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:** Motion in Compliance with Order to Show Cause dated August 28, 2024

MOTION IN COMPLIANCE WITH
ORDER TO SHOW CAUSE DATED AUGUST 28, 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 28, 2024, the 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 Regarding $25,000 Fine for Misrepresentation* ("August 28th Order"), in which the Energy Bureau found sufficient cause to believe that Genera may have engaged in alleged misrepresentation of material facts concerning the projected cost savings and Commercial Operation Date ("COD") timeline, thereby allegedly misleading the Energy Bureau into granting Genera authorization to continue with its proposed Request for Proposal ("RFP") process approach. The Energy Bureau stated that Genera misrepresented that its approach and plan for the

[1] Pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* ("LGA OMA"), dated January 24, 2023, executed by and among PREPA, Genera, and the Puerto Rico Public-Private Partnerships Authority ("P3 Authority"), Genera is the sole operator and administrator of the Legacy Generation Assets (as defined in the LGA OMA) and the sole entity authorized to represent PREPA before PREB with respect to any matter related to the performance of any of the O&M Services provided by Genera under the LGA OMA.

procurement of the Black Start and Emergency Peaking Resources would be more efficient than PREPA's, and that the actual costs associated with the projects under Genera have significantly exceeded the costs originally projected by PREPA. The Energy Bureau further claimed that the project timeline has been extended beyond the promised schedule, contrary to the commitments made by Genera. The Energy Bureau further added that, in a May 25, 2023, filing, Genera estimated the project could achieve COD within eighteen (18) months, while it now ascertains completion time across 2027. Consequently, the Energy Bureau then ordered Genera to show cause as to why a fine of twenty-five thousand dollars ($25,000) should not be imposed for misrepresentation in connection with the RFP process. The Energy Bureau requested that Genera submit a written response to the August 28th Order within five (5) business days of its notification, addressing the following:

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

In response to the Energy Bureau's concerns, Genera considers it essential to reference the operational comparison report filed on August 9, 2024, referred to as the "RFP Process Comparison Report". The RFP Process Comparison Report clearly articulated the projected efficiencies and benefits of Genera's project relative to previous initiatives, emphasizing the potential for significant operational cost savings and technological enhancements. Based on comprehensive analyses and realistic projections, the RFP Process Comparison Report highlighted key differences

in unit configurations and operational efficiencies that are expected to yield substantial cost savings throughout the project's lifespan. Regrettably, these pivotal advantages were overlooked in the Energy Bureau's August 28th Order.

Genera maintains that all projections and representations made to the Energy Bureau were based on thorough analyses and realistic assessments of the project's capabilities and potential impacts. Any discrepancies between the projected and actual costs and timelines are attributed to unforeseen factors and market dynamics beyond Genera's control, **not from any intent to mislead**. In responding to the August 28th Order, it is imperative to contextualize the discrepancies between Genera's initial projections and the current status of the RFPs within the framework of unforeseen global market shifts, regulatory changes, and other external factors that have impacted the RFP process. Genera asserts that these discrepancies were not a result of any intent to mislead the Energy Bureau but were influenced by circumstances beyond Genera's control.

It's important to consider cost differences in a holistic way, rather than evaluating project or equipment costs alone. A cost comparison isn't ready for assessment yet because Genera has not completed the equipment RFP award, and PREPA never had firm and final prices for its proposed project. Similarly, timeline considerations should be evaluated based on market response rather than PREPA's proposed completion date, which was aspirational and not certain. Upon further examination of both projects and the facts behind each, it can be concluded that Genera's approach will be completed at a lower cost and in less time than the original project would have.

II. Factual and Procedural Background

On January 23, 2023, the Energy Bureau issued a Resolution and Order titled *Determination for the Project Application Package for the Seven (7) Additional Peakers to be used*

as Emergency Generation ("January 23rd Order") through which it conditionally approved PREPA's RFP process for the procurement of emergency generation at Jobos, Daguao, and Palo Seco ("RFP 3800"). This approval was subject to various conditions, including that PREPA would report to the Energy Bureau on the status of emergency generation and black-start generation procurement, including interconnection study assumption consistency between contractors, at bimonthly intervals for the first year and quarterly intervals thereafter until installation.

Effective as of July 1, 2023, responsibility for O&M Services for the Legacy Generation Assets transitioned from PREPA to Genera, in accordance with the provisions of the LGA OMA. From that point forward, Genera has assumed exclusive responsibility for managing, leading, and deciding on RFP 3784 and RFP 3800 matters. The Energy Bureau recognized and affirmed this shift in responsibilities in their Resolutions and Orders dated July 13, 2023,[2] and July 17, 2023.[3]

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, along with recommendations for changes to the RFP processes, which Genera affirmed could lead to significant cost savings and a reduction in completion time by 9 to 12 months.

On August 23, 2023, the Energy Bureau issued a Resolution and Order titled *Resolution and Order regarding the Bi-Monthly Reports on the Status of Emergency Generation and Black-Start Generation Procurement for the Periods from July 15 to July 31, 2023 and August 1 to August*

[2] *See*, Resolution and Order, *In re: 10-Year Plan Federally Funded Competitive Process*, Case No.: NEPR-MI-2022-0005, July 13, 2023 (July 13th Resolution).
[3] *See*, Resolution and Order, *In re: 10-Year Plan Federally Funded Competitive Process*, Case No.: NEPR-MI-2022-0005, July 17, 2023 (July 17th Resolution).

15, 2023, filed by Genera PR, LLC ("August 23rd Order"). Therein, among other directives, the Energy Bureau (i) **allowed** the RFP process to continued in the manner described by Genera in Exhibit A of the August 16th Motion and (ii) **ordered** Genera to submit the draft RFP for its review and approval.

On November 8, 2023, after several procedural events, the Energy Bureau issued a Resolution and Order titled *Motion to Submit Supplement to September 8, 2023, Motion in Compliance with Resolution and Order Dated August 23, 2023 - Genera Competitive Procurement of Black Start and Emergency Generation* ("November 8th Order") approving the RFP package submitted by Genera for the procurement of black start and emergency generation services.

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 29th Motion"), in which Genera stated that the initial award was scheduled for March 2024.

On July 1, 2024, Genera filed a document with the Energy Bureau 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 1st Motion"). In this document, Genera included as Exhibit A the Bi-Weekly Report describing the status of the Emergency Generation and Black-Start Generation Procurement. Additionally, Genera notified the Energy Bureau in the July 1st Motion that starting July 1, 2024, pursuant to Footnote 16 of the January 23rd Order, reports would be submitted on a quarterly basis, consistent with the fiscal year's quarters, with the next report due by October 9, 2024.

On July 30, 2024, the Energy Bureau issued a Resolution and Order titled *Resolution and Order to Motion to Submit Bi-weekly Report on the Status of Emergency Generation and Black-*

Start Generation Procurement in Compliance with Resolution and Order of January 23, 2023 ("July 30th Resolution"). Upon reviewing Genera's July 1st Motion, the Energy Bureau determined that Exhibit A, filed as the bi-monthly report, did not adequately inform on the progress of the procurement process nor provide information on the milestones of the critical paths required to have the units in commercial operation within the timeline presented in Annex A-3 of the August 16th Motion.

Consequently, the Energy Bureau, in the July 30th Resolution, denied the change of the cadence of the bi-monthly reports to quarterly reports and ordered Genera to submit monthly reports instead of bi-weekly reports on the status of Emergency Generation and Black-Start Generation Procurement, commencing August 15, 2024.[4] Additionally, the Energy Bureau ordered Genera to include, as part of the next and subsequent monthly progress reports, at a minimum, the following:

a. A breakdown of each task, estimated cost, cost amount consumed, and timeline for completion of such task.
b. The stages of each task, timeline, present status and estimated time for completion.
c. A project timeline chart *(e.g.* Gantt Chart) with critical path for the Commercial Operation Date ("COD") of the project.
d. Permit list, permits obtained, estimated timeline for each permit and status of such permit.
e. 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.
f. Permit and cost for each site to accommodate the project.

[4] *See* July 30th Resolution, p. 2. It is important to note that while the July 30th Resolution refers to a denial of Genera's request to change the frequency of bi-monthly reports to quarterly reports, Genera did not formally request this change. Instead, Genera provided notice to the Energy Bureau, informing them of its intent to proceed with quarterly reports beginning July 1, 2024, as per the directives outlined in the Energy Bureau's January 23rd Order.

On August 14, 2024, Genera submitted a document titled *Urgent Request for Extension of Deadlines Following Tropical Storm Ernesto* ("August 14th Motion"). In the August 14th Motion, Genera requested an extension until August 19, 2024, for all impending deadlines, including the submission of the monthly progress reports on Emergency Generation and Black-Start Generation Procurement, due to operational disruptions caused by Tropical Storm Ernesto.

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 19th Motion") In the August 19th Motion, 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.

III. Applicable Standards for the Imposition of Fines and Discussion

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.

It is crucial to acknowledge that the approach the Energy Bureau takes in handling noncompliance issues is meticulously guided by the stipulations of Regulation No. 8543, also known as the *Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Proceeding* ("Regulation 8543"). Section 1.04 of Regulation 8543 provides that this Regulation shall apply to all adjudicative proceedings, notices of noncompliance, and investigations addressed before or by the Energy Bureau. Regarding the Notice of Noncompliance, Section 14.01 of Regulation 8543 states that the Energy Bureau may issue a Notice of

Noncompliance if it learns that a person has incurred, is incurring, or may incur a violation of the energy public policy set forth in Act No. 57-2014, as amended. Such Notice of Noncompliance shall state the alleged breach, according to public information or the information that forms part of the administrative record, as well as the facts that give rise to the Notice of Noncompliance. *See* Section 14.02 of Regulation 8543. Moreover, Section 14.06 of Regulation 8543 provides that if the notified party fails to comply with any of the Energy Bureau's orders issued during a Notice of Noncompliance proceeding, the Energy Bureau may impose any fine or sanction it deems appropriate, including fines and penalties set forth in Section 12.02 of Regulation 8543.

Article XII of Regulation No. 8543 outlines that the Energy Bureau "may issue any order or resolution it deems necessary to give effect to the purpose of Act No. 57-2014, to compel compliance with any law whose interpretation and implementation is subject to the jurisdiction of the Energy Bureau and to enforce its rules, regulations, orders, and decisions". Article XII of Regulation 8543 further adds, in its Section 12.02, that the Energy Bureau may levy administrative fines up to twenty-five thousand dollars ($25,000) per day for instances of noncompliance with provisions of Act No. 57-2014, as amended, the Energy Bureau's regulations, any law whose interpretation and implementation is subject to the jurisdiction of the Energy Bureau, or any other order issued by the Energy Bureau.

IV. Discussion

Genera respectfully submits that there is no evidence indicative of any intention to mislead the Energy Bureau and fervently denies such characterization of Genera's efforts. The discrepancies observed by the Energy Bureau between the projected outcomes and the current status of the RFP process primarily originate from external factors that significantly exceeded the control of Genera, rather than from any deliberate or willful misrepresentation. From the outset,

Genera has grounded its projections in transparency and accuracy, adopting a rigorous methodology for its forecasts and estimates. These projections were diligently developed based on the most reliable information, market predictions available at the times and experience from Genera's personnel. Genera has found itself obligated to adjust its projects and its RFP due to substantial changes in the external economic and regulatory environment, which significantly impacted the scope and scale of the project's requirements and costs; Genera has continued to communicate any developments to the Energy Bureau. Each alteration to the initial projections has been comprehensively documented and communicated to the Energy Bureau with full transparency. Such disclosures were made in a timely manner, as required by the Energy Bureau's mandates. Thus, Genera fails to observe how its actions during the past year have constituted a misrepresentation to the Energy Bureau.

Genera has not only maintained open communication with the Energy Bureau but has also rigorously complied with the Energy Bureau mandates concerning continuous updates. Since assuming operations of the Legacy Generation Assets on July 1, 2023, Genera has diligently adhered to the reporting requirements set forth by the Energy Bureau, providing detailed and timely updates on every aspect of the RFP process. This ongoing communication has included regular submissions of bi-weekly reports outlining the progress and adjustments related to the RFP process's initial project estimates, ensuring that the Energy Bureau was continually apprised of the latest developments. Genera's commitment to transparency is evidenced by its proactive efforts to keep the Energy Bureau fully informed, aligning with regulatory expectations and fostering a transparent oversight environment.

Despite the unforeseen increase in projected project costs, the operational efficiencies and technological advancements implemented by Genera, as outlined in the August 9, 2024,

operational comparison report, are expected to provide substantial long-term benefits. These improvements include diversification in the types of generation units—specifically the integration of two Combustion Turbine Generators (CTGs) and eight Reciprocating Internal Combustion Engines (RICE)—which are designed to optimize both performance and environmental compliance. This configuration provides a higher total output and achieves lower emissions and quicker response times compared to the older technologies used by PREPA.

Additionally, these technological advancements are projected to significantly extend the lifespan of the generation assets by utilizing modern, less wear-intensive technologies. The long-term operational cost reductions, combined with decreased environmental impacts, substantiate the initial investments and counterbalance the initial cost overruns. These benefits are critical not only for meeting current regulatory standards but also for positioning Puerto Rico's energy infrastructure to meet future demands more efficiently and reliably. As such, the comprehensive benefits of these technological enhancements and operational efficiencies are expected to contribute profoundly to the improvement of the island's energy system's stability, efficiency, and environmental footprint, making a compelling case against the severity of the proposed penalties in light of these substantial long-term advantages.

The imposition of a twenty-five thousand ($25,000) fine by the Energy Bureau is viewed as excessive and unreasonable by Genera, given the nature of the alleged misrepresentations. These discrepancies arose under conditions of significant external volatility without any demonstrated intent of deception from Genera. Such a punitive measure not only appears excessive but also unreasonable, considering the broader context in which these discrepancies emerged. The initial cost overruns and project delays, though substantial, were the result of evolving market dynamics and not from a deliberate misguidance by Genera. Furthermore, the December 2025 target for

starting commercial operations and the estimated costs provided by PREPA cannot be used as a basis for comparing Genera's project outcomes. These projections were never validated, and Genera's process demonstrates that those projections were unachievable. This is further supported by the hundreds of exceptions that PREPA received in response to its proposed EPC project. Therefore, the projected costs and timelines would have been significantly adjusted to address these exceptions during the negotiation process, which never occurred. Therefore, the severity of the proposed fine does not proportionately reflect the nature of the discrepancies, which were largely influenced by external factors beyond Genera's control.

Furthermore, the proposed fine fails to consider the mitigating circumstances that have significantly influenced both the financial and operational dynamics of the project. The project was impacted by a broader economic downturn, unforeseen regulatory changes, and supply chain disruptions, all of which affected the project in ways that could not have been anticipated at its planning stages. These factors significantly contributed to the discrepancies between the projected and actual outcomes, underscoring the importance of acknowledging these challenges when assessing the fairness and appropriateness of any punitive measures. It is crucial that the Energy Bureau recognizes these mitigating factors, as they provide essential context that explains the deviations from the initial project estimates and argues against the imposition of harsh penalties on Genera.

Further responses to the Energy Bureau question listed in pages three and four of the August 28th Order are provided as Attachment A.

WHEREFORE, Genera respectfully requests that the Energy Bureau **take notice** of the above and **reconsider** the proposed fines outlined in the August 28th 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 counsels of record, Alexis G. Rivera Medina, at arivera@gmlex.net, and Mirelis Valle Cancel at mvalle@gmlex.net.

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

/s/ Alejandro López-Rodríguez
Alejandro López-Rodríguez

Exhibit A

Docket Number: NEPR-MI-2022-0005
In Re: 10 Year Plan Federally Funded Competitive Process
Re: Order to Show Cause Regarding $25,000 Fine for Misrepresentation

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:

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

Response:

Genera's expectations at the time of making statements regarding costs and timeline were based on data on hand at the time, namely the information relayed by the Puerto Rico Electric Power Authority ("PREPA") about their process, and the industry experience of Genera personnel on other projects. The costs and proposed commercial operation date (COD) put forward by the PREPA, however, were based on projections and not on actual data or results. A third-party contractor had proposed the costs but had not considered architecture and engineering costs. Furthermore, there were never actual costs incurred or a formal assessment of responses from the market on costs – i.e., whether the costs proposed in the PREPA process were reasonable or how the exceptions and caveats to the proposals presented to PREPA translated into dollar values.

In a competitive processes for major projects, once proposals come in, parties typically finalize the scope, negotiate the contract exceptions and refine the

price proposal before award. Risks that will be accepted and not negotiated away should be priced into the evaluation (e.g., a $100 bid with a near certain $50 cost overrun should be evaluated as if it were closer to $150 rather than $100). This process can take considerable time and see material changes in cost proposals. If it is not done, and the exceptions to contractor cost and timeline projections are accepted and not narrowed, then the resultant timelines and costs are not firm and cannot be relied upon. The costs are, as a result, often more accurate after the entire project is awarded than in the mere proposal stage. Even then, there could be costs-overruns covered by change orders and other mechanisms, particularly when the contractor's proposal carries many exceptions.

PREPA had not gone through this process. They had not negotiated and finalized a contract with any proponent, or evaluated the impact of exceptions on the bids. The COD and cost proposal information from PREPA that Genera relied on was thus more of an aspiration rather than a firm response from the market. When the RFP process was handed over to Genera, PREPA had only received responses that did not include final costs or firm COD dates, and they also included numerous exceptions to the process. These exceptions would have had significant consequences in the competitive process, potentially leading to increased prices and other unforeseen challenges.

To reiterate, increased contract exceptions in a competitive process can lead to increased price and schedule risk for owners as the exceptions typically allow contractors out of their obligations and to transfer their associated risks to the project owner. Contractors face uncertainties and potential risks in accepting firm price deals, which prompt them to raise their bid prices to accommodate unforeseen events or to introduce exceptions that could affect the project's timeline and budget. These exceptions can result in unexpected costs that were not initially included in the bid, potentially requiring the project owner to cover them, leading to higher overall expenses. To account for this, project owners, like PREPA, would typically need to implement additional risk

management strategies, such as allocating contingency funds or purchasing extra insurance, raising the true project costs. If the evaluation was not done by PREPA, then the estimates provided by them could not reflect the true market costs at the time.

While Genera relied on the information available from PREPA's process, Genera's decision to change the peaker procurement process was also driven by the generally-accepted advantages that an owner-driven process typically has over the EPC (Engineer, Procure and Construct) approach, including cost implications. Genera understands the importance of justifying our choice and appreciates the opportunity to provide insight into the rationale behind this decision. The selection of an owner-driven process for the purchase of equipment, construction, and development project was based on careful consideration of several factors and assessments of various project management methodologies. Genera firmly believes that this approach aligns with our commitment to an efficient, controlled, and transparent project management framework.

The owner-driven process presents several compelling advantages that resonate with our organizational objectives. It offers the owner a heightened level of control and flexibility, empowering them to make informed decisions and prompt adjustments without being encumbered by procedural complexities. This streamlined decision-making process fosters efficient project management and problem-solving, enhancing our ability to maintain project timelines and uphold quality standards. Direct communication between the owner and contractors is a pivotal aspect of the owner-driven process, as it facilitates better alignment with the owner's vision and goals. Furthermore, it enables the owner to exercise oversight of the project, ensuring adherence to specified requirements and quality benchmarks as well as cost controls. The direct involvement of the owner in discussions and decision-making processes serves to maintain the integrity of the original project vision and fosters an environment conducive to open dialogue and collaboration. Of

significant importance is the control over budget allocation that the owner-driven process affords, enabling responsible cost-saving decisions and the preservation of project savings. This financial autonomy, coupled with the capacity to monitor the quality of work firsthand, bolsters our ability to achieve successful project completion while adhering to stringent quality standards.

Moreover, Genera's decision to opt for an owner-driven process is underpinned by its favorable implications for the permitting process. The direct involvement of the owner in addressing requirements and concerns from permitting agencies helps to streamline the process, mitigate potential delays, and maintain the project's trajectory. This proactive engagement safeguards project continuity and promotes a collaborative approach to regulatory compliance, underscoring our steadfast commitment to adherence to legal and regulatory frameworks.

In weighing the selection of an owner-driven process against alternative methodologies such as the EPC process, we acknowledge that each approach harbors distinct advantages and limitations. While the EPC process offers certain conveniences, its attendant limitations, including reduced client control, restricted flexibility, and potentially heightened initial costs, underscore the unsuitability of this approach for our specific operational imperatives. The proprietary nature of our projects necessitates a project management framework that affords the owner enhanced control, facilitates direct involvement, and maintains alignment with our organizational vision. The owner-driven process resonates fits with these imperatives, positioning us to uphold stringent quality standards, exercise oversight, and better navigate the complexities of project management. In summary, the rationale for our selection of an owner-driven process stems from its propensity to empower us to maintain control, uphold quality standards, and leverage direct involvement throughout all project stages. This can, and Genera believed at the time, based on experience on other projects, would lead to cost and schedule improvements over the EPC approach.

Genera evaluated PREPA's peaker procurement process and determined that such an important project should be managed internally rather than being left to a third-party contractor. Genera's personnel experience showed that an owner-driven process, where Genera maintains significant control and oversight as the project owner, can offer several time-related advantages over an EPC approach, as stated above.

Additionally, Genera respectfully suggests that since the costs are not finalized yet, the Energy Bureau does not have sufficient information to judge whether one project process was more or less costly than the other. This assessment can be conducted once the entire project is finished, allowing a comparison of the projected cost of the PREPA projects and the actual cost of the Genera project. Further, the analysis must include evaluation of cost-savings achieve in the long term for the entire project, which could include, for example, efficiency of the installed generation and how it results in savings through less fuel use.

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2. A detailed explanation of the reasons for the discrepancies between the projected and actual costs and timelines.

Response:

Inflation is a contributing factor. In year 2022, the Association of General Contractors of America published a "*Construction Inflation Alert*" in which they stated that "*inflation is at a 40 year high*". In that same report, there were increases of more than 60% in the indexes for copper and brass mill shapes (up 68%), while numerous other indexes rose by more than the 23% increase in the "bid price" index. In that same year, the Governor of Puerto Rico brought the issue to the attention of the United States Congress, expressing concerns over delays in projects commencement due to the lack of supplies and workers, and the costs increases faced. These issues not only affect the energy reconstruction, but also the universe of construction projects in Puerto Rico and continental United States.

Moreover, on March 6, 2023, the Central Office for Recovery, Reconstruction, and Resiliency ("COR3") sent a letter to Federal Emergency Management Agency ("FEMA") stressing the challenges faced with the costs increases and supply chain issues. In its letter, COR3 stated that "Inflation remains stubbornly high and the supply chain- while improved from a year ago- shows some persistent problems. Unfortunately, the construction industry is not immune to all these problems." Considering that the peakers are specialized and custom-made equipment, the inflation and supply chain issues effects are acute and more severe.

Regarding timeline, the current projections reflect the market's long lead time of major equipment, including electrical systems, and Genera continues to work to shorten these timelines. These circumstances are having an adverse

effect on the project schedules extending the initially projected completion. This equipment is in high demand due to new generation and grid projects being developed worldwide, which are also still being impacted by supply chain constraints.

Notwithstanding the enormous challenges faced and the conditions out of Genera's control, our team continues working tirelessly to complete the final design, procurement, and FEMA's approval of the statement of work ("SOW") to commence the Peakers units' installation.

Additionally, critical project activities have continued in parallel with major equipment procurement, including permitting, geotechnical assessments and surveys, decommissioning and demolition planning, and coordination with generator interconnect evaluations with the transmission and distribution ("T&D") operator.

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3. Any mitigating circumstances or evidence that Genera wishes to present in defense of its actions.

Response:

Genera is taking steps to reduce costs and shorten project schedules. The estimates and projects that the PREB has seen thus far are not final. Thus, no final determination can be made.

The preliminary results of Genera's process also show how its process will be more beneficial to Puerto Rico than the original proposal. Thus far, the main benefits of the process, in comparison with the original process, are:

	Topic	Genera (Current)	PREPA (Previous)
1.	**Unit Configuration**	2 Combustion Turbine Generators (CTG) 8 Reciprocating Internal Combustion Engines (RICE)	11 CTGs (combined over two RFPs)
2.	**Capacity**	CTG: 2 x 50 MW RICE: 8 x 18 MW Eight proposals were received from 6 OEMs, which allowed Genera to evaluate different options and select the best value.	CTG: 11 x 28 MW (2 different models) 11 x 22 MW (1 model) Four proponents participated among the two RFPs, with three different models; none is an OEM.

3.	**Location, Type, and Number of Units**	**CTG:** Costa Sur 2	**RICE:** Daguao 2 Yabucoa 2 Jobos 2 Costa Sur 1 San Juan 1	**CTG:** Daguao 2 Yabucoa 2 Jobos 2 Costa Sur 2 Palo Seco 3
4.	**Operational Cost Savings**	• **Fuel Cost Savings: ~$80,000,000** (over an expected 20-yr unit life) • **Avg. Heat Rate (HHV) [NG]:** 9105 Btu/kWhr CTG & RICE based on approved generation capacity (244 MW) and assuming a capacity factor of 28%, this configuration will save $2.91M/yr in fuel for 20 yrs when compared with the units proposed under PREPA RFP.		• Higher fuel & maintenance costs over life of units, accruing to rate payers • **Avg. Heat Rate (HHV) [NG]:** 9528 Btu/kWhr CTG On the normalizing assumptions stated, this configuration will have a higher fuel cost by $2.91M/yr
		Cost savings executing contracts directly with OEM. Final costs remain under negotiation.		EPC applies overhead costs and profit margin to major equipment and engineering.
4.	**Operational Costs Savings (cont.)**	No maintenance penalties for starts/stop for RICE under the LTSA providing operational flexibility.		CTG's OEM penalize the starts/stops of their units under LTSA contracts. This limits operation and increases costs.

5.	**Operational & Technological Advances**	**•Cleaner NOx 15% O_2 Emissions [NG]:** 50 MW CTG: 20 ppmvd 18 MW RICE: 6 ppmvd	**•NOx 15% O_2 Emissions [NG]:** 22 to 28 MW (Avg.): 22 ppmvd
		RICE provide **faster response**. Time to full load: 2 to 5 minutes. Fast ramp to compensate intermittency of renewables.	2 to 3 times slower than RICE.
		50 MW CTG provides higher generator inertia.	Lower generator inertia and low exhaust gas temperatures limit ability for heat recovery and use of steam turbine when compared to medium-sized CTGs.
		RICE is efficient during part load operation and output is not affected by ambient temperatures.	Higher temperatures have an impact in CTG efficiency and operating at lower loads affect the emissions numbers.
		Medium-sized CTG units provide more capability to potentially close cycle and increase power production from a steam generator at Costa Sur, if required, for lower cost operation in a compact footprint.	Low exhaust gas temperatures limit ability for heat recovery and use of steam turbine.
		Owner-controlled LTSA negotiations increase opportunity of a better agreement.	EPC leads the negotiations and reduces the opportunity of a better agreement for the owner.
6.	**Equipment Scope**	**Genera included all major, long-lead equipment, including** auxiliary equipment, step-up transformers, low- and medium-voltage	**Some proposals did not include long-lead items. These items would have been needed before unit operation and would have**

		switchgear, and high-voltage gas-insulated switchgear (GIS)**.**	**delayed the project beyond proposal dates.**
7.	**Timeline & Process**	Equipment supply procurement to be completed in Q3 2024, with **delivery across 2026-2027**. In the meantime, Genera advanced the following tasks: • Data gathering and emissions calculations for federal and local permits, including Environmental Assessment. • Contracting for related services such as asbestos and lead-containing paint testing, geotechnical, GPR, and topographic surveys. • Development of decommissioning plans, as required on the OMA - a new mandatory process for Genera. Approval delay may impact project implementation. • Development of technical specifications, terms and conditions, and drawings for demolition works required for new units' facilities construction.	**No certainty over award date**. Proponents presented hundreds of exceptions. As of July 2023, no negotiation or diligence had taken place. Negotiation would have been more complex than current process given broader EPC scope and contractors acting as intermediary with OEM. Significant technical work remained open. **No certainty over COD or pricing**. Uncertain site information (soil capacity, underground utilities) and other unknowns are included in the pricing of the EPC with contingencies and risk allowances, including schedule and price adjustments to cover permitting, lead-containing paint and asbestos in the equipment and buildings, and other risks. It is improbable that the initially proposed delivery dates would hold or that the remaining equipment could be procured to achieve the proposed COD.

As mentioned in the table above, now that Genera has been able to assess the results of the market responses, Genera believes that its project will be less costly fuel-wise than what the fuel costs of the PREPA project would be. When comparing PREPA's peaking and black start solution, consisting of 11 total GTG units versus Genera's peaking and black start solution, consisting of 8 RICE generators and 2 GTG units, a basic fuel consumption comparison may be made to illustrate the advantage of Genera's plan.

The average heat rate of the PREPA solution utilizes 11 GTGs (this heat rate is the average of all bids). The heat rate for Genera's solution is the fleet heat rate for the GTG and RICE Generators suppliers, configured for the same peaking and black start service. The heat rate of PREPA's solution is 9528 BTU/kWh versus Genera's solution of 9105 BTU/kWh. Aside from numerous other technical advantages of the RICE generation technology to serve peaking, load following, and grid support services, RICE technology also provides a distinct advantage with its lower heat rate, providing an advantage in operational costs. Both the application of RICE generation technology, and its ability to deliver more efficient services provide distinct advantages when integrated into Genera's fleet replacement strategy. Over a 20-year period, the estimated savings with Genera's solution in fuel costs alone are over $80M. While these savings are important and significant, the true benefit to Puerto Rico's customers will be realized in Genera's suitability-for-service strategy that provides a more capable generation configuration to support the future integration of renewable generation and energy storage technologies which provides support for Genera's Grid Stabilization Plan.

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4. 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.

Response:

FEMA allows applicant to adjust abstract or preliminary costs estimates as the project is finalized, as further explained below.

Under FEMA Accelerated Award Strategy ("FAASt") project number 13627, PREPA received an award to perform work eligible under Section 428 of Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Section 428"). The FAASt Project Number 136271 defined what will be considered eligible work, and included the following actions as eligible activities: restoring the disaster damage to local codes/standards and/or FEMA-approved industry standard; restoring components that were either not damaged by the disaster and/or had pre-existing damage prior to the disaster when such work is necessary to fully effectuate the replacement or restoration of disaster-damaged components to restore the function of the facility to an approved industry standard.

FEMA Guide for Permanent Work in Puerto Rico Public Assistance Alternative Procedures (Section 428), allow for the consolidation of funds associated with fixed-cost subawards across all the facilities of a Recipient or Subrecipient based upon the agreed-upon cost estimates. Under Section 428, the subrecipient may use funding from its fixed-cost sub-award to complete the approved SOW associated with the project. Under this same section, the Subrecipient may also share funding from a fixed-cost subaward across any

of its other fixed-cost subawards and eligible facilities in order to best meet its post-disaster recovery needs.

As detailed above, Genera will use the remainder $5.88 billion, plus over $7 billion from Section 406 hazard mitigation funding not yet formulated under FAASt Project 136271 to complete the Peakers SOW. Genera is actively working with COR3 and FEMA to update the detailed SOW to FEMA to capture actual costs. Therefore, the increase in cost of the Peakers project is eligible to be reimbursed with the funding available in FAASt project number 13627.