

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

IN RE: REQUEST FOR APPROVAL OF THE
ASSET PURCHASE AGREEMENT BETWEEN
NFE POWER PR LLC AND THE PUERTO
RICO ELECTRIC POWER AUTHORITY

CASE NO.: NEPR-AP-2024-0001

SUBJECT: Request of Information.

RESOLUTION AND ORDER

In the aftermath of Hurricane Fiona, due to a generation shortfall, the Federal Emergency Management Agency ("FEMA") and the U.S. Army Corps of Engineers ("USACE") installed temporary generation units in the Palo and San Juan Power Plants. The operation of these units ended on March 15, 2024. Although the immediate threat caused by the passage of Hurricane Fiona ceased to exist, temporary energy support remained a necessity on the island.

As a result, FEMA obligated over \$335MM for the acquisition of those temporary power generators which would allow their operation to continue until December 2025.

Shortly thereafter, on January 14, 2024, the Puerto Rico Electric Power Authority ("PREPA") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *Urgent Motion Submitting for Review and Approval of the Scope of Work for the Transfer/Ownership to PREPA of the Temporary Generation Units* ("January 14 Motion"). The January 14 Motion was filed in the proceeding identified as *In re: Review of the Puerto Rico Electric Power Authority's 10-Year Infrastructure Plan – December 2020*, Case No.: NEPR-MI-2021-0002. Through the January 14 Motion, PREPA informed that on January 5, 2024, FEMA sent a letter to the Puerto Rico Central Office for Recovery, Reconstruction, and Resiliency ("COR3") approving the negotiation of the acquisition of the temporary generation units installed in the Palo Seco Steam Plant (150MW) and the San Juan Power Plant (200MW) ("Temporary Units").¹ Further, it indicated that FEMA would provide funding for the acquisition of the Temporary Units.² PREPA requested the Energy Bureau's approval of the initial Scope of Work for the acquisition and ownership to PREPA of the Temporary Units. Particularly, PREPA requested that the Energy Bureau evaluate and grant leave to conduct all tasks necessary to transfer ownership of the Temporary Units to PREPA; grant leave to continue working with all the associated permitting activities to continue dispatching the Temporary Units until the Integrated Resource Plan revision process makes a different determination; and grant leave to continue supporting COR3 with the federal processes available to have the costs of the Temporary Units reimbursed with federal funds.³

In its January 14 Motion, PREPA noted these units were **dual-fuel capable (diesel and natural gas)**.⁴ This information also emerges from the Inventory List (Exhibit 1 to the January 14 Motion). Specifically, both the Palo Seco and the San Juan Temporary Generation Equipment Inventory List reference the following: "[p]iping, valves and instrumentation for Natural Gas, Diesel and Demineralized Water systems." This dual capability assertion also stems from a letter from Genera PR, LLC ("Genera") to LUMA Energy, LLC and LUMA Energy ServCo, LLC (referred to jointly as "LUMA") dated November 24, 2023 (Exhibit 8 to the January 14 Motion) and PREPA's Project Scope of Work with Cost Estimates Submittal to COR3 and FEMA (Exhibit 11 to the January 14 Motion). In the referenced letter, Genera states that "all units are **dual fuel (i.e., Natural Gas and Diesel)**". Additionally, in PREPA's Scope of Work ("SOW") and FEMA's Approved SOW ("March 5, 2024 Motion") it was referenced

¹ January 14 Motion, p. 11.

² *Id.*

³ *Id.*, p. 21.

⁴ *Id.*, p. 2.



that **natural gas is the primary fuel and ultra-low sulfur distillate oil ("ULSD") as backup fuel.**⁵

On February 21, 2024, the Energy Bureau approved the initial Scope of Work ("SOW") for the acquisition of the temporary generation units (350MW) through December 31, 2025 and warned PREPA that, once approved by FEMA, the final Scope of Work, shall be submitted before the Energy Bureau for its review and approval ("February 21 Resolution").⁶

On March 15, 2024, PREPA filed before the Energy Bureau a document titled *Urgent Motion to Submit the Execution Version of the Asset Purchase Agreement* ("March 15 Request"),⁷ in which PREPA requested that the Energy Bureau evaluate and approve the Proposed Asset Purchase Agreement. The March 15 Request included three Exhibits (i) Exhibit A which is a redline of the Execution version of the Asset Purchase Agreement between PREPA and NFE Power PR LLC ("NFE") ("APA"); (ii) Exhibit B of the March 15 Request illustrates a string of emails regarding the Borescope inspection of the FEMA Temporary Units which, among others, addresses the *serviceability* of seven equipment items. Exhibit B also addresses a regasification equipment lease. PREPA has made public these items in its March 15 Request in which it states "... during this very evening, PREPA has been advised by COR3 of various issued that span from units that will need to be taken out of service for repairs, to NFE's refusal to sign a regasification equipment lease agreement critical to the operation of the units."⁸; and (iii) Exhibit C which is a clean copy (no redline) of the APA.

Also, on March 15, 2024, the Energy Bureau issued a Resolution and Order ("March 15 Resolution"). With respect to the twenty (20) Open Items, the Energy Bureau inferred that PREPA had not shown its agreement to the APA as presented, which caused the Energy Bureau to not be in a position to evaluate the APA as presented. Therefore, the Energy Bureau stated that PREPA shall submit a final Asset Purchase Agreement in which PREPA agrees to be executed.

That same day, in response to the March 15 Resolution, PREPA filed in the instant proceeding a document titled *Motion in Compliance with the March 15th Resolution and Order* ("March 15 Motion in Compliance"). The March 15 Motion in Compliance includes several exhibits⁹ which includes the approval of FEMA authorizing the amendment to the Scope of Work to acquire only the fourteen (14) onsite units that are part of the existing seventeen (17) generator system ("Temporary Generation SOW").

The March 15 Motion in Compliance includes the acceptance by FEMA and the U.S. Environmental Protection Agency ("EPA") acceptance of the project described in the Temporary Generation SOW. It also included several transactional documents directly related to the acquisition of the temporary generation units which supplement the Temporary Generation SOW.

On March 15, 2024, the Energy Bureau, in the instant proceeding, issued its **final approval** to the Temporary Generation SOW as evaluated in the Hurricane Fiona Response proceeding with the EPA and FEMA documents presented in the March 15 Motion in Compliance.

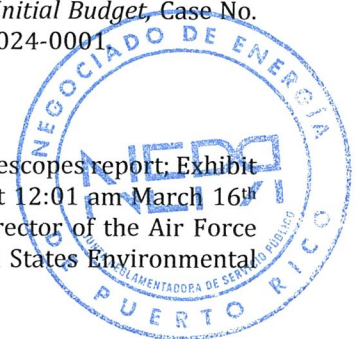
⁵ *Urgent Motion in Compliance with Resolution and Order, In re: Luma's Response to Hurricane Fiona*, Case No. NEPR-MI-2022-0003, March 5, 2024, pdf page 12.

⁶ This Resolution and Order was notified under the following proceedings: *In re: Review of the Puerto Rico Electric Power Authority's 10-Year Infrastructure Plan – December 2020*, Case No.: NEPR-MI-2021-0002, and *In re: LUMA's Response to Hurricane Fiona*, Case No. NEPR-MI-2022-0003.

⁷ The March 15 Request was filed by PREPA in the procedure *In re: Review of LUMA's Initial Budget*, Case No. NEPR-MI-2021-0004 ("Budget Case") and transferred to the instant docket NEPR-AP-2024-0001.

⁸ March 15 Request, p. 4, ¶ 3.

⁹ Exhibit 1- Email from FEMA to Sebastian Batista, legal counsel of COR3; Exhibit 2 – borescopes report; Exhibit 3 – Confirmation that NFE will be supplying the fuel for the acquired units starting at 12:01 am March 16th under a newly issued fuel agreement; and Exhibit 4- Letter from Mary E. Greene, Director of the Air Force Enforcement Division, Office of Enforcement and Compliance Assurance of the United States Environmental Protection Agency ("EPA").



Puerto Rico's energy public policy requires dual-fuel capability for power plants. Specifically, Art.1.11 of Act 17-2019¹⁰ and Art. 6.29 of Act 57-2014¹¹ clearly state that every newly built generation plant, other than a plant operating exclusively with renewable energy sources, shall have the capacity to generate power and/or operate with two (2) or more fuels, one of which shall be natural gas.

As referenced above, the temporary generation units installed by FEMA and USACE in the Palo Seco and San Juan Plants were, from the outset, **designed to operate using natural gas as the primary fuel and ULSD as backup.**

Moreover, representations have consistently been made to the Energy Bureau that these units were dual-fuel capable and that ULSD would be fired when natural gas became unavailable, in accordance with Art.1.11 of Act 17-2019 and Art. 6.29 of Act 57-2014.

Based on media reports, involving availability of the natural gas supply, the Energy Bureau has taken notice of Genera's lack of the necessary infrastructure to enable fuel switching from natural gas to diesel in the Temporary Units, despite consistent representations to the contrary.¹²

The Energy Bureau **REQUESTS CLARIFICATIONS** from Genera as to how this situation came to be, within **ten (10) days** from the notification of this Resolution and Order. Specifically, why was the necessary infrastructure not in place to allow for a fuel switch upon the lack of natural gas supply, in light of repeated assertions that the units were dual-fuel capable.

In view of the current situation, the Energy Bureau further **ORDERS** Genera and PREPA to each submit a monthly report in the tariff docket, Case No.: NEPR-MI-2020-0001, beginning on **August 15, 2025, and continuing on the 15th of each subsequent month**, detailing: any incidents or limitations that arise due to its inability to switch fuels; the operational impact of such limitations; any related documentation including, but not limited to, technical assessments, internal correspondence, and mitigation measures taken or planned; and the results of actions taken regarding claims under the contract for the supply of natural gas to these units.

The Energy Bureau **DETERMINES** the report must include all instances or incidents in which diesel had to be used, instead of natural gas, since the beginning of the contract, the cause or causes of each incident, the actions taken to correct those causes, and documentation evidencing the corresponding claims made under the contract and any other related claims. In addition, the report must be accompanied by copies of any documentation (e.g., letters, emails, memoranda, etc.) that support the data contained therein, including, but not limited to, all communications between the parties to the contract regarding natural gas nominations since the beginning of the contract.

One of the most important duties of the Energy Bureau, as the regulator of the electric system, is to induce performance. That is why the Energy Bureau must take all necessary regulatory actions and determinations to ensure that its regulated entities, comply with their obligations to provide safe, reliable, and reasonably priced electric service. To that end, Act 57-2014 establishes that electric service rates must be just and reasonable. A just and reasonable rate is one that allows for the recovery of prudent and reasonable costs incurred by the utility to provide service at the lowest possible cost. Therefore, the Energy Bureau has the obligation to evaluate the prudence of the costs recovered through the rate, in order to determine whether they are prudent and reasonable before allowing their recovery. The purpose of this is to ensure that imprudent or unreasonable costs are not passed on to consumers. In this analysis, the Energy Bureau must strike a balance between the right to

¹⁰ Known as the Puerto Rico Energy Public Policy Act, as amended ("Act 17-2019").

¹¹ Known as the Puerto Rico Energy Transformation and RELIEF Act, as amended ("Act 57-2014").

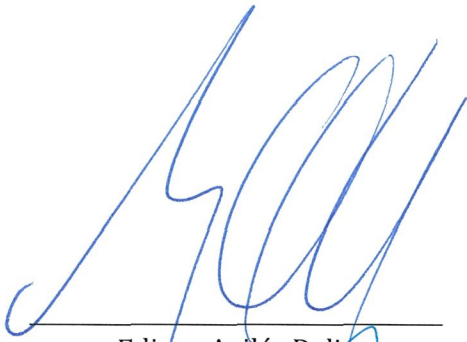
¹² Fuera de servicio 10 de las 14 unidades de emergencia en San Juan y Palo Seco tras agotarse abastos de gas natural - El Nuevo Día (última visita: 15 de julio de 2025).




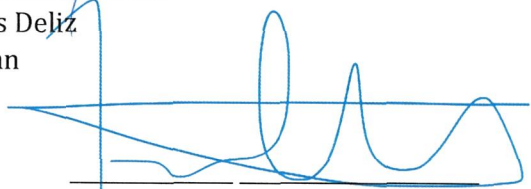
recover prudent costs and the consumers’ inherent interest in receiving reliable service at the lowest possible cost. Following that analysis, the Energy Bureau will only approve the recovery of those costs it determines to be prudent and reasonable. As a corollary, the Energy Bureau **will not approve costs it determines to be imprudent or unreasonable. This determination protects the consumer from costs that could be covered by natural gas suppliers, while inducing diligence and promptness in the pursuit of claims.** In this way, the Energy Bureau ensures that PREPA’s customers only assume the costs for which they are truly responsible.

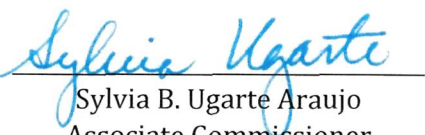
The Energy Bureau **WARNS** Genera and PREPA that failure to comply with this Resolution and Order will result in the imposition of fines, in accordance with Section 6.36 of Act 57-2014.

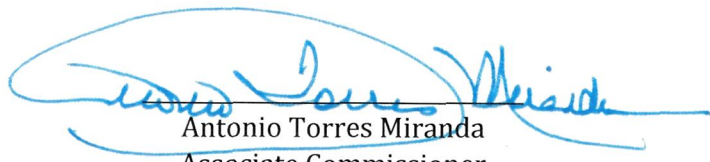
Be it notified and published.


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 have agreed on July 16, 2025. I also certify that in July 16, 2025 a copy of this Resolution and Order was notified by electronic mail to arivera@gmlex.net; mvalle@gmlex.net; margarita.mercado@us.dlapiper.com; laura.rozas@us.dlapiper.com; Yahaira.delarosa@us.dlapiper.com; alopez@sbgblaw.com; jfr@sbgblaw.com; legal@genera-pr.com; regulatory@genera-pr.com; and I have moved forward with filing the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today July 16, 2025.


Sonia Seda Gaztambide
Clerk

