

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

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IN RE:

MAINTENANCE AND REPAIR
MANAGEMENT OF THE GENERATION
UNITS OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY

CASE NO.: NEPR-MI-2021-0014

SUBJECT: Motion in Compliance with Order
to Show Cause dated August 30, 2024

**MOTION IN COMPLIANCE WITH ORDER TO SHOW
CAUSE DATED AUGUST 30, 2024**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW GENERA PR LLC (Genera”), as agent of the Puerto Rico Electric Power Authority (“PREPA”),¹ through its counsels of record, and respectfully submits and prays as follows:

I. Introduction

On August 30, 2024, this honorable Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order in the instant proceeding titled *Order to Show Cause – Oversight Field Visits at Generation Facilities* (“August 30th Order”). The August 30th Order detailed certain incidents where Energy Bureau advisors visited Genera’s San Juan Power Plant and, upon arrival for Genera’s weekly project meeting, found that the visits had been cancelled by Genera, either without prior notice or with same-day notice. The Energy Bureau expressed in the August 30th Order that such alleged behavior by Genera impeded the Energy

¹ Pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* (“LGA OMA”), dated January 24, 2023, executed by and among PREPA, the Puerto Rico Public-Private Partnerships Authority and Genera, Genera is the sole operator and administrator of the Legacy Generation Assets (defined in the LGA OMA), and the sole entity authorized to represent PREPA before the Energy Bureau with respect to any matter related to the performance of any of the O&M Services provided by Genera under the LGA OMA.

Bureau’s ability to fulfill its statutory obligations under Act No. 57 of May 27, 2014, as amended, known as the “Puerto Rico Energy Transformation and RELIEF Act” (“Act No. 57-2014”) and Act No. 17 of April 11, 2019, known as the “Puerto Rico Energy Public Policy Act” (“Act No. 17-2019”). Consequently, the Energy Bureau ordered Genera to show cause, on or before September 5, 2024, as to why the Energy Bureau should not impose the maximum administrative fine of up to twenty-five thousand dollars (\$25,000.00) per day for each cancellation of the meetings that occurred during August 19, 2024, August 20, 2024, and August 26, 2024. Furthermore, the August 30th Order instructed Genera to designate separate staff or personnel to accommodate the Energy Bureau’s needs during its planned visits, regardless of any unexpected emergencies. Due to the alleged repeated delays and cancellations, the Energy Bureau also mandated Genera to address this issue immediately ensuring full cooperation with scheduled visits.

Genera acknowledges and respects the Energy Bureau’s emphasis on the necessity of adhering to scheduled oversight visits to ensure comprehensive regulatory compliance and maintain operational transparency. The incidents cited in the August 30th Order, which led to the unexpected weekly project meeting cancellation, were influenced by a combination of unforeseen operational exigencies and not by any intention to undermine the regulatory process. Genera is committed to clarifying the context and circumstances around these cancellations to underscore its continued respect for and compliance with Energy Bureau guidelines.

II. Factual and Procedural Background

On November 29, 2023, the Energy Bureau issued a Resolution and Order titled *Visits for revision of FEMA and COR3 approved projects* (“November 29th Resolution”) ², in which it

² See *In Re: Review of the Puerto Rico Electric Power Authority’s 10-Year Infrastructure Plan – December 2020*, Case No.: NEPR-MI-2021-0002, Resolution and Order, November 29, 2023.

established visits and inspections for the generation, transmission, and distribution facilities to ensure the progress of the approved projects. Through the November 29th Resolution, the Energy Bureau authorized its Technical Consultant, Alianza Engineering Services, to inspect the Sites on behalf of the Energy Bureau. It also ordered GENERA to: (i) designate a Point of Contact with whom the Energy Bureau personnel will coordinate the initial meeting to present the plan for the inspections, (ii) provide any documentation and information required, and (iii) make sure full access is timely provided for each inspection.

On May 29, 2024, the Energy Bureau issued a Resolution and Order titled *Dates and Frequency for the Visits for revision of FEMA and COR3 approved projects* (“May 29th Resolution”)³. In the May 29th Resolution, the Energy Bureau underscored that The Energy Bureau and Alianza Engineering Services personnel had visited all the Generation Facilities under Genera’s LGA OMA. The list of all the projects was reviewed, and Genera's principal management personnel participated and presented the status of the projects during each site visit. The Energy Bureau added that Genera's plant managers and the project engineers' team had offered their support to the Energy Bureau and Alianza Engineering Services personnel to access the facilities for the respective site visits, and had informed that at each site, the project's engineering team held weekly meetings to report the status of each project. The Energy Bureau determined that to accomplish effective progress of the projects, Alianza Engineering Services personnel must have participated every two weeks in those meetings, and afterwards, proceeded with a walkthrough to inspect and document the progress of the projects.

On August 30, 2024, as mentioned in the introduction, the Energy Bureau issued the August 30th Order, whereby it ordered Genera to show cause by September 5, 2024, as to why it should

³ See *Id.*, Resolution and Order, May 29, 2024.

not be fined up to twenty-five thousand dollars (\$25,000) per day for each meeting cancellation that occurred on August 19, 20, and 26, 2024.

III. Applicable Standards for the Imposition of Fines

Pursuant to Section 6.36 of Act No. 57-2014, the Energy Bureau is vested with the authority to “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”. *See* 22 LPRA § 1054jj. However, as we will continue to discuss, it is crucial that the exercise of this authority be reasonable and proportionate to the alleged violations. The Puerto Rico Supreme Court has underscored that the imposition of penalties by regulatory agencies must be based on substantial evidence, must not constitute an ultra vires action, and must maintain a reasonable nexus with the prohibited acts. *Comisionado de Seguros v. Puerto Rico Ins. Agency, Inc.*, 168 DPR 659 (2006); *Comisionado de Seguros v. Prime Life*, 162 DPR 334 (2004); and *OEG v. Román González*, 159 DPR 401 (2003). In Puerto Rico, administrative agencies possess considerable discretion to choose enforcement actions that support the objectives of the legislations they oversee, provided these actions are within their expertise and legal boundaries. *Assoc. Ins. Agencies, Inc. v. Com. Seg. P.R.*, 144 DPR. 425, 438 (1997). This discretion is intended to permit agencies to calibrate sanctions appropriately to the specific misconduct addressed. *Id.* The agencies' specialized knowledge should guide them in imposing penalties that are fair and commensurate with the impacts of the violations, promoting consistency and fairness in enforcement. *Com. Seg. P.R. v. Antilles Ins. Co.*, 145 DPR 226, 234 (1998).

While administrative agencies in Puerto Rico are endowed with considerable discretion in levying sanctions, they must operate within the confines of legality and procedural fairness.

Ensuring substantial evidence supports any sanctions imposed is essential to prevent decisions from being arbitrary or capricious. *Com. of Mass., Dep't of Pub. Welfare v. Sec'y of Agric.*, 984 F.2d 514, (1st Cir. 1993). This involves a rigorous evaluation of the evidence to confirm that it justifiably supports the decisions made. When the record lacks evidence to substantiate a sanction or contains evidence that significantly undermines the support for an administrative determination, the agency must reassess its decision to prevent capricious actions. *Ferguson v. U.S. Dept. of Agriculture*, 911 F.2d 1273 (8th Cir. 1990) This rigorous approach helps maintain the integrity and fairness of administrative enforcement.

IV. Discussion

Genera deeply values its collaborative relationship with the Energy Bureau and greatly respects the regulatory oversight it provides. Genera was taken aback and deeply concerned by the recent August 30th Order to Show Cause issued by the Energy Bureau regarding the cancellation of meetings on August 19, August 20, and August 26, 2024, and the proposal of fines. The strong language used in the August 30th Order may have caused significant apprehension and unease among the people of Puerto Rico regarding Genera's operations.

To clarify, **Genera welcomes and respects all regulatory oversight**. As an agent acting on behalf of a public corporation and administering public assets, Genera recognizes that it is properly regulated by the Puerto Rico Energy Bureau.

In response to the sudden cancellation of the specific internal project meetings in question, however, Genera respectfully submits that these cancellations were not made with any disrespect or disregard for the Energy Bureau's regulatory oversight. Rather, Genera believes that a series of misunderstandings have led to this point. Since the Energy Bureau issued the May 29th Resolution, Genera has been actively engaged with the Energy Bureau, consistently expressing its concern

about the proposed process to “participate every two weeks in the weekly project meetings,” instead of scheduling meetings specifically dedicated for the Energy Bureau to receive reports, ask questions, and conduct site visits. Our proposal is based on the following: (1) the weekly project meetings are internal and subject to cancellation and rescheduling if another need arises, and (2) the best course of action was (and still is) to have meetings scheduled explicitly for the Energy Bureau and its personnel. This model has been followed over five times without complaints or cancellations.

Genera’s operations are underpinned by an unwavering commitment to transparency and cooperation with the Energy Bureau. This commitment is evidenced by Genera’s willingness to accommodate site visits scheduled at the request of the Energy Bureau, which have been held on multiple occasions in the past. Genera’s track record is a testament to its respect for the Energy Bureau's oversight and its dedication to working together for the benefit of the people of Puerto Rico.

It is imperative to note that Genera did cancel a last-minute internal meeting that the Energy Bureau advisors were expected to attend due to operational exigencies within the Power Plants, which take precedence over internal weekly project meetings. However, it is vital to underscore that site visits scheduled at the request of the Energy Bureau have always been accommodated at specified dates and times, with a track record of never being canceled. During these visits, the Energy Bureau Staff and Commissioners received introductory presentations for each of the sites from the Plant Managers, Vice Presidents, Chief Regulatory Officer and staff from multiple departments; answered multiple questions; reviewed documentation; and visited the Generation Sites areas as requested, on foot and by all-terrain vehicles.

Moreover, despite the unforeseen last-minute cancellations of several meetings, it is crucial to highlight that the meeting scheduled for August 26, 2024, was necessarily canceled due to an unexpected trip of San Juan Unit 7 just an hour before its commencement. At that critical moment, Genera's technical personnel and management, who are directly responsible for managing forced outages, swiftly redirected all their resources and focus towards restoring the units to operational status. This decisive action was imperative to ensure the continued availability of generation capacity to the System Operator, thereby maintaining reliable service delivery to our customers.

Following this situation, the Energy Bureau communicated its concerns to Genera regarding the importance of attending meetings and the issue of last-minute cancellations. Genera acknowledged the cancellation of the meeting, accepted responsibility, expressed regret, and revived its proposal for an alternative method to conduct inspections. This proposal included scheduling meetings specifically for the Energy Bureau's inspections, which would mitigate the risk of cancelling internal meetings. Genera also requested an in-person meeting to further discuss these matters. On August 29, 2024, just one day before the August 30th Order to Show Cause was issued, the Senior Manager of Genera's Regulatory Department visited the offices of the Energy Bureau and met with its technical staff and consultants. During this meeting, the topic of meeting cancellations was addressed; Genera sought understanding for the delayed notifications of cancellations. Additionally, Genera reiterated its proposal to schedule meetings that would specifically accommodate the Energy Bureau's site visits, as opposed to the weekly project meetings which are subject to cancellations due to other emergent needs. The technical staff and consultants from the Energy Bureau concurred that there would be no visits that week and that they would contact Genera to arrange future visits. The team further indicated that upcoming visits

would focus on projects at San Juan and Palo Seco. Genera confirmed some of the agreements from this meeting in writing.

Furthermore, on September 4, 2024, Genera proactively engaged with the Energy Bureau's consultants to outline the agenda for upcoming visits, during which they communicated plans to coordinate these meetings within the current or the following week. This demonstrates Genera's commitment to rectifying the situation that led to the previous cancellations.

Consequently, in alignment with the Energy Bureau's August 30th Order, both parties agreed on August 29, 2024 (before the August 30th Order), to adopt a process akin to the one mandated in the order. In light of this, Genera hereby informs that, in alignment with the agreements reached during the meeting held on August 29, 2024, and in compliance with the August 30th Order to Show Cause, Genera has taken steps to ensure:

1. Coordination with the Energy Bureau to establish dates for site inspections.
2. Availability of personnel from the Operations, Regulatory, and Projects departments during these meetings to answer questions and support any field or works inspections.
3. Designation of a Senior Manager in the Regulatory Department as the lead for these coordinations.

Therefore, it is respectfully requested that the Energy Bureau determine the following:

- (i) Genera has demonstrated sufficient cause as to why the proposed \$25,000 fine for each of the three canceled meetings should not be imposed.
- (ii) Genera has already informed and ensured that dedicated staff will be allocated specifically to accommodate the needs of the Energy Bureau's site visits.
- (iii) Genera has addressed the issues raised in the August 30th Order to Show Cause during the in-person meeting on August 29, 2024.

(iv) Genera has fully addressed the issues and directives stated in the August 30th Order to Show Cause in this submission.

Genera respectfully requests that the Energy Bureau reconsider the proposed fines outlined in the August 30th Order to Show Cause. Genera remains steadfast in its commitment to regulatory compliance and actively encourages open dialogue to address any concerns raised by the Energy Bureau. Genera anticipates a positive resolution and eagerly looks forward to continued collaboration with the Energy Bureau to serve the best interests of the people of Puerto Rico.

WHEREFORE, Genera respectfully requests that this Energy Bureau **take notice** of the above for all purposes and **reconsider** the proposed fines outlined in the August 30th Order to Show Cause.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 5th day of September 2024.

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CERTIFICATE OF SERVICE

We hereby certify that a true and accurate copy of this motion was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System and that we will send an electronic copy of this motion to PREPA through its counsel of record, Alexis G. River Medina, at arivera@gmlex.net, and Mirelis Valle Cancel, at mvalle@gmlex.net; and to LUMA through its counsel of record, Margarita Mercado Echegaray, at margarita.mercado@us.dlapiper.com.

In San Juan, Puerto Rico, this 5th day of September 2024

/s/ Alejandro López-Rodríguez
Alejandro López-Rodríguez