

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

NEPR

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IN RE: LUMA INITIAL BUDGET AND
RELATED TERMS OF SERVICE

CASE NO.: NEPR-MI-2021-0004

SUBJECT: 3PPO TPG RFP Costs

**P3A'S MOTION IN FURTHER SUPPORT OF ITS 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"), through its undersigned counsel, and respectfully submits this motion in support of its *Opposition to the Motion for Declaratory Determination filed by Genera PR LLC*:

1. On March 19, 2026, Genera PR LLC ("Genera") filed a Motion for Declaratory Determination requesting that this Honorable Energy Bureau absolve it of any contractual obligation to process and pay \$369,130.54 in costs incurred by the Third-Party Procurement Office ("3PPO") in connection with the Temporary Power Generation ("TPG") Request for Proposals ("RFP").

2. On March 22, 2026, P3A filed its Opposition, setting forth that the 3PPO costs arise within the contractual framework of the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement ("OMA") and must be addressed in accordance with its established budgetary mechanisms.

3. This supplemental motion is submitted to further clarify a central issue raised by Genera's Motion — namely, the premise that the 3PPO procurement process falls outside the scope of Genera's contractual obligations.

Genera's position relies on a characterization of the procurement as external to the OMA based on the form of the Energy Bureau's directives and the involvement of PREPA and P3A in administering the process. That characterization is incorrect.

4. The participation of PREPA and P3A does not render the procurement external to the OMA; rather, it reflects their compliance with the directives expressly issued by the Bureau. Both PREPA and P3A acted in strict adherence to those regulatory mandates, including the implementation of the procurement through the 3PPO. Accordingly, the structure and administration of the procurement are a direct result of regulatory compliance, not a basis to displace or reassign Genera's underlying contractual responsibilities under the OMA.

5. As demonstrated below, the engagement of the 3PPO was not an independent or extra-contractual undertaking, but rather a required consequence of Genera's Organizational Conflict of Interest ("OCI") as expressly governed by Annex VI of the OMA. Accordingly, the resulting costs remain within the contractual framework that governs Genera's performance and must be addressed through the Agreement's established mechanisms.

6. The 3PPO was not an independent or discretionary undertaking. It was the direct and necessary consequence of Genera's own OCI, expressly governed by the OMA. Genera's position would allow an operator to trigger a contractual safeguard and then disclaim responsibility for its implementation. The OMA does not permit that result.

7. Genera's argument rests on the premise that the TPG procurement is external to its contractual obligations. The record establishes otherwise. Genera initiated the February 26, 2025 filing requesting approval for approximately 800 MW of temporary generation. The 3PPO procurement process was the direct regulatory response to that request. Genera cannot invoke the Energy Bureau's authority to secure emergency generation and then disclaim responsibility for the procurement mechanisms required to execute that request.

8. The OMA is explicit. Annex VI establishes an OCI Policy that requires the use of an independent procurement office where an actual or apparent conflict exists. Genera's affiliation with New Fortress Energy ("NFE") is expressly identified as a source of such conflict. The risks of "biased ground rules" and "impaired objectivity" are contractually recognized conditions that trigger mandatory safeguards.

9. Section 4.2(p)(i) requires the Operator to develop and implement a Procurement Manual incorporating the OCI Policy. That Policy mandates the use of a third-party procurement office retained by the Administrator whenever a conflict exists. Accordingly, the 3PPO is not an independent or external procurement mechanism, but the contractually prescribed method through which Genera must perform in the presence of its own conflicts. When Genera is conflicted, the OMA does not revert authority to PREPA. It mandates the use of the 3PPO as a substitute mechanism to preserve procurement integrity.

10. Under Section 5.2(b) of the OMA, PREPA designated and appointed Genera as its agent for the purpose of entering into Facility Contracts necessary or

appropriate to operate, maintain, and/or support the Legacy Generation Assets. Consistent with that agency role, the OMA further contemplates that Genera is responsible for conducting and implementing the procurement processes necessary to discharge and fulfill its operational obligations, including the identification and acquisition of resources, equipment, and materials necessary to ensure system reliability and adequacy.

11. Such responsibility extends to all procurements required to meet demand and maintain sufficient reserve margins, except in those limited circumstances where a conflict of interest necessitates the use of an independent procurement administrator. The TPG RFP arises directly from Genera's execution of these operational responsibilities under the OMA, including the identification and procurement of resources necessary to address system capacity needs. Accordingly, the involvement of an independent entity such as the 3PPO reflects a structural safeguard to address conflicts of interest, not a transfer or displacement of Genera's underlying obligations.

12. Where Genera's corporate affiliations gave rise to a conflict of interest in the performance of that role, the OMA's OCI framework governs. Annex VI requires that such conflicts be mitigated through the use of the 3PPO retained by the Administrator to conduct the procurement process. The engagement of the 3PPO is therefore not external to Genera's authority, but a required contractual mechanism through which Genera's delegated functions are carried out in a conflict-free manner.

13. Accordingly, the 3PPO is not external to Genera's obligations - it is embedded within them as a required component of the OMA's conflict-mitigation framework.

14. The TPG RFP likewise cannot be separated from Genera's contractual responsibilities. The OMA imposes on Genera the obligation to ensure the availability of sufficient generation resources to meet system demand. That obligation necessarily encompasses not only identifying capacity shortfalls and implementing solutions required to maintain system reliability but also planning for and maintaining adequate reserve margins consistent with prudent utility practices and applicable reliability standards. This includes, at a minimum, the maintenance of planning reserve margins and contingency reserves sufficient to withstand contingencies (including forced outages of generating units) without compromising system stability.

15. Accordingly, Genera's responsibility extends beyond merely supplying sufficient capacity to meet forecasted demand; it includes ensuring that sufficient dispatchable and available reserves are in place at all times to preserve frequency control, voltage stability, and overall system reliability in the event of unplanned interruptions.

16. The TPG procurement is the direct implementation of that obligation. Genera identified the capacity deficit and initiated the process before this Bureau. The resulting procurement — and the mechanisms required to carry it out — are therefore operational consequences of Genera's contractual role. Critically, the purpose of the TPG RFP is not limited to addressing existing or forecasted

demand, but to closing the reserve margin deficiency identified by Genera and ensuring compliance with reliability requirements. The procurement is designed to secure both the firm capacity necessary to meet peak demand and the additional reserve capacity required to maintain appropriate planning reserve margins and contingency reserves. In doing so, it directly mitigates the risk associated with the unavailability or forced outages of generating units operated by Genera and ensures that the system retains sufficient operational flexibility and resiliency to withstand unforeseen events without service disruption.

17. As such, the TPG RFP constitutes a necessary and integral reliability measure within Genera's contractual mandate, rather than a discretionary or ancillary procurement. Responsibility and authority under the OMA operate together. Genera cannot retain the authority to initiate and structure generation solutions while disclaiming responsibility for the contractual mechanisms required to execute them.

18. Genera's Organizational Conflict of Interest is not an intervening event but expressly addressed in the OMA. The measures required to mitigate that conflict, including the engagement of the 3PPO, form part of Genera's contractual performance framework.

19. The July 24, 2025, Memorandum of Understanding further confirms this allocation. Genera expressly acknowledged that the 3PPO was engaged in support of its obligations under the OMA and agreed, in its role as PREPA's agent, to use PREPA-funded accounts within its budget to process and pay the associated costs.

20. Genera's argument that it cannot be required to pay these costs misstates the issue. P3A does not seek payment from Genera's corporate funds. Rather, P3A seeks compliance with Genera's administrative obligation to process these costs within the OMA's financial structure.

21. The fact that the invoiced amount exceeds the cap established in the MOU does not eliminate Genera's obligation. Under Section 7.3(e)(i) of the OMA, when an expenditure is projected to exceed the approved budget, the Operator must submit a proposed budget amendment to the Bureau for approval. The Agreement provides a mechanism to address such circumstances, and that mechanism must be followed.

22. Genera's request to classify these costs as a "one-time, voluntary accommodation outside the OMA framework" is inconsistent with the Agreement. The costs arise from the implementation of a mandatory contractual safeguard and therefore remain governed by the OMA's budgetary and regulatory structure.

23. The relief requested by Genera would separate the costs from the contractual framework that governs them and would shift those costs outside the mechanisms established by the OMA. The Agreement does not support that result.

WHEREFORE, P3A respectfully requests that this Honorable Bureau: DENY Genera's Motion for Declaratory Determination in its entirety; ORDER Genera to process and pay the 3PPO invoice through its existing Operating Budget; and DENY any relief that would shift these costs to PREPA or to ratepayers.

RESPECTFULLY SUBMITTED

In San Juan, Puerto Rico, this 9th day of April, 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; jmartinez@gmlex.net; alexis.rivera@prepa.pr.gov; jfr@sbgllaw.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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