

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

NEPR

Received:

Apr 24, 2025

11:21 PM

IN RE:

CERTIFICATE OF ENERGY
COMPLIANCE

CASE NO.: NEPR-AP-2022-0001

**INFORMATIVE MOTION AND IN COMPLIANCE WITH RESOLUTION AND ORDER
DATED APRIL 7, 2025**

TO THE PUERTO RICO ENERGY BUREAU,

COMES NOW the Puerto Rico Electric Power Authority ("PREPA"), through its counsel of record, and respectfully states and prays:

1. On April 7, 2025, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("April 7 Resolution") in the above-captioned case. This Resolution mandated two actions: (1) that the PREPA and the Puerto Rico Public-Private Partnerships Authority ("P3 Authority") modify the proposed amendment to the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement ("Original Proposed Amendment") in accordance with specified recommendations; and (2) that PREPA submit a comprehensive legal memorandum justifying the lawfulness of executing the proposed payment through the Fuel Purchase Adjustment Clause of its tariff ("Legal Memorandum"). The April 7 Resolution required submission within five (5) days of notification.

2. On April 14, 2025, PREPA filed a *Motion Requesting Extension of Time to Comply with Resolution and Order Dated April 7, 2025*, seeking an additional

five (5) business days to meet the directives outlined in the April 7 Resolution. On April 15, 2025, the Energy Bureau granted the extension, setting April 24, 2025, as the new deadline for compliance (“April 15 Resolution”).

3. In compliance with the April 7, 2025 Resolution, PREPA hereby submits the required Legal Memorandum regarding the lawfulness of executing the proposed payment through the Fuel Purchase Adjustment Clause of its tariff. See **Exhibit A** – Legal Memorandum.

4. In further compliance with the directives of this Energy Bureau, it is informed that PREPA and the P3 Authority jointly reviewed the full content of the April 7 Resolution, including each of the suggestions and proposed modifications specificized by the Energy Bureau.

5. PREPA and the P3 Authority prepared a revised version of the Original Proposed Amendment, incorporating the modifications, clarifications, and protections outlined by the Energy Bureau (“Revised Proposed Amendment”). This Revised Proposed Amendment was notified to Genera PR, LLC (“Genera”) on April 21, 2025, for review and comments. See **Exhibit B** – P3 Authority’s Letter to Genera dated April 21, 2025.

6. Despite PREPA’s express request for Genera to review and provide feedback on the Revised Proposed Amendment by today’s date, Genera has informed PREPA and the P3 Authority that it will not be able to finalize its analysis in time for today’s filing deadline. As such, PREPA and the P3 Authority are unable to submit the final Revised Proposed Amendment to the Energy Bureau at this moment.

7. It is respectfully submitted that PREPA and the P3 Authority have complied with the April 7 Resolution to the extent possible at this stage. It is also noted that, as of today, neither Genera nor NFE has responded to the P3 Authority's requests for financial information, as set forth in the letters dated March 28, 2025, and April 21, 2025.

WHEREFORE, PREPA and the P3 Authority respectfully request the Energy Bureau to take notice of the foregoing, and deem the April 7 and April 15 Resolutions as complied with by PREPA and the P3 Authority.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 24th day of April 2025.

CERTIFICATE OF SERVICE: We hereby certify that this document was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and notified to all counsels of record.

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Exhibit A

Legal Memorandum - Recovery of the \$110 million one-time payment through the FCA Clause

Paragraph (a) of Article 6.3 of Act No. 57-2014¹ establishes that the Energy Bureau has the duty to oversee and ensure the execution and implementation of the public policy on the electric power service in Puerto Rico. Similarly, paragraph (c) of the referenced Article 6.3 establishes that the Energy Bureau must implement the necessary regulatory actions to, among others, guarantee the reasonability of the rates of Puerto Rico's electrical system. The Energy Bureau must also implement strategies to achieve the objectives of Act 57-2014 including, but not limited to, reducing and stabilizing energy costs permanently.² Finally, under Act 57-2014, the Energy Bureau has the power to review and approve and, if applicable, modify the rates or fees charged by electric power service companies.³

Furthermore, Act 57-2014 establishes that in cases in which the rate structure includes fuel and purchased power adjustment clauses they shall only include the portion of the charges directly related to fluctuations due to changes in the price of fuel and the purchase of energy, respectively, or that variable portion of the fuel and energy price that is not included in the base rate, as the case may be.⁴ No other expenses may be included under these clauses.⁵ Reiterating this provision, paragraph (i) of Section 6 of Act 83 of May 2, 1941⁶ establishes that the Puerto Rico Electric Power Authority ("PREPA") rate shall not include or encompass any other charge or fee under the fuel and purchased power reconciliation clauses **other than that approved by the Energy Bureau** in accordance with the mandates of Act 83 and Act 57-2014.

The purpose of these provisions was to break away from the PREPA's practice of including the costs associated with the Contribution in Lieu of Taxes and subsidies in the former Adjustment Clause, which was in effect before 2014. As such, the intention is to recover through these clauses only the costs associated with fuel and purchased power, as such costs and recovery is approved by the Energy Bureau.

1. Energy Bureau's Interpretation of Act 83 and Act 57-2014; Implementation of the PPCA Clause

The Energy Bureau has interpreted the Act 83 and Act 57-2014 provisions in a liberal manner allowing to recover through the Purchased Power Charge Adjustment ("PPCA") Clause certain costs that, although not directly related to changes in the price of purchased power, were considered associated with purchased power.

¹ *The Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014").

² Act 57-2014, Article 6.3(f).

³ *Id.*, Article 6.3(n).

⁴ *Id.*, Article 6.25(b).

⁵ *Id.*

⁶ *The Puerto Rico Electric Power Authority Act*, as amended ("Act 83").

To that effect, through Resolution and Order of February 5, 2024 in Case No. NEPR-MI-2020-0012, the Energy Bureau approved using the PPCA Clause to recover the interconnection cost discrepancies between the Tranche 1 bidders final offers and the actual costs, as estimated by LUMA through the required interconnection studies.⁷ LUMA estimated such costs at \$100.8 million.⁸ Moreover, through Resolution and Orders of March 27, 2024⁹, December 21, 2024¹⁰ and March 28, 2025¹¹, the Energy Bureau approved to recover through the PPCA Clause \$1.9 million, \$24.716 and \$24.716 million, respectively, in relation with the described interconnection costs.

Similarly, on December 21, 2023, the Energy Bureau approved the use of the PPCA Clause to create a cash reserve to cover any impact the Third Amendment to Power Purchase Operating Agreement between PREPA and AES would have on PREPA customers.¹² This reserve was to be reconciled based on the final impact, if any.¹³ The reserve amount for the period of January 1, 2024 to March 31, 2024 was estimated at \$15.247 million.

On August 11, 2023, the Energy Bureau issued a Resolution and Order in Case No. NEPR-MI-2022-0001 through which it approved using the PPCA Clause to recover the costs associated with certain Demand Response programs, specifically the then called Battery Emergency Demand Response Program (“BEDRP”).¹⁴ Moreover, on August 29, 2023, the Energy Bureau allowed LUMA to recover its administrative costs related to the implementation of the BEDRP, although such costs are not directly related to changes in the price of purchased power.¹⁵

The Energy Bureau initially approve including the BEDRP costs on September 29, 2023 for the PPCA rider to be in effect during the period of October 1, 2023 to December 31, 2023.¹⁶ The yearly estimated LUMA administrative costs for the implementation of the BEDRP was

⁷ Resolution and Order, In Re: Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan, Case No. NEPR-MI-2020-0012, February 5, 2024.

⁸ See Motion to Submit Estimate of Portion of Tranche 1 Interconnection Costs to Be Recovered Through PPCA in Compliance with Resolution and Order of February 5, 2024 in Case NEPR-MI-2020-0012, In Re: Puerto Rico Electric Power Authority Permanent Rate, Case No. NEPR-MI-2020-0001, Exhibit 1, February 15, 2024.

⁹ Resolution and Order, In Re: Puerto Rico Electric Power Authority Permanent Rate, Case No. NEPR-MI-2020-0001, at page 6 of 10 and Anejo 2, March 27, 2024.

¹⁰ Resolution and Order, In Re: Puerto Rico Electric Power Authority Permanent Rate, Case No. NEPR-MI-2020-0001, at page 7 of 10 and Anejo 3, December 21, 2024.

¹¹ Resolution and Order, In Re: Puerto Rico Electric Power Authority Permanent Rate, Case No. NEPR-MI-2020-0001, at page 8 of 10 and Anejo 2, March 28, 2025 (“March 28 R&O”).

¹² Resolution and Order, In Re: Puerto Rico Electric Power Authority Permanent Rate, Case No. NEPR-MI-2020-0001, at page 3 of 8, December 21, 2023.

¹³ *Id.*

¹⁴ Resolution and Order, In Re: Energy Efficiency and Demand Response Transition Period Plan, Case No. NEPR-MI-2022-0001, at pages 2-3 of 4, August 11, 2023. The BEDRP was renamed to Customer Battery Energy Sharing Program (“CBES”).

¹⁵ Resolution and Order, In Re: Energy Efficiency and Demand Response Transition Period Plan, Case No. NEPR-MI-2022-0001, at pages 2-3 of 4, August 29, 2023.

¹⁶ Resolution and Order, In Re: Puerto Rico Electric Power Authority Permanent Rate, Case No. NEPR-MI-2020-0001, at page 6-7 of 10 and Exhibit 2, September 29, 2023.

\$693,463.¹⁷ As of this date, LUMA continues to recover the BEDRP (now called CBES) costs and LUMA's administrative expenses through the PPCA Clause.

On March 5, 2025, the Energy Bureau approved using the PPCA Clause to recover the incremental LUMA administrative costs associated with the Accelerated Storage Addition Program ("ASAP").¹⁸ These costs were estimated in \$15 million, which includes about \$1.7 million incurred by LUMA through February 2025.¹⁹ LUMA requested confidential treatment for the information related to the actual total implementation costs, which include interconnection upgrades for the new systems.²⁰

Furthermore, on March 28, 2025, the Energy Bureau approved to recover through the PPCA Clause \$3.449 million with respect to LUMA's incremental administrative costs associated with the implementation of the ASAP program.²¹ Through the same Resolution and Order, the Energy Bureau approved the recovery of \$400,000 related to viability and interconnection studies associated with new temporary generation to be developed in the following months.²²

The Energy Bureau has consistently interpreted the provisions of Act 83 and Act 57-2024 with respect to the purchased power clause as a flexible mandate that could be used to recover certain costs associated with purchased power rather than a rigid construct. The same could be asserted in relation to the Fuel Charge Adjustment ("FCA") Clause since the aforementioned provisions of Act 83 and Act 57-2014 are equally applicable to the FCA and PPCA Clauses.

2. Genera PR's Incentives and the FCA Clause

With respect to Genera PR's incentives, Annex II to the LGA OMA establishes that Genera PR can earn incentives under five categories: (i) Operation Cost Efficiency, (ii) Equivalent Availability Factor, (iii) Safety Compliance, (iv) Environmental Compliance, and (v) Fuel Savings. In the aggregate, Genera PR can earn up to \$100 million per year on these incentives. Fuel Savings represents by far the largest amount out of the five categories.

¹⁷ See Motion Submitting FCA and PPCA Reconciliations for September, October and November 2023, Submission of FCA, PPCA and FOS Calculated Factors, and Request for Confidential Treatment, In Re: Puerto Rico Electric Power Authority Permanent Rate, Case No. NEPR-MI-2020-0001, File "January-March-2024-Proposed-Factors_Values-1.xlsx", Tab "CBES Program Costs & Estimates", Cell C16, December 15, 2023.

¹⁸ Resolution and Order, In Re: LUMA's Accelerated Storage Addition Program, Case No. NEPR-MI-2024-0002, at pages 2-3 of 4, March 5, 2025.

¹⁹ *Id.* at page 2 of 4.

²⁰ See Motion to Submit ASAP Program Implementation Plan and Associated Documents, Request for Approval of ASAP Cost Recovery Mechanism, and Request Confidential Treatment, In Re: LUMA's Accelerated Storage Addition Program, Case No. NEPR-MI-2024-0002, February 28, 2025. Exhibit 1: ASAP Program Implementation Plan, Exhibit 2: ASAP Program Expenditure Collection, Reporting and Recovery Procedure, and Exhibit 3: ASAP Program Status Update, were submitted under seal.

²¹ March 28 R&O at page 3 of 12 and Anejo 2. The \$3.449 million is divided in \$1.560 million for costs incurred thru February 2025 and \$1.889 million estimated for the period of April-June 2025. LUMA provided a revised optimistic estimate for ASAP incremental administrative costs totaling \$8 million.

²² *Id.*, at pages 4-5 and 8-9 of 12, and Anejo 2.

Furthermore, although in exchange for the \$110 million one-time payment Genera PR will forfeit its claim to any present and future incentive payments, the entire \$110 million amount could be attributable to fuel costs.

As described in the February 27 Motion²³, under the Fuel Savings provision, Genera PR is entitled to 50% of actual fuel cost savings achieved through efficiency initiatives, which are calculated pursuant to the Fuel Optimization Plan and based on the applicable assumptions in the current approved budget, and be an amount equal to the difference between the budgeted cost and the actual cost of the relevant budget items.

As such, if it is assumed that Genera PR achieves \$100 million of Fuel Savings (either actual or avoided) for the 10-year term of the agreement, Genera PR would be entitled to 50% of the Fuel Savings (i.e., \$50 million in each year) for a total of \$500 million. Moreover, even if it is assumed that Genera PR only achieves \$50 million of Fuel Savings per year during the same term, Genera PR will still be entitled to \$250 million. These amounts, which are reasonable assumptions, far exceed the \$110 million one-time payment.

The Fuel Savings achieved by Genera PR would have been reflected in the quarterly FCA reconciliations as a reduction in fuel costs. In other words, to the extent that Genera PR achieved Fuel Savings, PREPA's fuel costs would be reduced by an amount equal to such savings. This represents a lower FCA rider factor and an overall lower FCA charge to PREPA's customers.

As discussed before, PREPA's incentive payment to Genera PR with respect to Fuel Savings is 50% of the savings amount. Therefore, this incentive payment is directly related to fuel costs, and as such, recoverable through the FCA Clause. It follows that since the \$110 million amount is less than the reasonably assumed Fuel Savings during the 10-year LGA OMA contract term, it could be entirely attributable to fuel costs and recovered through the FCA Clause.

We must point out that, recognizing the economic and financial benefits of the \$110 million one-time payment, which represents potential savings in the amount of \$805 million during the LGA OMA term, the Energy Bureau approved using the FCA Clause to establish a funding reserve that will accrue at a \$10 million per month rate until the \$110 million is achieved.²⁴ This reserve will be used to make the one-time payment once the pertinent entities approve the LGA OMA Amendment, including the Energy Bureau issuing the Certificate of Compliance as required by Act 120-2018.²⁵

²³ Joint Motion to Request Preliminary Approval for Amendments to Genera's Operation and Maintenance Agreement, In Re: Certificate of Energy Compliance, Case No. NEPR-AP-2022-0001, Annex A, February 27, 2025 ("February 27 Motion").

²⁴ March 28 R&O at pages 3-4 of 12 and Anejo 1.

²⁵ *Id.* at page 4 of 12.

Moreover, the Energy Bureau stated that it was not the first time it established this type of reserve. To that effect, the Energy Bureau referenced the reserve established through the PPCA with respect to the Third Amendment to Power Purchase Operating Agreement between PREPA and AES discussed before.²⁶ This action by the Energy Bureau also supports the argument that the FCA Clause is an appropriate vehicle to recover the \$110 million.

3. Conclusion

Based on the preceding discussion, recovery of the \$110 million one-time payment through the FCA Clause is appropriate and aligned with the manner in which the Energy Bureau has consistently interpreted the provisions of Act 83 and Act 57-2014 with respect to the fuel and purchased power adjustment clauses. It also represents the viable option to implement the LGA OMA Amendment. In addition, spreading the recovery over an 11-month period is consistent with the Energy Bureau's mandate to take all the necessary regulatory actions to guarantee the reasonability of the rates of Puerto Rico's electrical system and to reduce and stabilize energy costs permanently.

²⁶ *Id.*



**PUERTO RICO PUBLIC-PRIVATE
PARTNERSHIPS AUTHORITY**
GOVERNMENT OF PUERTO RICO

April 21st, 2025

BY ELECTRONIC MAIL
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Re: Puerto Rico Energy Bureau April 7th, 2025 Resolution and Order

Mr. Pallens:

The Puerto Rico Public-Private Partnerships Authority (P3 Authority), in its capacity as Administrator under the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement (GOMA), hereby notifies Genera PR, LLC (Genera) of the Resolution and Order issued by the Puerto Rico Energy Bureau (PREB) on April 7, 2025, in Case No. NEPR-AP-2022-0001 (Resolution). The Resolution addresses the proposed First Amendment to the GOMA and establishes specific requirements to ensure that the amendment aligns with the public interest and applicable regulatory frameworks. Please be reminded that the Resolution and Order must remain confidential and may not be disclosed or circulated without the express authorization of the PREB.

As you know, the PREB granted preliminary approval of the proposed amendment, subject to the inclusion of several clarifications and modifications. The Resolution emphasizes the importance of incorporating safeguards to mitigate the financial risks associated with the \$110 million incentive payment, which is to be paid upfront over eleven monthly installments. Among the recommended measures are: 1) the adoption of a performance bond to protect the Puerto Rico Electric Power Authority (PREPA) and the public interest in the event of nonperformance, default, or insolvency and 2) the revision of terminology to avoid confusion with regulatory performance metrics established under Regulation 9137. The PREB also requires written confirmation that the amendment's waiver-and-release provision will not prejudice any pending administrative or judicial proceeding, nor diminish the PREB's enforcement authority. Finally, given that New Fortress Energy, Inc. (NFE) is the contractual guarantor, the PREB directs the parties to document NFE's current financial condition.

In response to the Resolution, the P3 Authority has completed a revised version of the First Amendment to the GOMA that incorporates the clarifications and safeguards mandated by the PREB. A copy of the revised amendment is enclosed for Genera's immediate review.

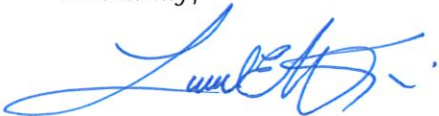
The P3 Authority requests Genera's written acceptance - or a red-lined alternative showing all proposed edits - no later than **Wednesday, April 23, 2025**.

In addition, as of the date of this letter, neither Genera nor NFE have addressed the P3 Authority's March 28, 2025 request for financial information evidencing NFE's capacity to honor its guaranty under the GOMA. Consistent with the Resolution, said information must be provided together with Genera's comments on the enclosed draft, no later than April 23, 2025.

Should you have any questions or require additional information, please contact my office without delay.

We appreciate your prompt cooperation.

Cordially,

A handwritten signature in blue ink, appearing to read 'Lionel Santa-Crispin'.

Lionel Santa-Crispin, Esq.

Annexes

- c. Kevin D. Futch, General Counsel, Genera; kevin.futch@genera-pr.com
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