Genera filed the October 12th Request for Reconsideration, arguing that the Energy Bureau’s decision to reallocate budgeted funds for the Incentive Payment to matters unrelated to the nature and purposes contractually established between Genera, PREPA, and the P3 Authority represents a violation of Article 7, Section 7.1 (c) of the LGA OMA, which details how the Incentive Payment is going to be budgeted. This Motion for Reconsideration is presumably being held under abeyance since no decision has been made by the Energy Bureau.

5. On December 8, 2023, the Energy Bureau issued the December 8th Resolution, addressing various budgetary aspects for FY2024. However, it should be noted that on its December 8th Resolution, the Energy Bureau did not address Genera’s October 12th Request for Reconsideration and the allocation of funds for the Incentive Payment.

III. Request for Clarification and Proposal for Addressing the Incentive Payment

Considering those matters not addressed in the December 8th Resolution, particularly the lack of direction about allocating the Incentive Payment throughout the above-detailed procedural background, Genera respectfully seeks clarity through this motion. To address these critical issues, Genera respectfully puts forth the following proposals for the Energy Bureau's consideration,

which aim to provide solutions to immediate and future challenges arising from the absence of clear guidance on budgeting for the Incentive Payment.

A. One-Time Adjustment of Incentive Payment

Genera respectfully requests that the Energy Bureau determine that the reallocation of the Incentive Payment budget to the year in which it will be disbursed rather than collected is deemed a decision not binding for future rates or budgetary processes. Further, Genera requests that the Energy Bureau determine that the decision on how the Incentive Payment is going to be budgeted is evaluated and settled in the rate review process currently being carried out by the Energy Bureau⁶ or, in the absence of a rate review process for the next fiscal year, in the budgeting process contemplated in LUMA and Genera's operation and maintenance agreements. This clarification aims to safeguard Genera's contractual rights under the LGA OMA without affecting ratepayers.

In alignment with the above stated, Genera hereby respectfully requests the Energy Bureau to clarify that the interpretation of the timing to budget the Incentive Payment made in the September 22nd Resolution is not binding for future rate and budgetary proceedings and is only applicable to the budgeting process for this fiscal year Incentive Payment budgeting and future disbursement.⁷

B. Proposal for Reserve Account Establishment

Genera further respectfully proposes the creation of a dedicated escrow or reserve bank account for the explicit management of the Incentive Payment funds realized during this fiscal year, but that will be disbursed in the next fiscal year. This approach is critical for segregating the Incentive Payment funds from the general budget, enabling clearer, more transparent, and

⁶ *In Re: Puerto Rico Electric Power Authority Rate Review*, case no. NEPR-AP-2023-0003.

⁷ Genera hereby adopts by reference the explanation and its interpretation of the LGA OMA process to budget the Incentive Payment as set forth in Section III of the October 12 Request for Reconsideration.

accountable handling of the payments pertaining to FY24 earned incentives. Genera advocates for the account's establishment to adhere to a strict timeline, with an initial deposit of \$30.040 MM to be made within the first four months of FY2024-2025, thus guaranteeing the timely availability of funds for disbursement in accordance with the LGA OMA. This alternative can be further evaluated during the ongoing rate review process.

WHEREFORE, Genera respectfully requests that the Energy Bureau **take notice** of the above for all purposes **and clarify the September 22nd Resolution and the December 8th Resolution** as requested in this motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 28th day of December 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 PREPA, through its counsels of record: Juan M. Martínez-Nevárez, at jmartinez@gmlex.net, Alexis G. Rivera-Medina, at arivera@gmlex.net Joselyn Rodríguez-Gonzalez, 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 28th day of December 2023.

/s/ Alejandro López-Rodríguez
Alejandro López-Rodríguez