

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

**NEPR**

**Received:**

**Mar 31, 2025**

**12:50 PM**

**IN RE:**

GENERA PR, LLC.,  
ELECTRIC COMPANY CERTIFICATE  
APPLICATION

**CASE NO.:** NEPR-CT-2023-0001

**MOTION IN COMPLIANCE WITH RESOLUTIONS AND ORDERS DATED FEBRUARY 28,  
2025 AND MARCH 28, 2025**

**TO THE HONORABLE PUERTO RICO ENERGY BUREAU:**

**COME NOW** the **Puerto Rico Electric Power Authority** ("PREPA"), through the undersigned counsel, and respectfully states and requests as follows:

1. On February 28, 2025, this Honorable Energy Bureau issued a Resolution and Order ("February 28 Order") granting preliminary approval of the proposed amendment to the Puerto Rico Legacy Generation Assets Operation and Maintenance Agreement ("LGA OMA") between PREPA, the Puerto Rico Public-Private Partnerships Authority ("P3") and Genera PR, LLC ("Genera"). The proposed amendment removes the incentive structure set forth in the LGA OMA and replaces it with a one-time fixed payment of \$110 million, to be disbursed in eleven (11) monthly installments of \$10 million, subject to final approval by the Boards of PREPA and P3, the Energy Bureau, and the Fiscal Oversight and Management Board ("FOMB"), in that order.

2. This contractual restructuring was designed to ensure administrative efficiency, transparency, and long-term cost savings, consistent with the

principles set forth in the Puerto Rico Energy Public Policy Act and the Energy Bureau's regulatory mandate.

3. As part of its February 28 Order, the Energy Bureau conditioned its preliminary approval on the submission of:

- (i) the final executed amendment to the LGA OMA; and
- (ii) a detailed explanation of the funding source and budgetary implications associated with the agreed \$110 million fixed payment to Genera.

4. In compliance with the February 28 Order, on March 21, 2025, PREPA filed a *Motion in Compliance with Order* proposing that the payments to Genera be included in the Fuel Charge Adjustment (FCA). Specifically, P3A and PREPA maintained that maintaining the currently applicable FCA would yield an estimated \$55 million in revenues, which PREPA would use to fund half of the installments. The remaining installments would be addressed in the FCA reconciliations for the next quarter, from July to September. This payment structure is consistent with the fiscal and operational framework of the original agreement, under which performance-based incentives were funded in a similar manner.

5. On March 28, 2025, the Energy Bureau issued a Resolution and Order in Case No. NEPR-MI-2020-0001 ("March 28 Order"), once again directing PREPA to submit the final amendment for its consideration following approval by the Boards of PREPA and P3, so that the Bureau may conduct the corresponding evaluation and, if applicable, issue the certification of compliance with the public

energy policy. Taking into consideration that the process of approving the final amendment is still underway, instead of recovering the corresponding item through the reconciliation, the Energy Bureau ordered PREPA to create a reserve for the sum of \$40 million through the FCA Clause to withhold the portion of the payment associated with the amendment. Since the total to be collected for the proposed amendment is \$110 million, \$70 million will remain to be recovered through the FCA Clause, which will be included in upcoming quarterly reconciliations.

6. In compliance with the Energy Bureau's Orders of February 28 and March 28, PREPA hereby submits, as Annex A, the First Amendment to the LGA OMA, which has been approved by the governing boards of both PREPA and P3 for the Bureau's corresponding evaluation<sup>1</sup>. The First Amendment was duly authorized and approved by Resolution No. 5171 (March 25, 2025) and P3 Resolution No. 2025-03 (March 26, 2025), respectively<sup>2</sup>. These approvals reflect the consensus reached by the public entities involved in the negotiation and confirm the legal sufficiency of the agreement for submission to this Honorable Energy Bureau.

7. PREPA emphasizes that the Amended LGA OMA includes critical safeguards to protect the interests of the people of Puerto Rico.<sup>3</sup> In coordination with P3, PREPA ensured that the amendment preserves all penalty provisions,

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<sup>1</sup> See Annex A

<sup>2</sup> See Annex B & C

<sup>3</sup> See Annex D

institutes robust performance standards, and introduces financial protections in the event of Operator abandonment, failure to meet minimum thresholds, or bankruptcy. These provisions include:

- Continued enforceability of all original penalty clauses;
- Triggers for contractual default if minimum performance thresholds are not met for two consecutive years;
- An Owner Termination Fee payable by the Operator in cases of abandonment or voluntary bankruptcy within the first five years of the contract;
- A debarment clause disqualifying the Operator from contracting with any Puerto Rico government entity for a period of ten years if terminated for cause.

8. These measures reflect PREPA's and the P3's commitment to fiscal prudence, operational discipline, and long-term reliability, and are consistent with the Energy Bureau's statutory oversight responsibilities under Act 57-2014 and Act 17-2019.

9. The information contained in annexes A and D is part of a deliberative process, and PREPA requests that it remain confidential until the proposed amendment is executed, pending approval by the Energy Bureau and the FOMB.

10. Article 6.15 of the *Puerto Rico Energy Transformation and RELIEF Act* provides that “any person who is required to submit information to the Energy [Bureau] believes that the information to be submitted has any confidentiality privilege, such person may request the [Bureau] to treat such information as such[.]” Act 57 at Art. 6.15 states that “If the Energy [Bureau], after the appropriate

evaluation, believes such information should be protected, it shall grant such protection in a manner that least 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 Art. 6.15 (a). If the Energy Bureau determines that the information is confidential, "the information shall be duly safeguarded and delivered exclusively to the personnel of the Energy [Bureau] who needs to know such information under nondisclosure agreements." *Id.* at Art. 6.15 (c). "The Energy [Bureau] shall swiftly act on any privilege and confidentiality claim made by a person subject to its jurisdiction by means of a resolution to such purposes before any allegedly confidential information is disclosed." *Id.* at Art. 6.15 (d).

11. In the exercise of its powers, the PREB and PREPA approved Regulation 8815, which has force of law. *Id.* at Art. 6.3 (b). Regulation 8815 includes language in Art. 10.2 which protects confidential information in those competitive bidding processes contemplated in the regulation. In its pertinent part, it states that "[o]nce the Contract has been executed, the Authority shall make public the report of the Project Committee which shall contain the information related to the procurement, evaluation, scoring, selection and negotiation process, and the information contained in the Proposal as required by law, except trade secrets, proprietary or privileged information of the Proponent clearly identified as such by the Proponent, or information that must otherwise be protected from publication according to law, unless otherwise

ordered by a court order, in each case, if the Authority determines that the protection of such information is appropriate."

**WHEREFORE**, PREPA respectfully requests that this Honorable Energy Bureau take notice of the above and accept this motion in compliance with the directives set forth in its February 28 Order and March 28 Order.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 31<sup>st</sup> day of March, 2025.

**González & Martínez Law Offices, PSC.**

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/s/ Juan González Galarza

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TSPR 13,460

## **CERTIFICATE OF SERVICE**

I hereby certify that on this same date 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.

In San Juan, Puerto Rico, this 31<sup>st</sup> day of March, 2025.

/s/ Juan González Galarza  
Juan González Galarza