

**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: Resolution and Order pertaining
to *Order to Show Cause* issued on August 28,
2024.

RESOLUTION AND ORDER

I. Factual Background

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, PREPA must give 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

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 Motion"), 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 EPA³ 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.**"⁴

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 RFP processes, which Genera affirmed could **lead to significant cost savings and a reduction in completion time by 9 to 12 months.**⁵

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 Order.⁶ **Considering Genera's assurance that the units would be purchased at a lower cost and be commissioned earlier than**

¹ Request for Proposal ("RFP").

² January 23 Order.

³ USA Environmental Protection Agency ("EPA").

⁴ May 25 Motion, p.4.

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").



expected, the Energy Bureau allowed the RFPs process to continue in the manner described by Genera in Exhibit A of the August 16 Motion.

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. Genera also informed that starting July 1, 2024 under Footnote 16 of the January 23 Order, reports would 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.

After a 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 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 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 Dagua, 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.

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 beginning 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:

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 September 16, 2024).



1. A breakdown of each task, estimated cost, cost amount consumed, and timeline for completion of such task.
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 to prepare for each site where the project shall be installed. Details on any demolition and permits required to prepare for the installation of the project.
6. Permit and cost for each site to accommodate the project.

SMN 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 under Act 57-2014.¹¹

SMN 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.

SMN 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.

SMN As shown in Genera's multiple filings with the Energy Bureau, Genera 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 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.

Nonetheless, Genera's August 9 and August 19 Motions illustrated that the actual costs associated with the projects under Genera 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 9-12 months before PREPA's spring of 2026 COD proposed schedule, while it now ascertains completion time across 2027.

The Energy Bureau deemed there was sufficient cause to believe that Genera may have engaged in misrepresentation of material facts about the projected cost savings and COD timeline, thus potentially misleading the Energy Bureau in granting them authorization to continue with their proposed approach. On August 28, 2024, the Energy Bureau ordered Genera to, within five (5) business days, show cause to as to why the Energy Bureau should not impose the maximum administrative fine of twenty-five thousand dollars (\$25,000) for misrepresentation in connection with the RFP process for the procurement of black start and

¹⁰ Commercial Operation Date ("COD").

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



emergency peaking generation systems. The Energy Bureau further ordered Genera to submit a written response addressing the following:

- a) The basis for the representations made regarding cost savings and the COD timeline;
- b) A detailed explanation of the reasons for the discrepancies between the projected and actual costs and timelines;
- c) Any mitigating circumstances or evidence that Genera wishes to present in defense of its actions; and
- d) A clarification on whether 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.

On September 5, 2024, Genera filed a document titled *Motion in Compliance with Order to Show Cause dated August 28, 2024* ("September 5 Motion"). In its September 5 Motion, Genera argued that discrepancies between projected outcomes and the current status of the RFP process originated from external factors that significantly exceeded its control, rather than from deliberate or willful misrepresentation.¹² According to Genera, initial cost overruns and projected delays, though substantial, resulted from evolving market dynamics.¹³ Genera stressed that the project was affected by a broader economic downturn, unforeseen regulatory changes, and supply chain disruptions.¹⁴ Genera further argued that COD and estimated costs from PREPA cannot be used as a basis for comparing Genera's project outcomes.¹⁵ Genera maintained that PREPA's projections were never validated, and that Genera's process demonstrates that those projections were unachievable.¹⁶ Genera supported this argument referencing alleged hundreds of exceptions that PREPA received in response to its proposed EPC¹⁷ project.¹⁸ Genera argued that the projected PREPA costs and timelines would have been significantly adjusted to address these exceptions during this negotiation process which never occurred.¹⁹

Before issuing a ruling, on September 6, 2024, the Energy Bureau granted PREPA five (5) business days to submit a detailed response to Genera's September 5 Motion.

On September 12, 2024, Genera filed a document titled *Motion to Submit a Supplement to the Response to the Order to Show Cause dated August 28, 2024* ("September 12 Motion"). Through its September 12 Motion, Genera submitted supplemental information, as Exhibit A, aiming to provide the Energy Bureau with a detailed account of the factors contributing to the delay in the awarding of the RFPs. Particularly, Genera maintained that throughout the awarding process for PREPA's RFPs 3784 and 3800, many exceptions and clarifications from proponents were identified and received, requiring thorough review and consideration.²⁰ Exhibit A to the September 12 Motion details those clarifications and exceptions reported by the proponents, which total 532. Genera submitted Exhibit A to the September 12 Motion under seal of confidentiality, due to the inclusion of sensitive commercial details related to the RFP process. Genera requested the Energy Bureau to maintain its confidentiality and

¹² September 5 Motion, p. 11.

¹³ *Id.*

¹⁴ *Id.*, p. 12.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Engineer, Procure, and Construct ("EPC").

¹⁸ September 5 Motion, p. 12.

¹⁹ *Id.*

²⁰ September 12 Motion, p. 2, ¶ 3.



indicated it would provide a memorandum of law, within ten (10) days, to support said request.²¹

On September 13, 2024, PREPA filed a document titled *Motion in Compliance with the Resolution and Order Dated September 6th, 2024, and to Request Order* ("September 13 Motion"). PREPA argued that Genera's claims were misleading and do not accurately reflect the reality of the contracting process and the circumstances under which PREPA transferred the project to Genera.²² Pertaining to Genera's assertion that the procurement presented by PREPA was not possible from the start and that its timeline and cost projections were unachievable, PREPA maintained that its process for selecting projects was competitive, based on the RFPs, which allows PREPA to meet with proponents to clarify any exceptions or concerns regarding the proposals.²³ According to PREPA, each proponent presented a timeline in the proposals submitted; the proponents had the manufacturer's support, which gave PREPA certainty about the representations they made in the proposal, including the project completion timeline.²⁴ In addition, PREPA indicated that the proposals received were secured with a bid bond, ensuring the project's viability within the RFP parameters.²⁵ PREPA further stated that the delivery periods for the units and the completion date were set by the proponents, not by PREPA.²⁶ Moreover, PREPA expressed its project scope involved installing new combustion turbine units within footprint of existing units, which would have reduced construction time and ensured control over the budget.²⁷

PREPA also argued that Genera assumed responsibility to meet the original time and budget and that its determination to cancel the advanced process started by PREPA, causing the loss of the guaranteed delivery dates and prices for the units, and avoidable delays.²⁸ PREPA maintained that one of the primary reasons for the delay was Genera's unilateral decision to reconfigure the project to one that involves the installation of larger and heavier units, a decision that has required demolition, constructing new foundations, and handling new environmental permit challenges, which were not part of PREPA's original concept.²⁹ PREPA contended that Genera's claims, trying to shift blame to PREPA for the delays and additional costs are misleading. PREPA sustained those problems with the project stem largely from Genera's decisions after taking control, including canceling the original RFP and reconfiguring the project in a more costly, complex, and environmentally impactful way.³⁰ PREPA also requested the Energy Bureau to order Genera to provide PREPA with Exhibit A to the September 12 Motion and grant PREPA ten (10) days to file a supplemental response.³¹

II. Discussion & Conclusion

In its May 25 and August 16, 2023 Motions Genera represented that its proposed changes to the RFPs **would not result in higher costs and/or a lengthier project timeline than those originally expected under PREPA**. Particularly, through the May 25 Motion, Genera stated that the referenced project could achieve commercial operation **within 18 months** and that its plan would result in **lower costs**, among other benefits. In the August 16 Motion,

²¹ *Id.*, p. 3, ¶ 5.

²² September 13 Motion, pp. 6 – 7.

²³ *Id.*, p. 7.

²⁴ *Id.*

²⁵ *Id.*, pp. 7 – 8.

²⁶ *Id.*, p. 8.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*, p. 9.

³⁰ *Id.*, pp. 9 – 10.

³¹ *Id.*, pp. 10 – 11.



Genera stated its proposed path forward reduces the costs of the entire project and reduces times to have the units in commercial operation. Comparing its approach to PREPA's, Genera stated it would considerably **reduce the project completion time by 9-12 months** from PREPA's schedule, which specified a COD by the **spring of 2026**. Further, Genera highlighted its approach would **reduce overall project costs by 25% to 40%**.

Relying on these representations, the Energy Bureau approved Genera's reconfiguration of the original scope of the RFPs and allowed it to continue with the understanding that the project would not require additional costs or significant delays in completion.

Though the August 9 and 19, 2024 Motions, the Energy Bureau, was made aware, that contrary to the representations made, both the costs and timeline have **substantially exceeded the originally projected estimates**. Specifically, PREPA's estimates totaled \$613,541,936.38, while Genera projected estimated costs to be \$911,340,000.00. Further, while PREPA's schedule indicated a COD by the spring of 2026, and Genera initially estimated it could shorten said timeline by 9-12 months, it now ascertains completion time across 2027.

The Energy Bureau requested an explanation to justify these discrepancies in costs and timeline. In its September 5 Motion, Genera asserted that cost overruns and projected delays, though substantial, resulted from evolving market dynamics. Genera contended that the costs and timeline proposed by PREPA in connection with the RFPs were unrealistic and that PREPA's projections were neither validated nor achievable. Through the September 12 Motion, Genera further attributed delays in awarding of the RFPs to the numerous clarifications and exceptions from proponents.

On the other hand, in its September 13 Motion, PREPA argued that Genera has tried to shift responsibility to PREPA. PREPA denies such responsibility and stated that delays and cost overruns were directly attributable to Genera's reconfiguration of the RFPs, leading to the need for new construction foundations, additional permits, and other unexpected work, which has resulted in significant cost increases and delays to the project timeline.

After reviewing the arguments put forth by both parties in their respective motions, the Energy Bureau **DETERMINES** that project delays and cost increases **resulted from misrepresentations** by Genera, particularly in their **commitment to improve the original cost estimates and timeline, proposed by PREPA**. If Genera had reason to believe that the timeline and costs would increase, instead of decrease (as originally represented by Genera), it was their responsibility to **promptly** notify the Energy Bureau.

Since Genera guaranteed it would maintain the timeline and costs and failed to notify promptly of the alleged project costs overruns and delays, it must now **comply with what it represented in terms of time and costs**, which led to the Energy Bureau's RFPs reconfiguration approval.

To address the issue with the project timeline, the Energy Bureau evaluated the schedule proposed by the proponents under PREPA's RFPs, **with a COD by the spring of 2026**. Genera contended its approach could reduce such completion time by 9-12 months, but now proposes completion time across 2027. Therefore, in the interest of maintaining the terms originally represented by Genera, which were the basis for our approval, the Energy Bureau **ORDERS** Genera to complete the project and achieve COD **by the end of the Second Quarter (Q2) of 2026**, consistent with PREPA's approach. If Genera fails to meet this deadline, it will be subject to a **daily fine of up to twenty-thousand dollars (\$25,000) for each day the project remains incomplete beyond the specified deadline**, which shall serve as a deterrent for further delays, under Art. 6.36 of Act 57-2014.

In its latest monthly report, filed on September 13, 2024, Genera informed the Energy Bureau that it was exploring ways to improve the timeline with negotiations with proponents and revisiting the construction sequences.

The Energy Bureau **TAKES NOTICE** that Genera is in discussions with the proponents to **shorten the timeline**. In this case, the Energy Bureau **REITERATES** that the schedule set by



the Energy Bureau should be followed, and any agreed timeline between Genera and the proponents must not extend beyond **the end of Q2 2026**, as established by the Energy Bureau.

The Energy Bureau acknowledges that, as stated by Genera, project costs will be covered by funds from FEMA and costs overruns are eligible for reimbursement. Hence, consumers **will not be held responsible for any cost overruns directly related to the mismanagement of the RFPs**. Nonetheless, should FEMA fail to assume the additional costs incurred due to the reconfiguration of the RFP, Genera shall be fully responsible for covering any excess costs. **Under no circumstances will these additional costs be passed on to consumers**. Consumers will be shielded from cost increases, with FEMA covering additional costs, and any uncovered costs to be borne by Genera for its misrepresentation of the RFP.

The Energy Bureau will continue to monitor the progress of the project closely and Genera must continue to submit its monthly reports on the project's status, including any unforeseen developments that may affect the cost or timeline, ensuring continued oversight by the Energy Bureau.

The Energy Bureau **DETERMINES** not to impose a fine at this time, but Genera is **WARNED** that any failure to comply with this Resolution and Order will result in daily fines and potential further sanctions if necessary.

With this Resolution and Order the Energy Bureau is ensuring clarity, accountability, and a firm response to Genera's misrepresentation, while also protecting the interests of consumers. The Energy Bureau reserves the right to impose additional sanctions should further misrepresentations or delays be uncovered during the course of the projects.

The Energy Bureau will issue a determination on Genera's request for confidentiality pertaining Exhibit A to the September 12 Motion through a separate resolution once Genera provides the memorandum of law in support thereof, due on or before **Monday, September 23, 2024**.

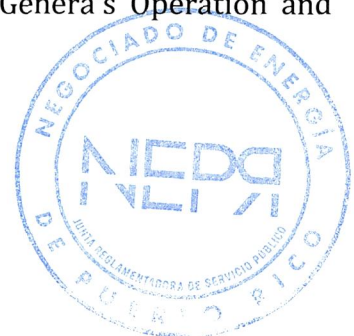
PREPA's request to order Genera to provide PREPA with Exhibit A to the September 12 Motion and grant PREPA ten (10) days to file a supplemental response is hereby **DENIED**, as the Energy Bureau has resolved the matter at hand through this Resolution and Order, and no further arguments are needed.

The Energy Bureau **WARNS** Genera that under Art. 6.36 of Act 57-2014:

- (i) noncompliance with this Resolution and Order, regulations and/or applicable laws may carry the imposition of fines and administrative sanctions of up to \$25,000 per day;
- (ii) any person who intentionally violates Act 57-2014, as amended, by omitting, disregarding, or refusing to obey, observe, and comply with any rule or decision of the Energy Bureau shall be punished by a fine of not less than five hundred dollars (\$500) nor over five thousand dollars (\$5,000) at the discretion of the Energy Bureau; and
- (iii) for any recurrence of non-compliance or violation, the established penalty shall increase to a fine of not less than ten thousand dollars (\$10,000) nor greater than twenty thousand dollars (\$20,000), at the discretion of the Energy Bureau.

The Energy Bureau further **WARNS** Genera that the payment of **any fine** imposed by the Energy Bureau must be satisfied using the money it receives as payment (*i.e.*, Service Fee) under its contract; such payment shall not be considered, construed or treated as a cost attributable to customers or pass-through expenditures, as per Genera's Operation and Maintenance Agreement.

Be it notified and published.

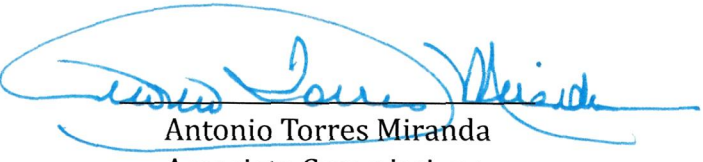



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Associate Commissioner


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 have agreed on September 17, 2024. I also certify that on September 17, 2024 a copy of this Resolution and Order was notified by electronic mail to arivera@gmlex.net; mbustelo@gmlex.net; mvalle@gmlex.net; jfr@sbgblaw.com; alopez@sbgblaw.com; legal@genera-pr.com; regulatory@genera-pr.com; and I have moved forward with filing the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today September 17, 2024.


Sonia Seda Gaztambide
Clerk

