

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

NEPR

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IN RE: 10-YEAR PLAN FEDERALLY
FUNDED COMPETITIVE PROCESS

Case No. NEPR-MI-2022-0005

Motion Requesting Compliance with Sections
3.1, 3.2 and 3.4 of LPAU and Sections 3.2, 3.3
and 3.5 of PREB's Regulation 8543

**MOTION REQUESTING COMPLIANCE WITH SECTIONS 3.1, 3.2 AND 3.4 OF LPAU
AND SECTIONS 3.2, 3.3 AND 3.5 OF PREB'S REGULATION 8543**

TO THE PUERTO RICO ENERGY BUREAU:

COMES NOW, GENERA PR LLC ("Genera"), through the undersigned counsel and, very respectfully, STATE and PRAY as follows:

I. RELEVANT PROCEDURAL BACKGROUND

1. On September 17, 2024, the Energy Bureau issued a *Resolution and Order* in connection with the peaking generation projects at Dagua, Jobos, Yabucoa and Costa Sur. ("September 17 Resolution"). Among other determinations, the Energy Bureau concluded that changes in the projected schedule and costs of the projects resulted from purported "misrepresentations" by Genera, and unilaterally established a deadline of the end of the second quarter of 2026 for completion of the projects. The Energy Bureau further warned that failure to comply with that deadline could result in a daily administrative fine of up to \$25,000 pursuant to Article 6.36 of Act 57-2014.

2. Genera sought reconsideration and requested an adjudicative hearing, raising, among other matters, due process concerns associated with the Energy Bureau's findings and the potential imposition of substantial administrative penalties. After an interlocutory appellate process promoted by Genera, the Puerto Rico Court of Appeals ultimately determined that an

evidentiary hearing was not required at that time because the *September 17 Resolution* had not actually imposed a monetary sanction, but instead warned of a potential future sanction if the Q2 2026 deadline was not met.

3. On July 30, 2026, after the Q2 2026 deadline had elapsed, the Energy Bureau issued a *Resolution and Order* directing Genera to show cause why administrative penalties should not be imposed and preliminarily proposing a continuing fine of \$25,000 per day beginning July 1, 2026. (“July 30 Resolution”).

4. On August 19, 2026, Genera filed a *Motion Showing Cause and Request for Adjudicative Hearing*. Genera expressly maintained therein, as a threshold matter, that before any administrative penalty may be imposed, the matter must proceed in accordance with the adjudicative safeguards established by the LPAU and Regulation No. 8543. Genera nevertheless responded to the Energy Bureau’s Order to Show Cause and requested an adjudicative hearing in the alternative, while preserving its threshold procedural objections.

5. On September 24, 2026, the Energy Bureau appointed Lcdo. Javier Vega Villalba as Hearing Examiner in this proceeding. (“September 24 Resolution”). The Resolution authorizes the Hearing Examiner to administer oaths, issue subpoenas, receive and evaluate evidence, preside over hearings, prepare reports for the consideration of the Energy Bureau, and conduct conferences to simplify the proceedings. The Resolution expressly provides that the Hearing Examiner may not impose administrative fines.

6. Thus, it appears that the Energy Bureau formally intends to open an adjudicative matter by referring the matter to a Hearing Examiner for the purpose of determining whether Genera may ultimately be subjected to an administrative monetary sanction. However, the PREB has still not complied with the due process requirements of formally presenting a complaint detailing the charges leveled against Genera, in order to properly commence the adjudicative proceeding.

II. THE ADJUDICATIVE PROCEEDING SHOULD BE FORMALLY COMMENCED THROUGH THE FILING OF A COMPLAINT

7. Section 3.1 of the Puerto Rico Administrative Procedure Act (“LPAU”, in its Spanish acronym), which sets forth the statute’s Bill of Rights, provides, in relevant part, that “[t]he following rights shall be safeguarded in every formal adjudicative proceeding before an agency: (A) **The right to be timely notified of the charges or complaints or claims against one of the parties;** (B) The right to present evidence; (C) The right to an impartial adjudication; and (D) the right to have the decision based on the record.” 3 L.P.R.A. § 9641. (Emphasis added).

8. In turn, Section 3.2 of LPAU, 3 L.P.R.A. § 9642, governs the commencement of administrative adjudicative proceedings. Specifically, Section 3.2 provides that an adjudicative proceeding may be initiated by the agency itself or through the filing of a complaint, request, or petition, and requires agencies to adopt regulations governing their adjudicative proceedings. Id.

9. When the adjudicative proceeding is initiated by the agency, Section 3.4(1) of the LPAU provides that an agency may file a complaint before its administrative forum for violations of the laws or regulations that it administers. 3 L.P.R.A. § 9644. In such instances, “[t]he complaint shall contain:(a) The name and mailing address of the respondent; (b) The facts constituting the violation; and (c) The statutory or regulatory provisions allegedly violated.” 3 L.P.R.A. § 9644(1)(a)-(c).

10. In turn, the PREB’s Regulation No. 8543 establishes the corresponding procedure governing the initiation, filing, service, and response to an adjudicative complaint before the Energy Bureau. See Regulation No. 8543 §§ 3.02, 3.03, 3.05 and 4.02. The Regulation expressly contemplates that an adjudicative action before the Energy Bureau begins with the filing and service of the pertinent complaint or other initiating pleading, followed by the respondent’s opportunity to answer.

11. This statutory and regulatory framework is consistent with the fundamental principle that a party facing an administrative sanction must receive adequate notice of the claim against it and a meaningful opportunity to defend itself. See Rivera Rodríguez & Co. v. Lee Stowell Taylor, 133 D.P.R. 881, 888–89 (1993).

12. The need to follow that procedure is particularly clear at this stage. This is because the *September 24 Resolution* did not merely continue the Energy Bureau’s regulatory oversight of the projects. Through that Resolution, the PREB appointed a Hearing Examiner pursuant to Article 6.11(b) of Act 57-2014 to preside over an adjudicative matter, receive and evaluate evidence, conduct hearings, and prepare recommendations to the Energy Bureau. It is important to underscore that Article 6.11(b) of Act 57-2014, 22 L.P.R.A § 1054j, expressly provides that hearing examiners shall perform their duties pursuant to the LPAU.

13. Yet, to date, no complaint has been filed by the Energy Bureau commencing the adjudicative proceeding against Genera.

14. Genera respectfully submits that this threshold procedural step should occur before the parties and the Hearing Examiner commence discovery, evidentiary proceedings, pre-hearing conferences, or any other proceedings concerning the merits of the proposed administrative penalty.

15. Genera is not requesting through this Motion that the Hearing Examiner determine the merits of any charge, defense, or potential sanction. Rather, Genera requests only that the proceeding begin in the manner established by the governing statute and the Energy Bureau’s own regulation on adjudicative proceedings, which is through the filing and service of a complaint by the Energy Bureau detailing the charges leveled against it, followed by the opportunity afforded to Genera under Regulation No. 8543 to respond.

16. Once such complaint is filed and served, Genera will have the first opportunity to evaluate the allegations presented therein and exercise whatever procedural and substantive rights

may then be available to it. Genera expressly reserves all defenses, objections, and remedies concerning the proposed administrative penalties and the allegations underlying them.

17. Alternatively, if the Energy Bureau were to hold that no Complaint should be filed—a decision which Genera would emphatically object to—then, without waiving any argument, defense or remedy, we ask that the parties be allowed to conduct discovery under Article VIII of Regulation 8543 without further delay, and thus order the PREB to announce and produce the allegations it intends to prove sustaining the proposed penalties, the evidence to be presented, and witnesses it intends to use during the final hearing.

III. REQUEST FOR RELIEF

WHEREFORE, Genera respectfully requests that the Hearing Examiner:

- (a) direct the Energy Bureau, if it still intends to formally commence this adjudicative proceeding, to the filing and service of a complaint pursuant to Sections 3.2 and 3.4 of the LPAU, and Sections 3.02, 3.03 and 3.05 of Regulation No. 8543;
- (b) hold further proceedings concerning the merits of the proposed administrative penalty in abeyance until this complaint is filed and Genera has been afforded the opportunity provided by Regulation No. 8543 to respond thereto; and
- (c) alternatively, if the Energy Bureau were to hold that no Complaint should be filed—a decision which Genera would emphatically object to—then, without waiving any argument, defense or remedy, we ask that the parties be allowed to conduct discovery under Article VIII of Regulation 8543 without further delay, and that an order be issued to the PREB requiring to provide the specific allegations it intends to prove, announce and produce the evidence that sustain these and the witnesses it intends to use during the final hearing.
- (d) grant such other relief as the Hearing Examiner may deem just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 20th day of October, 2026.

It is hereby certified 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 following attorneys who have filed a notice of appearance in this case: **Lcda. Mirelis Valle Cancel**, mvalle@gmlex.net; **Lcda. María Teresa Bustelo-García**, mbustelo@gmlex.net.

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