

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

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IN RE: LUMA INITIAL BUDGET AND
RELATED TERMS OF SERVICES

CASE NO.: NEPR-MI-2021-0004

SUBJECT: 3PPO RFP Costs (Temporary
Generation Procurement)

**P3A'S RESPONSE IN OPPOSITION TO
GENERA'S MOTION FOR DECLARATORY DETERMINATION**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Public-Private Partnerships Authority ("P3A"), by and through its undersigned counsel, and respectfully STATES and PRAYS as follows:

I. Introduction

1. On March 19, 2026, Genera PR LLC ("Genera") filed a *Motion for Declaratory Determination* requesting that the Energy Bureau issue a declaratory ruling absolving it of the contractual obligation to pay an invoiced amount of \$369,130.54 for services rendered by the Third-Party Procurement Office ("3PPO") during the Temporary Power Generation ("TPG") Request for Proposals ("RFP").

2. Genera's Motion further seeks a declaration that it bears no responsibility for costs associated with the TPG RFP conducted through the Third-Party Procurement Office ("3PPO"). While P3A does not oppose the Bureau's authorization of payment of the invoiced costs - subject to a

prudence and reasonableness determination - P3A opposes Genera's legal and contractual arguments.

3. Genera's position does not align with the contractual mechanisms designed to govern its own corporate conflicts of interest under the OMA. P3A maintains that the 3PPO costs constitute valid Pass-Through Expenditures. The 3PPO's involvement was a mandatory mitigation measure implemented pursuant to Genera's Organizational Conflict of Interest ("OCI") Policy. Consequently, the exceedance of previously negotiated financial caps does not permit Genera to reclassify its obligations as voluntary accommodations; rather, it strictly triggers the formal budget amendment process expressly mandated by Section 7.3(e)(i) of the OMA.

II. PROCEDURAL AND FACTUAL BACKGROUND

4. On February 26, 2025, Genera filed a request seeking expedited approval of emergency generation capacity solutions to address a critical generation shortfall. Subsequently, the Puerto Rico Energy Bureau ("PREB") issued a Resolution and Order on March 19, 2025, approving urgent initiatives to acquire temporary generation. Crucially, the Bureau ordered the Puerto Rico Electric Power Authority ("PREPA") to appear before P3A and initiate the procurement process through the 3PPO. As the Bureau noted, PREPA was directed to utilize the 3PPO because of Genera's status as a "restricted party".

5. Pursuant to Genera's OCI Avoidance and Mitigation Plan, P3A had previously published an RFP on February 3, 2023, to engage the 3PPO to

independently manage certain procurement activities. On July 24, 2025, P3A, PREPA, and Genera entered into a Memorandum of Understanding (“MOU”) governing the 3PPO Services. The MOU established that Genera, as agent for PREPA, would use PREPA funds in its budget to pay the 3PPO for reasonable procurement activities, subject to a cap of \$237,051.34.

6. P3A subsequently presented Genera with an invoice for approximately \$369,130.54, representing 3PPO fees and costs associated with the TPG RFP. On December 5, 2025, Genera issued correspondence disputing its obligation to fund the invoice, citing the MOU cap and asserting the procurement fell outside its OMA scope. Genera’s present Motion seeks a declaratory determination confirming this evasion of responsibility.

III. LEGAL ARGUMENT

A. The TPG RFP Falls Within Genera's Contractual Responsibility

7. Genera’s primary argument is that the TPG RFP relates to temporary generation resources that are not "Legacy Generation Assets," and therefore the procurement is outside the scope of Genera’s Facility Contract authority under OMA §5.2. This interpretation overlooks the comprehensive scope of Genera's obligations.

8. Genera’s responsibilities are not strictly confined to historical assets; Annex IX of the OMA expressly includes assisting in the mobilization of emergency power generation resources within Genera's Scope of Services.

Therefore, the procurement of the TPG RFP operates firmly within Genera's sphere of contractual responsibility.

9. Because the TPG RFP is Genera's responsibility, Genera's corporate affiliations trigger strict compliance with the OMA's conflict-of-interest safeguards. Annex VI of the OMA establishes the Organizational Conflict of Interest ("OCI") Policy ("OCI Policy"), which recognizes the inherent risk of "biased ground rules" and "impaired objectivity" when affiliates participate in procurements.

10. This is not a hypothetical concern. Genera's own OCI Policy explicitly identifies its affiliate, NFEnergia LLC, as an active market participant, acknowledging that Affiliates may pursue future procurements. Because Genera's affiliation with New Fortress Energy created an actual or apparent conflict of interest regarding the TPG RFP, the deployment of the 3PPO was a mandatory, contractually prescribed safeguard to preserve the integrity of the procurement

11. Furthermore, Genera's attempt to recharacterize the TPG RFP as an external, PREPA-driven transaction is directly contradicted by the administrative record and Genera's own admissions. As Genera concedes in its Motion, it was Genera that filed the February 26, 2025, request before this Bureau seeking expedited approval for the installation of approximately 800 MW of temporary generation.

12. The subsequent deployment of the 3PPO was the direct regulatory consequence of Genera's own operational petition to address a generation shortfall within the fleet under its management.

13. Genera cannot formally petition this Bureau to approve emergency generation solutions and subsequently disclaim all administrative and financial responsibility for the conflict-of-interest safeguards required to legally procure them.

B. PREPA's Inability to Independently Conduct the Procurement is a Direct Consequence of Agency Delegation to Genera.

14. Genera asserts that the Bureau's directives were addressed to PREPA, not Genera, and uses this fact to argue that the 3PPO costs are not Genera's responsibility. This argument fails to acknowledge the agency framework established by the OMA and why PREPA is structurally unable to run this procurement independently.

15. Under Section 5.2(b) of the OMA, PREPA explicitly designated and appointed Genera as its agent for the purpose of entering into generation-related Facility Contracts. By executing the OMA, PREPA effectively delegated its operational generation procurement functions to Genera. This delegation stripped PREPA of the primary administrative apparatus required to independently run complex, generation-specific RFPs, centralizing those duties within Genera.

16. When Genera's corporate affiliations triggered conflict limitations regarding this delegated role, the OMA did not dictate that the procurement function simply revert to PREPA. Instead, the OMA's OCI Policy strictly governs the process.

17. The OCI Policy dictates that when Genera is conflicted, the 3PPO must assume control of the procurement and take the actions necessary to mitigate the conflict on behalf of the operator.

18. Furthermore, Genera attempts to use P3A's involvement as proof that the TPG RFP was an extra-contractual transaction. This argument ignores the express text of OMA Section 4.2(p)(i), which dictates that the OCI Policy "shall require the use of a third-party procurement office to be retained by the Administrator through an independent procurement process". P3A did not assume statutory ownership of the procurement; rather, P3A strictly fulfilled its contractual duty as Administrator to retain and manage the independent 3PPO required to cure Genera's corporate conflict of interest.

19. Therefore, PREPA's inability to independently run the TPG RFP is a direct contractual consequence of its delegation of authority to Genera under the OMA.

20. The 3PPO's involvement remains an intrinsic mechanism of Genera's own OMA compliance framework, and the administrative burden cannot be severed from Genera simply because PREB formally directed PREPA to utilize the prescribed 3PPO safeguard.

C. The 3PPO Costs Are Valid Pass-Through Expenditures

21. Because the 3PPO is a mandatory compliance mechanism required by Annex VI, the administrative costs incurred by the 3PPO constitute valid Pass-Through Expenditures. Annex XII of the OMA defines Pass-Through Expenditures as reasonable and documented costs and expenses incurred by Operator in the course of providing services.

22. Furthermore, the July 24, 2025 MOU explicitly acknowledges that the 3PPO was engaged in support of the LGA Operator's obligations to perform its responsibilities under the LGA O&M Agreement. Genera formally agreed in the MOU that, in its role as agent for PREPA, LGA Operator will use PREPA funds in LGA Operator's budget to pay any and all fees, costs, and expenses payable to the 3PPO.

23. Genera relies on Section 7.6(g) of the OMA to argue that it cannot be compelled to assume the payment of the 3PPO invoice on its own account. P3A does not dispute this principle; P3A is not requesting that Genera pay these costs out of its corporate Service Fee. Rather, P3A requires Genera to fulfill its administrative role by utilizing PREPA-funded Service Accounts to process these Pass-Through Expenditures.

D. PREB's Statutory Mandate Requires the Reassignment of Genera's Existing Operating Budget to Satisfy Mandatory 3PPO Costs Without Increasing the Ratepayer Burden

24. Genera requests that this Bureau either declare the 3PPO invoice a "voluntary accommodation" outside the OMA framework or authorize a budget increase to pass the costs directly to PREPA and the ratepayers. Both requests must be denied.

25. The 3PPO's administrative costs are mandatory compliance expenses triggered by Genera's own Organizational Conflict of Interest Policy, and they must be absorbed through a reprioritization of Genera's currently approved Operating Budget rather than through an amendment that increases the rate base.

26. Under Act 57-2014 and Act 17-2019, this Bureau is statutorily mandated to ensure that all tariffs, charges and modifications thereto are "just and reasonable" and "*consistentes con prácticas fiscales y operacionales acertadas que proporcionen un servicio confiable, al menor costo razonable*". Furthermore, the Bureau is statutorily empowered to formulate and implement strategies to reduce and stabilize energy costs permanently. Authorizing an unbudgeted payment of \$369,130.54 for these administrative costs outside the established regulatory framework is inconsistent with this integrated statutory mandate to ensure rates remain just and reasonable for consumers.

27. Furthermore, the Bureau is statutorily empowered to formulate and implement strategies to reduce and stabilize energy costs permanently.

The OMA itself contemplates that budgets may require internal adjustment to accommodate regulatory directives.

28. Section 7.4 of the OMA explicitly acknowledges that adjustments to the O&M Budgets may be necessary as a result of "additional requirements imposed by Owner, Administrator, PREB or any other Governmental Body after approval of the O&M Budgets". The Bureau's March 19, 2025 Order directing the use of the 3PPO due to Genera's status as a "restricted party" constitutes exactly such a regulatory requirement.

29. Therefore, rather than authorizing an amendment that unlawfully shifts these compliance costs to PREPA and the ratepayers, this Bureau should exercise its broad statutory authority to order Genera to reassign and reallocate existing funds within its currently approved Operating Budget—specifically from its legal, compliance, or contingency allocations—to satisfy the \$369,130.54 invoice. Genera cannot use its own corporate conflict of interest as leverage to unilaterally inflate the OMA Operating Budget at the expense of Puerto Rican consumers.

IV. Conclusion

30. Under the OMA, costs arising from the implementation of required conflict-of-interest safeguards—specifically the mandatory engagement of the 3PPO pursuant to Annex VI—are valid Pass-Through Expenditures governed by the Agreement's established budgetary mechanics. The OMA contemplates that budgets may require internal adjustment to accommodate regulatory

directives. Consequently, rather than bypassing the OMA framework as a "voluntary accommodation" or authorizing a budget increase that inevitably impacts the ratepayer, this Honorable Bureau possesses the statutory authority to order the reassignment of Genera's currently approved Operating Budget to satisfy these compliance costs.

WHEREFORE, P3A respectfully requests that the Puerto Rico Energy Bureau **DENY** Genera's request for a declaratory determination that payment of the 3PPO procurement costs is "not an obligation imposed on Genera; **DENY** Genera's request to classify the payment as a "one-time, voluntary accommodation outside the OMA framework; **DENY** Genera's request to shift future 3PPO cost budgeting directly to PREPA and consumers; and **ORDER** Genera to process the 3PPO invoices through a reassignment and reprioritization of its existing, approved Operating Budget, without necessitating a budget amendment that increases customer rates.

RESPECTFULLY SUBMITTED

In San Juan, Puerto Rico, this 22nd day of March, 2026

CERTIFICATE OF SERVICE: We hereby certify that the foregoing petition was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System, and courtesy copies were sent via electronic means to: nzayas@gmlex.net; Alexis.rivera@prepa.pr.gov; jfr@sbglaw.com; yahaira.delarosa@us.dlapiper.com; jan.albinolopez@us.dlapiper.com; hrivera@jrsp.pr.gov; katiuska.bolanos-lugo@us.dlapiper.com; legal@genera-pr.com; regulatory@genera-pr.com.

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