

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

IN RE: CERTIFICATE OF ENERGY COMPLIANCE

CASE NO.: NEPR-AP-2022-0001

SUBJECT: Resolution and Order on the Return of Reserve Funds to Consumers.

RESOLUTION AND ORDER

I. Relevant Background

On January 14, 2023, the Puerto Rico Public-Private Partnerships Authority ("P3 Authority") requested the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") to issue a Certificate of Energy Compliance for the Preliminary Contract¹, which relates to a Puerto Rico Electric Power Authority ("PREPA") Transaction, in accordance with the provisions of Act No. 120-2018,² Act No. 29-2009³ and Act No. 57-2014.⁴ As required by applicable Law, the P3 Authority appeared before the Energy Bureau as the sole and exclusive party authorized to request and procure the issuance of the Certificate of Energy Compliance.⁵

On January 15, 2023, the Energy Bureau issued a Resolution and Order ("January 15 Resolution") in which it determined that the Preliminary Contract complied with Puerto Rico's energy public policy and applicable regulatory framework and accordingly issued a Certificate of Energy Compliance in connection therewith.⁶ On January 24, 2023, PREPA, P3 Authority and Genera PR, LLC ("Genera") entered into an agreement for the Puerto Rico Thermal Generation Facility Operation and Maintenance.⁷ On July 1, 2023, Genera assumed the operation of PREPA's Thermal Legacy Assets and commenced to provide the O&M Services under the Generation OMA.

On February 27, 2025, Genera and PREPA filed before the Energy Bureau a document titled *Joint Motion to Request Preliminary Approval for Amendments to Genera's Operation and Maintenance Agreement* ("February 27 Motion") under case *In Re: Request for Certification*

¹ See *Puerto Rico Public-Private Partnerships Authority's Motion Submitting Documents, as Further Amended, and Requesting Confidential Treatment* filed on January 14, 2023, in the captioned case ("January 14 Motion"). Exhibit I to the January 15 Motion includes a document titled *PUERTO RICO THERMAL GENERATION FACILITIES OPERATION AND MAINTENANCE AGREEMENT* dated as of [●], 2022, by and among [THE PUERTO RICO ELECTRIC POWER AUTHORITY] [PREPA GENCO, LLC] as Owner, THE PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY as Administrator, and [REDACTED-CONFIDENTIAL] as Operator (the "Preliminary Contract").

² Known as *Puerto Rico Electric Power System Transformation Act*, as amended ("Act No. 120-2018").

³ Known as *Public-Private Partnership Act*, as amended ("Act No. 29-2009").

⁴ Known as *Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act No. 57-2014").

⁵ See Article 5 of Act No. 120-2018.

⁶ See, January 15 Resolution, pp. 18-19. On January 20, 2023, the P3 Authority filed a motion requesting approval of the Preliminary Contract with minor modifications ("January 20 Motion"). On January 21, 2023, the Energy Bureau issued a Resolution and Order upholding the Energy Compliance Certificate as issued through the January 15 Resolution in connection with the Preliminary Contract (as modified). For the avoidance of doubt, the Preliminary Contract approved by the Energy Bureau is the version included as part of the January 20 Motion.

⁷ Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement ("Generation OMA"), dated January 24, 2023, executed by and among PREPA, the P3 and Genera.



Genera PR, LLC, Case No: NEPR-CT-2023-0001.⁸ Through the February 27 Motion, Genera and PREPA informed that, after extensive discussions between Genera and the Government of Puerto Rico, PREPA, the P3 Authority, and Genera have agreed that the existing incentive structure in the Generation OMA can be removed to ensure long-term cost savings for the ratepayers, administrative simplicity, and greater certainty for the people of Puerto Rico.⁹

They asserted that PREPA, the P3 Authority, and Genera reached an agreement to amend the Generation OMA by retroactively eliminating all incentive categories, while preserving all existing penalty provisions.¹⁰ In exchange, Genera will receive \$110 million, payable over eleven (11) monthly installments of \$10 million, with payments scheduled to commence by the end of March, subject to the Energy Bureau and the Financial Oversight and Management Board for Puerto Rico ("FOMB") approval.¹¹

According to PREPA and Genera, the agreement would recognize \$15.42 million in incentives to Genera for Fiscal Year 2024 ("FY24"), which would be included in the \$110 million payment.¹² As part of the February 27 Motion, no contract or amendment was submitted, nor was any detailed information provided regarding the alleged \$15.42 million incentive. In the February 27 Motion, Genera and PREPA requested the Energy Bureau to grant "preliminary approval" for the proposed amendments to the Generation OMA, subject to final submission for final regulatory approval.¹³

Based on the information submitted by the parties at the time, the Energy Bureau, on February 28, 2025, granted preliminary approval of the proposed amendment ("February 28 Resolution"). The Energy Bureau clarified that no final determination has been made, as the specific terms of the amended contract cannot be reviewed at the time, particularly given that they have yet to be formally submitted for evaluation. The Energy Bureau also emphasized that any amendment to the Generation OMA must comply with Act No. 120-2018, Act No. 29-2009, and Act No. 17-2019, including the requirement to obtain a Certificate of Energy Compliance.¹⁴ In addition, the Energy Bureau required PREPA to explain the funding source and fiscal impact of the proposed \$110 million payment.¹⁵

⁸ Under this docket number, the Energy Bureau certified Genera as an Electric Service Company, and Genera has continued to submit the required filings to maintain its certification in accordance with applicable laws and regulations.

⁹ February 27 Motion, pp. 1–2, ¶2.

¹⁰ February 27 Motion, p. 2, ¶3.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*, pp. 9–10.

¹⁴ The Energy Bureau emphasized that the evaluation of a Preliminary Contract for the purpose of issuing a Certificate of Energy Compliance does not entail the preapproval of an amendment to the Generation OMA or the elements proposed to be included therein. Accordingly, the Energy Bureau clarified that its:

evaluation [] does not constitute, nor should it be construed, as an evaluation of compliance under the above-mentioned legal framework. Likewise, it does not form part of such an evaluation process. Instead, the Energy Bureau's assessment consists of preliminary comments regarding the potential suitability of certain elements intended for negotiation between PREPA, Genera, and the P3 Authority, with the objective of reaching an amendment to the GOMA. Nothing in this Resolution and Order binds the Energy Bureau to issue a Certificate of Energy Compliance, should such a requirement arise in the future. (Emphasis added).

See February 28 Resolution. p. 4.

¹⁵ *Id.*, p. 3.



1
Given the status of the ongoing evaluation of a potential amendment to the Generation OMA, as well as the preliminary assessment by the Energy Bureau in the February 28 Resolution, through a Resolution and Order issued in the context of the quarterly fuel and purchased power cost reconciliation process, the Energy Bureau, as a cautionary measure, established a reserve account for the potential payment of \$110 million, should such payment ultimately be required.¹⁶ For the period from April 1, 2025, through June 30, 2025, a total of \$40 million was set aside in this reserve account. Since the total amount to be recovered under the proposed amendment would be \$110 million, an amount PREPA proposed to recover entirely through the FCA clause, the remaining \$70 million is to be incorporated into future quarterly reconciliations.¹⁷ Accordingly, LUMA was ordered to include, in its upcoming factor proposals, a corresponding reserve allocation related to the amendment, at a rate of \$10 million per month, until the full \$110 million is recovered.

Jim
7/15
Following various procedural events¹⁸, including multiple filings by PREPA, none of which included a formal request by the P3 Authority for the issuance of a Certificate of Energy Compliance in connection with the preliminary amended contract, and the issuance of several Resolutions and Orders by the Energy Bureau, the Energy Bureau issued a Resolution and Order on April 28, 2025 ("April 28 Resolution"). In that Resolution, and as a cautionary measure, the Energy Bureau denied the draft amendment to the Generation OMA filed by PREPA.¹⁹ The Energy Bureau determined that it was unable to continue the required review for the issuance of a Certificate of Energy Compliance due to the absence of a complete and final submission of the proposed amendment by the P3 Authority.²⁰ The Energy Bureau further noted that the P3 Authority's failure to submit a complete request for the issuance of the Certificate of Energy Compliance -along with the proposed amendment- by the end of the trimester (*i.e.*, after May 31, 2025) would affect the reserve established in the reconciliation docket for funding the \$110 million payment.²¹

ABN
GML
On May 31, 2025, PREPA filed a document titled *Motion Submitting GOMA Amendment Draft* ("May 31 Motion"). Through the May 31 Motion, PREPA informed the Energy Bureau of Genera's refusal to adopt several key provisions required by the Energy Bureau in its April 7 Resolution, including the performance bond requirement.²² PREPA affirmed its position to fully adopt all modifications and legal safeguards required by the Energy Bureau.²³ PREPA indicated that for that reason on Monday, May 26, 2025, the P3 Authority sent Genera a communication accompanying the revised amendment draft that fully adopts all required modifications ("Exhibit A to the May 31 Motion").²⁴ According to PREPA, in this communication Genera was informed that PREPA would submit such draft, advising the Energy Bureau that PREPA was prepared to complete the regulatory process and execute the amendment.²⁵ PREPA further asserted that should Genera challenge any of the

¹⁶ See *In Re: Puerto Rico Electric Power Authority Permanent Rate*, Case No.: NEPR-MI-2020-0001, *Resolution and Order*, March 31, 2025.

¹⁷ *Id.*

¹⁸ For a detailed account of the procedural events that occurred in this case, reference is made to the February 28 Resolution, and the Resolutions and Orders issued by the Energy Bureau in the captioned case on April 7, and April 28, 2025, which collectively set forth the relevant procedural history and determinations made by the Energy Bureau.

¹⁹ See, April 28 Resolution, pp. 4-5.

²⁰ *Id.*

²¹ *Id.*, p. 4.

²² May 31 Motion, p. 4, ¶ 6.

²³ *Id.*, ¶ 8.

²⁴ *Id.*, p. 5, ¶ 9.

²⁵ *Id.*



precautionary provisions, it was free to petition the Energy Bureau directly.²⁶ PREPA added that as of May 31st it had not received a formal response from Genera.²⁷ As such, PREPA requested that the Energy Bureau take notice that it had incorporated the directives set forth in the April 7 Resolution and of any further steps it deems appropriate to advance the regulatory process toward the issuance of the Certificate of Energy Compliance.²⁸

II. Analysis

A. May 31 Motion

As the Energy Bureau has consistently stated throughout this proceeding, the evaluation of any proposed amendment to the Generation OMA commences only upon the formal filing by the P3 Authority (as the sole and exclusive entity authorized to do so under applicable law) of a request for the issuance of a Certificate of Energy Compliance. Such a request must be accompanied by the preliminary agreement (in this case, a preliminary amendment), duly negotiated and agreed upon by all relevant parties, including the P3 Authority, PREPA, and Genera.

The procedural history of this case demonstrates that no such set of circumstances has ever been presented before the Energy Bureau. The May 31 Motion is no exception. Indeed, not only has the P3 Authority never appeared before the Energy Bureau in this matter, but PREPA's own filings also reflect significant concerns shared by both PREPA and the P3 Authority regarding the procedural and substantive aspects of this process. In fact, both entities have expressly agreed with certain safeguards and recommendations proposed by the Energy Bureau, which were intended to help render the proposed transaction viable.²⁹

In light of the Energy Bureau's denial of further consideration, as stated in the April 28 Resolution, the May 31 Motion fails to contribute anything new to the record. Accordingly, the Energy Bureau reiterates that, should the P3 Authority decide to formally proceed with this matter, it must do so in compliance with the applicable legal framework. The Energy Bureau stands ready to evaluate such a request upon proper submission. Since the May 31 Motion does not contain a specific or actionable request, the Energy Bureau **DETERMINES** that there is nothing before it requiring further action.³⁰

Lastly, and of particular importance, the Energy Bureau reminds PREPA that the evaluation process for the issuance of a Certificate of Energy Compliance does not contemplate the participation of any party other than the P3 Authority. Accordingly, any suggestion that Genera may take part in such a process is contrary to the Law. Moreover, upon the issuance or denial of a Certificate of Energy Compliance, only the P3 Authority is authorized to exercise any corresponding rights under the applicable legal framework.

B. Reserve Account

Given that the required financial safeguards, as well as the concerns related to the financial condition of Genera and its parent company, were not formally submitted and incorporated by the P3 Authority through a proper filing in connection with the issuance of a Certificate

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*, pp. 6 – 7.

²⁹ The Energy Bureau notes that, in light of the evolving information in this proceeding, particularly with respect to the financial difficulties of Genera and its parent company, which serves as Guarantor under the Generation OMA, the Energy Bureau's preliminary approval of the proposed amendment is now in question and, at a minimum, will require further evaluation. See, May 31 Motion, Exhibit A..

³⁰ To the extent that any expansive or creative construction may seek to characterize the May 31 Motion as a formal request for the issuance of a Certificate of Energy Compliance, such characterization must be rejected. In any event, the motion must be deemed denied for being contrary to the public interest and for failing to include sufficient information to enable the Energy Bureau to undertake the required evaluation.



of Energy Compliance, and within the timeframe set forth in the April 28 Resolution, the Energy Bureau finds that the necessary conditions for further evaluation have not been met. In view of this and considering that the Energy Bureau has terminated all proceedings related to the proposed amendment to the Generation OMA at this time, the Energy Bureau **DETERMINES** that the reserve collected from consumers through the FCA, as established in the tariff docket for the purpose of funding the \$110 million incentive, must be **RETURNED** to consumers. Additionally, the reserve scheduled for collection in future quarters **SHALL NOT BE COLLECTED**. The Energy Bureau will, in due course, notify LUMA of the adjustments it must implement pursuant to this determination.³¹

C. Judicial Review Request by Genera

The Energy Bureau is aware that Genera has filed a request for judicial review before the Court of Appeals concerning certain aspects of the present case. The Energy Bureau **CLARIFIES** that this Resolution and Order does not modify, alter, nor is it intended to modify any prior determinations issued in this case relating to the matters referenced in Genera's petition for judicial review. Moreover, this Resolution and Order does not interfere with, nor does it intend to affect, the proceedings initiated by Genera before the Court of Appeals, which will be addressed by the Energy Bureau through the appropriate procedural mechanisms, including any jurisdictional objections it may deem warranted.

III. Conclusion

In light of the foregoing discussion, the Energy Bureau **DETERMINES** that the May 31 Motion warrants no further consideration, in accordance with the clarifications set forth in **Part II(A)** of this Resolution and Order. Furthermore, the Energy Bureau **ORDERS** that the reserve account established for the potential payment of the \$110 million incentive -already collected from customers through the FCA- be **RETURNED** to customers. No further amounts shall be collected prospectively for this purpose. The Energy Bureau will, in due course, issue the corresponding notification to LUMA regarding the necessary adjustments to implement this determination.

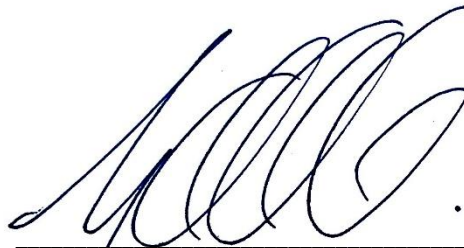
THE CLERK OF THE ENERGY BUREAU SHALL NOTIFY THIS RESOLUTION AND ORDER TO THE PREPA and the P3 AUTHORITY ONLY AND SHALL KEEP IT CONFIDENTIAL UNTIL OTHERWISE INSTRUCTED BY THE ENERGY BUREAU.³²

BE IT NOTIFIED AND NOT PUBLISHED.

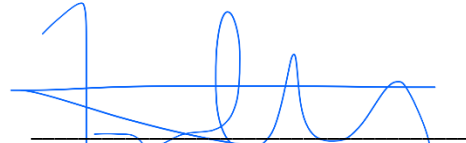


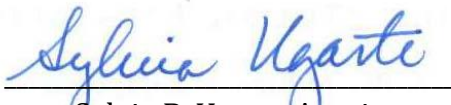
³¹ In light of this determination, the Energy Bureau finds that it is not necessary at this time to assess the legal propriety of the initial collection of the reserve funds through the FCA clause. Such collection was authorized solely as a cautionary measure. Now that the Energy Bureau has ordered the return of the collected funds and determined that no further amounts shall be collected for this purpose, a final legal assessment on the propriety of the collection is not required in the context of this proceeding. Should such assessment become necessary in the future, the Energy Bureau will undertake it at the appropriate time and within the appropriate procedural framework. Nor is it necessary, within the context of this proceeding, to determine the validity of the alleged \$15.42 million incentive attributed to Genera during FY2024. Should such determinations become necessary in the future, the Energy Bureau will address them in the appropriate procedural context.

³² Although the matter under consideration in this case has not been formally handled as a request for a Certificate of Energy Compliance -given that the P3 Authority has not submitted such a petition-the Energy Bureau, as a cautionary measure, has adhered to the confidentiality protections customarily applied to such proceedings. In addition, all Resolutions and Orders have been duly notified to the P3 Authority. To the extent the P3 Authority considers that such confidentiality protections do not apply or are no longer necessary, it shall so indicate, for the Energy Bureau to make all relevant documents in this case publicly available.



Edison Avilés Deliz
Chairman

Lillian Mateo Santos
Associate Commissioner

Ferdinand A. Ramos Soegaard
Associate Commissioner

Sylvia B. Ugarte Araujo
Associate Commissioner

Antonio Torres Miranda
Associate Commissioner

CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on June 6, 2025. I also certify that on June 6, 2025 a copy of this Resolution and Order was notified by electronic mail to jgonzalez@gmlex.net; arivera@gmlex.net; mary.zapata@prepa.pr.gov; josue.colon@p3.pr.gov . I also certify that today, June 6, 2025, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today June 6, 2025.



Sonia Seda Gaztambide
Clerk