

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

NEPR

Received:

Jan 17, 2025

10:12 PM

IN RE:

PUERTO RICO ELECTRIC POWER
AUTHORITY RATE REVIEW

CASE NO.: NEPR-AP-2023-0003

SUBJECT: Motion to Submit Response to
Resolution and Order Dated December 20,
2024

**MOTION TO SUBMIT RESPONSE TO
RESOLUTION AND ORDER DATED DECEMBER 20, 2024**

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 states and requests the following:

1. On December 16, 2024, the Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau”) issued a Resolution and Order titled *Preliminary Guidance on Rate Case Procedures and Notice of Upcoming Conference* (“December 16th Resolution”), providing preliminary guidance on rate case procedures and scheduling to ensure an orderly and efficient process that advances the public interest while complying with statutory requirements. Part II of the December 16th Resolution described the procedure for completing the work on filing requirements for those new rates and scheduled a Technical Conference for December 20, 2024, to discuss the substantive issues related to the expected filing requirements for the rate review.

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 (“P3 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. On December 20, 2024, a Technical Conference was held by the Energy Bureau (“December 20th Technical Conference”) where various procedural and substantive matters concerning the Rate Review proceeding were discussed among the Energy Bureau, LUMA, Genera, PREPA, and other Stakeholders.

3. On the same day, December 20, 2024, the Energy Bureau issued a Resolution and Order titled *Requests of Information and Scheduling of Technical Conference for January 10, 2025* (“December 20th Resolution”), in which it included, as Attachment A therein, a Request for Information (“RFI”) directed to LUMA, Genera, and PREPA, with all responses due on Friday, January 17, 2025. Additionally, through the December 20th Resolution, the Energy Bureau schedule a Technical Conference for Friday, January 10, 2025, to address any questions that LUMA, PREPA, and Genera may have about the RFIs and the filing requirements in general.

4. On January 3, 2025, the Energy Bureau consultants and examiners of the rate review proceedings issued a memorandum to all relevant stakeholders and parties in the rate review proceeding case titled *Technical Conference of January 10, 2025: Consultants’ Agenda and Explanation* (“January 3rd Memo”), identifying the matters to be discussed during the Technical Conference scheduled for January 10, 2025. The January 3rd Memo included an appendix listing five (5) legal questions that the Energy Bureau consultants intended to discuss with the legal counsel of the parties on January 10, 2025. The memo clarified that the discussion would not seek answers to these questions but rather focus on whether the questions were clear, complete, and how counsel might address them.

5. On January 10, 2025, the Energy Bureau’s consultants held a Technical Conference (“January 10th Technical Conference”) to address any questions that LUMA, PREPA, and Genera may have about the December 20th Resolution’s RFIs and the filing requirements in general. Pertinent to this Motion, during the January 10th Technical Conference, the Energy Bureau consultant, Mr.

Scott Hempling, received comments and considerations from LUMA's, Genera's, and PREPA's counsel regarding, among other things, the five (5) legal questions included in the Appendix to the January 3rd Memo. Notably, the necessity and reasonability of addressing and including Questions No. 3 and No. 4 of the Appendix within the scope of the rate review proceeding were questioned.

These two questions read as follows:

3. What are the Bureau's statutory powers, if any, to hold LUMA and Genera financially accountable for imprudent action and inaction; that is, action or inaction that causes costs, revenues, or service quality to depart from the levels that the Bureau would expect if performance were prudent? By what means, if any, can the Bureau prevent recovery in rates of expenses imprudently incurred by LUMA or Genera, while making one of those companies financially responsible for covering the shortfall?

4. Aside from any Bureau power to hold LUMA and Genera financially accountable for imprudence, consider this scenario: The Bureau makes findings, after a fully litigated case in which LUMA or Genera was a party, that (a) LUMA or Genera has acted imprudently or failed to act prudently, and (b) the consequences to customers amounted to a specific dollar level of excess cost. Would the Bureau's conclusion have collateral estoppel effect in a contract breach action against the company brought by P3A?

See Appendix to the January 3rd Memo.

6. During the January 10th Technical Conference, Mr. Hempling requested that counsel for LUMA, Genera, and PREPA clarify whether these five (5) legal questions were stated clearly, and provide their respective opinions on whether Questions No. 3 and No. 4 should be included in the rate review proceeding of reference.

7. Genera hereby confirms that the five (5) legal issues raised in the Appendix to the in Appendix to the January 3rd Memo are indeed stated clearly. However, Genera respectfully maintains that Questions No. 3 and No. 4, which concern (i) the Energy Bureau's statutory powers to hold operators financially accountable for imprudent conduct, and (ii) the potential collateral estoppel effect of the Bureau's findings in any subsequent contractual or breach-of-contract litigation, bear no direct or immediate nexus to the central, statutorily defined purpose of the instant rate review.

The primary focus of this rate review proceeding, as contemplated, is to ensure that electric utility rates are just and reasonable, balancing the recovery of prudently incurred costs with the protection of consumers and the promotion of reliable service.

8. Genera further contends that the exploration of financial accountability and potential collateral estoppel in a breach-of-contract context prematurely mixes the Energy Bureau's adjudicative and/or enforcement powers with the narrower ratemaking objectives at stake in this proceeding. Engaging in such analysis risks diverting the Energy Bureau's and the parties' resources from the core questions essential to establishing the revenue requirement and, by extension, setting just and reasonable rates. Should a dispute arise regarding the extent to which LUMA or Genera may be held financially liable for imprudence, or whether an Energy Bureau determination might bind a separate contractual action (including one by the P3 Authority), those issues could be more appropriately addressed in a separate docket, structured to handle nuanced questions of liability and contractual obligations.

9. Moreover, incorporating these issues within the rate review may create undue complexity and delay, hampering the timely resolution of fundamental ratemaking components. It is precisely for these reasons that Genera respectfully requests that the Energy Bureau either (a) exclude Questions No. 3 and No. 4 from the scope of this Rate Review proceeding or (b) defer such matters until after the Energy Bureau has sufficiently addressed the vital tasks of cost-of-service determination, budgetary approvals, and rate design.

10. Accordingly, Genera respectfully submits that, while the five (5) questions are indeed clearly stated, Questions No. 3 and No. 4 do not align with the principal purpose and timeline of this rate review proceeding. Rather, they implicate broader legal and contractual considerations that should be reviewed in a more suitable procedural context.

11. Lastly, and in compliance with the December 20th Resolution, Genera hereby respectfully submits, as Exhibit A herewith, its responses to the RFI included as Attachment A to the December 20th Resolution.

WHEREFORE, Genera respectfully requests that the Energy Bureau **take notice** of the above for all purposes; **accepts** Genera's responses to the December 20th Resolution RFI, submitted as Exhibit A to this Motion; and **deem** Genera to be in compliance with the December 20th Resolution.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 17th day of January 2025.

ECIJA SBGB
PO Box 363068
San Juan, Puerto Rico 00920
Tel. (787) 300.3200
Fax (787) 300.3208

/s/ Jorge Fernández-Reboredo
Jorge Fernández-Reboredo
jfr@sbgblaw.com
TSPR 9,669

/s/ Alejandro López-Rodríguez
Alejandro López-Rodríguez
alopez@sbgblaw.com
TSPR 22,996

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 Mirelis Valle-Cancel, mvalle@gmlex.net, and Alexis G. Rivera Medina, arivera@gmlex.net; and to LUMA, through Margarita Mercado Echegaray, at margarita.mercado@us.dlapiper.com, and Jan M. Albino López, jan.albinolopez@us.dlapiper.com.

In San Juan, Puerto Rico, this 17th day of January 2025.

/s/ Alejandro López Rodríguez
Alejandro López Rodríguez

Exhibit A
December 20th RFI Response

Docket Number: NEPR-AP-2023-0003

In Re: Puerto Rico Electric Power Authority Rate Review.

Attachment A: Request of Information re: Filing Requirements

GPR-PREB-NEPRAP20230003-20241220 #1(a)

As stated in the Energy Bureau's Order of December 16, 2024, this rate case will establish expected revenue requirements, and rates, for FY2027 and FY2028 in addition to the test and rate year of FY2026.

a. Confirm that all references to the test year can be updated to FY2026.

Response:

Genera has no objection to updating the test year to FY2026.

GPR-PREB-NEPRAP20230003-20241220 #1(b)

- b. Detail the ability of each utility to provide estimates of changes to costs, revenues, and other provided values (akin to pro forma adjustments) for the two subsequent fiscal years (FY27 and FY28), for each schedule.

Response:

Genera understands and will strive to be in a position to provide estimates of changes to costs, revenues, and other provided values (akin to pro forma adjustments) for the two subsequent fiscal years (FY27 and FY28), for each schedule.

GPR-PREB-NEPRAP20230003-20241220 #2(a)

As stated in the Energy Bureau's Order of December 16, 2024, this rate case will map all costs and all revenues, regardless of source or payee, including the Puerto Rico Government and Federal government grants, cost sharing, and loans.

- a. Ensure that the schedules include information about all costs and revenues

Response:

No response by Genera is required.

GPR-PREB-NEPRAP20230003-20241220 #2(b)

- b. Ensure that the schedules contain debt that is subject to the Title III process, as well as other debts (such as debts to the Puerto Rico Government).

Response:

No response by Genera is required.

GPR-PREB-NEPRAP20230003-20241220 #2(c)

- c. Ensure that the schedules contain costs and revenues associated with pension plans

Response:

No response by Genera is required.

GPR-PREB-NEPRAP20230003-20241220 #3(a)

As stated in the Energy Bureau's Order of December 16, 2024, this rate case must account for changes in the generation portfolio that are consistent with the Approved IRP and the results of the ongoing IRP process:

- a. Schedule F-3 requires capital expenditures for generation, as well as for the remainder of the electric transmission and distribution systems. Provide a detailed discussion of how the filing can reflect the various generation options (retirements and additions) under consideration in the 2025 IRP analysis.

Response:

Genera has visibility and operational responsibility, and thus is fully capable of providing expenditure details over the following generation portfolios:

- Necessary Maintenance Expense ("NME"),
- Critical Components and Capital Spare Parts;
- Auxiliary Equipment;
- Battery Energy Storage Systems Support Units ("BESS");
- Peakers & Blackstart Grid Support Units ("Peakers"); &
- Legacy Generation Assets decommissionings.

However, Genera does not have visibility, especially expenditures, over retirements and additions to the generation system under consideration in the 2025 IRP outside of Genera's operational mandate.

GPR-PREB-NEPRAP20230003-20241220 #3(b)

- b. When making projections of expenditures for FY26, FY27, and FY28, it will likely be required to itemize the costs associated with specific assets entering or leaving service as a result of some trigger event (such as the availability of a replacement resource), or other capital investments which are uncertain in time. Detail how LUMA's filing will enable the Energy Bureau to make these itemized determinations when setting expected revenues and rates for FY27 and FY28

Response:

As stated above in response to **GPR-PREB-NEPRAP20230003-20241220 #3(a)**, Genera has visibility and operational responsibility, and thus is fully capable of providing projected expenditure details for FY26, FY27, and FY28 over the following generation portfolios:

- Necessary Maintenance Expense ("NME"),
- Critical Components and Capital Spare Parts;
- Auxiliary Equipment;
- Battery Energy Storage Systems Support Units ("BESS");
- Peakers & Blackstart Grid Support Units ("Peakers"); &
- Legacy Generation Assets decommissionings.

GPR-PREB-NEPRAP20230003-20241220 #4

As stated in the Energy Bureau's Order of December 16, 2024, the Energy Bureau is planning to address the revenue requirement in this proceeding, and rate design in a separate (perhaps overlapping) proceeding. Identify which schedules LUMA believes are required for the revenue requirement proceeding, and which would only be necessary for a rate design proceeding.

Response:

No response by Genera is required.

GPR-PREB-NEPRAP20230003-20241220 #5

Provide an update on activities to mitigate the limitations of PREPA's financial reporting, and identify and describe any variation among the various schedules in the impact of these activities.

Response:

No response by Genera is required.

GPR-PREB-NEPRAP20230003-20241220 #6

Provide an update on the accounting / balance sheet remediation initiatives.

Response:

No response by Genera is required.

GPR-PREB-NEPRAP20230003-20241220 #7

What are the "most recent available audited financials"? When are subsequent audited financial expected to be available?

Response:

No response by Genera is required.

GPR-PREB-NEPRAP20230003-20241220 #8

In some cases, the requested Schedule (e.g., Schedules E-3 and E-4) would include the *changes* in values rather than the absolute values. Clarify whether the changes are available as requested, even if the underlying absolute values are not available due to financial reporting or audit limitations.

Response:

No response by Genera is required.

GPR-PREB-NEPRAP20230003-20241220 #9

Amend the Phase I Report and its associated Appendix A to identify Schedules that can be provided in part [e.g., defer those portions of Schedules that will be addressed by the Title III process, and provide those portions of the data which are not subject to that deferral)

Response:

No response by Genera is required.

GPR-PREB-NEPRAP20230003-20241220 #10

Provide a detailed update regarding LUMA's progress in developing a cost-of-service analysis, including the scope of LUMA's analyses and the timeframe on which different levels of analysis are expected to be available. Funds are insufficient to make and carry out plans to improve operations.

Response:

No response by Genera is required.

GPR-PREB-NEPRAP20230003-20241220 #II

Identify and provide outstanding questions that PREPA has about the Filing Requirements, which the Energy Bureau can address in its Order.

Response:

No response by Genera is required.

GPR-PREB-NEPRAP20230003-20241220 #12

Identify and provide outstanding questions that LUMA has about the Filing Requirements, which the Energy Bureau can address in its Order

Response:

No response by Genera is required.

GPR-PREB-NEPRAP20230003-20241220 #13

Identify and provide outstanding questions that Genera has about the Filing Requirements, which the Energy Bureau can address in its Order.

Response:

Genera is currently engaged with the Energy Bureau's consultant on the Budget Portion of Filing Requirements/Table of Contents seeking guidance and addressing questions.