

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

NEPR

Received:

May 31, 2025

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IN RE: CERTIFICATE OF ENERGY
COMPLIANCE

CASE NO.: NEPR-AP-2022-0001

MOTION SUBMITTING REVISED GOMA AMENDMENT DRAFT

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority ("PREPA") through its undersigned legal counsel and respectfully informs and requests as follows:

1. On February 27, 2025, PREPA and Genera PR, LLC ("Genera") jointly filed before this Honorable Bureau a motion requesting preliminary approval of proposed amendments to the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement ("GOMA").

2. On February 28, 2025, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order granting preliminary approval of the proposed amendment, subject to specific conditions and the submission of additional information.

3. On April 7, 2025, the Energy Bureau issued a subsequent Resolution and Order recommending PREPA and the Puerto Rico Public-Private Partnership Authority ("P3 Authority") to incorporate additional modifications and submit further explanations to complete its assessment and issue the final Certificate of Energy Compliance. Specifically, the Energy Bureau required:

a. **Clarification of Contract Standards:** The Proposed

Amendment introduced the term "Performance Standards," which the Energy Bureau found could cause confusion by implying they were the exclusive operational criteria or were standards established under Regulation 9137. The Energy Bureau found that the Proposed Amendment should be revised to clearly distinguish these contractual standards from those under Regulation 9137, suggesting alternative terms such as "selected contract standards", "selected service level standards" or another neutral term.

b. **Waiver of Penalties Assurance:** The Proposed Amendment included a broad waiver provision where Genco, PREPA, and P3 Authority waived all claims related to penalties under the GOMA for events occurring before January 1, 2025. Given the scope of this waiver, the Energy Bureau deemed it proper that a formal representation from Genera be included in the Proposed Amendment. Specifically, the Energy Bureau required that Genera confirm that this provision would not affect or prejudice any ongoing administrative or judicial proceedings before the Energy Bureau or the courts, and that it would not be invoked to impair the Energy Bureau's regulatory or enforcement authority concerning such proceedings.

c. **Financial Condition Update:** The Energy Bureau noted concerns raised by the P3 Authority regarding the financial condition of New Fortress Energy (NFE), Genera's parent company and guarantor under the GOMA. The Energy Bureau requested that PREPA and P3 Authority provide an update on the information requested from NFE and/or Genera concerning NFE's financial status and indicate whether, based on the information received, the Proposed Amendment's terms are still considered aligned with the public interest.

d. **Safeguards for Incentive Payment:** The Energy Bureau identified a risk associated with the Proposed Amendment's structure, where Genera would receive a \$110 million payment upfront over eleven months as a discounted replacement for future performance incentives. To safeguard PREPA's financial interests, especially given the long-term nature of the GOMA and Genera's critical role, the Energy Bureau recommended the adoption of contractual provisions incorporating key elements of a proposed model. These essential elements included:

i. A contractual repayment obligation requiring Genera to repay a portion of the \$110 million Discounted Incentive if the agreement is terminated due to Operator Default or if Genera becomes subject to a

Bankruptcy Event before the ten-year term expires. The repayable amount would be calculated based on the remaining contract months.

ii. A third-party amortizing performance bond to secure the repayment obligation. This bond, issued by a qualified surety company licensed in the relevant jurisdiction with an A- or better credit rating, would have an initial principal amount of \$110 million. The bond amount would be reduced annually in accordance with a schedule, correlating to the declining repayable amount. The bond must remain continuously in effect until the end of the contract term or until the repayable amount is zero, and it should be callable by PREPA upon Operator Default or a Bankruptcy Event. Genera is responsible for all costs associated with this bond.

4. On April 24, 2025, PREPA submitted an Informative Motion complying with the Energy Bureau's directive to file a legal memorandum justifying the use of the Fuel Purchase Adjustment Clause for the proposed payment. PREPA also informed the Energy Bureau that it had prepared a revised draft of the amendment incorporating all changes requested by the Bureau. This draft was delivered to Genera on April 21, 2025, for review and comment. PREPA further notified the Energy Bureau that Genera had not finalized its review and, therefore, PREPA and the P3 Authority were unable to submit a jointly agreed-upon version for approval.

5. Through a Resolution and Order issued on April 28, 2025, the Energy Bureau acknowledged the efforts of PREPA and the P3 Authority but stated it was unable to conduct the required review for the issuance of the Final Certificate of Energy Compliance due to the lack of a complete and final submission. The Energy Bureau further warned that if a final filing is submitted after the close of the current trimester (May 31, 2025), the reserves allocated under the preliminary

approval could be adversely impacted.

6. On May 8, 2025, Genera submitted a response to the P3 Authority proposing certain modifications and indicating its refusal to adopt several key provisions required by the Energy Bureau. Specifically:

a. Genera's modified Guarantee applies only to three of the twelve possible Operator Events of Default. This contradicts the Bureau's April 7 Resolution, which requires a repayment mechanism triggered upon termination due to Operator Default or Bankruptcy, secured by a legally enforceable financial instrument.

b. Genera limits the enhanced termination fee to Bankruptcy or Abandonment within five years. This is inconsistent with the Bureau's directive that the repayment mechanism remain effective through the contract term or until the repayable amount is extinguished, as outlined in the amortization schedule.

c. Genera eliminated the performance bond requirement, proposing instead a revised Guarantee Agreement. This does not address the Bureau's stated concerns regarding the financial condition of NFE.

7. However, Genera did agree to incorporate the provisions related to the clarification of contract standards and the waiver of penalties assurance.

8. After reviewing Genera's proposed modifications, PREPA affirms its position to fully adopt all modifications and legal safeguards required by the Energy Bureau. PREPA reiterates that the proposed amendment furthers the government's commitment to reviewing and strengthening operator agreements in the public interest. The P3 Authority and PREPA firmly believe the amendment represents a meaningful step toward greater financial stability, improved contractual transparency, and a more consumer-focused energy policy. For the amendment to remain aligned with the public interest, it is essential to retain the safeguards for the incentive payment as directed by the Energy Bureau.

9. For this reason, on Monday, May 26, 2025, the P3 Authority sent a communication to Genera accompanying the revised amendment draft that fully adopts all required modifications. See Exhibit A. In this communication, Genera was informed that PREPA would submit this draft, advising the Energy Bureau that PREPA is prepared to complete the regulatory process and execute the amendment exactly as attached. Should Genera elect to challenge any of the precautionary provisions, it is, of course, free to petition the Energy Bureau directly. As of today, we have not received a formal response from Genera to this communication.

10. In light of the foregoing, PREPA respectfully reiterates that it has incorporated all changes recommended by the Energy Bureau. PREPA remains committed to full compliance with all applicable legal and regulatory requirements. However, as Genera has not agreed to essential safeguards identified by the Energy Bureau, PREPA hereby submits the revised amendment draft that fully adopts all required modifications.

11. The information contained in **Exhibit A** is confidential, as it is not a final document and forms part of an ongoing deliberative process and negotiations between the parties. Accordingly, PREPA respectfully requests that Exhibit A be treated as confidential until the proposed amendment is executed, subject to the final approval of both the Energy Bureau and the Financial Oversight and Management Board (FOMB).

12. Generally, documents in the possession of a public corporation such as PREPA are presumed to be public. However, access to public information is not

absolute. See *Bhatia Gautier v. Gobernador*, 199 DPR 59, 82 (2017). For a document to be subject to disclosure, it must indeed possess the character of a public document. *Ortiz v. Dir. Adm. of the Courts*, 152 DPR 161 (2000).

13. A government entity may keep the information confidential when:

a law so declares; (2) the communication is protected by one of the evidentiary privileges that the citizens may invoke; (3) revealing the information may injure the fundamental rights of third parties; (4) it deals with the identity of a confidante and (5) it is "official information" pursuant to Rule 514 of Evidence.

See *Bhatia Gautier v. Gobernador*, 199 DPR 59, 83 (2017)

14. The Puerto Rico Supreme Court has expressly recognized that "documents that pertain to pre-decisional and deliberative processes may be shielded from public disclosure." *Bhatia Gautier v. Gobernador*, 199 DPR 59, 86 (2017). The deliberative process privilege protects materials that are: (a) pre-decisional – created prior to an agency's final decision, and (b) deliberative – reflecting internal recommendations, evaluations, and discussions essential to the formulation of policy.

15. In addition, the deliberative process privilege is codified in Article 4(iv) of the Puerto Rico Government Open Data Act, Act 122-2019, 3 LPRA § 9894, which explicitly exempts from public disclosure "[i]nformation and official information related to decision-making in public policy-making processes, as recognized by case law."

WHEREFORE, PREPA respectfully requests that the Energy Bureau take notice that PREPA has fully incorporated the modifications required by the Energy Bureau into the revised GOMA amendment draft, and is prepared to proceed

with its execution. PREPA further requests that the Energy Bureau take any further steps it deems appropriate to advance the regulatory process toward the issuance of the Final Certificate of Energy Compliance.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 31st 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 Genera PR, LLC through its counsel of record at ricardo.pallens@genera-pr.com.

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