

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

**IN RE:** REQUEST FOR APPROVAL OF THE  
VEGA BAJA DECOMMISSIONING PLAN

**CASE NO.:** NEPR-MI-2024-0003

**SUBJECT:** Opening Proceeding and  
Requirements of Information

**RESOLUTION AND ORDER**

**I. Relevant Background**

On April 17, 2024, Genera PR LLC ("Genera") submitted a letter to the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") regarding the *Decommissioning-Vega Baja Decommissioning Plan* ("April 17 Letter"). Enclosed with the April 17 letter is a document titled *Vega Baja Proposed Decommissioning Plan* ("Preliminary Draft Plan"), prepared by Sargent & Lundy, Genera's consultant. On April 24, 2024, Genera filed a document entitled *Memorandum of Law in Support of Confidential Treatment of Vega Baja Decommissioning Plan* ("April 24 Motion"). In the April 17 Letter Genera requests the Energy Bureau's "review" and "input" on the Preliminary Draft Plan.

**II. Discussion**

*(i) Generation OMA Legacy Generation Assets Decommissioning Framework*

According to Generation OMA<sup>1</sup>, Genera will provide Decommissioning Services for the Legacy Generation Assets.<sup>2</sup> These services encompass the dismantling and removal of the structures that make up the Legacy Generation Assets, as well as all other necessary activities for their retirement, dismantlement, decontamination, or storage of those assets.<sup>3</sup> After the Service Commencement Date the P3 Authority (acting on behalf of PREPA, under the Approved IRP<sup>4</sup>, and in consultation with the Energy Bureau and LUMA<sup>5</sup> may issue a Decommissioning Notice to Genera to start Decommissioning Services for one or more of the Legacy Generation Assets.<sup>6</sup> In addition, on or after the Service Commencement Date, P3 Authority (acting on behalf of PREPA) may deliver to Genera Operator a Decommissioning Notice to proceed regarding one or more of the Out-of-Service Units.<sup>7</sup> Furthermore, if Genera

<sup>1</sup> See *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement*, dated January 24, 2023, executed by and among Puerto Rico Electric and Power Authority ("PREPA"), the Puerto Rico Public-Private Partnerships Authority ("P3 Authority") and Genera PR LLC ("Genera"), hereinafter "Generation OMA". Except as otherwise provided, capitalized terms used but not otherwise defined in this Resolution and Order have the meaning ascribed to them in the Generation OMA.

<sup>2</sup> Legacy Generation Assets are the base-load generation plants and combustion turbine peaking units listed on Annex I of the Generation OMA. See *Recitals* of the Generation OMA.

<sup>3</sup> Section 1.1 of the Generation OMA.

<sup>4</sup> Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan, In re. Review of the Puerto Rico Electric Power Authority Integrated Resource Plan, Case No. CEPR-AP-2018-0001, August 24, 2020 ("Approved IRP"). Minor modifications and/or clarifications to the Approved IRP were introduced through a Resolution and Order on Reconsiderations issued by the Energy Bureau on December 2, 2020, in case: In re. Review of the Puerto Rico Electric Power Authority Integrated Resource Plan, Case No. CEPR-AP-2018-0001.

<sup>5</sup> LUMA Energy LLC and LUMA Energy ServCo LLC (jointly referred as, "LUMA").

<sup>6</sup> Section 16.1(a)(i) of the Generation OMA.

<sup>7</sup> Section 16.1(c) of the Generation OMA.



determines, in accordance with Prudent Industry Practice and in consultation with the Energy Bureau and LUMA, that a Legacy Generation Asset or a portion of it cannot continue to be safely operated and maintained due to an Emergency Event, Extended Event, or other critical developments, Genera may submit a request to the P3 Authority and the Energy Bureau (with copies to PREPA and LUMA) to commence Decommissioning Services for the affected Legacy Generation Asset.<sup>8</sup> Genera must provide LUMA with at least two (2) years' advance written notice before starting any Decommissioning Services due to such events, unless the Energy Bureau mandates an earlier specific commencement date.<sup>9</sup>

The Decommissioning Plan shall include provisions for permitting, demolition, decontamination, waste disposal, and either dismantling or preparing the Legacy Generation Asset for future use as designated by the P3 Authority and the Energy Bureau. It shall also cover the development of the Decommissioning Budget and establish acceptable arrangements for transitioning Genera Employees into new jobs or industries. This includes a training and/or severance plan funded by PREPA, with cooperation from Genera, PREPA, and the P3 Authority as needed. Additionally, the plan must outline a timeline for the Decommissioning Services, specifying the start and completion dates for the decommissioning of the Legacy Generation Asset.<sup>10</sup> PREPA will pay Genera all Pass-Through Expenditures necessary to carry out the Decommissioning Services.<sup>11</sup> Additionally, Genera will be eligible to earn an Incentive Payment or may incur a Penalty based on its performance of the Decommissioning Services, as detailed in Section 7.1(c) of the Generation OMA.<sup>12</sup> The Decommissioning Plan will be based on the decommissioning standards established by the Energy Bureau and will require approval from both the Energy Bureau and the P3 Authority.<sup>13</sup>

Genera shall prepare and submit a Decommissioning Plan for any Legacy Generation Asset to the P3 Authority and the Energy Bureau within 120 days of receiving a Decommissioning Notice from the P3 Authority. The Energy Bureau will review and approve the submitted Decommissioning Plan. In addition, the Energy Bureau is responsible for approving the Decommissioning Plan, including its budget and timeline, outlines the expected content of the plan, and establishes that the Energy Bureau will approve the standards for the decommissioning process.<sup>14</sup>

(ii) *Preliminary Draft Plan Informal Review*

In the April 17 letter, Genera acknowledges that the P3 Authority has not yet issued a Decommissioning Notice in accordance with the Generation OMA.<sup>15</sup> Additionally, the Preliminary Decommissioning Plan is not the version intended for evaluation and approval by the Energy Bureau. Genera states that once it has more accurate cost and schedule information from the Demolition RFP<sup>16</sup> and the Decommissioning Notice has been issued, it

<sup>8</sup> Section 16.1(a)(ii) of the Generation OMA.

<sup>9</sup> *Id.*

<sup>10</sup> See Section 16.1(b) of the Generation OMA.

<sup>11</sup> See Section 16.2 (a) and (d) of the Generation OMA.

<sup>12</sup> See Section 16.2 (d) of the Generation OMA.

<sup>13</sup> See Section 16.2(b) of the Generation OMA.

<sup>14</sup> See Annex XV of the GOMA.

<sup>15</sup> [While Administrator and Genera are communicating regarding the issuance of a Decommission Notice issuance under the OMA for the two LGA located at Vega Baja, we kindly request PREB's review of and input on our preliminary draft of the Decommissioning Plan (the "Draft Plan"). See April 17 Letter, p. 1.

<sup>16</sup> Genera informed that it has published a request for proposals (RFP) for the proposed demolition of the Vega Baja Legacy Generation Assets (the "Demolition RFP"). The contractor selected through this RFP will be responsible for implementing a significant portion of the final Decommissioning Plan. See April 17 Letter, p. 2.



will submit a final version of the Preliminary Draft Plan for approval by the P3 Authority and the Energy Bureau.<sup>17</sup> Genera also confirms that it will not award the Demolition RFP until the Decommissioning Plan receives final approval from both the P3 Authority and the Energy Bureau.<sup>18</sup>

To date, Genera has not submitted a Decommissioning Plan, as required by the Generation OMA. The Energy Bureau lacks the necessary documentation to issue a ruling regarding approval, amendment, or disapproval. Despite the foregoing, Genera argues for an initial review of the Preliminary Draft Plan by the Energy Bureau, stating that advance coordination and communication will enable them to implement this initial decommissioning project as swiftly as possible. Genera also acknowledges that the evaluation sought from the Energy Bureau may not be final, since the P3 Authority has not yet formally issued a Decommissioning Notice, and a final review process will be necessary once Genera submits the final proposed plan. However, Genera contends that an initial review will assist in confirming regulatory compliance and facilitating stakeholder feedback and revisions to the various processes.

The Energy Bureau acknowledges Genera's proactive efforts and values the opportunity to review the Preliminary Draft Plan. Additionally, the Energy Bureau recognizes the unique circumstances of this situation, especially given the interest in implementing the battery storage project proposed at PREPA's Vega Baja site. Given the nature of Genera's request for early-stage input from the Energy Bureau, it is deemed appropriate to **commence an informal review process** involving Genera, the P3 Authority, and the Energy Bureau staff and consultants. This informal process aims to streamline the procedures mandated by the Generation OMA for the implementation of Legacy Generation Asset decommissioning-related activities, particularly those related to PREPA's Vega Baja facility.

The Energy Bureau's staff and its consultants will initiate and conduct this informal process with Genera and P3 Authority, as necessary, to clarify matters related to the Preliminary Decommissioning Plan. However, it is clarified that the staff members and consultants are not authorized to make representations or decisions on behalf of the Energy Bureau. All relevant decisions will be made by the Energy Bureau through resolutions and orders.

This review allows the Energy Bureau to begin gathering information that may inform the evaluation of the final plan. Additionally, the Energy Bureau's inquiries may provide Genera with insights into areas of interest that should be addressed in the final plan. It is important to emphasize that the scope of the Energy Bureau's involvement in the review of the Preliminary Draft Plan during this informal proceeding will not limit the scope of the review of the final plan when Genera properly files it.

### III. Confidential Treatment

In the April 24 Motion, Genera requests confidential treatment of the Preliminary Draft Plan on the basis of three arguments. First, Genera states that the Preliminary Draft Plan is not yet final and is subject to comprehensive review and possible alteration by the Energy Bureau. Second, Genera states that the contents of the Preliminary Draft Plan are closely related to an ongoing procurement process. Third, Genera states that the Preliminary Draft Plan is derived from proprietary analysis that should be subject to trade secret protection.

The Energy Bureau seeks to make as much information filed before it publicly available as possible. However, the Energy Bureau's regulations and practice require keeping some information confidential. In this case, the Energy Bureau **GRANTS** confidential treatment to the Preliminary Draft Plan primarily based on its nature as a draft and its relationship to ongoing procurement. The Energy Bureau **ORDERS** Genera, when filing the final Vega Baja

<sup>17</sup> See April 17 Letter, p. 2.

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



Decommissioning Plan, to (1) carefully consider whether the stage of the ongoing procurement process requires continued confidential treatment of the full plan, (2) identify the date or stage of the procurement process after which the final plan may be made available to the public, if that stage has not yet been reached, and (3) prepare and file a version of the final decommissioning plan that redacts claimed trade secret information such that it can be made public after the proper point in the procurement process.

#### IV. Conclusion

The Energy Bureau **ORDERS** Genera and the members of the Energy Bureau staff, with the participation of the P3 Authority, to begin an informal review process for the Preliminary Draft Plan, as outlined in **Part III** above, no later than seven (7) days following the issuance of this Resolution and Order. Additionally, Genera **SHALL** submit a summary of the progress made towards the expedited evaluation of a final decommissioning plan for the Vega Baja facility no later than thirty (30) days thereafter. To the extent necessary and based on the feedback received from Genera and the staff, the Energy Bureau will issue additional orders to further expedite this matter.

Be it notified and published.

Edison Avilés Deliz  
Chairman

Lillian Mateo Santos  
Associate Commissioner

Ferdinand A. Ramos Soegaard  
Associate Commissioner

Sylvia B. Ugarte Araujo  
Associate Commissioner

Antonio Torres Miranda  
Associate Commissioner

#### CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on June 27, 2024. I also certify that on June 27, 2024 a copy of this Resolution and Order was notified by electronic mail to the following: [jfr@sbgbllaw.com](mailto:jfr@sbgbllaw.com); [alopezr@sbgbllaw.com](mailto:alopezr@sbgbllaw.com); [kbolanos@genera-pr.com](mailto:kbolanos@genera-pr.com). I also certify that on June 27, 2024, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, on June 27, 2024.

Sonia Seda Gaztambide  
Clerk

