

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

NEPR

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IN RE:

GENERA PR, LLC.,
ELECTRIC COMPANY CERTIFICATE
APPLICATION

CASE NO.: NEPR-CT-2023-0001

**RESPONSE IN OPPOSITION TO
ICSE'S REQUEST FOR THE STAY OF ILLEGAL GOMA AMENDMENT NEGOTIATIONS**

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 February 27, 2025, PREPA and Genera PR, LLC ("Genera") filed a Joint Motion to Request Preliminary Approval for Amendments to Genera's Operation and Maintenance Agreement before the Puerto Rico Energy Bureau ("Energy Bureau"). PREPA and Genera informed the Bureau that, following extensive discussions with the Government of Puerto Rico and the Puerto Rico Public-Private Partnerships Authority ("P3A"), the parties had agreed to eliminate the incentive structure under the Generation Operation and Maintenance Agreement ("GOMA") to promote long-term cost savings, streamline administration, and provide greater financial predictability for the people of Puerto Rico. On February 28, 2025, the Energy Bureau issued a Resolution and Order granting preliminary approval of the proposed amendment.

2. PREPA's Governing Board then met on March 25, 2025, certified quorum, and unanimously adopted Resolutions 5171 and 5172. Resolution 5171 authorizes execution of the GOMA amendment and delegates all implementing authority to the Executive Director, while Resolution 5172 simultaneously ratifies the PREPA Genco LLC operating agreement and related governance matters, confirming that the same directors serve as Genco's managers. See Exhibit 1.

3. The directors present at the March 25, 2025, meeting were: (i) Atty. Eduardo Soria Rivera, appointed to the Board by gubernatorial Resolution dated January 17, 2025 (See Exhibit 2) ; (ii) Atty. Francisco Domenech Fernández, sitting *ex officio* as Executive Director of AAFAF since January 2, 2025; (iii) Eng. Memphis Cabán Rodríguez, whose uninterrupted tenure predates the current administration; and (iv) Atty. Norberto J. Negrón Díaz, directly appointed on March 5, 2025 (See Exhibit 3).

4. On April 21, 2025, the Institute for Competitiveness and Sustainable Economy of Puerto Rico ("ICSE") filed a motion requesting that the Bureau issue an order staying all ongoing or future negotiations related to the GOMA amendment. ICSE baldly asserts that PREPA allegedly lacks a duly constituted Governing Board with the quorum necessary to take binding corporate actions, including negotiating or approving amendments to the GOMA¹. ICSE's allegation is demonstrably false.

5. Section 4(a) of Act No. 83 of May 2, 1941 (22 L.P.R.A. § 194) outlines the structure and appointment process for PREPA's Governing Board. The powers

¹ ICSE reiterated its request on May 1, 2025.

of the Authority and its general policy and strategic management are determined by this Board, which serves as its governing body. The Board is composed of seven (7) members: three (3) are appointed by the Governor of Puerto Rico with the advice and consent of the Senate, and three (3) are appointed at the Governor's sole discretion. One (1) of these discretionary appointees must be independent, with expertise in energy affairs, and must not be a government employee.

6. In addition to the seven members provided for under Act 83-1941, the Governing Board currently includes an eighth member pursuant to Article 16 of Act No. 2 of January 18, 2017 ("Act 2-2017"), known as the "Puerto Rico Fiscal Agency and Financial Advisory Authority Act" ("AAFAF"). Act 2-2017 provides that the Executive Director of AAFAF, or their designee, shall be a member of every board, committee, commission, or council of entities of the Government of Puerto Rico that are considered "covered territorial instrumentalities" under the PROMESA Act. Since PREPA qualifies as such an instrumentality under PROMESA, the provision is fully applicable to its Governing Board.

7. A quorum for Board meetings is constituted when four (4) members are present. Any action by the Board requires a majority vote of those present when quorum is established. If a quorum exists at the start of a meeting, it may continue even if a member later departs, but no decisions can be taken unless the quorum is still present at the time of the vote.

8. Regular and special meetings of the Board are livestreamed over the internet and later posted on PREPA's website, except when specific confidential

or sensitive topics are discussed. These include labor or personnel issues, litigation strategies, contract matters, and public security concerns.

9. These transparency requirements are consistently met through PREPA's official digital platforms. Board meetings are livestreamed and archived on PREPA's official YouTube channel: <https://www.youtube.com/@AEEJuntadeGobierno>, and recordings are also available for public access on PREPA's website under the "Recordings Archive" section: https://aeepr.com/#/archivos_grabaciones.

10. PREPA's current bylaws, adopted on May 25, 2022, fully incorporate and reiterate the statutory requirements set forth in Act No. 83.

11. As of the date when Resolution 5171 and 5172 were unanimously approved, PREPA's Governing Board included the aforementioned individuals:

- a. Atty. Eduardo Soria Rivera
- b. Atty. Francisco Domenech Fernández
- c. Eng. Memphis Cabán Rodríguez
- d. Atty. Norberto Negrón Díaz

12. These four (4) members present on March 25, 2025, meet the statutory minimum required for quorum. Therefore, the Board was legally authorized to meet, deliberate, and approve resolutions, including approving resolutions related to the GOMA.

13. ICSE based its initial allegations solely on information obtained from PREPA's public website. In its subsequent motion, filed on May 1, 2025, ICSE acknowledged that the website had since been updated to reflect additional

board members. In other words, ICSE effectively concedes that it made no effort to verify the claims presented in its petition. Had ICSE invested even a few minutes to view those public recordings it would have discovered that its premise was flatly wrong. Had ICSE exercised even minimal diligence, it would have observed from the recordings that each meeting begins with a certification of quorum, including the names of members present and excused.²

14. Instead, ICSE relied on an outdated webpage, ignored easily accessible primary sources, and rushed to file a motion laced with misstatements. To make matters worse, ICSE also erroneously relies on a prior version of PREPA's bylaws from 2007, ignoring the updated bylaws adopted in 2022, which are publicly available. ICSE's failure to exercise even minimal diligence before making such serious allegations reflects a reckless disregard for the truth, for the potential consequences of its request, and wastes this Bureau's limited resources.

15. ICSE's request to stay all GOMA amendment negotiations seeks to disrupt PREPA's lawful operations based on a wholly meritless argument. The Governing Board has acted within its statutory authority and in accordance with all applicable procedural rules. There is no legitimate justification for suspending or interfering with the proper exercise of those powers.

² The motion was filed on April 21, 2025, and the most recent meeting of PREPA's Governing Board had been held on March 25, 2025. The record of appearances includes: Atty. Eduardo Soria Rivera, Atty. Norberto Negrón Díaz, Eng. Memphis Cabán Rodríguez, and Attorney Marta Acevedo appearing on behalf the Executive Director of AAFAF, Francisco Domenech. The recording of the March 25th meeting is publicly available at: <https://www.youtube.com/watch?v=Fj62MEIsEDc&t=651s>

16. PREPA's Governing Board is legally constituted, operating with quorum, and duly authorized to act on matters such as the amendments for the GOMA. In light of the foregoing, ICSE's motion is entirely without merit, and the Energy Bureau should 1) deny it in its entirety, and 2) advise that further filings unsupported by minimal diligence may warrant sanctions.

WHEREFORE, PREPA respectfully requests that the Energy Bureau deny ICSE's Request for the Stay of GOMA Amendment Negotiations in its entirety.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 9th day of May 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 courtesy copies were sent via e-mail to rpallens@genera-pr.com, agraitfe@agraitlawpr.com, and jpouroman@outlook.com.

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PREPA

GOVERNMENT OF PUERTO RICO

RESOLUTION 5171

TO AUTHORIZE AND APPROVE AN AMENDMENT TO THE PUERTO RICO THERMAL GENERATION FACILITY OPERATION AND MAINTENANCE AGREEMENT, DATED AS OF JANUARY 24, 2023, TO REPLACE THE EXISTING INCENTIVE STRUCTURE, AMONG OTHER MATTERS

WHEREAS: The Puerto Rico Electric Power Authority (PREPA) is a public corporation, and an instrumentality of the Government of Puerto Rico created by Act No. 83 of May 2, 1941, as amended (Act No. 83). PREPA was created to provide electrical energy in a reliable way contributing to the general welfare and sustainable future of the people of Puerto Rico, maximizing benefits and minimizing social, environmental, and economic impacts. In addition, it provides a service based on affordable, fair, reasonable, and non-discriminatory costs that is consistent with environmental protection, non-profit, focused on citizen participation, and its clients.

WHEREAS: Act No. 83 authorizes PREPA, in the management of its purposes, to grant contracts and formalize all the instruments that are necessary or convenient in the exercise of any of its powers.

WHEREAS: Pursuant to the provisions of the Puerto Rico Electric System Transformation Act, Act No. 120-2018, as amended ("Act 120"), on January 24, 2023, the Puerto Rico Public-Private Partnerships Authority ("P3 Authority"), the Puerto Rico Electric Power Authority ("PREPA") and Genera PR, LLC ("Genera") entered into a certain Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement ("LGA O&MA"), pursuant to which Genera became the entity responsible for the operation and maintenance of PREPA's Legacy Generation Assets (as defined in the LGA O&MA);

WHEREAS: The LGA O&MA establishes an incentive-based compensation structure requiring Genco to compensate Genera through a performance incentive fee for achieving certain operational efficiencies and cost reductions in the operation of the Legacy Generation Assets (the "Incentive Structure");

WHEREAS: After thoroughly evaluating the terms and conditions of the LGA O&MA, the parties to the LGA O&MA determined that the Incentive Structure is inefficient and warrants revisions, as PREPA's estimates indicate that the incentive payments under the existing Incentive Structure could total up to \$1 Billion;



WHEREAS: In the spirit of promoting long-term cost savings, avoid administrative complexity and unwanted litigation and to provide greater certainty for the people of Puerto Rico, the parties have negotiated an amendment to the LGA O&MA (the "LGA O&MA Amendment"), in the form attached hereto as Exhibit A, whereby Genera would receive a one-time payment of \$110 million, disbursed in eleven (11) equal monthly installments, in exchange for agreeing to eliminate the LGA O&MA Incentive Structure; and

WHEREAS: The execution of the LGA O&MA Amendment is subject to the final approval of PREPA, the P3 Authority, Genco, Genera, the Puerto Rico Energy Bureau ("PREB") and the Financial Oversight and Management Board for Puerto Rico ("FOMB").

THEREFORE, be it resolved by this Governing Board:

1. To approve the LGA O&MA Amendment, substantially in the form presented to this Board and attached hereto as Exhibit A, subject to the final approval of Genco, the P3 Authority, Genera, PREB and FOMB.
2. To authorize Mary Carmen Zapata Acosta, Executive Director of PREPA and GenCo (the "Authorized Representative"), on behalf of and in representation of PREPA and GenCo, to execute, sign and deliver the LGA O&MA Amendment and any other documents, certifications, statements, agreements, contracts or instruments required under the LGA O&MA Amendment or that the Authorized Representative deems necessary or convenient for the consummation of the transactions contemplated by the LGA O&MA Amendment, all subject to such changes, modifications or additions as the Executive Director of PREPA deems necessary or appropriate, and whose approval of any such change, modification or addition shall be evidenced by the execution and delivery of such documents, without the necessity of further action.
3. To authorize and direct, officers, agents, employees and the Authorized Representative of PREPA to do all acts and things required of them by the provisions of this Resolution, including but not limited to, the execution of any documents, certificates, or agreements required to give effect to the provisions of this Resolution, and any other such action is hereby authorized and ratified.

This Resolution shall take effect immediately upon its adoption.

Approved in San Juan, Puerto Rico, on this 25th day of March 2024


Maricarmen Boria Goltia
Corporate Secretary



EXHIBIT A

LGA O&MA First Amendment

[See attached.]





PUERTO RICO
ELECTRIC POWER AUTHORITY

PREPA

GOVERNMENT OF PUERTO RICO

RESOLUTION 5172

TO AUTHORIZE THE PREPA GENCO LLC LIMITED LIABILITY COMPANY AGREEMENT

WHEREAS: The Puerto Rico Electric Power Authority ("PREPA") is a public corporation and instrumentality of the Government of Puerto Rico created pursuant to Act No. 83 of May 2, 1941, as amended, with the statutory mandate to provide reliable, affordable and sustainable electrical energy to the People of Puerto Rico.

WHEREAS: The Puerto Rico Electric System Transformation Act, Act No. 120-2018, as amended ("Act 120"), directed PREPA to enter into public-private partnership agreements to delegate its transmission and distribution functions, the sale of electric power, the operation of the Energy Control Center and other related functions, including the operation and maintenance of PREPA's legacy power generation assets.

WHEREAS: The Puerto Rico Energy Public Policy Act, Act No. 17 of April 11, 2019 ("Act No. 17"), recognized that the quality of Puerto Rico's electric power service contributes to the island's overall competitive value as an investment destination and, thus, to its economic development and job creation potential.

WHEREAS: On May 27, 2021, the Fiscal Oversight and Management Board for Puerto Rico ("FOMB") certified the 2021 PREPA Fiscal Plan, requiring PREPA to complete operational and financial reorganization through the formation of various subsidiaries to improve the management of its responsibilities and assets. *msg*

WHEREAS: In compliance with Act 17 and the 2021 Fiscal Plan, PREPA decided to segregate its legacy thermal generation assets and related responsibilities into a new subsidiary named PREPA Genco LLC ("GenCo").

WHEREAS: Pursuant to Resolution No. 4939, dated as of December 15, 2021, PREPA's Governing Board authorized the formation of GenCo and approved the draft of that certain PREPA GenCo LLC Limited Liability Company Agreement ("GenCo LLC Agreement"), attached hereto as Exhibit A, and that certain Capital Contribution Agreement by and between PREPA and GenCo (the "Capital Contribution Agreement"). *romer*



WHEREAS: On June 19, 2023, the then executive director of PREPA, Josué Colón Ortiz, executed the GenCo LLC Agreement and the Capital Contribution Agreement, thereby formally making GenCo the legal entity responsible for owning, operating and/or delegating the operation of PREPA's legacy thermal generation assets.

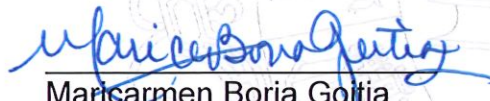
WHEREAS: On January 24, 2023, PREPA entered into that certain Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement, (the "GOMA") with the Puerto Rico Public-Private Partnerships Authority and Genera PR LLC and, subsequently, on June 19, 2023, it assigned its rights and obligations under the GOMA to GenCo.

THEREFORE: Be it resolved by this Governing Board to:

1. Ratify the GenCo LLC Agreement dated as of June 19, 2023, attached hereto as Exhibit A, including, without limitation, that the members of the Board of Managers of GenCo shall be the same as the members of the PREPA Governing Board.
2. Ratify that the chairman, vice chairman and secretary of PREPA's Governing Board shall likewise be the chairman, vice chairman and secretary of GenCo's Board of Managers.
3. Ratify the appointment of Mary C. Zapata as the Executive Director of GenCo

This Resolution shall take effect immediately upon its adoption.

Approved in San Juan, Puerto Rico, on this 25th day of March 2025.


Marcarmen Boria Goltia
Corporate Secretary





JENNIFFER GONZÁLEZ COLÓN
GOBERNADORA

17 de enero de 2025

Lcda. Maricarmen Boria Goitía
Secretaria
Junta de Directores
Autoridad de Energía Eléctrica
PO Box 364267
San Juan, PR 00936-4267

Estimada secretaria Boria Goitía:

De conformidad con lo establecido en la Ley Núm. 83 de 2 de mayo de 1941, según enmendada, conocida como “Ley de la Autoridad de Energía Eléctrica de Puerto Rico”, le informo la designación del Lcdo. Eduardo Soria Rivera como Miembro a la Junta de Gobierno de la Autoridad de Energía Eléctrica designado a discreción de la Gobernadora.

Cordialmente,

Jenniffer A. González Colón
Gobernadora



JENNIFFER GONZÁLEZ COLÓN
GOBERNADORA DE PUERTO RICO

5 de marzo de 2025

Lcdo. Norberto José Negrón Díaz
839 calle Añasco
Plaza Universidad 2000
Apt. 2007
San Juan, PR 00925

Estimado licenciado Negrón Díaz:

En virtud de la autoridad que me confiere la Constitución y las leyes del Gobierno de Puerto Rico, me place extenderle un nombramiento como Miembro de la Junta de Gobierno de la Autoridad de Energía Eléctrica designado a discreción de la Gobernadora.

Agradezco su disponibilidad y compromiso para llevar a cabo tan importante encomienda. Le deseo el mayor de los éxitos en el desempeño de sus funciones, en beneficio del pueblo de Puerto Rico.

Que Dios le brinde la sabiduría para cumplir con esta encomienda.

Cordialmente,

A large, stylized blue ink signature of Jenniffer González Colón, which is written over the printed name and title.

Jenniffer González Colón
Gobernadora