

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

**NEPR**

**Received:**

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**IN RE:** PUERTO RICO ELECTRIC  
POWER AUTHORITY RATE REVIEW

**CASE NO.:** NEPR-AP-2023-0003

**SUBJECT:** Opposition to PREPA's Motion  
to Disqualify Counsels

**OPPOSITION TO PREPA'S MOTION TO DISQUALIFY COUNSELS**

**TO THE HONORABLE PUERTO RICO ENERGY BUREAU:**

**COMES NOW** the undersigned counsels, representatives of Genera PR LLC ("Genera"), as agent of the Puerto Rico Electric Power Authority ("PREPA"), and respectfully states and prays as follows:

**I. INTRODUCTION**

1. On September 10, 2025, PREPA filed a "Motion to Disqualify Counsel" ("Motion") intended to disqualify Attorneys Maraliz Vázquez-Marrero and Giuliano Vilanova-Feliberti, alleging successive adverse representation in violation of Canon 21 of the Puerto Rico Supreme Court's Canons of Professional Ethics.
2. PREPA argues that former counsels cannot represent Genera in this proceeding because of their past work for PREPA and particularly considering Genera's Motion to Compel and alleged "cross-examination" of PREPA's Comptroller regarding a Request of Information ("ROI") to PREPA on the nature and availability of a \$683M Energy Sector Reserve.
3. The reserve at issue, announced in a public newspaper article, was created by an act of Puerto Rico's legislature and could potentially cover both PREPA pensions as well as energy emergency events, thus limiting the amounts to be recovered from rate payers

through this Rate Case.

4. The questions asked of PREPA personnel based on this public newspaper article sought information that would facilitate the use of these funds, in line with the interest of the public and PREPA itself, as a public company. Such a reserve could potentially mitigate the rate payer burden and in doing so directly benefit PREPA by supplementing or enabling a more efficient allocation of funds for emergency events, pensions or other uses determined through this process. It is surprising that the questions have elicited such a response, more so when the interests of PREPA, Genera, LUMA, and the public on this issue are aligned.
5. The basis of the Motion is **flawed**. It ignores the governing contractual framework under the Legacy Generation Operation and Maintenance Agreement (“LG-OMA”) and mischaracterizes Genera's role as adversarial in the Rate Case, rather than as PREPA's agent within the scope of the LG-OMA. In doing so, it mistakenly overextends Canon 21<sup>1</sup> beyond its intended scope. Likewise, the Motion ignores the Energy Bureau’s own prior orders in this case. The Energy Bureau has clearly established that the relationship between LUMA, Genera, and PREPA is not adversarial in nature. Pursuant to the unquestionable delegation of responsibilities delegated through the LG-OMA, **Genera's counsels in the case of caption represents PREPA and thus PREPA's interest in the Rate Case, and those interests are aligned.** The information sought is consistent with the basic fiduciary duty and due diligence on the

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<sup>1</sup> Canon 21 requires, among others, that an attorney who represents a corporation or partnership owe complete loyalty to the legal entity itself, and not to its partners, directors, employees, or shareholders, and may only represent the interests of those individuals when such interests do not conflict with those of the corporation or partnership.

part of Genera to seek information that will benefit PREPA and Puerto Rico as it seeks information of funds that could potentially reduce the amounts ultimately charged to Puerto Rico's rate payers.

6. Lastly, the arguments forwarded by PREPA **do not describe a violation of Canon 21 and 38 of the Ethics Code. The undersigned are still representing PREPA through its agent Genera** in a matter squarely within the purview of PREPA's delegated authority to Genera and for which **no inherent adversarial position exists**. PREPA mischaracterizes its interest as an entity with the scrutiny of due diligence a PREPA employee must pursue in furtherance of those interests. The nature and scope of the Rate Case itself, i.e, determination of rates sufficient for the three entities to operate the electrical system in compliance with industry and contractual standards, is not adversarial among those seeking the revenue. Asking questions and expecting full responses is not adversarial. Further, the undersigned are unaware of any information that they may have been privy to almost two years ago that could in any way negatively impact PREPA. PREPA's nature as a public utility, as well as its extensive regulation by other state and federal governmental entities imply that there are very few things that are confidential for the utility. **The undersigned are not aware of any confidential information within their knowledge that could in any way jeopardize PREPA's interests, either generally or in this proceeding.**

7. For the reasons that will follow, **the undersigned respectfully requests this Honorable Energy Bureau to deny the Motion to Disqualify Counsels.**

## **II. PROCEDURAL BACKGROUND RELATED TO THE REQUEST FOR INFORMATION ON THE ENERGY RESERVE ACCOUNT**

8. On August 6, 2025, Genera submitted a Request for Information (“ROI”), identified as GENERA-of-PREPA-FIN-1, directed to PREPA.
9. ROI GENERA-of-PREPA-FIN-1 concerned the availability of additional funds for PREPA allocated by the Puerto Rico Legislature (Senate Joint Resolution 11 of June 23, 2025) and specifically requested information regarding the “Energy Sector Reserve” of approximately \$683,178,256, as reported by the Puerto Rico Office of Management and Budget.
10. The ROI referred to a newspaper article in “El Nuevo Dia” published on August 5, 2025, that references an energy sector reserve account for both energy sector related emergencies as well as PREPA pension payments. (<https://www.elnuevodia.com/noticias/locales/notas/aee-tendra-disponible-reserva-de-683-millones-para-gastos-futuros-de-deuda-y-pensiones/>)
11. The information in this newspaper article, prompted the questions on the (a) purpose and permissible uses of the reserve under law and budgetary authority; (b) PREPA’s access to the reserve; (c) the fiduciary agent and disbursement procedures; (d) potential use of the reserve to address PREPA’s obligations to Genera, including replenishment of the Reserve Outage Account; and (e) disclosure of the reserve’s existence to the Puerto Rico Energy Bureau (“Energy Bureau”) during provisional rate proceedings. Genera’s ROI’s asked as follows:

*According to a news report published by El Nuevo Día on August 6, 2025, titled in Spanish “AEE tendrá reserva de \$683 millones” (page 9, print edition), the Executive Director of the Puerto Rico Office of Management and Budget (OGP, by its Spanish acronym), Orlando Rivera Berrios, stated that an “Energy Sector Reserve” totaling \$683,178,256 was created through a budget amendment in June 2025. The reserve is funded by both General Fund appropriations and excise tax revenues, and it is to be held by an external fiduciary agent. The fund is designated for future obligations*

*related to PREPA's debt service and pensions. The article further clarifies that the reserve may not be used to pay LUMA Energy or Genera PR, although it remains unclear whether this restriction stems from.*

***Questions:***

**1. *Nature and Permitted Uses of the Fund***

- a. *What is the officially stated purpose of the Energy Sector Reserve, and what specific uses are contemplated under the applicable legal or budgetary framework?*
- b. *Which entity or authority determined the purpose and permitted uses of this reserve?*
- c. *Please confirm whether PREPA has direct or conditional access to the Energy Sector Reserve totaling \$683 million.*
- d. *Describe in detail the permissible uses of this reserve in accordance with the enabling joint resolution.*
- e. *Indicate whether the fund may be used for non-debt and non-pension related operational expenses, such as emergency response activities.*

**2. *Fiduciary Agent and Disbursement Process***

- a. *Identify the financial institution or entity that will serve as the external fiduciary agent responsible for managing the reserve.*
- b. *Explain the procedure for disbursing funds from this reserve, including any conditions or approvals required.*

**3. *Emergency Response and Contingency Mechanisms***

- a. *Is there any existing mechanism that would allow part of this reserve to be used in response to emergencies affecting the electrical system (e.g., blackouts, forced outages, hurricanes)?*
- b. *If the answer to question 3(a) is "yes", how would such disbursements be coordinated with LUMA and Genera?*

**4. *Allocation to Genera PR***

- a. *Please explain why funds from the Energy Sector Reserve were not considered as a potential source to fulfill PREPA's outstanding payment obligations to Genera PR, particularly for the replenishment of the Reserve Outage Account required under the Operation and Maintenance Agreement.*

- b. *Was any legal, financial, or policy analysis conducted to evaluate the feasibility of using the reserve to address PREPA outstanding payment obligations to Genera? If so, please provide a summary or copy of such analysis.*

**5. *Regulatory Coordination and Pension Request***

- a. *Was the existence and availability of this reserve disclosed to the Puerto Rico Energy Bureau (PREB) in advance of, or during, the process of establishing the provisional rate in July 2025?*
- b. *If so, please indicate the date and form in which such disclosure was made, and whether PREPA received any feedback or acknowledgment from the PREB.*
- c. *How does the existence of this reserve relate to PREPA's request for the establishment of a provisional rate by the Energy Bureau?*
- d. *Will any portion of this reserve be used to fulfill PREPA's pension obligations during Fiscal Year 2026?*

12. **PREPA did not object to ROI GENERA-of-PREPA-FIN-1** and then stated through its Comptroller that it did not have information about the reserve.

13. PREPA's answer to Genera's questions was:

*After a comprehensive review of PREPA's financial records, accounts, books, and reporting systems, I confirm that PREPA has not identified an "Energy Sector Reserve" in the amount of \$683,178,256. No account or fund designated as an "Energy Sector Reserve" in the amount of \$683,178,256 exists in PREPA's books or under its direct custody or control. Further, PREPA has not been provided documentation by any government agency indicating that it has access to, or authority over, said funds.*

*Accordingly, PREPA is not in a position to address the specific questions raised regarding the purpose, permitted uses, fiduciary administration, disbursement process, or regulatory coordination of such reserve.*

*Attestation*

*I, Juan C. Adrover Ramírez, state that the information contained in this response is complete, true, and accurate to the best of my knowledge and belief.*

*/s/Juan C. Adrover Ramírez*

14. On August 21, 2025 Genera filed a *Motion to Compel* indicating that PREPA's answer to these questions was not responsive and that the same were material and relevant to the Rate Case as the "Energy Sector Reserve" expressly contemplated funds for both PREPA's pension obligations and emergencies within the energy sector- two items that have been requested as part of the revenue requirement in the rate case.

### III. HEARING EXAMINERS ORDER ON NATURE OF PREPA'S ROLE IN THE RATE CASE

15. As a result of a discovery dispute among LUMA and PREPA, regarding LUMA's objections to PREPA's questions, on July 21, 2025, the Hearing Examiner entered "Order Clarifying PREPA's Role in the Rate Case Evidentiary Hearing<sup>2</sup>". This order is particularly instructive as it sought to clarify the relationship among LUMA, Genera and PREPA in the Rate Case.

16. In denying PREPA cross-examination rights, the Hearing Examiner held that: As a matter of statute and contract, PREPA and LUMA [Genera] **are not adversaries:**

- *Act 120-2018 established a "legal framework" for a Public-Private Partnership to operate the Commonwealth's electricity system.1 As a matter of law, in a partnership the partners are allies, not adversaries. Indeed, Act 120-2018 declares that the results of the negotiations leading to the partnership "shall align the corporate and business interests of the [partnership's] proponents with the Fundamental Interests of the People of Puerto Rico..."*<sup>3</sup>
- *The OMA says that LUMA shall be "responsible for preparing, presenting, defending current or future rate cases or other regulatory or legal matters as they relate to the Agreement, as [PREPA's] representative before the PREB..."*<sup>4</sup> *When LUMA is PREPA's "representative before the PREB," it is not logical for PREPA to be LUMA's adversary. These sources make*

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<sup>2</sup> Hearing Examiner's Order Clarifying PREPA's Role in the Rate Case Evidentiary Hearing, NEPR-AP-2023-0003 July 21, 2025)

<sup>3</sup> Act 120-2018, section 3

<sup>4</sup> T&D OMA, Annex I, Section I.G.

*clear that in Energy Bureau proceedings, LUMA's and PREPA's interests are legally aligned. PREPA might have other interests—strategic interests, financial interests, commercial interests, political interests. What matters to the Energy Bureau are the two companies' legal interests. Under the statute and the contract, those legal interests are aligned.*

17. Similarly, when Genera acts as PREPA's representative before the Energy Bureau, PREPA and Genera cannot be adversaries. “Asking questions is not inherently adversarial. A principal that asks questions of the agent is not interfering with the agent.”<sup>5</sup> **Likewise, when an agent asks questions of a principal, it is not interfering with the principal or being inherently adversarial.**

18. The Hearing Examiner also concluded that in this proceeding:

**“PREPA, LUMA, and Genera must fit together, work together, and produce together the cost-effective, reliable, reasonably priced electricity service that Puerto Rico's citizens so desperately need.”**

(Emphasis added)<sup>6</sup>

#### **IV. AGENCY RELATIONSHIP BETWEEN PREPA AND GENERA**

19. Section 2.1 of the LG-OMA defines Genera as PREPA's exclusive agent for the operation and maintenance of the thermal generation fleet.
20. Section 4.5 further provides that Genera “shall represent PREPA<sup>7</sup> in proceedings before governmental and regulatory authorities... [and] **PREPA shall provide all cooperation reasonably required.** Also, section 7.5 provides Genera with concrete

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<sup>5</sup> *Hearing Examiner's Order Clarifying PREPA's Role in the Rate Case Evidentiary Hearing, NEPR-AP-2023-0003, at p.1 (July 21, 2025).*

<sup>6</sup> *Id.* at p. 2

<sup>7</sup> The Vázquez & Vilanova Law Firm professional services contract is a contract with PREPA, whereby Genera acts as PREPA's agent.



responsibilities related to the rate proceedings. (Emphasis added)

21. Genera's role is within the purview of PREPA's delegated authority pursuant to the LG-OMA and thus as PREPA's agent. The Hearing Examiner has recognized this agency structure, expressly stating that: "A disagreement between a principal and its agent is not inherently inconsistent with a principal-agent relationship. We have principal-agent case law because we have principal-agent disputes."<sup>8</sup>
22. **Genera's participation and representations in this rate review are not adverse to PREPA but rather aligned**, are in the interest of the public and in furtherance of the performance of PREPA's delegated duties under the LG-OMA. Genera, as agent for PREPA, is doing what PREPA itself has contractually authorized it to do: represent operational interests before the Energy Bureau and in doing so identify funds that will allow it to comply with those contractual obligations delegated by PREPA.

## **V. HEARING ON REVENUE REQUIREMENT**

23. On September 3, 2025, the Hearing Examiner issued an order addressing, among other matters, the pending discovery dispute regarding ROI GENERA-of-PREPA-FIN-1. In that order, the Hearing Examiner stated: "I will hear views from the two parties, ask my own questions, then attempt to resolve this dispute. If I need more submissions, I will request them after the discussion."<sup>9</sup>
24. On September 4, 2025, following a recess, at minute 2:33:53 of the Hearing, the hearing opened with Hearing Examiner, Mr. Scott Hempling ("Hearing Examiner"), greeting

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<sup>8</sup> *Hearing Examiner's Order Clarifying PREPA's Role in the Rate Case Evidentiary Hearing, NEPR-AP-2023-0003, at p. 1 (July 21, 2025).*

<sup>9</sup> *Hearing Examiner's Order on Agenda for September 4 Conference, Covering Revenue Requirement Questions, Hearing Procedures, and Related Matters, NEPR-AP-2023-0003 (September 3, 2025)*

- the parties and asking them to turn on their cameras and microphones so the session could begin. He confirmed the presence of Ms. Mirelis Valle Cancel, PREPA's Counsel, and asked about the PREPA witness, identifying him as Juan Carlos Adrover, PREPA's Comptroller. After clarifying the spelling of his last name, the Hearing Examiner thanked him for appearing and began the discussion<sup>10</sup>.
25. The focus quickly turned to the Energy Sector Reserve of \$683 million. Hearing Examiner asked Adrover whether he had anything to do with the account. The witness replied that he did not, saying he only knew of it through a newspaper article, the same one referenced by Attorney Vázquez. He confirmed that he had spoken with PREPA's CEO, who also knew nothing about the account. The Hearing Examiner expressed disbelief that the Legislature would set aside such a large amount for PREPA's use without informing PREPA itself.<sup>11</sup>
26. The Hearing Examiner then allowed Genera's counsel, Attorney Vázquez-Marrero, to ask questions. Attorney Vázquez-Marrero **only pointed out** that the **existence of such a reserve raised questions about whether anyone at PREPA knew of it**, stressing that it was "incredible" that PREPA could be unaware of an account intended for pensions, emergencies, and other energy sector needs.<sup>12</sup>
27. The Hearing Examiner responded that while he shared the curiosity, the fact that the witness claimed not to know about the account did not make it a discovery dispute. He explained that he could not order PREPA to provide what it said it did not have, and that Genera's distrust of the answer did not change that. Unless counsel wanted a

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<sup>10</sup> "NEPR-AP-2023-0003 Virtual Conference," *YouTube* ([Negociado de Energía en vivo](https://www.youtube.com/watch?v=Tujq4QtJS6c)), Thursday, September 4, 2025, <https://www.youtube.com/watch?v=Tujq4QtJS6c>

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

- subpoena or some extraordinary measure, there was nothing more he could do at that moment.<sup>13</sup>
28. Attorney Vázquez, **did not request a subpoena or ask for some extraordinary measure** and **only stated that PREPA should clarify whether anyone within PREPA had knowledge of the account**, as the funds could significantly affect the revenue requirements in the rate case.<sup>14</sup>
29. PREPA's counsel, Ms. Valle Cancel, interjected that PREPA was not being evasive, but simply sharing the information it had at that time. If new information came to light, PREPA would provide it. At that point, the Hearing Examiner placed PREPA under a continuing obligation to bring forward any information about the reserve if and when it became available, adding that he was concerned about surprises later in the case.<sup>15</sup>
30. The discussion turned to which government entity was responsible for the account. The witness mentioned the Department of Treasury, explaining that PREPA had reached out to them and was awaiting clarification. Attorney Vázquez countered that the article cited the Office of Management and Budget. The Hearing Examiner suggested that PREPA should have included this outreach in its initial response to show some effort had been made.<sup>16</sup>
31. Ultimately, the Hearing Examiner directed PREPA to use the discovery platform to keep Genera and all parties informed of developments regarding the reserve, clarifying that he was not asking PREPA to disclose privileged matters but to maintain

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

transparency about ordinary government communications.<sup>17</sup>

32. He concluded by noting that he did not find PREPA's response to be intentionally evasive, though surprising, and encouraged PREPA to use Genera's list of questions as a guide in seeking answers. Before adjourning, **the Hearing Examiner reminded everyone to keep the process friendly and cooperative, underscoring that all parties shared a common responsibility to serve the people of Puerto Rico with reliable, affordable electricity.**<sup>18</sup>
33. As a result of the exchanges in this hearing, as well as the Motion to Compel, PREPA filed the Motion to Disqualify the undersigned alleging that the "cross-interrogation" of PREPA's Comptroller by Genera's counsel related to the Energy Reserve as well as questioning PREPA's position denying any knowledge about said account entailed an adversary position and successive adversarial representation of PREPA.
34. Notwithstanding, **as evident from the above exchange, there was no "cross-examination"** of PREPA's comptroller by the undersigned, and nothing in the exchange, including the very nature of the questions posted, can be interpreted as conflicting with PREPA's interest. The Hearing Examiner asked all the necessary questions related to the ROI and Attorney Vázquez requested that PREPA keep Genera informed of any information related to the reserve account. **Merely asking questions regarding a matter that is of utmost public interest to PREPA is not adversarial or antagonistic.** It in fact demonstrates that Genera, as agent of PREPA, is acting in furtherance of its fiduciary duty with the common goal of seeking information on funds that could lower the revenue requirement and reduce the impact on the rate payers of

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

Puerto Rico.

## **VI. Legal Standard for Disqualification of Counsel**

35. The undersigned recognize the seriousness of a request for disqualification of counsel and do not take lightly the allegations imputed by PREPA.
36. When addressing a disqualification request, “[t]he court must balance the adverse effect that the legal representation may have on the parties’ rights to a fair and impartial trial, and on the judicial system.”<sup>19</sup> Likewise, the court must analyze whether continuing with the legal representation would cause undue harm or disadvantage in the case to the requesting party.
37. The Puerto Rico Supreme Court has clarified that disqualification is not punitive but preventive, intended to avoid real conflicts of interest.<sup>20</sup>
38. Before determining whether the requested disqualification is appropriate, the court must provide the legal representative whose disqualification is sought the opportunity to be heard. This is so because when an opposing party files a motion for disqualification, “the attorney against whom the motion is presented has the right to be heard and to present evidence in their defense before the court resolves the request,” so that the requirements of due process of law are met.<sup>21</sup>
39. In accordance with the foregoing, before resolving a disqualification request, the court must conduct an analysis of the totality of the circumstances in light of the factors set forth by the Supreme Court of Puerto Rico, namely:

*a. whether the party requesting disqualification has standing to invoke it;*

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<sup>19</sup> *Job Connection Center v. Sups. Econo*, 147 DPR 597 (1999).

<sup>20</sup> *K-Mart v. Walgreens of P.R.*, 121 D.P.R. 633 (1988); *Liquilux Gas Corp. v. Berríos Zaragoza*, 138 D.P.R. 864 (1995).

<sup>21</sup> *Job Connection Ctr.*, 186 D.P.R. at 598.

- b. *the seriousness of the potential ethical violation involved;*
- c. *the complexity of the law or facts relevant to the controversy and the expertise of the attorneys involved;*
- d. *the stage of the proceedings at which the controversy over disqualification arises and its possible effect on the fair, prompt, and economical resolution of the case; and*
- e. *the purpose behind the disqualification.*

*Id.* at 597–598 (citing *Otaño v. Vélez*, 141 DPR 820, 828 (1996); *Liquilux Gas Corp. v. Berríos, Zaragoza*, 138 DPR 850, 865 (1995)).

40. It is important to distinguish disqualification proceedings from disciplinary actions, since the disqualification of an attorney is rather a preventive measure intended to avoid possible violations of the Canons of Professional Ethics. Although in a disqualification case an attorney is not exposed to a sanction or penalty, the reality is that it negatively affects the rights of the parties and the procedural course of the cases. For that reason, disqualification is not a remedy that should be imposed lightly but instead should be avoided if there are less burdensome measures available to ensure the integrity of the judicial process and fair treatment of the parties. In other words, it should only be granted when strictly necessary.<sup>22</sup>

## VII. CANON 21 OF THE PUERTO RICO CANONS OF PROFESSIONAL ETHICS

41. Canon 21 of the Puerto Rico Canons of Professional Ethics requires loyalty to the client and prohibits successive representation in matters that are (1) substantially related and (2) adverse.<sup>23</sup> In the case of a corporation, "an attorney who represents a corporation or partnership owes complete loyalty to the legal entity itself, and not to its partners, directors, employees, or shareholders, and may only represent the interests of those individuals when such interests do not conflict with those of the corporation or

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<sup>22</sup> *Id.*

<sup>23</sup> *P.R. Fuels, Inc. v. Empire Gas Co.*, 133 D.P.R. 112 (1993).

partnership". (Emphasis added)

42. Canon 21 of the Code of Professional Ethics partly reads as follows:

**Canon 21 – Conflicting Interests.** An attorney owes their client a duty of complete loyalty. This duty includes the obligation to disclose to the client all circumstances regarding the attorney’s relationships with the parties and with third persons, as well as any interest in the controversy that might influence the client in the selection of counsel. No attorney should accept legal representation when their professional judgment may be affected by personal interests. It is improper for a professional to represent conflicting interests. Within the meaning of this rule, an attorney represents conflicting interests when, in benefit of one client, it becomes their duty to advocate for something that they must oppose in order to comply with their obligations to another client. The obligation to represent the client faithfully includes not disclosing the client’s secrets or confidences and taking appropriate measures to prevent their disclosure. An attorney must not accept the representation of a client in matters that may adversely affect any interest of a former client, nor serve as an arbitrator, especially when the former client has shared confidences that may be compromised. The duty of fidelity also includes not disclosing a client’s secrets or confidences and adopting adequate measures to prevent their disclosure. An attorney must not accept the representation of a client in matters that may adversely affect any interest of a former client, nor serve as an arbitrator, especially when the former client has shared confidences that may be compromised. **An attorney who represents a corporation or partnership owes complete loyalty to the legal entity itself, and not to its partners, directors, employees, or shareholders, and may only represent the interests of those individuals when such interests do not conflict with those of the corporation or partnership.** (Emphasis added) <sup>24</sup>

43. The Supreme Court of Puerto Rico has stated that Canon 21 imposes on every attorney the duty to avoid three basic situations:

- a. accepting legal representation when, in their judgment, it may be affected by their personal expectations or interests;
- b. simultaneously accepting the legal representation of two distinct clients with opposing interests; and
- c. accepting the representation of a client in matters that may affect any

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<sup>24</sup> *Canon 21 of the Code of Professional Ethics*, 4 LPRA Ap. IX.

interest of a former client.

*In re Toro Cubergé*, 140 DPR 523 (1996).

44. The first prohibition seeks to prevent an attorney from refraining from taking an action that could benefit their client because such action would frustrate a personal interest of the attorney.<sup>25</sup> The second and third prohibitions are intended to guarantee clients that the confidences shared with their attorney will not be used against them for the benefit of representing another simultaneous or subsequent client.<sup>26</sup>

- i. Thus, an attorney is barred from assuming a representation, whether simultaneous or successive, when there exists a substantial relationship with adverse interests.<sup>27</sup>

45. Nevertheless, Canon 21 does not prohibit the simultaneous or successive representation of two clients by the same attorney where there is a total absence of any possible conflict of interest between the two representations.<sup>28</sup>

46. In its Motion to Disqualify, PREPA alleges that "while serving as counsel for PREPA in multiple cases before this Energy Bureau—and working hand-in-hand with PREPA's Department of Legal Affairs on most, if not all, of PREPA's legal matters—Ms. Vázquez-Marrero and Mr. Vilanova-Feliberti obtained extensive access to privileged and confidential information, including PREPA's legal strategies, regulatory positions, and sensitive administrative records across a wide range of matters, which include issues directly involving Genera...[t]he Motion to Compel and the cross-

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<sup>25</sup> *In re Belén Trujillo*, 126 DPR (1990); *In re Pizarro Santiago*, 117 DPR 197 (1986); *In re Martínez Rivera*, 106 DPR 239 (1977).

<sup>26</sup> *In re Carlos Roberto Soto*, 134 DPR (1993).

<sup>27</sup> *Empire Gas*, 133 D.P.R. at 112.

<sup>28</sup> *Liquilux Gas Corp. v. Berríos, Zaragoza*, *supra*.



examination—particularly the assertion by PREPA’s former counsel that PREPA’s response is “intentionally evasive” and their suggestion that PREPA is being dishonest—demonstrate beyond doubt that Genera’s interests in this proceeding are directly adverse to those of PREPA, rendering the ethical conflict of these attorneys both evident and unavoidable." Motion to Disqualify at page 6-7.

47. This allegation **does not demonstrate any adverse interest between PREPA and Genera as its agent**, or in the undersigned representation of the corporation in this capacity. Ultimately, as recognized by Canon 21, there is a material distinction between the interests of a corporate entity and those of their employees or directors. **The undersign, represent the interests of the corporate entity, PREPA, as these have been delegated to Genera, not the interest of employees or corporate directors.**
48. In this matter, (i) there is a **continuation of an attorney-client relationship** as the undersign are acting on behalf of PREPA given the agency relationship between PREPA and Genera; (ii) there is **no conflicting representation** and (iii) there is **no adverse effect** arising from the continuing representation of PREPA as a corporate entity.
49. Further, PREPA did not make any attempt to discuss what is the causal relationship between any alleged confidential information it may have made the **undersigned privy of and the potential effect of that information on the current proceeding**. The issue raised by PREPA in its Motion pertains solely to its interpretation of the undersigned set of responses to questions stemming from a newspaper article published on August 5, 2025. Nothing in these responses suggests breach of confidentiality or reliance on privileged information. Furthermore, PREPA’s character as a public utility, coupled

with the extensive oversight it receives from both state and federal entities, means that very little about a public utility such as PREPA is truly confidential. To the undersigned's knowledge, there is no information they could possess that would in any way compromise PREPA's interests. Lastly, the Motion fails to **discuss how it is that seeking information that will ultimately benefit PREPA, as a corporate entity, as well as the public, could possibly entail a conflict of interest.** Instead, it relies solely on "appearance of impropriety" because of valid questioning to a PREPA employee. But appearances alone, without substantial discussion of an adversarial relation or actual prejudice to the corporation is not enough to seek the disqualification of counsel whose interests are ultimately aligned with PREPA as a corporate entity.

50. As previously stated, **the undersigned are in effect counsel for PREPA as Genera is acting on behalf of PREPA as its agent.** Further, the undersigned have been attorneys for a corporation, and as such their loyalty is to the corporation itself and not to employees or directors.
51. The potential existence of \$683M in funds that could be used to pay for some of the costs requested as part of the rate case is of material importance *to* PREPA. **Identifying these funds is central to Genera's fiduciary duty as operator and cannot in any objective way imply a conflict of interests.** It ensures that reserves are maximized before imposing additional rate burdens on the people of Puerto Rico.
52. **This is not hostility toward PREPA; it is loyalty to the corporation and the responsibilities delegated to Genera through the LG-OMA.** As the Hearing Examiner has recognized, both the TD and LG OMA's and Act 120-2018 **require PREPA, LUMA, and Genera to operate "hand-in-glove", bow-and-fiddle,**

- trumpet-and-trumpeter. PREPA—LUMA, and Genera—must fit together, work together, and produce together the cost-effective, reliable, reasonably priced electricity that Puerto Rico’s citizens so desperately need.<sup>29</sup> PREPA’s attempt to frame Genera’s counsels’ diligence, who are acting on behalf of PREPA, as disloyalty is misplaced. The efforts are intended *for* the benefit of PREPA. (Emphasis added).
53. By fulfilling its regulatory mandate, **Genera, through its attorneys, is acting not only as PREPA’s contractual agent but as fiduciary for the benefit of PREPA.** Genera, in compliance with the LG-OMA, has sought to identify existing funds—including the \$683 million Energy Sector Reserve—that could be applied to system obligations that can stabilize the system and ensure operational efficiency and regulatory compliance. The purpose is to minimize rate burdens on citizens and ensure responsible use of existing reserves. PREPA’s motion seeks to punish counsel for carrying out this responsibility. Disqualification in these circumstances would prejudice Genera, as agent for PREPA, distort the regulatory process, and undermine public trust.
54. The Puerto Rico Supreme Court requires courts to balance the following competing interests in disqualification cases: the seriousness of the conflict, prejudice to the parties, stage of the proceeding, and potential for tactical abuse.<sup>30</sup>
55. Here, **no genuine conflict exists**; PREPA suffers no prejudice, and **Genera would be harmed by the loss of experienced counsels at such late stage of the proceedings—a mere two months from the beginning of the formal hearing in such a complex case.** The balance of equities weighs strongly against disqualification.

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<sup>29</sup> *Hearing Examiner’s Order Clarifying PREPA’s Role, NEPR-AP-2023-0003, at p. 2 (July 21, 2025).*

<sup>30</sup> *Liquilux*, 138 D.P.R. at 864.

56. The undersigned acting on behalf of Genera as PREPA's agents are fulfilling a fiduciary duty to PREPA by seeking information to identify funding sources that can reduce rate burdens on citizens. **This is not adversity—it is the very essence of the operator's mandate and in the interests of PREPA as a corporate entity.**

**WHEREFORE**, the undersigned counsel, as representative of Genera, an agent of PREPA, respectfully requests that the Energy Bureau to **DENY PREPA's Motion to Disqualify Genera's Counsels.**

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 12<sup>th</sup> day of September 2025.

**WE HEREBY CERTIFY** that this Motion was filed using the electronic filing system of this Energy Bureau and that electronic copies of this motion will be notified to the Hearing Examiner, Scott Hempling, [shempling@scotthemplinglaw.com](mailto:shempling@scotthemplinglaw.com); and to the attorneys of the parties of record.

A courtesy copy of the present Motion will also be notified to the following:

**Parties and Intervenors:**

mvalle@gmlex.net; arivera@gmlex.net; jmartinez@gmlex.net; jgonzalez@gmlex.net;  
nzayas@gmlex.net; Gerard.Gil@ankura.com; Jorge.SanMiguel@ankura.com;  
Lucas.Porter@ankura.com; [katuska.bolanos-lugo@us.dlapiper.com](mailto:katuska.bolanos-lugo@us.dlapiper.com);  
Yahaira.delarosa@us.dlapiper.com; margarita.mercado@us.dlapiper.com;  
carolyn.clarkin@us.dlapiper.com; andrea.chambers@us.dlapiper.com; regulatory@genera-pr.com;  
legal@genera-pr.com; mvazquez@vvlawpr.com; gvilanova@vvlawpr.com;  
ratecase@genera-pr.com; hriviera@jrsp.pr.gov; gerardo\_cosme@solartekpr.net;  
contratistas@jrsp.pr.gov; victorluisgonzalez@yahoo.com; Cfl@mcvpr.com;  
nancy@emmanuelli.law; jrinconlopez@guidehouse.com; Josh.Llamas@fticonsulting.com;

Anu.Sen@fticonsulting.com; Ellen.Smith@fticonsulting.com; Intisarul.Islam@weil.com;  
kara.smith@weil.com; rafael.ortiz.mendoza@gmail.com; rolando@emmanuelli.law;  
monica@emmanuelli.law; cristian@emmanuelli.law; lgnq2021@gmail.com;  
jan.albinolopez@us.dlapiper.com; Rachel.Albanese@us.dlapiper.com;  
varoon.sachdev@whitecase.com; javrua@sesapr.org; Brett.ingerman@us.dlapiper.com;  
brett.solberg@us.dlapiper.com; agraitfe@agraitlawpr.com; jpouroman@outlook.com;  
epo@amgprlaw.com; loliver@amgprlaw.com; acasellas@amgprlaw.com; [matt.barr@weil.com](mailto:matt.barr@weil.com);  
[Robert.berezin@weil.com](mailto:Robert.berezin@weil.com); Gabriel.morgan@weil.com; [corey.brady@weil.com](mailto:corey.brady@weil.com);  
lramos@ramoscruzlegal.com; tlauria@whitecase.com; gkurtz@whitecase.com;  
ccolumbres@whitecase.com; isaac.glassman@whitecase.com; tmacwright@whitecase.com;  
jcunningham@whitecase.com; mshepherd@whitecase.com; [jgreen@whitecase.com](mailto:jgreen@whitecase.com);  
[hburgos@cabprlaw.com](mailto:hburgos@cabprlaw.com); [dperez@cabprlaw.com](mailto:dperez@cabprlaw.com); [howard.hawkins@cwt.com](mailto:howard.hawkins@cwt.com);  
[mark.ellenberg@cwt.com](mailto:mark.ellenberg@cwt.com); [casey.servais@cwt.com](mailto:casey.servais@cwt.com); [bill.natbony@cwt.com](mailto:bill.natbony@cwt.com);  
zack.schrieber@cwt.com; [thomas.curtin@cwt.com](mailto:thomas.curtin@cwt.com); [escalera@reichardescalera.com](mailto:escalera@reichardescalera.com);  
[riverac@reichardescalera.com](mailto:riverac@reichardescalera.com); [susheelkirpalani@quinnemanuel.com](mailto:susheelkirpalani@quinnemanuel.com);  
[erickay@quinnemanuel.com](mailto:erickay@quinnemanuel.com); [dmonserrate@msglawpr.com](mailto:dmonserrate@msglawpr.com); [fgierbolini@msglawpr.com](mailto:fgierbolini@msglawpr.com);  
[rschell@msglawpr.com](mailto:rschell@msglawpr.com); [eric.brunstad@dechert.com](mailto:eric.brunstad@dechert.com); [Stephen.zide@dechert.com](mailto:Stephen.zide@dechert.com);  
David.herman@dechert.com; Isaac.Stevens@dechert.com; James.Moser@dechert.com;  
Kayla.Yoon@dechert.com; Julia@londoneconomics.com; Brian@londoneconomics.com;  
luke@londoneconomics.com; juan@londoneconomics.com; mmcgill@gibsondunn.com;  
LShelfer@gibsondunn.com; jnieves@cstlawpr.com; arrivera@nuenergypr.com;  
apc@mcvpr.com; ramonluisnieves@rlnlegal.com;

#### **PREB Consultants:**

shempling@scotthemplinglaw.com; rsmithla@aol.com; guy@maxetaenergy.com;  
jorge@maxetaenergy.com; rafael@maxetaenergy.com; dawn.bisdorf@gmail.com;  
msdady@gmail.com; mcranston29@gmail.com; ahopkins@synapse-energy.com;  
clane@synapse-energy.com; kbailey@acciongroup.com; zachary.ming@ethree.com;  
PREBconsultants@acciongroup.com; carl.pechman@keylogic.com;

bernard.neenan@keylogic.com; tara.hamilton@ethree.com; aryeh.goldparker@ethree.com;  
roger@maxetaenergy.com; Shadi@acciongroup.com;

***Counsels for GENERA PR LLC.***



Vázquez & Vilanova  
LAW FIRM

**VÁZQUEZ & VILANOVA LAW FIRM  
LLC**

563 Calle C. H Alverio Unit 2  
San Juan, PR 00918  
Tel.: (787) 519-7063  
Fax. (260) 234-3410

/s/ Maralíz Vázquez-Marrero  
Maralíz Vázquez-Marrero  
[mvazquez@vvlawpr.com](mailto:mvazquez@vvlawpr.com)  
RUA NÚM. 16,187

/s/ Giuliano Vilanova Feliberti  
Giuliano Vilanova-Feliberti  
[gvilanova@vvlawpr.com](mailto:gvilanova@vvlawpr.com)  
RUA NÚM. 22,718