

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

**NEPR**

**Received:**

**Sep 13, 2024**

**9:36 PM**

**IN RE:** 10-YEAR PLAN FEDERALLY  
FUNDED COMPETITIVE PROCESS

**CASE NO.:** NEPR-MI-2022-0005

**Subject:** Procurement of Black-Start  
and Emergency Peaking Resources

**MOTION IN COMPLIANCE WITH THE RESOLUTION AND ORDER DATED SEPTEMBER  
6<sup>TH</sup>, 2024, AND TO REQUEST ORDER**

**TO THE HONORABLE PUERTO RICO ENERGY BUREAU:**

**COMES NOW** the Puerto Rico Electric Power Authority (PREPA) through the undersigned legal representation and respectfully submits and requests as follows:

**I. PROCEDURAL BACKGROUND**

On August 24<sup>th</sup>, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") entered the Integrated Resource Plan Order ("IRP Order"). The Energy Bureau approved a Modified Action Plan that included an allowance for replacing a part of PREPA's older gas turbine peaking resources up to 81 MW, subject to competitive procurement. The Modified Action Plan further indicated that PREPA should place such peaking resources at locations with zero or only one remaining older peaking unit (i.e., Costa Sur, Aguirre, and Yabucoa) and that the design of such procurement should define services to be provided such as black start, rather than specific technologies.

On November 10, 2022, PREPA filed under seal a confidential letter to the Chairman of the Energy Bureau seeking approval of the Energy Bureau for the launch of an RFP for black start generation units at Yabucoa and Costa Sur. The Energy Bureau, through Resolution and Order issued on December 5<sup>th</sup>, 2022, approved PREPA's request for an RFP process for the procurement of black start systems at Costa Sur and Yabucoa. After a lengthy discussion regarding these projects, on January 23<sup>rd</sup>, 2023, the Energy Bureau approved the RFPs, and PREPA initiated the procurement process of RFPs 3784 and 3800 pursuant to the orders issued by the Energy Bureau.

On April 14, 2023, the Energy Bureau issued a Resolution and Order stating that, since the generation units being procured in RFP 3784 and RFP 3800 shall eventually be under the operation and maintenance of Genera PR, LLC ("Genera"), as per the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement ("LGA OMA"), the Energy Bureau encouraged Genera to assume, an active role and jointly engage with PREPA in the RFP process to promote a cooperative working relationship intended to ensure an efficient and orderly transfer of care, custody and control of the Legacy Generation Assets between both parties.

On May 8<sup>th</sup>, 2023, the Energy Bureau determined that Genera had to immediately assume an active role in the administration of these RFP processes and to provide formal input into those processes to ensure the procurement of the black start units at Costa Sur and Yabucoa and the emergency generation

units at Daguao, Jobos, and Palo Seco are being completed efficiently, and allow for efficient and low-cost procurement and future operations of such generation units. Furthermore, the Energy Bureau ordered Genera to file any suggested revisions to PREPA's RFP 3784 and RFP 3899 processes, including any suggested changes to the RFP documents and bid schedules, to outline a plan for transitioning administration of those RFPs from PREPA to Genera, and to outline a proposed process for implementing its suggested changes and administration of the RFPs for black start and emergency generation resources.

On May 25, 2023, Genera filed a document titled *Memorandum of Compliance with May 8 Order (subject: Procurement of Black Start and Emergency Peaking Resources)* 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."**

On July 6, 2023, Genera submitted a Motion to seek an order from the Energy Bureau affirming its exclusive responsibility for overseeing, managing, and making decisions regarding the black-start and emergency units being procured under RFPs 3784 and 3800, in accordance with Sections 4.7(b), 5.1, and 5.8(c) of

the LGA OMA. Genera further requested that the Energy Bureau direct HoldCo to transfer all documentation related to these RFPs to Genera promptly.

PREPA disagreed with Genera's expansive interpretation of the terms and conditions of LGA OMA. Notwithstanding, PREPA agreed that Genera concluded the RFP process since the RFPs were in the adjudication stage, and Genera guaranteed that the units would be purchased at a lower cost and commissioned earlier than expected.

However, on July 13<sup>th</sup>, 2023, the Energy Bureau granted Genera's request and determined that, given the LGA OMA, Genera was the sole entity responsible for managing, leading, and deciding on RFPs 3784 and 3800. The Energy Bureau indicated that Genera cannot issue new RFPs or amend existing RFPs unless a duly justified request is approved.

On August 16<sup>th</sup>, 2023, Genera proposed changes to the Energy Bureau in the RFP. On August 23<sup>rd</sup>, 2023, the Energy Bureau approved the changes to the RFPs proposed by Genera and ordered Genera to submit the new draft RFP for the Energy Bureau review and approval. **Further, the Energy Bureau warned Genera that the Commercial Operation Date (“COD”) established in PREPA's RFPs will remain unaltered.**

On September 1<sup>st</sup>, 2023, Genera requested an extension to submit the new RFP draft. **According to Genera's bi-weekly report filed on the same date, from August 16-31, 2023, Genera began a new project approach, evaluating market options to issue a new RFP that is different from PREPA's RFPs.** On September 8<sup>th</sup>,

2023, among other things, Genera requested until October 13<sup>th</sup>, 2023, to submit the Energy Bureau with the completely new RFP package. Genera submitted the RFP package on October 20, 2023, and the Energy Bureau approved it on November 8, 2023. Genera continued filing bi-weekly reports to the Energy Bureau regarding the progress of the RFP process.

After several procedural events, on July 30<sup>th</sup>, 2024, the Energy Bureau 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. **Further, 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<sup>st</sup>, 2023, compared to Genera's approach which to date has not completed the award of its equipment RFP.**

On August 9<sup>th</sup>, 2024, Genera complied with the July 30 Order and submitted a Comparison Report detailing the distinctions between Genera's RFP process and PREPA's previous RFP process. In Genera's monthly report from August 19, 2024, 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.

On August 28, 2024, the Energy Bureau issued an Order to Show Cause, asking Genera to explain alleged misrepresentations regarding cost savings and the COD for projects involving the RFPs. The Energy Bureau ordered Genera to

show cause as to why it should not impose a fine for allegedly providing overly optimistic estimates that appear to have misled the Bureau, particularly when compared to PREPA's original projections.

On September 5, 2024, Genera filed a Motion in Compliance with Order to Show Cause. Genera argued that its initial estimates were based on data provided by PREPA, as well as its own industry experience. However, according to Genera, PREPA's numbers were aspirational, based on preliminary projections, and not grounded in actual market data or final contract negotiations. Thus, when Genera began implementing the project, it became apparent that external factors (global market changes, inflation, and supply chain disruptions) were the main causes of cost overruns and project delays, not any intentional misrepresentation. Genera further explained that unforeseen global conditions, including inflation and supply chain issues, led to cost discrepancies. These conditions affected the availability and cost of critical components such as copper and steel, causing delays in the delivery of equipment and materials.

On September 6<sup>th</sup>, 2024, the Energy Bureau issued a Resolution and Order and granted PREPA five (5) days to submit a detailed response to Genera's September 5<sup>th</sup> Motion. In compliance with such, PREPA submits its response.

## **II. DISCUSSION**

In its September 5<sup>th</sup> Motion, Genera attempts to justify the delays and cost overruns of the Black Start and Peaker unit projects. However, Genera's claims are misleading and do not accurately reflect the reality of the contracting process

and the circumstances under which PREPA transferred the project to Genera. Below, PREPA outlines key points demonstrating why Genera is responsible for the delays and additional costs, not PREPA.

#### **A. PREPA's RFP Process was Competitive and Adequate**

Genera asserts that the procurement process presented by PREPA was not viable from the start and that its timeline and cost projections were "unachievable." This argument is misleading. PREPA's process for selecting the projects was competitive, based on the Request For Proposals, which allows PREPA to meet with proponents to clarify any exceptions or concerns regarding the proposals. Each proponent presented a timeline in the proposals submitted to PREPA. The proponents had the manufacturer's support, which gave PREPA certainty about the representations they made in the proposal, including the project competition timeline. In addition, the proposals received were secured with a bid bond.

While it is true that some proponents presented several exceptions, this is a normal part of an RFP process. Under current regulations, the RFP process allows PREPA to meet with each proponent individually to discuss and negotiate each of the exceptions presented in the proposal. PREPA would have had the opportunity to clarify these exceptions through meetings with the proponents before awarding the project. Genera ignores this critical aspect of the RFP process by arguing that these exceptions were problematic for continuing the project.

Additionally, Genera claims that the execution timeline set by PREPA was unachievable. This is false and misleading. Section 8 of PREPA's RFPs defined the timeline as "Time is of the essence." However, the delivery periods for the units and the completion of the project were established by the proponents, not by PREPA. Each proposal received included a delivery date and an associated cost secured by a bid bond, ensuring the project's viability within the RFP parameters.

Moreover, the project's scope under PREPA involved installing new combustion turbine units within the footprint of existing units, which would have minimized construction time and ensured control over the budget. This design reduced risks by leveraging existing infrastructure, something Genera chose to abandon. Genera must assume the consequences of its own decisions, meaning that the delay on the process created by the change of scope is Genera's responsibility not PREPA's.

#### **B. GENERA ASSUMED RESPONSIBILITY TO MEET THE ORIGINAL TIME AND BUDGET**

When PREPA was ordered to transfer the project to Genera, Genera committed to adhering to the same construction timeline, as provided by the proponents, and budget approved under the FEMA Project Worksheet (PW). This included prices and delivery dates that had already been secured by the original equipment manufacturers (OEMs). **Genera chose to cancel the advanced process initiated by PREPA, resulting in the loss of the guaranteed delivery dates and prices for the units, causing avoidable delays.**



One of the primary reasons for the delay is Genera's unilateral decision to reconfigure the project. This included replacing PREPA's original design, which proposed installing the units within the existing footprint, with a new project that involves the installation of larger and heavier units. This decision has necessitated demolition, the construction of new foundations, and the handling of new environmental permit challenges, which were not part of PREPA's original concept. It is important to note that PREPA's original project minimized environmental impacts by not requiring large structural modifications. In contrast, Genera's design requires longer construction time and higher costs, mainly due to the need for more complex environmental permits, reconfiguration of the plant site, and additional construction work not envisioned in PREPA's original project.

### **C. GENERA DELAYED THE PROJECT BY REFORMULATING THE RFP**

Once Genera assumed control of the project, it spent a significant amount of time reformulating the procurement process instead of continuing with the RFP that had already been approved and had guaranteed delivery dates and prices. These delays in issuing a new RFP are Genera's direct responsibility, not PREPA's. The changes implemented by Genera and approved by the Energy Bureau have been the primary cause of the extended timelines and increased costs.

In conclusion, Genera's claims, attempting to shift blame to PREPA for the delays and additional costs, are misleading. The current problems with the project stem largely from the decisions made by Genera after taking control, including canceling the original RFP and reconfiguring the project in a more costly,

complex, and environmentally impactful way. These changes have caused the delays and cost overruns that Genera is now attempting to attribute to PREPA. Therefore, we respectfully request that this Honorable Energy Bureau reject Genera's arguments and reaffirm the responsibility that Genera assumed by modifying PREPA's original project.

### **III. PREPA'S REQUEST FOR ORDER**

On September 5<sup>th</sup>, 2024, at 9:52 PM, Genera filed a *Motion to Submit a Supplement to the Response to the Order to Show Cause Dated August 28, 2024*, which included a confidential Exhibit A not provided to PREPA. Upon receiving notice of this filing, PREPA immediately requested a copy of Exhibit A from Genera's counsel; however, no response has been received.

As yesterday's filing supplements the September 5<sup>th</sup> motion, PREPA submits this Motion without the benefit of Genera's complete position and urgently requests receipt of Exhibit A to properly prepare and submit a comprehensive supplemental response in accordance with the timeline to be established by the Energy Bureau. Without access to this critical exhibit, PREPA's ability to respond fully and accurately is significantly impaired. PREPA respectfully requests that the Energy Bureau direct Genera to immediately provide PREPA with Exhibit A and grant ten (10) days from notice to file its supplemental response.

**WHEREFORE**, PREPA respectfully requests the Energy Bureau to (1) take NOTICE of the present Motion; (2) deem PREPA in compliance with the September

6<sup>th</sup> Order; (3) order Genera to immediately provide PREPA with Exhibit A and (4) grant PREPA ten (10) days from notice to file a supplemental response.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 13<sup>th</sup> day of September 2024.

**CERTIFICATE OF SERVICE:** We hereby certify that this document was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and courtesy copies were sent via e-mail to Genera PR, LLC through its counsels of record at [jfr@sbgblaw.com](mailto:jfr@sbgblaw.com), [alopez@sbgblaw.com](mailto:alopez@sbgblaw.com).

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