

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

NEPR

Received:

Jun 4, 2025

10:07 AM

IN RE: GENERA PR, LLC, ELECTRIC  
COMPANY CERTIFICATE  
APPLICATION

CASE NO.: NEPR-CT-2023-0001

SUBJECT: REQUEST FOR FTI REPORT

**URGENT MOTION REITERATING ICSE'S  
ACCESS TO INFORMATION REQUEST**

**TO THE HONORABLE ENERGY BUREAU:**

Comes now the **Institute of Competitiveness and Economic Sustainability ("ICSE" as its Spanish acronym)**, represented by the undersigned, respectfully states and prays:

On March 26, 2025, ICSE, in the exercise of its constitutional right to free expression — as recognized by the Supreme Court of Puerto Rico in *Soto v. Secretary of Justice*, 112 DPR 477 (1982) — requested access to the FTI Report. *See ICSE's Motion Requesting Access to FTI Report ("ICSE's March 26 Request")*.

ICSE has filed motions on April 11 and May 1 requesting disclosure. *See Reply to PREPA's April 9 Motion & Notice of P3A Position of April 11, 2025; Motion Reiterating ICSE's March 26 Access of Information Request of May 1, 2025*. However, the FTI Report has not been disclosed because this Energy Bureau has neglected addressing ICSE's petition. This omission cannot stand, particularly since neither Genera, PREPA, nor the Public-Private Partnership Authority (P3A) has raised opposition to ICSE March 26 Request.

The Government of Puerto Rico continues its efforts to amend PREPA's contract with Genera, the GOMA, with no indication of ending negotiations. However, the cost of said amendment, \$110 million, is currently being collected through Puerto Rico consumers' electricity bills pursuant to a Resolution and Order of this Bureau on Case No. NEPR-MI-2020-0001.

Energy affairs, matters of the highest public interest, are being managed with a complete lack of transparency. The pattern of unprofessionalism and recklessness in the contractual administration of public generation assets is evident. The public is deprived of adequate information to scrutinize this management. But it is not only the general public that lacks adequate information. **One of the harmed parties is this Energy Bureau.**

This Bureau has issued official statements that cast doubt on confidence in energy governance not only from the perspective of Genera, but also of the P3A. The governmental apparatus is actively participating in the lack of transparency, and this is not merely the opinion of the appearing party, but the official position of this Forum:

As discussed below, the circumstances surrounding its claim for additional compensation of approximately \$32.48 million are not only unfounded but are being pursued before the P3 Authority under highly atypical, troubling, and non-transparent conditions. **Equally troubling is the way the P3 Authority has handled the matter, including the lack of transparency and the failure to provide the Energy Bureau with the necessary information.** *Resolution* of May 23, 2025, at p. 1; Case No. NEPR-MI-2023-0004.

To our knowledge, this is the first time this Bureau passes judgment on the management of a public entity outside its jurisdictional purview and asserts that such management poses a risk to advancing energy public policy. The findings of this Bureau

in the *Resolution* of May 23, 2025 in Case No. NEPR-MI-2023-0004 are frightening and unheard of and highlight the need for more transparency. The PREB found noncompliance attributable to Genera in actions such as: not disclosing the identity of its affiliates, misrepresentations regarding procurement of power generation equipment, insufficient methodology, among others. What is worse, Genera attempts to receive incentive payments for activities that were “not even proposed within the scope of the rejected Initiative #8.” *Id.*, at p. 8.

The *Resolution* highlights:

This impudent attempt is further exacerbated by the fact that Genera failed to submit to the Energy Bureau copy of the Incentives and Penalties Report, which must include the separate Fuel Optimization Report along with all supporting information, that would have allowed for a proper assessment of the appropriateness of the claimed payment. *Id.*

The most appalling of the findings is that it is clear Genera’s intent of intimidating the PREB by claiming that essential infrastructure may be removed if Genera does not receive its incentive payment, a situation caused by their own actions:

This statement may be reasonably interpreted as an implicit threat by Genera and/or its Affiliate toward PREPA, suggesting that failure to authorize the requested payment could result in the removal of critical regasification infrastructure. Such implications are deeply concerning and raise questions about the appropriateness of the tactics employed in support of the incentive payment request. *Id.*

The PREB goes on to say that “Genera should assess whether any such actions may have constituted a violation of the conflict-of-interest policies that govern transactions between PREPA and Genera’s affiliates.” *Id.*, at p. 10.

Even the Government of Puerto Rico, who is contributing to Genera's misconduct, shares the PREB's appreciation of the facts. The P3A's Executive Director has claimed that Genera and New Fortress has been "mixing commercial interests" as early as April 26, 2025. See Manuel Guillama, "*Josué Colón Denuncia trabas de New Fortress en entrega de tres unidades portátiles para atender crisis de generación*", (April 26, 2025, ENDI).<sup>1</sup> However, inexplicably, the Government of Puerto Rico continues negotiations for eliminating the incentive mechanism clauses of the GOMA. **An entity that resorts to holding essential infrastructure for ransom to secure payment of an unfounded incentive not only warrants the immediate termination of negotiations, but also the imposition of the most serious sanctions – sanctions well within the PREB's authority.**

With all due respect, the issue of directing Genera to "assess whether any such actions may have constituted a violation of the conflict-of-interest policies that govern transactions between PREPA and Genera's affiliates" is not an issue to be taken lightly and delegated to the regulated party. It should not end on a directive that, while appreciated, is merely symbolic. The proper answer is for the PREB to start a formal investigation into these matters. The risks of this way of doing business are well known and are even illustrated in our recent history with LUMA and the withholding of FEMA payments related to projects in which Federal procurement standards were unmet. See *Motion in Compliance with December 26 Resolution and Order Regarding PREPA Employee*

---

<sup>1</sup> <https://www.elnuevodia.com/noticias/locales/notas/josue-colon-denuncia-trabas-de-new-fortress-en-entrega-de-tres-unidades-portatiles-para-atender-crisis-de-generacion/>

*Retirement System Funding* dated January 26, 2025 filed by PREPA in Case No. NEPR-MI-2021-0004.

Adding insult to injury, the evidence that validates the alleged undisputed amount of \$15.71 million “has never been submitted to the Energy Bureau.” **That is, after two (2) years since commencing operations, Genera has not proven it is owed any incentive payment under the GOMA.** This underscores the strong possibility that the purported premises in which the FTI Report is based are untrue and unverified.

This factual backdrop amply supports rejecting any amendment that would reduce oversight of Genera’s performance or subject it to perverse incentives.

Even though ICSE commends the PREB’s attitude towards the matters the Bureau addressed in the Fuel Optimization Procurement proceeding, the findings necessitate further regulatory action. The issue of transparency, as this Bureau knows, is a bedrock institutional principle of ICSE. It is also a bedrock principle of energy public policy as per Acts 57-2014 and 17-2019. The disclosure of the FTI Report is ripe and overdue. Should the Bureau fail to act, ICSE will file a petition for *mandamus* before the Court of First Instance, as recognized under Puerto Rico case law.

Lastly, we wish to place on the record that ICSE believes the Energy Bureau should be a public entity where access to information is the rule, not the exception – a position we have long maintained. ICSE’s request to access the FTI Report has now been pending for over two months. The Bureau’s institutional response cannot be to ignore a legitimate claim under the Constitution and applicable energy laws, thereby forcing citizens to resort to the courts. In practical terms, this obstructs the exercise of the right to access

public information. It cannot be that access is only achieved when a nonprofit organization is willing to pursue the claim through the last judicial recourse. That, in and of itself, constitutes a failure of the transparency mandate enshrined in Acts 57-2014 and 17-2019. **This forum should be more than enough.**

**WHEREFORE**, it is respectfully requested that this Energy Bureau take into account the foregoing and:

- (i) Finally grant *ICSE's Motion Requesting Access to FTI Report* of March 26, 2025;
- (ii) Start a formal investigation of Genera's compliance with its conflict-of-interest responsibilities; and
- (iii) Sanction Genera for the findings of mischaracterization and misrepresentations regarding procurement of power generation and non-disclosure of the identity of its affiliates.

**RESPECTFULLY SUBMITTED.**

**I HEREBY CERTIFY** that this document was presented using the Energy Bureau's electronic filing system and copy was sent via email to [arivera@gmlex.net](mailto:arivera@gmlex.net), [jgonzalez@gmlex.net](mailto:jgonzalez@gmlex.net), [rpallen@genera-pr.com](mailto:rpallen@genera-pr.com), and [lrn@roman-negron.com](mailto:lrn@roman-negron.com).

*[Signatures in next page]*

In San Juan, Puerto Rico, June 4, 2025.

**FERNANDO E. AGRAIT LAW OFFICE**  
EDIFICIO CENTRO DE SEGUROS  
OFICINA 414  
701 AVENIDA PONCE DE LEON  
SAN JUAN, PUERTO RICO 00907  
Tel: (787) 725-3390-3391  
Fax: (787) 724-0353

**/s/ LCDO. FERNANDO E. AGRAIT**  
**T.S. Núm. 3772**  
Email: [agraitfe@agraitlawpr.com](mailto:agraitfe@agraitlawpr.com)

**/s/ LCDO. JOSÉ POU ROMÁN**  
**T.S. Núm. 23,523**  
Email: [jpouroman@outlook.com](mailto:jpouroman@outlook.com)