

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

IN RE: 10 YEAR PLAN FEDERALLY FUNDED
COMPETITIVE PROCESS

CASE NO. NEPR-MI-2022-0005

SUBJECT: Order to Show Cause Regarding
\$25,000 Fine for Misrepresentation

ORDER TO SHOW CAUSE

On January 23, 2023, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("January 23 Order") that conditionally approved the Puerto Rico Electric Power Authority ("PREPA") RFP¹ process for the procurement of emergency peaker generation systems at Jobos, Daguao, and Palo Seco subject to various conditions. Conditions included a maximum total nameplate capacity of 200 MW, three (3) of seven (7) units being mobile, prioritization to interconnection of IRP-based generation and battery energy storage systems ("BESS") over other generation installation interconnection (where feasible while supporting reliable system operation), and other conditions.²

JAB
On May 25, 2023, Genera PR, LLC ("Genera") submitted a document titled *Memorandum of Compliance with May 8 Order (subject: Procurement of Black Start and Emergency Peaking Resources)* ("May 25 Memorandum"), in which Genera proposed to the Energy Bureau a different approach and plan for the procurement of the Black Start and Emergency Peaking Resources and stated that their proposed approach would be more efficient. Permitting was identified as a critical path, specifically EPA air permitting, and the proposed plan by Genera stated that "if EPA air permits can be completed within nine months, **the entire project can achieve commercial operation within 18 months.**"³

SMH
On August 16, 2023, Genera, filed a document titled *Motion to Submit Bi-Monthly Report on the Status of Emergency Generation and Black-Start Generation Procurement for the Period from August 1 to August 15, 2023, in Compliance with Resolution and Order Dated January 23, 2023* ("August 16 Motion"). Genera included as Exhibit A the Bi-monthly report describing the status of the black start and emergency generation procurement process, and recommendations for changes to the RFP⁴ processes, which Genera affirmed could **lead to significant cost savings and a reduction in completion time** by 9 to 12 months.⁵

Tom
On August 23, 2023, the Energy Bureau issued a Resolution and Order ("August 23 Order") in which it determined that the changes proposed by Genera in Exhibit A of the August 16 Motion were consistent with the IRP Order⁶. **Considering Genera's assurance that the units would be purchased at a lower cost and be commissioned earlier than expected, the Energy Bureau allowed the RFPs process to continue in the manner described by Genera in Exhibit A of the August 16 Motion.**

¹ Request for Proposal ("RFP").

² January 23 Order.

³ May 25 Memorandum, p.4.

⁴ Request for Proposal ("RFP").

⁵ August 16 Motion, Annex A, p.5.

⁶ Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan, *In re: Review of the Integrated Resource Plan of the Puerto Rico Electric Power Authority*, Case No. CEPR-AP-2018-0001, August 24, 2020 ("IRP Order").



On November 8, 2023, after several procedural events, the Energy Bureau issued a Resolution and Order (“November 8 Order”) approving the RFP package submitted by Genera for the procurement of black start and emergency generation services. The Energy Bureau reminded Genera that the total MW quantity could not exceed 200 MW of emergency generation and 81 MW of net plant output for black start services. Also, authorized Genera to file a separate BESS project detailing the magnitude (in MW), purpose, planned timing of installation, among other information.⁷

On February 29, 2024, Genera, filed a document titled *Motion to Submit Bi-Monthly Report on the Status of Emergency Generation and Black-Start Generation Procurement in Compliance with Resolution and Order Dated January 23, 2023* (“February 29 Motion”) in which Genera stated that initial award was scheduled for March 2024.

On July 1, 2024, Genera filed before the Energy Bureau a document titled *Motion to Submit Bi-weekly Report on the Status of Emergency Generation and Black-Start Generation Procurement in Compliance with Resolution and Order Dated January 23, 2023* (“July 1 Motion”), in which Genera included as Exhibit A the Bi-weekly Report describing the status of the Emergency Generation and Black-Start Generation Procurement.

Additionally, Genera informs in the July 1 Motion that starting July 1, 2024, pursuant to Footnote 16 of the January 23 Order, reports will be submitted on a quarterly basis, consistent with the fiscal year’s quarters (e.g., July 1 to September 30 for Q1, October 1 to December 31 for Q2, and so forth)⁸, and that their next report is due by October 9, 2024.

Upon review of the July 1 Motion, and considering the delay in the RFP process conducted by Genera in comparison with the expected time savings that would have occurred compared to the Puerto Rico Electric Power Authority (“PREPA”) RFP award scheduling, which was scheduled to end July 31, 2023, on July 30, 2024, the Energy Bureau issued a Resolution and Order (“July 30 Resolution”) whereby it determined that Exhibit A filed as the bi-monthly report did not adequately inform the progress in the procurement process nor provided information on the milestones of the critical paths that shall be accomplished to have the units in commercial operation in due time, according to the timeline presented in Annex A-3 of the August 16 Motion. The Energy Bureau further highlighted that the *FY2023 Certified Fiscal Plan for the Puerto Rico Electric Power Authority* (“FY2023 Certified Fiscal Plan”), Section 5.2.1.4 (p. 94), expected to have deployed the black start units for Costa Sur and Yabucoa by December 2025, and the new Peaker units deployed for the Daguao, Jobos, and Palo Seco Power Stations by January 2026.⁹ The Energy Bureau emphasized that it was in the best public interest to know if the Emergency Peaker Generation and Black-Start Generation Procurement would be in commercial operation by the time specified in the FY2023 Certified Fiscal Plan and the time scheduled promised by Genera.

Consequently, through its July 30 Resolution, the Energy Bureau denied Genera’s request to submit the bi-monthly report to quarterly reports, ordered Genera to submit monthly reports instead of bi-weekly on the Status of Emergency Generation and Black-Start Generation Procurement commencing August 15, 2024.

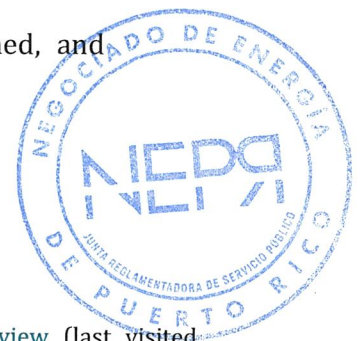
The Energy Bureau also ordered Genera to include as part of the next and subsequent monthly progress report its best estimate of the expected schedule and timetable for completing the critical steps up to project completion. The Energy Bureau further ordered that the reports include, as a minimum, the following:

1. A breakdown of each task, estimated cost, cost amount consumed, and timeline for completion of such task.

⁷ November 8 Order, p.4.

⁸ January 23 Order, p. 5.

⁹ Available at: <https://drive.google.com/file/d/1aqXCP728HU7s7uE1Ys-nHvchnj85dvIJ/view> (last visited August 28, 2024).



2. The stages of each task, timeline, present status and estimated time for completion.
3. A project timeline chart (*e.g.* Gantt Chart) with critical path for the COD¹⁰ of the project.
4. Permit list, permits obtained, estimated timeline for each permit and status of such permit.
5. Tasks required in preparation for each site where the project shall be installed. Details on any demolition and permits required in preparation for the installation of the project.
6. Permit and cost for each site to accommodate the project.

AM
The Energy Bureau granted Genera ten (10) days to inform how the Genera procurement approach has saved costs and accelerated the COD compared to the PREPA RFP approach which had a scheduled award date of July 31, 2023 compared to Genera's approach which to date has not completed the award of its equipment RFP. The Energy Bureau warned Genera that noncompliance with such orders would result in the imposition of fines pursuant to Act 57-2014.¹¹

AM
On August 9, 2024, Genera filed a document titled *Motion to Submit Comparison Report in Compliance with Resolution and Order Dated July 30, 2024* ("August 9 Motion"), whereby it detailed the distinctions between Genera's RFP process and PREPA's previous RFP process.

AM
On August 19, 2024, Genera filed a document titled *Motion to Submit Monthly Report on the Status of Emergency Generation and Black-Start Generation Procurement in Compliance with Resolution and Order Dated July 30, 2024* ("August 19 Motion"). In it, Genera informed that the preliminary estimate for the peaker projects was \$911,340,000.00 and projected that COD would be achieved across the first and fourth quarters of 2027.

LM
As evidenced in Genera's multiple filings with the Energy Bureau, Genera has always represented that its approach and plan for the procurement of the Black Start and Emergency Peaking Resources would be more efficient than PREPA's. Genera maintained that their plan would result in significant cost savings and a shortened Commercial Operation Date (COD) timeline compared to the continuation of the project under PREPA. Relying on these representations, the Energy Bureau granted Genera authorization and/or allowed it to continue the RFPs processes in the manner described by Genera.

LM
Nonetheless, Genera's August 9 and August 19 Motions illustrate that the actual costs associated with the projects under Genera have significantly exceeded the costs originally projected by PREPA. Further, the project timeline has been extended beyond the promised schedule, contrary to the commitments made by Genera. Specifically, PREPA's estimates totaled \$613,541,936.38, while Genera projected estimated costs to be \$911,340,000.00. Further, in its May 25, 2023 filing Genera estimated the project could achieve COD within eighteen (18) months, while it now ascertains completion time across 2027.

The Energy Bureau **DETERMINES** there is sufficient cause to believe that Genera may have engaged in misrepresentation of material facts concerning the projected cost savings and COD timeline, thereby potentially misleading the Energy Bureau in granting them authorization to continue with their proposed approach.

As such, the Energy Bureau **ORDERS** Genera to **SHOW CAUSE** as to why a fine of \$25,000 should not be imposed for misrepresentation in connection with the RFP process. Genera shall submit a written response to this Order within **five (5) business days** from its notification, addressing the following:

- The basis for the representations made regarding cost savings and the COD timeline.

¹⁰ Commercial Operation Date ("COD").

¹¹ *Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014").



- A detailed explanation of the reasons for the discrepancies between the projected and actual costs and timelines.
- Any mitigating circumstances or evidence that Genera wishes to present in defense of its actions.
- A clarification on whether any of the increased costs incurred under Genera's administration (any amount exceeding PREPA's original estimate) are expected to be recovered from the Federal Emergency Management Agency ("FEMA") or any other sources.

The Energy Bureau **WARNS** Genera that failure to comply and submit a timely response will result in the imposition of a \$25,000 fine, and/or any other sanctions the Energy Bureau deems appropriate, in accordance with Art. 6.36 of Act 57-2014. The Energy Bureau reserves the right to take any additional actions as may be deemed necessary based on the Genera's future filing in compliance with this Order, including but not limited to further financial penalties, recovery of any excess costs, or referral to other regulatory or legal authorities.

The Energy Bureau **WARNS** Genera that, in accordance with Section 6.36 of Act 57-2014:

(a) The Energy Bureau shall impose administrative fines for violations of this Act, or the regulations and orders issued thereunder, committed by any person or electric power company subject to its jurisdiction, of up to a maximum **of twenty-five thousand dollars (\$25,000) per day**. Said fines shall never exceed five percent (5%) of the gross sales, fifteen percent (15%) of the net income, or ten percent (10%) of the net worth of the sanctioned person or the electric power company. The greater of the aforementioned amounts corresponding to the most recent taxable year shall be the amount of the fine.

(b) If the person or certified electric power company commits a subsequent violation of this Act, the Energy Bureau may impose penalties of up to a maximum of twenty-five thousand dollars (\$25,000) per day. In such case and by unanimous determination of the Energy Bureau, it may impose fines up to twice the limitations on the basis of sales, income or assets set forth in subsection (a) of this Section and up to five hundred thousand dollars (\$500,000).

(c) Any claim or cause of action authorized by law filed by any person with legal standing shall not affect the powers granted under this Section to impose administrative sanctions.

(d) **Any person who intentionally violates any provision of this Act, omits, disregards, or refuses to obey, observe, and comply with any rule or decision of the Energy Bureau shall commit a misdemeanor** and upon conviction shall be punished by imprisonment for a term not to exceed six (6) months, or by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), at the discretion of the Energy Bureau. In the event of recurrence, the established penalty shall increase to a fine of not less than ten thousand dollars (\$10,000) nor more than twenty thousand dollars (\$20,000), at the discretion of the Energy Bureau.

(e) The Energy Bureau may resort to the pertinent forums to seek any remedy, including account garnishment, to ensure compliance with the penalties imposed.

The Energy Bureau **WARNS** Genera that the payment of any fine must be satisfied using the money it receives as payment (i.e., fee) under its contract; such payment shall not be considered, construed or treated as a cost attributable to consumers or pass thru.

The Energy Bureau further **WARNS** Genera that the failure to respond or provide adequate justification will be considered as a deliberate and intentional obstruction of the functions of the Energy Bureau, which could lead to additional legal actions and other sanctions as provided in Article 6.36 of Act 57-2014.

Be it notified and published.



Be it notified and published.



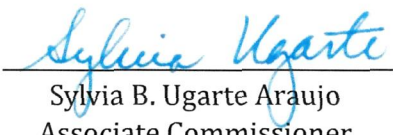
Edison Avilés Deliz
Chairman




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 August 28, 2024. I also certify that on August 28, 2024, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau, and was notified by electronic mail to arivera@gmlex.net; mvalle@gmlex.net; jfr@sbgblaw.com; alopez@sbgblaw.com; legal@genera-pr.com; regulatory@genera-pr.com.

I sign this in San Juan, Puerto Rico, on August 28, 2024.



Sonia Seda Gaztambide
Clerk

