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

IN RE: LUMA INITIAL BUDGETS AND RELATED TERMS OF SERVICE	**CASE NO.:** NEPR-MI-2021-0004 **SUBJECT:** Determination Regarding Payment for Temporary Generation Procurement

RESOLUTION AND ORDER

I. Relevant Background

Genera PR, LLC ("Genera") requested that the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") evaluate the need for the installation of approximately 800 megawatts ("MW") of temporary generation capacity and determine whether such installation would be consistent with Puerto Rico's energy public policy and the applicable regulatory framework.[1] Given that under the T&D OMA[2] LUMA is the entity responsible for analyzing generation resource adequacy, the Energy Bureau determined that LUMA was the entity that should prepare and submit any request for additional generation, the Energy Bureau ordered LUMA to present its position regarding Genera's request, specifically addressing the need for additional temporary generation and its capacity.[3]

Following several procedural filings, and after LUMA confirmed the need for additional temporary generation,[4] on March 19, 2025, the Energy Bureau ordered that a competitive procurement process be conducted to acquire the necessary generation resources.[5] Pursuant to the Energy Bureau's determination, P3 Authority, through the Independent Third-Party Procurement Office ("3PPO"),[6] initiated a procurement process for the acquisition of emergency generation resources. Initially, the 3PPO issued Request for Proposal No. 3PPO-0314-20-TPG ("RFP") for the acquisition of emergency generation which resulted in the conditional approval of one contract.[7] Notwithstanding, the 3PPO closed the RFP and later reopened the procurement process and issued the RFP No. 3PPO-0314-20-TPG2 ("TPG RFP"). Regarding this proceeding, to date, the Energy Bureau has granted regulatory approval to two contracts, pursuant to the applicable legal and regulatory framework, through Resolutions issued on December 11, 2025,[8] and February 2, 2026.[9] **The**

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[1] *See Request for Expedited Approval of Emergency Generation Capacity Solutions* filed by Genera on February 26, 2025 in *In Re: Plan Prioritario para la Estabilización de la Red Eléctrica*, Case No.: NEPR-MI-2024-0005.

[2] *Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement* signed by the Puerto Rico Electric Power Authority ("PREPA"), the Public-Partnership Authority ("P3 Authority") and LUMA Energy, LLC and LUMA Energy Servco, LLC (jointly referred as "LUMA") ("T&D OMA").

[3] *See Resolución y Orden* dated February 27, 2025 in *In Re: Plan Prioritario para la Estabilización de la Red Eléctrica*, Case No.: NEPR-MI-2024-0005 ("February 27 Resolution").

[4] *See Motion Submitting LUMA's Position Regarding Genera's Request for Expedited Approval of Emergency Generation Capacity Solutions* filed by LUMA on March 6, 2025 in *In Re: Plan Prioritario para la Estabilización de la Red Eléctrica*, Case No.: NEPR-MI-2024-0005 ("LUMA March 6 Motion").

[5] *See Resolution and Order* issued in *In Re: Plan Prioritario Para La Estabilización de la Red Eléctrica*, Case No. NEPR-MI-2024-0005, dated March 19, 2025 ("March 19 Resolution").

[6] In this case, the company Regulatory Compliance Services, Corp. acts as the 3PPO.

[7] *See Resolution and Order* dated July 4, 2025 in *In Re: Plan Prioritario para la Estabilización de la Red Eléctrica*, Case No.: NEPR-MI-2024-0005 ("July 4 Resolution").

[8] *See Resolution and Order* dated December 11, 2025 in *In Re: Plan Prioritario para la Estabilización de la Red Eléctrica*, Case No.: NEPR-MI-2024-0005 ("December 11 Resolution").

[9] *See Resolution* dated February 2, 2026 in *In Re: Plan Prioritario para la Estabilización de la Red Eléctrica*, Case No.: NEPR-MI-2024-0005 ("February 2 Resolution").

Energy Bureau reiterates, as stated in the December 11 Resolution and the February 2 Resolution, that it did not participate in, direct, or supervise the TPG RFP or the negotiations and decisions undertaken as part of that procurement process. The Energy Bureau's role was limited to the regulatory review of the resulting agreements once submitted for its consideration. Accordingly, the Energy Bureau's review and approval of those agreements should not be construed as an endorsement, validation, or approval of the manner in which the TPG RFP was structured, administered, or conducted. Responsibility for those matters rests with the governmental entities that conducted and administered the procurement.[10]

On March 19, 2026, Genera requested that the Energy Bureau issue an order regarding certain invoices issued by 3PPO related to the services rendered during the generation resource procurement process, which P3 Authority claims Genera must pay.[11] Genera requests that the Energy Bureau determine that Genera is not contractually obligated under the Generation OMA[12] to pay the 3PPO procurement costs related to the TPG RFP, including certain invoices totaling $369,130.54. Genera further asserts that, should it nevertheless make such payment, it should be treated as a one-time voluntary payment made as "an accommodation", outside the Generation OMA framework and without creating any ongoing contractual obligation. Alternatively, if payment is authorized, Genera requests approval of additional funding to cover such costs and clarification that any contracts resulting from the TPG RFP are outside Genera's operational and funding responsibilities under the Generation OMA.

On March 22, 2026, P3 Authority filed its response to the Genera March 19 Motion.[13] P3 Authority opposes Genera's request for a declaratory determination and argues that the 3PPO procurement costs are Genera's contractual responsibility under the Generation OMA.[14] Specifically, P3 Authority requests that the Energy Bureau deny Genera's requests to: (i) disclaim responsibility for the 3PPO procurement costs, (ii) classify the payment as voluntary accommodation, and (iii) shift future 3PPO costs to PREPA and consumers.[15] P3 Authority further requests that Genera be ordered to pay the 3PPO invoices through a reassignment of its existing approved Operating Budget without increasing customer rates.[16] Subsequently, P3 Authority supplemented its March 22 Motion, [17] and Genera filed a reply thereto.[18] On June 16, 2026, the 3PPO entered a special appearance before the Energy Bureau and requested leave to intervene in this proceeding, essentially adopting the position previously set forth by P3 Authority in its filings ("3PPO June 16 Motion").[19]

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[10] *See* December 11 Resolution at p. 7 and February 2 Resolution at p. 6.

[11] *See Motion for Declaratory Determination, filed by Genera on March 19, 2026* ("Genera March 19 Motion").

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

[13] *See P3A's Response in Opposition to Genera's Motion for Declaratory Determination*, filed by P3 Authority on March 22, 2026 ("P3 Authority March 22 Motion").

[14] *See* P3 Authority March 22 Motion, p. 3-5.

[15] *See* P3 Authority March 22 Motion, p. 10.

[16] *See Id*.

[17] *See P3A's Motion in Further Support of its Opposition to Genera's Motion for Declaratory Determination* filed by P3 Authority on April 9, 2026 ("P3 Authority April 9 Motion").

[18] *See Genera's Reply to P3A's Motion in Further Support of its Opposition to Genera's Motion for Declaratory Determination* filed by Genera on April 28, 2026 ("Genera April 28 Motion").

[19] *See Motion for Intervention by the Third-Party Procurement Office in Support of the Puerto Rico Public-Private Partnerships Authority's Position Regarding the 3PPO Invoice* filed by 3PPO on June 16, 2026 ("3PPO June 16 Motion").

II. Summary of Parties' Positions

A. Genera March 19 Motion

Through the Genera March 19 Motion, Genera requests a determination that it is not contractually obligated under the Generation OMA to pay the $369,130.54 in 3PPO invoices associated with the TPG RFP. Genera argues that the Energy Bureau's March 19 and December 11 Resolutions placed responsibility for initiating and conducting the temporary-generation procurement through PREPA, P3 Authority, and the 3PPO, rather than Genera, and contemplated subsequent Energy Bureau review of the associated costs of the process for prudence and reasonableness.[20] Genera further maintains that its responsibilities under the Generation OMA are principally tied to the operation and maintenance of the Legacy Generation Assets and that the TPG RFP, which concerns temporary generation resources, is not a Facility Contract under Section 5.2 of the Generation OMA. On that basis, Genera contends that the procurement falls outside its contracting authority and the related organizational conflict framework invoked by P3 Authority.[21]

Genera also maintains that the Generation OMA does not require it to fund Pass-Through Expenditures or similar costs from its own funds and that any authorized payment must be addressed through the applicable budget and reimbursement mechanisms.[22] Nevertheless, Genera states that it would consider payment of the invoices as one-time accommodation if the Energy Bureau first determined that the costs are authorized, prudent, and reasonable and approves the appropriate budget mechanism, including any necessary adjustment under Section 7.3(e)(i) of the Generation OMA.[23] Genera nevertheless emphasizes that it did not participate in the TPG RFP and had no visibility into the 3PPO's work or expenditures and therefore cannot independently determine whether the invoiced amounts are reasonable.[24] It further requests that future costs associated with the TPG RFP, or similar processes be budgeted and paid by PREPA and that contracts resulting from the TPG RFP be treated outside Genera's operational and funding responsibilities under the Generation OMA.[25]

B. P3 Authority March 22 Motion

P3 Authority opposes Genera's requested contractual determination, although it does not oppose payment of 3PPO costs that are determined to be prudent and reasonable.[26] P3 Authority argues that the TPG RFP falls within Genera's responsibilities under the Generation OMA because those responsibilities are not limited to the Legacy Generation Assets and include support related to the mobilization of emergency generation resources.[27] It further contends that Genera's corporate affiliations created an actual or potential Organizational Conflict of Interest under Annex VI of the Generation OMA, thereby requiring use of the 3PPO as the applicable conflict-mitigation mechanism.[28] According to P3 Authority, PREPA's delegation of generation-related procurement functions to Genera did not revert to PREPA when such a conflict arose; rather, the Generation OMA required implementation of the OCI framework, including use of the independently retained 3PPO.[29]

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[20] *See* Genera March 19 Motion, p. 1.

[21] *See* Genera March 19 Motion, pp. 6-8.

[22] *See* Genera March 19 Motion, pp. 6-7.

[23] *See* Genera March 19 Motion, pp. 8-9.

[24] *See* Genera March 19 Motion, p. 9.

[25] *See* Genera March 19 Motion, pp. 8-10.

[26] *See* P3 Authority March 22 Motion, pp. 1-2.

[27] See P3 Authority March 22 Motion, pp. 3-5.

[28] *See* P3 Authority March 22 Motion, p. 4

[29] *See* P3 Authority March 22 Motion, pp. 2, 4-6.

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P3 Authority therefore characterizes the 3PPO costs as reasonable and documented Pass-Through Expenditures incurred in connection with Genera's contractual responsibilities. It also relies on the July 24, 2025 Memorandum of Understanding ("MOU"), entered by and between P3 Authority, PREPA and Genera which, according to P3 Authority, recognizes the 3PPO's role and provides for payment of 3PPO's fees and expenses using PREPA-funded accounts administered within Genera's budget. P3 Authority stresses that it is not asking Genera to pay the invoices from its Service Fee or corporate funds.[30] Rather, it asks the Energy Bureau to deny Genera's characterization of payment as a voluntary accommodation and to require Genera to process the invoices through a reassignment or reprioritization of its existing approved Operating Budget, without an increase in customer rates.[31]

C. P3 Authority April 9 Motion

In the P3 Authority April 9 Motion, P3 Authority reiterates and supplements its opposition to Genera's position. It emphasizes that the TPG RFP arose after Genera itself identified a need for additional temporary generation and argues that Genera's responsibilities under the Generation OMA extend beyond operating the Legacy Generation Assets to maintaining adequate generation capacity, reserve margins, and system reliability.[32] P3 Authority contends that the procurement was intended to address identified capacity and reserve deficiencies and therefore constituted an implementation of Genera's contractual reliability responsibilities rather than an unrelated or discretionary procurement.[33] It again maintains that Genera could not separate its role in identifying and proposing the generation solution from the conflict-of-interest safeguards required to implement that solution.[34]

P3 Authority also reiterates that Genera's affiliations required use of the 3PPO and again invokes the MOU as evidence of the parties' understanding regarding the 3PPO's role and payment.[35] According to P3 Authority, the MOU confirms that Genera, acting as PREPA's agent, would process the related costs using PREPA-funded budget accounts. Thus, P3 Authority clarifies that its position is not that Genera must bear the economic burden of the invoices from its own funds, but that Genera has an administrative obligation to process those costs through the financial mechanisms established under the Generation OMA.[36]

D. Genera April 28 Motion

In the Genera April 28 Motion, Genera argues that the dispute should remain focused on whether the approximately $369,130.54 in 3PPO invoices is authorized, prudent, and reasonable, rather than on the broader contractual issues raised by P3 Authority.[37] Genera reiterates its interpretation that the Energy Bureau's March 19 and December 11 Resolutions established a framework under which PREPA, through P3 Authority and the 3PPO, conducted the procurement while the Energy Bureau retained authority to review the resulting costs.[38] Genera therefore contends that compelling immediate payment from its Operating Budget would bypass the review contemplated by those orders.[39] It also reiterates that the procurement concerned system-wide temporary generation rather than the operation and maintenance of the Legacy Generation Assets.

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[30] *See* P3 Authority March 22 Motion, p. 7.

[31] *See* P3 Authority March 22 Motion, pp. 7-10.

[32] *See* P3 Authority April 9 Motion, p. 5.

[33] *See* P3 Authority April 9 Motion, p. 5.

[34] *See* P3 Authority April 9 Motion, pp. 5-6.

[35] *See* P3 Authority April 9 Motion, p. 6.

[36] *See* P3 Authority April 9 Motion, pp. 6-7.

[37] *See* Genera April 28 Motion, p. 2

[38] *See* Genera April 28 Motion, p. 2.

[39] *See* Genera April 28 Motion, p. 2.

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Genera further reiterates that it was entirely outside the TPG RFP process, had no visibility into the 3PPO's work or expenditures, and consequently cannot independently verify or justify the scope or amount of the invoiced charges.[40] Accordingly, Genera modifies its prior position and now requests that the Energy Bureau (1) confirm that the invoices are subject to its review for authorization, prudence, and reasonableness; (2) deny P3 Authority's request to compel immediate payment from Genera's Operating Budget before Energy Bureau's completes that review; and (3) if Energy Bureau's later determines the invoice is prudent and reasonable, confirm that Genera may pay the invoice from an existing "legal" budget allocation following the rate case budget approval.[41]

E. 3PPO June 16 Motion

Through a special appearance, the 3PPO requests intervention and substantially adopts P3 Authority's position regarding responsibility for the invoices. The 3PPO maintains that the invoiced amounts arise from services performed in connection with the TPG RFP pursuant to the independent procurement structure used to address Genera's conflict of interest. It relies on the Generation OMA framework and the MOU in support of its position that the costs should be processed using PREPA-funded accounts and contends that the Energy Bureau may review the invoices for prudence and reasonableness. The 3PPO therefore requests that its invoices be recognized as valid Pass-Through Expenditures to be processed through the applicable service accounts or, alternatively, that the Energy Bureau authorize payment through Genera's Operating Budget.[42]

III. Evaluation and Determination

A. Clarification of the Energy Bureau's March 19 Resolution

1. Entity Responsible for the Procurement Process

As a threshold matter, the Energy Bureau finds it necessary to clarify the scope and intent of its March 19 Resolution. Although the language used therein directed PREPA to appear before the P3 Authority and initiate the competitive procurement process through the 3PPO, that directive must be understood in the context in which it was issued.[43] The principal regulatory concern addressed by the Energy Bureau was that Genera could not conduct or control a procurement in which one of its affiliates could potentially participate, as doing so could create an actual or apparent conflict of interest and undermine the independence and integrity of the competitive process. Separate and apart from Genera's inability to conduct or control the procurement on PREPA's behalf, the competitive process also required that Genera be treated as a "restricted party". In that capacity, Genera could not participate as part of, advise, assist, or otherwise support any proponent or proponent team in connection with the preparation or submission of a proposal, nor could it use its position or access to non-public information to influence or otherwise provide an advantage to any participant in the competitive process. This restriction was intended to preserve the independence and fairness of the procurement and to prevent Genera's access to information arising from its role as operator of PREPA's Legacy Generation Assets from creating an actual or perceived competitive advantage. Indeed, the record reflects that the use of an independent procurement mechanism was intended to address precisely such conflict-of-interest concerns. The March 19 Resolution should therefore not be construed as a categorical determination that only the 3PPO was legally or contractually responsible for conducting the procurement. Rather, the Energy Bureau's directive was intended to ensure that the procurement be conducted independently from Genera by the governmental entity or procurement mechanism having the corresponding legal or contractual authority, whether PREPA, the P3 Authority, or the 3PPO, as applicable.

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[40] *See* Genera April 28 Motion, pp. 2-3.

[41] *See* Genera April 28 Motion, pp. 3-4.

[42] *See* 3PPO June 16 Motion, pp. 2-4.

[43] *See* March 19 Resolution, p. 2.

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This interpretation is consistent with the Energy Bureau's treatment of comparable competitive procurements involving the conversion of PREPA generation facilities to natural gas. In its January 31, 2025 Resolutions addressing the proposed conversion of the Mayagüez combustion turbines and the Palo Seco mobile units -issued before the March 19 Resolution- the Energy Bureau expressly directed that "[t]he P3 Authority, 3PPO or PREPA, as applicable," conduct the required competitive procurement process.[44] The Energy Bureau subsequently employed the same approach in its July 4, 2025 Resolution concerning the proposed conversion of the Cambalache units to natural gas, again providing that the competitive procurement be conducted by the P3 Authority, 3PPO, or PREPA, without specifying which entity would be responsible for conducting the procurement.[45] These directives reflect the Energy Bureau's consistent regulatory objective: to require an independent, transparent, and competitive procurement while leaving the allocation of responsibility for administering that procurement to the entity having the applicable legal or contractual authority. Accordingly, the reference to the 3PPO in the March 19 Resolution should not be understood as an adjudication of the respective contractual or statutory responsibilities of PREPA, the P3 Authority, and the 3PPO, nor as prescribing which of those entities must ultimately bear responsibility for administering the procurement or its associated administrative costs. The Energy Bureau's directive was intended to ensure both that the procurement was conducted by an entity independent from Genera and that Genera was treated as a restricted party throughout the competitive procurement process.

2. *Scope of Energy Bureau "Prudent and Reasonable" Review*

The Energy Bureau further clarifies the meaning of its statement that, following completion of the competitive procurement process, the associated costs would be submitted for a determination as to whether they were "prudent and reasonable".[46] Genera interprets that language as reserving to the Energy Bureau the responsibility to determine whether the $369,130.54 invoiced by the 3PPO for conducting the procurement constitutes an authorized, prudent, and reasonable expenditure.[47] The 3PPO similarly maintains that the Energy Bureau retained authority to review the prudence and reasonableness of its invoiced fees and expenses and has offered to submit documentation concerning the services performed, time expended, and expenses incurred for that purpose.[48] That interpretation does not accurately reflect the intended scope of the Energy Bureau's directive. The reference to the Energy Bureau's subsequent review of costs concerned the regulatory review of the results of the competitive procurement, principally the prices, costs, terms, and conditions embodied in the contracts resulting from that process, not an audit or validation by the Energy Bureau of the administrative fees, professional services, time charges, or other expenses incurred by the entity conducting the procurement.

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[44] *See Resolution and Order for Request for Leave to Operate Mayaguez CTs with Natural Gas as Primary Fuel* ("January 31 Resolution for the Mayaguez CTs"), p. 15; and *Resolution and Order for Request for Leave to Operate Palo Seco MP with Natural Gas as Primary Fuel* ("January 31 Resolution for the Palo Seco MPs"), p. 2, both issued on January 31, 2025, in *In Re: Review of Genera PR, LLC Request to Operate Palo Seco MP and Mayaguez CT with Natural Gas as Primary Fuel*, Case No. NEPR-MI-2024-0004.

[45] See Resolution and Order for Request for Leave to Change Cambalache Units 2 and 3 Primary Fuel to Natural Gas ("July 4 Resolution for the Cambalache Units"), p. 15, issued on July 4, 2025, in *In Re: Review of Genera PR, LLC Request to Operate Palo Seco MP and Mayaguez CT with Natural Gas as Primary Fuel*, Case No. NEPR-MI-2024-0004.

[46] *See* March 19 Resolution, p. 2.

[47] *See* Genera March 19 Motion, p. 8-9.

[48] *See* 3PPO June 16 Motion, p. 3-4.

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Such distinction is consistent with the Energy Bureau's statutory role. Pursuant to Section 6.32 of Act 57-2014[49] and Regulation 8815,[50] the Energy Bureau reviews contracts within its jurisdiction to determine, among other matters, their compliance with Puerto Rico's energy public policy and applicable regulatory requirements. Consistent with that authority, the Energy Bureau has already carried out its regulatory review of contracts resulting from the competitive procurement at issue. Three contracts resulting from that process have been submitted to the Energy Bureau for regulatory review, and, with respect to two of them, the Energy Bureau determined that the proposed contractual arrangements complied with the applicable energy public policy and granted the corresponding regulatory authorization.[51] It is this substantive regulatory review of the contracts and the costs resulting from the competitive procurement that was contemplated by the March 19 Resolution, rather than a review of the internal administrative expenses incurred by the entity responsible for conducting the procurement. The reasonableness of the separate fees and expenses incurred by the 3PPO in administering the procurement presents a distinct matter. The Energy Bureau did not retain the 3PPO, did not supervise its day-to-day activities, did not approve or monitor the hours devoted to the procurement, and was not responsible for administering the contractual arrangement pursuant to which those services were rendered.[52]

The parties' filings also refer to a Memorandum of Understanding dated July 24, 2025 ("MOU"), purportedly executed among P3 Authority, PREPA, and Genera and governing certain aspects of the 3PPO services and their payment.[53] For example, P3 Authority represents that the MOU established that Genera, acting as PREPA's agent, would use PREPA funds within its budget to pay certain 3PPO costs, subject to an identified cap.[54] The 3PPO likewise relies upon that MOU in support of its position regarding the allocation and payment of its invoices.[55] However, the MOU itself has not been submitted to or otherwise placed before the Energy Bureau for its consideration. Accordingly, beyond the parties' respective characterizations of that agreement in their filings, the Energy Bureau has not evaluated, and does not make any determination regarding, the MOU's terms, scope, legal effect, allocation of responsibilities, or the obligations that may arise thereunder.

Under these circumstances, the determination of whether the particular services invoiced by the 3PPO were actually performed, properly documented, within the applicable scope of work, and reasonably incurred in carrying out the procurement must, in the first instance, be made by the entity or entities that retained, contracted with, or supervised the 3PPO and that are therefore positioned to verify the work performed and the expenses incurred. Significantly, Genera itself acknowledges the importance of such direct knowledge and

[49] Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014").

[50] *Joint Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation and Award Process for the Modernization of the Generation Fleet*, November 9, 2016 ("Regulation No. 8815").

[51] *See* December 11 Resolution and February 2 Resolution.

[52] As a factual matter, the P3 Authority has utilized the 3PPO on multiple occasions to conduct or assist with competitive procurement processes. In none of those instances has the P3 Authority submitted to the Energy Bureau, for its review or approval, the invoices for the services rendered by the 3PPO in connection with those procurements. This course of conduct further supports the conclusion that the parties themselves have not historically understood the Energy Bureau's regulatory role to encompass the review or validation of the 3PPO's fees and expenses incurred in administering competitive procurement processes. This should not be confused, however, with the Energy Bureau's authority, in the exercise of its ratemaking and budgetary responsibilities, to determine whether an expenditure or budgetary allocation associated with such services is reasonable, justified, and appropriate for recovery from ratepayers. The former involves verifying whether the services were actually rendered, properly documented, and invoiced in accordance with the applicable engagement, matters principally within the knowledge and responsibility of the entity that retained or supervised the 3PPO, whereas the latter constitutes a regulatory determination as to whether the resulting expenditure may appropriately be recognized for budgetary or ratemaking purposes.

[53] *See* P3 Authority March 22 Motion and P3 Authority April 9 Motion.

[54] *See* P3 Authority March 22 Motion, p. 3.

[55] *See* 3PPO June 16 Motion, p. 2-4.

oversight in evaluating the invoice.[56] In its reply, Genera states that it "was entirely outside the TPG RFP process," had "no visibility into the 3PPO's work or expenditures," and therefore could not independently verify or justify the scope or amount of the fees charged for work that it neither directed nor participated in.[57] That acknowledgment illustrates the underlying problem with Genera's request that the Energy Bureau make the very determination that Genera states it cannot make because it lacked involvement in, visibility over, and knowledge of the 3PPO's work.

The Energy Bureau was likewise not the entity that retained or supervised the 3PPO, nor did it monitor the services performed, the time devoted to individual tasks, or the expenses incurred in conducting the procurement. The parties' own submissions therefore do not provide a basis for transforming the Energy Bureau's regulatory review of the procurement results into a first-instance audit or validation of the 3PPO's invoice. Rather, the entity or entities that retained, administered, or supervised the 3PPO are in the position to determine, based on their knowledge of the engagement and the supporting documentation, whether the invoiced services and expenses were actually incurred, adequately supported, and reasonable. The Energy Bureau's March 19 Resolution should not be read as transferring that contractual and administrative responsibility to the Energy Bureau merely because the resulting procurement and contracts remain subject to the Energy Bureau's independent regulatory oversight. [58]

B. Responsibility for Payment of the TPG RFP Procurement Costs

(1) PREPA Responsibility as Owner of the Electric System

Having clarified the manner in which the reasonableness of the amounts invoiced by the 3PPO should be evaluated, the Energy Bureau must next determine the source from which any amount ultimately determined to be payable should be funded. The parties devote substantial portions of their respective filings to competing interpretations of the Generation OMA, including the scope of Genera's obligations, the applicability of the Organizational Conflict of Interest provisions, whether the 3PPO costs constitute Pass-Through Expenditures, and the budgetary mechanisms that may be available under the Generation OMA. P3 Authority, for example, maintains that PREPA delegated generation-related procurement functions to Genera under Section 5.2(b) of the Generation OMA and that, when Genera is conflicted, the Generation OMA requires the 3PPO to assume the procurement function.[59] Genera, in contrast, disputes that characterization and maintains that the procurement was structured through PREPA, P3 Authority, and the 3PPO rather than through Genera.[60]

The Energy Bureau need not, and for purposes of the present determination does not, adjudicate those competing contractual interpretations. Rather, the Energy Bureau resolves the payment issue based upon the respective roles of the entities within Puerto Rico's electric system, the regulatory and budgetary principles applicable to the procurement at issue, and the particular circumstances surrounding this matter, without determining the merits of the parties' broader contractual disputes.

Genera's principal responsibility under the Generation OMA is the operation and maintenance of PREPA's Legacy Generation Assets.[61] Although the Generation OMA may impose additional responsibilities upon Genera, including certain responsibilities associated

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[56] *See* Genera April 28 Motion, p. 3.

[57] *See Id*.

[58] As stated before, nothing herein, however, should be construed as limiting the Energy Bureau's authority to review any expenditure to the extent such review may become relevant or necessary in the exercise of its statutory ratemaking, budgeting, or other regulatory responsibilities.

[59] *See* P3 Authority March 22 Motion, p. 5-6.

[60] *See* Genera April 28 Motion, p. 2.

[61] *See* Genera April 28 Motion, p. 2-3.

with emergency generation resources, as P3 Authority emphasizes in its filings, the temporary generation resources procured through the TPG RFP are not themselves Legacy Generation Assets. Indeed, P3 Authority recognizes that Genera's position rests in part on that distinction, while arguing that Annex IX of the Generation OMA nevertheless includes assistance in the mobilization of emergency power generation resources within Genera's Scope of Services.[62] Resolution of that contractual disagreement is unnecessary here.

More fundamentally, the issue presented here does not concern the operation or availability of existing generation resources within the respective responsibilities of the system operators, but rather the need to procure additional generation resources beyond those then available to the system. Once such a system-wide generation resource deficiency is identified, responsibility for determining and implementing the measures necessary to procure the additional generation resources ultimately rests with PREPA, as owner of Puerto Rico's generation assets and the public corporation responsible for the electric power system.

Within the existing operational structure, LUMA, as Transmission and Distribution System Operator, identifies generation adequacy requirements and may determine that available generation is insufficient to satisfy system reliability needs and communicate such deficiency to PREPA.[63] Genera, by virtue of its operation of the Legacy Generation Assets, and PREPA, by virtue of its operation of the hydropower facilities, may likewise identify generation conditions, operational limitations, or resource needs relevant to such determination. PREPA may and should consider the technical and operational information provided by both operators in determining the measures necessary to address an identified generation deficiency. That is essentially what occurred here. Although the initial request for temporary generation was presented by Genera,[64] the need for additional generation resources was subsequently validated through the applicable system-planning and operational process, including LUMA's determination regarding the generation deficiency.[65] The fact that Genera initially identified or proposed a potential solution does not alter the fundamental nature of the need being addressed. The TPG RFP was undertaken to obtain additional temporary generation capacity necessary to address a system generation deficiency and preserve the reliability and stability of Puerto Rico's electric system. **Accordingly, the underlying responsibility for procuring the additional temporary generation resources necessary to address that system need rests with PREPA.**

(2) The Use of the 3PPO in the Procurement Process

PREPA, however, need not conduct every procurement directly. Where PREPA determines that a procurement should be conducted through the P3 Authority, or where the involvement of the P3 Authority is otherwise required pursuant to Act 120-2018,[66] PREPA may avail itself of the P3 Authority's statutory and regulatory procurement mechanisms to procure the required resources. In such circumstances, PREPA provides the relevant technical and operational requirements, and the P3 Authority administers the procurement pursuant to its governing statute, regulations, procedures, and available procurement mechanisms. The P3 Authority may, in turn, determine the appropriate way to perform those functions, including, where legally permissible and appropriate, retaining independent professional resources to assist in administering the procurement.

The fact that the P3 Authority conducts or administers a procurement on PREPA's behalf does not, however, mean that the costs of such procurement become ordinary operating expenses of the P3 Authority. The procurement is undertaken to satisfy PREPA's need for additional generation resources. Consequently, the reasonable and properly supported costs

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[62] *See* P3 Authority April 9 Motion, p. 3.

[63] *See* Section 5.13 (d) of the T&D OMA.

[64] *See* Genera March 19 Motion.

[65] *See* LUMA March 6 Motion.

[66] Act No. 120-2018, as amended, known as the "Puerto Rico Electric Power System Transformation Act ("Act 120-2018").

incurred in conducting that procurement should, as a general matter, be funded by PREPA, the entity on whose behalf and for whose system needs the procurement is undertaken. PREPA must therefore make available to the P3 Authority the financial resources reasonably necessary to conduct such procurement, including the reasonable costs of any independent professional entity appropriately retained by the P3 Authority to assist in that process.[67]

This allocation of responsibilities is consistent with the statutory framework governing the P3 Authority. Act 29-2009[68] recognizes that, when the P3 Authority undertakes processes or provides services on behalf of a Participating Government Entity (as defined in Act 29-2009), the expenses associated with those activities may be charged to or reimbursed by that entity. Section 6(a)(vi) of Act 29-2009 authorizes the P3 Authority to impose charges for services rendered in connection with processes undertaken for Participating Government Entities and expressly contemplates reimbursement of project-related expenses, including consultant and direct administrative costs. Section 6(a)(viii) of Act 29-2009 likewise authorizes agreements with Government Entities concerning expenses, service charges, and corresponding reimbursements. These provisions reflect the general statutory principle that the existence of the P3 Authority's own operating budget does not require it to absorb project-specific costs incurred in carrying out a process on behalf of another Government Entity.

That statutory framework is also relevant to the P3 Authority's use of the 3PPO in connection with the TPG RFP. As explained above, in administering a procurement on PREPA's behalf, the P3 Authority may utilize the professional resources legally available to it to carry out that process. Accordingly, for purposes of resolving the present payment issue, the Energy Bureau need not determine whether the Generation OMA independently required the use of the 3PPO. The Energy Bureau therefore concludes that the P3 Authority had the authority to utilize the 3PPO to assist in conducting the TPG RFP, subject to compliance with the legal and procurement requirements applicable to such engagement.

(3) Funding of 3PPO TPG RFP Payment

Having determined that responsibility for the procurement ultimately rests with PREPA and that the P3 Authority had the authority to utilize the 3PPO to assist in conducting the TPG RFP, the Energy Bureau must now determine the appropriate funding mechanism for the amount, if any, ultimately validated as payable for the 3PPO's services. In making that determination, the Energy Bureau considers the budgetary principles applicable to procurement-related expenditures.

As a general budgetary principle, neither PREPA nor the private operators should assume that every procurement-related expenditure that was not expressly identified in an approved budget automatically justifies an increase to the applicable budget or an additional charge to customers.[69] The nature of operating a complex electric system necessarily requires PREPA, Genera, and LUMA to maintain sufficient budgetary flexibility to address

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[67] The Energy Bureau clarifies that it is not making any determination at this time regarding circumstances in which the P3 Authority may have included, as part of its own approved operating budget, funds specifically intended to conduct procurement processes on behalf of PREPA or other governmental entities. To the extent that such funds may have been budgeted and approved for that purpose, the allocation of procurement-related costs may warrant a different analysis, and the entity on whose behalf a procurement is conducted would not necessarily be required to separately provide or reimburse the corresponding funds. The Energy Bureau, however, has not undertaken in this proceeding a broader assessment of whether the P3 Authority's approved budgets generally contain or have contained such appropriations, nor does it make any determination regarding the consequences that the existence of such budgeted funds may have in other circumstances. The Energy Bureau's determination in this case is based on the assumption that no funds were specifically allocated in the P3 Authority's applicable operating to conduct the TPG RFP or a procurement process of this nature.

[68] Act No. 29-2009, as amended, known as the “Public-Private Partnership Act” (“Act 29-2009”).

[69] *See* Genera March 19 Motion, p. 9. In its Request, Genera maintains that an increase to its Operating Budget is warranted to address circumstances such as those presented here, where additional costs were incurred in connection with the conduct of the TPG RFP procurement process.

reasonable and foreseeable contingencies arising during the fiscal year.[70] This includes, as applicable to each entity's responsibilities, the potential need to conduct competitive procurements, retain independent procurement resources, address conflicts of interest, or incur other reasonable administrative expenses necessary to carry out their respective functions.

This budgetary principle applies equally where use of an independent procurement entity is required because an operator cannot participate in or administer a particular procurement. Genera's approved budgets should contain sufficient flexibility to address reasonable costs associated with independent procurement mechanisms when their use is required in connection with Genera's responsibilities. The same principle applies to LUMA when an independent procurement mechanism becomes necessary in connection with its responsibilities, and to PREPA when it must conduct or sponsor a procurement to satisfy its own obligations. The absence of a specific budget item identifying a particular procurement or independent procurement entity does not, standing alone, establish a need for additional revenues or a budget increase. To the extent necessary, the entity responsible should first utilize available funds, contingencies, or appropriate reallocations within its approved budget.

This approach is essential to protect customers from unnecessary rate impacts. Approved budgets should be structured with sufficient flexibility to absorb reasonable contingencies inherent in the operation and administration of the electric system without requiring an immediate increase in rates each time unforeseen procurement or related administrative expense arises. There may, of course, be circumstances in which the magnitude or nature of an unforeseen event requires a budget reallocation or, in an exceptional case, an amendment to an approved budget. Such circumstances must be evaluated on their particular facts. As a general rule, however, procurement-related administrative expenses should be addressed within the existing approved budgets of the entity responsible for the underlying procurement and should not automatically result in additional costs being imposed upon customers.

Consistent with the principles set forth above, PREPA, Genera, and LUMA are expected to structure and administer their respective approved budgets with sufficient flexibility to address reasonable procurement-related costs and the potential use of independent procurement resources when required in connection with their respective responsibilities. The mere fact that such an expense was not separately identified when a budget was approved will not, without more, justify an increase in the approved budget or the recovery of additional revenues from customers. The responsible entity must first identify and utilize available budgetary resources, including reasonable reallocations where appropriate, before seeking additional funding.

Accordingly, the Energy Bureau determines that PREPA **SHALL BE** responsible for the payment of the reasonable and properly supported costs incurred by the 3PPO in connection with the TPG RFP, using its allocated funds. The P3 Authority, as the entity responsible for administering the procurement and positioned to evaluate the services performed on its behalf, shall review the invoices and supporting documentation and determine the amount, if any, that represents reasonable, adequately documented, and properly incurred costs associated with the TPG RFP. Upon such determination, PREPA shall pay, from its allocated funds, the amount validated by the P3 Authority.

IV. Conclusion

For the reasons stated herein, the Energy Bureau determines that the procurement of the temporary generation resources at issue was undertaken to address a system generation need that, under the specific circumstances presented here, falls primarily within PREPA's responsibilities, rather than within the ordinary operational and procurement responsibilities assigned to Genera or LUMA. Accordingly, PREPA shall be responsible for the payment of the validated procurement costs associated with the TPG RFP. The P3

[70] *See*, in general, *Final Resolution and Order on Electricity Rates* issued on April 15, 2026, in *In Re: Puerto Rico Electric Power Authority Rate Review*, Case No. NEPR-AP-2023-0003.

Authority, rather than the Energy Bureau, shall determine, based upon the invoices and supporting documentation and its knowledge and administration of the procurement, the reasonable amount properly payable for the 3PPO services. If PREPA determines that its allocated funds are insufficient to satisfy such payment obligation, PREPA may request additional funding from the Energy Bureau upon demonstrating both the insufficiency of available funds and the existence of extraordinary circumstances that justify the requested additional funding and a departure from the otherwise applicable budgetary principles discussed herein.

In light of the foregoing, the Energy Bureau finds it unnecessary at this time to resolve the parties' competing contractual interpretations concerning the Generation OMA, the characterization of the 3PPO costs, the effect of the MOU, or the parties' respective contractual payment obligations. Accordingly, this determination does not constitute an adjudication of those or any other broader contractual disputes among the parties, nor should it be construed as establishing a precedent requiring additional budget allocations for future procurement-related expenses.[71]

The Energy Bureau **WARNS** that, in accordance Art. 6.36 of Act 57-2014:

(i) noncompliance with this Resolution and Order, regulations and/or applicable laws may carry the imposition of fines and administrative sanctions from ten thousand dollars ($10,000) up to one hundred twenty-five thousand dollars ($125,000) per day; and

(ii) for any recurrence of non-compliance or violation, the established penalty shall increase to a fine of not less than fifteen thousand dollars ($15,000) nor greater than two hundred fifty thousand dollars ($250,000), at the discretion of the Energy Bureau.

Be it notified and published.

Edison Avilés Deliz
Chairman

Ferdinand A. Ramos Soegaard
Associate Commissioner

Sylvia B. Ugarte Araujo
Associate Commissioner

Antonio Torres Miranda
Associate Commissioner

[71] The Energy Bureau notes that P3 Authority relies on the MOU to support its contention that Genera is required to process and pay the 3PPO costs through the budgetary mechanisms identified by P3 Authority. (See P3 Authority March 22 Motion and P3 Authority April 9 Motion). As stated above, however, that MOU has not been submitted to or reviewed by the Energy Bureau, and the Energy Bureau therefore makes no determination regarding its scope or legal effect. The Energy Bureau cautions that, while a memorandum of understanding may appropriately memorialize or clarify the parties' understandings regarding the implementation of existing contractual obligations, it should not be used as a vehicle to create new substantive obligations, materially alter the allocation of responsibilities established in an underlying regulated agreement, or accomplish indirectly an amendment that would otherwise be subject to contractual, statutory, or regulatory approval requirements. The same caution applies to obligations arising from the Energy Bureau's regulatory determinations. The parties remain bound by applicable Energy Bureau orders, including orders issued in rate proceedings, as well as by the annual budget review and approval process and the budgets approved by the Energy Bureau. An memorandum of understanding or similar side agreement should not be used to alter, reallocate, circumvent, or effectively modify obligations, funding responsibilities, cost-recovery mechanisms, or budgetary limitations established through those regulatory processes, nor should it be used to commit funds or create payment obligations inconsistent with an approved budget or applicable Energy Bureau orders without first obtaining any approval that may be required. This is particularly important with respect to agreements such as the Generation OMA and the T&D OMA, whose terms, amendments, budgetary consequences, and implementation may be subject to review or approval by governmental and regulatory entities. The parties are therefore cautioned to exercise particular care when entering into MOUs, side letters, or similar arrangements to ensure that such instruments do not purport to amend regulated contracts or modify obligations established through rate, budget, or other regulatory proceedings without compliance with all applicable contractual procedures and legal and regulatory approval requirements.

CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau agreed on August 15, 2026. Associate Commissioner Omar M. Rodríguez González did not intervene. I also certify that on August 15, 2026, I have proceeded with the filing of this Resolution and Order and was notified by email to katiuska.bolanos-lugo@us.dlapiper.com; RegulatoryPREBOrders@lumapr.com; margarita.mercado@us.dlapiper.com, Yahaira.delarosa@us.dlapiper.com; jan.albinolopez@us.dlapiper.com; katiuska.bolanos-lugo@us.dlapiper.com; alexis.rivera@prepa.pr.gov; nzayas@gmlex.net; mvalle@gmlex.net; rcruzfranqui@gmlex.net; hrivera@jrsp.pr.gov, Ricardo.pallens@genera-pr.com; jfernandez@ecija.com; eramos@ecija.com; jdiaz@ecija.com; legal@genera-pr.com; regulatory@genera-pr.com.

I sign this in San Juan, Puerto Rico, today August 15, 2026.

Sonia Seda Gaztambide
Clerk

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO