

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

**IN RE:** REQUEST FOR APPROVAL OF THE  
VEGA BAJA DECOMMISSIONING PLAN

**CASE NO.:** NEPR-MI-2024-0003

**SUBJECT:** Approval of the Vega Baja  
Decommissioning Plan.

**RESOLUTION AND ORDER**

**I. Relevant Background**

On January 24, 2023, the Puerto Rico Electric Power Authority ("PREPA"), the Puerto Rico Public-Private Partnerships Authority ("P3 Authority") and Genera PR, LLC ("Genera") entered into an agreement for the operation and maintenance of PREPA's legacy generation assets.<sup>1</sup> According to Generation OMA, Genera will provide Decommissioning Services for the Legacy Generation Assets.<sup>2</sup> These services encompass the dismantling and removal of the structures that make up the Legacy Generation Assets, as well as all other necessary activities for their retirement, dismantling, decontamination, or storage.<sup>3</sup>

On April 17, 2024, Genera submitted a letter to the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") regarding the Vega Baja Decommissioning Plan ("April 17 Letter"). Enclosed with the April 17 Letter was a document titled *Vega Baja Proposed Decommissioning Plan* ("Preliminary Draft Plan"), prepared by Sargent & Lundy, Genera's consultant. In the April 17 Letter, Genera requested the Energy Bureau's "review" and "input" on the Preliminary Draft Plan.

On April 24, 2024, Genera filed a document titled *Memorandum of Law in Support of Confidential Treatment of Vega Baja Decommissioning Plan* ("April 24 Motion"). In this motion, Genera requested that the Preliminary Draft Plan be kept confidential.

On June 27, 2024, the Energy Bureau issued a Resolution and Order ("June 27 Resolution") opening this proceeding for decommissioning of the Vega Baja plant and commencing an informal review process involving Genera, the P3 Authority and Energy Bureau staff and consultants. In the June 27 Resolution the Energy Bureau granted confidential treatment to the Preliminary Draft Plan and ordered Genera to begin the informal review process for the Preliminary Draft Plan.

On July 16, 2024, Genera held an initial discussion on the Preliminary Draft Plan with representatives from the P3 Authority, as well as staff and consultants from the Energy Bureau. On July 23, 2024, the Energy Bureau sent a staff letter to Genera, which included comments on the plan (Annex A of the letter). The letter also acknowledged that Genera had submitted: (i) the presentation used during the July 16, 2024, meeting<sup>4</sup>, (ii) LUMA's approval of Genera's proposal to retire the Vega Baja units 1 and 2 issued on March 18, 2024 ("LUMA's

<sup>1</sup> See Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement, dated January 24, 2023, executed by and among PREPA, P3 Authority and Genera ("Generation OMA"). Except as otherwise provided, capitalized terms used but not otherwise defined in this Resolution and Order have the meaning ascribed to them in the Generation OMA.

<sup>2</sup> Legacy Generation Assets are the base-load generation plants and combustion turbine peaking units listed on Annex I of the Generation OMA. See *Recitals* of the Generation OMA.

<sup>3</sup> Section 1.1 of the Generation OMA.

<sup>4</sup> See document titled *Vega Baja Decommissioning Plan Discussion*, dated July 16, 2024 ("Decommissioning Plan Discussion").



Retirement Approval")<sup>5</sup>, and (iii) the Decommissioning Notice issued by the P3 Authority on May 16, 2024 ("P3's Decommissioning Notice").<sup>6</sup>

On August 5, 2024 Genera filed a *Motion to Submit Summary Report of Final Decommissioning Plan in Compliance with Resolution and Order Dated June 27, 2024* ("August 5 Motion"), informing the Energy Bureau of the progress made towards the evaluation of a final decommissioning plan for the Vega Baja facility. The August 5 Motion included, as Exhibit A, a *Summary Report in Compliance with the Energy Bureau's June 27 Order*.

On August 23, 2024 Genera filed a *Motion to Submit Final Decommissioning Plan in Compliance with Resolution and Order Dated June 27, 2024 and Responses to Energy Bureau's Staff Letter Dated July 23, 2024* ("August 23 Motion"). The August 23 Motion included, as Exhibit A, the *Vega Baja Proposed Decommissioning Plan* ("Proposed Decommissioning Plan"). The evaluation in this case concerns the Proposed Decommissioning Plan.

On September 26, 2024 Genera filed a *Restated Request for Approval of the Final Decommissioning Plan for the Vega Baja Power Station*, noting that approval is essential for triggering several activities indispensable for adhering to the timelines in the Proposed Decommissioning Plan ("September 26 Motion").<sup>7</sup> Genera requested; (i) approval of the Proposed Decommissioning Plan submitted with the August 23 Motion, and (ii) issuance of a *Notice to Commence Demolition*.<sup>8</sup>

On October 2, 2024, Genera filed a *Motion to Submit LUMA's Notice Regarding the Decommissioning Plan for the Vega Baja Power Station* and requested; (i) approval of the Proposed Decommissioning Plan submitted with the August 23 Motion, and (ii) issuance of a *Notice to Commence Demolition*.

## II. Generation OMA Legacy Generation Assets Decommissioning Framework

Pursuant to Generation OMA, Genera will provide Decommissioning Services for the Legacy Generation Assets.<sup>9</sup> These services include the dismantling and removal of the Legacy Generation Assets structures, as well as all other necessary activities for their retirement, dismantling, decontamination, or storage.<sup>10</sup> After the Service Commencement Date the P3 Authority (acting on behalf of PREPA), under the Approved IRP,<sup>11</sup> and in consultation with the Energy Bureau and LUMA<sup>12</sup> may issue a Decommissioning Notice to Genera to start Decommissioning Services for one or more of the Legacy Generation Assets.<sup>13</sup> In addition, on or after the Service Commencement Date, P3 Authority (acting on behalf of PREPA) may deliver to Genera a Decommissioning Notice to proceed regarding one or more of the

<sup>5</sup> See Letter address to Genera, PR LLC from LUMA dated March 18, 2024, RE: Decommissioning Plan for Vega Baja GTs.

<sup>6</sup> See Letter address to Genera, PR LLC from P3 dated May 16, 2024, RE: Decommissioning Notice.

<sup>7</sup> See September 20 Motion, p. 6.

<sup>8</sup> *Id.*, p. 7.

<sup>9</sup> Section 2.1 of Generation OMA.

<sup>10</sup> Section 1.1 of the Generation OMA.

<sup>11</sup> Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan, In re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan, Case No. CEPR-AP-2018-0001, August 24, 2020 ("Approved IRP"). Minor modifications and/or clarifications to the Approved IRP were introduced through a Resolution and Order on Reconsiderations issued by the Energy Bureau on December 2, 2020, in case: In re. Review of the Puerto Rico Electric Power Authority Integrated Resource Plan, Case No. CEPR-AP-2018-0001.

<sup>12</sup> LUMA Energy LLC and LUMA Energy ServCo LLC (jointly referred as, "LUMA").

<sup>13</sup> Section 16.1(a)(i) of the Generation OMA.





Out-of-Service Units.<sup>14</sup> Furthermore, if Genera determines, in accordance with Prudent Industry Practice and in consultation with the Energy Bureau and LUMA, that a Legacy Generation Asset or a portion of it cannot continue to be safely operated and maintained due to an Emergency Event, Extended Event, or other critical developments, Genera may submit a request to the P3 Authority and the Energy Bureau (with copies to PREPA and LUMA) to commence Decommissioning Services for the affected Legacy Generation Asset.<sup>15</sup> Genera must provide LUMA with at least two (2) years' advance written notice before starting any Decommissioning Services due to such events, unless the Energy Bureau mandates an earlier specific commencement date.<sup>16</sup>

The Decommissioning Plan shall include provisions for permitting, demolition, decontamination, waste disposal, and either dismantling or preparing the Legacy Generation Asset for future use as designated by the P3 Authority and the Energy Bureau. It shall also cover the development of the Decommissioning Budget and establish acceptable arrangements for transitioning Genera Employees into new jobs or industries. This includes a training and/or severance plan funded by PREPA, with cooperation from Genera, PREPA, and the P3 Authority as needed. Additionally, the plan must outline a timeline for the Decommissioning Services, specifying the start and completion dates for the decommissioning of the Legacy Generation Asset.<sup>17</sup>

PREPA will pay Genera all Pass-Through Expenditures necessary to carry out the Decommissioning Services.<sup>18</sup> Additionally, Genera will be eligible to earn an Incentive Payment or may incur a Penalty based on its performance of the Decommissioning Services, as detailed in Section 7.1(c) of the Generation OMA.<sup>19</sup> The Decommissioning Plan will be based on the decommissioning standards established by the Energy Bureau and will require approval from both the Energy Bureau and the P3 Authority.<sup>20</sup>

Genera shall prepare and submit a Decommissioning Plan for any Legacy Generation Asset to the P3 Authority and the Energy Bureau within one hundred (120) days of receiving a Decommissioning Notice from the P3 Authority. The Energy Bureau will review and approve the submitted Decommissioning Plan, including, but not limited to, its budget, timeline, and overall content, ensuring compliance with established standards applicable to the decommissioning process.<sup>21</sup>

### III. Discussion and Findings

#### A. Description of the Vega Baja Power Station

The Vega Baja Power Station proposed for decommissioning spans approximately 1.3 acres at PR-2, km 39.4, in the Monte Carlo sector of Barrio Algarrobo, Vega Baja, Puerto Rico ("Vega Baja Power Station").<sup>22</sup> Located in an urban setting, it is surrounded by commercial and residential properties.<sup>23</sup> The Vega Baja Power Station comprises two (2) 21 MW diesel-

<sup>14</sup> Section 16.1(c) of the Generation OMA.

<sup>15</sup> Section 16.1(a)(ii) of the Generation OMA.

<sup>16</sup> *Id.*

<sup>17</sup> See Section 16.1(b) of the Generation OMA.

<sup>18</sup> See Section 16.2 (a) and (d) of the Generation OMA.

<sup>19</sup> See Section 16.2 (d) of the Generation OMA.

<sup>20</sup> See Section 16.2(b) of the Generation OMA.

<sup>21</sup> See Annex XV of the Generation OMA.

<sup>22</sup> See Proposed Decommissioning Plan, p. 1.

<sup>23</sup> *Id.*



fired generation units and support balance-of-plant (BOP) systems, including transformers, storage tanks, and maintenance facilities.<sup>24</sup> Primarily used for peaking power generation, the facility operated for about fifty (50) years, with multiple modifications and upgrades over its lifespan.<sup>25</sup> Both units are currently non-operational, and a timeline has been proposed by Genera to initiate decommissioning.<sup>26</sup>

In its filing to the Energy Bureau, Genera alleges that Vega Baja GT Unit 1 last operated in August 2022 with a full load rating of 21 MW.<sup>27</sup> Persistent repair issues, however, led to the unit being declared impaired in late 2023, after which it was fully depreciated.<sup>28</sup> Genera states that, following this decision, Vega Baja Unit 1 and its balance of plant (BOP) systems could be decommissioned and removed from service, pending approval from the P3 Authority, the Energy Bureau, and LUMA.<sup>29</sup> According to Genera, Vega Baja GT Unit 2 has been non-operational since 2019 due to a thrust bearing failure, with no intention of restoration.<sup>30</sup> The unit was similarly declared impaired in late 2023, attributed to ongoing issues and its prolonged inactive state, leading to full depreciation of the asset.<sup>31</sup>

*B. Decommissioning Notice by P3 Authority*

After an initial exchange of information between Genera and the P3 Authority, the latter issued the P3's Decommissioning Notice on May 16, 2024 for the retirement and commencement of decommissioning for two legacy generation units (Vega Baja GT Units 1 and 2) at the Vega Baja Power Station. In response, Genera prepared the Proposed Decommissioning Plan intended to comply with Section 16 and Annex XV of the Generation OMA. The plan outlines three main phases: permitting, pre-demolition, and dismantling/demolition.

In accordance with Section 16.1(a)(i) of Genera OMA, a Notice of Decommission must be issued by the P3 Authority. In this instance, the notice was indeed issued.<sup>32</sup> However, Section 16.1(a)(i) mandates that, prior to the issuance of such a notice, the P3 Authority consults with the Energy Bureau to ensure alignment with the Approved IRP, a consultation that did not occur in this case.

The Energy Bureau concurs with the P3 Authority's determination that the proposed decommission aligns with the Approved IRP, as will be more fully explained below. The Energy Bureau notes that this case does not encompass significant complexities in determining compliance with the Approved IRP; therefore, it deems the P3's Notice of Decommission to be compliant with the Genera OMA. However, the Energy Bureau advises the P3 Authority and Genera that, in future occasions, the P3 Authority must consult with the Energy Bureau **before** issuing a Notice of Decommission to avoid a determination of noncompliance that could delay the evaluation of a proposed decommission plan.

*C. Summary of Proposed Decommissioning Plan*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Proposed Decommissioning Plan, Section 2.1, p. 1.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*, Section 2.1, p. 2.

<sup>32</sup> See Notice of Decommissioning.





The Proposed Decommissioning Plan includes a detailed outline of the steps to decommission the Vega Baja Power Station, which is intended for future use as a Battery Energy Storage System ("BESS") facility.<sup>33</sup> This aligns with Genera's approved plan to install 430 MW of BESS capacity throughout Puerto Rico, incorporating the property and specific salvaged equipment from the existing station for this purpose.<sup>34</sup> Genera specifically proposes installing a 52 MW (208 MWh) BESS at the Vega Baja Power Station site.<sup>35</sup>

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The Proposed Decommissioning plan is structured into three phases: (i) permitting, (ii) pre-demolition, and (iii) dismantling, removal, and demolition. It also incorporates a Community Relations Plan, a Decommissioning Budget, and outlines the responsibilities of the demolition contractor to appoint staff dedicated to health, safety, security, and quality management throughout the decommissioning process. Additionally, the plan includes a timeline graphic for the demolition process ("Decommissioning Timeline") and provides responses to questions from the Energy Bureau regarding (i) the roles and responsibilities of LUMA, PREPA, and the P3 Authority, and (ii) detailed elements of the decommissioning budget and reporting requirements.

The scope and arrangement of the Proposed Demolition Plan are generally compliant with the requirements outlined in Section 16.1 and Annex XV of the Generation OMA. However, certain substantive elements, including the Decommissioning Budget, Incentives, and Decommissioning Timeline, among others, appear to be misaligned with public policy principles and the requirements of the Generation OMA. These elements will require specific modifications to be deemed acceptable. The issues related to these elements are further discussed below in this Resolution and Order.

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*D. Vega Baja Power Station proposed retirement alignment with Approved IRP and Energy Public Policy*

PREPA's Proposed IRP was evaluated by the Energy Bureau in an adjudicative proceeding.<sup>36</sup> The Energy Bureau issued the final resolution and order, approving in part PREPA's Proposed IRP.<sup>37</sup> The Approved IRP includes a Modified Preferred Resource Plan ("Modified Action Plan") that takes into account specific planning parameters for additions<sup>38</sup> and retirements<sup>39</sup> of power generation capacity, among other factors.

To meet the Renewable Energy Portfolio requirements under Act 82-2010<sup>40</sup>, as amended by Act 17-2019<sup>41</sup>, the Modified Action Plan mandates the procurement of 3,750 MW of renewable energy resources and 1,500 MW of energy storage resources over a three-year

<sup>33</sup> See April 17 Letter, pp. 1-2, September 26 Motion, p. 1, and Decommissioning Plan Discussion, pp. 2-3 and 6.

<sup>34</sup> See *Resolution and Order* issued on July 17, 2024 in *In Re: Review of the Puerto Rico Electric Power Authority's 10 Year Infrastructure Plan-December 2020*, Case No.: NEPR-MI-2021-0002.

<sup>35</sup> See Decommissioning Plan Discussion, pp. 2-3 and 6.

<sup>36</sup> See PREPA's Motion to Leave File IRP Main Report "ERRATA" Version, dated June 14, 2019, which included a corrected version of the Main IRP Report submitted on June 7, 2019, and is titled *Integrated Resource Plan 2018-2019, Draft for the Review of the Puerto Rico Energy Bureau, Prepared for the Puerto Rico Electric Power Authority, June 7, 2019 (Rev. 2.1)*, In re. Review of the Puerto Rico Electric Power Authority Integrated Resource Plan, Case No. CEPR-AP-2018-0001 ("Proposed IRP").

<sup>37</sup> See Approved IRP, *supra*.

<sup>38</sup> *Id.*, ¶¶847-867, pp. 263-269.

<sup>39</sup> *Id.*, ¶¶869-873, pp. 270-271.

<sup>40</sup> Known as *Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act*, as amended ("Act 82-2010").

<sup>41</sup> Known as *Puerto Rico Energy Public Policy Act* ("Act 17-2019").



period for integration into Puerto Rico's electric system.<sup>42</sup> The acquisition is planned to take place in six (6) tranches through a series of requests for proposals ("RFPs").<sup>43</sup> To date, only 435 MW of battery storage resources are under contract for development in the coming years.<sup>44</sup> Therefore, a substantial amount still needs to be acquired for integration into the electric system. Consistent with the foregoing and considering the need for an aggressive plan to integrate more battery storage resources into the electric grid, the Energy Bureau approved Genera's plan to install 430 MW of BESS capacity throughout Puerto Rico.<sup>45</sup>

Aligned with the planned integration of renewable energy and battery storage resources, the Modified Action Plan includes a phased retirement strategy with various scenarios and timelines for generation assets, including PREPA's Legacy Generation Assets. The Energy Bureau approved the retirement plans for PREPA units in accordance with certain PREPA's caveats indicating a need for replacement capacity, assurance of meeting the overall reliability needs, and in alignment with more specific timing thresholds described in the Modified Action Plan.<sup>46</sup> Notably, the Approved IRP determined that PREPA should retire its older, oil-fired steam and certain combined cycle turbines assets in order of the declining cost to operate when they are no longer necessary for system reliability.<sup>47</sup> The Energy Bureau also approved the retirement and replacement of certain existing gas turbine peaking with new gas turbines (GTs).<sup>48</sup> All these units were scheduled for retirement within the period from 2021 to 2025. Accordingly, the Energy Bureau ordered PREPA to establish a retirement schedule for the worst-performing of the eighteen (18) existing peaking units and to include this in the bi-annual status reports on the retirement of oil-fired steam and combined cycle units.<sup>49</sup> The Vega Baja GT 1-1 and Vega Baja GT 1-2 are two of the eighteen (18) existing peaking units included in PREPA's Proposed IRP.<sup>50</sup> However, like the other peaking units, the Modified Action Plan does not specifically designate those units for retirement.<sup>51</sup>

In its Resource Adequacy Report, LUMA deemed only seven (7) of the eighteen (18) GT units available due to their condition.<sup>52</sup> In particular, the following units were considered as available: PS 1-1, PS 2-1, Jobos 1-1, Jobos 1-2, AG-2-1, Yabucoa 1-1 and Dagua 1-1, while the Vega Baja GT 1-1 and Vega Baja GT 1-2 were classified as unavailable.<sup>53</sup>

As discussed above, the retirement of the Vega Baja peaking units was anticipated in the Approved IRP; for these units to be retired, they must be classified among the worst-performing of the eighteen (18) GT units. The Resource Adequacy Report conducted by

<sup>42</sup> See, Approved IRP, ¶ 860, pp. 266-268.

<sup>43</sup> *Id.*

<sup>44</sup> See, in general, *In Re: Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, Case No.: NEPR-MI-2020-0012.

<sup>45</sup> See *Resolution and Order* issued on July 17, 2024 in *In Re: Review of the Puerto Rico Electric Power Authority's 10 Year Infrastructure Plan-December 2020*, Case No.: NEPR-MI-2021-0002.

<sup>46</sup> Approved IRP, ¶ 630, p. 193.

<sup>47</sup> The retirements should align with synchronous condensers conversion. Approved IRP, ¶ 630, p. 193.

<sup>48</sup> See Approved IRP, ¶ 873, p. 271.

<sup>49</sup> *Id.*

<sup>50</sup> See PREPA's Proposed IRP, Section 4.2.1.3, p. 4-7.

<sup>51</sup> See Approved IRP, ¶ 873, p. 271.

<sup>52</sup> See, Exhibit 1 ("Resources Adequacy Report") to *Motion to Submit Corrected Exhibit 1 of the Motion to Submit LUMA's 2024 Resource Adequacy Study* filed on November 14, 2023, filed by LUMA on December 11, 2023 in *In Re: LUMA Resource Adequacy Study*, Case No.: NEPR-MI-2022-0002, p. 68 and p. 74.

<sup>53</sup> *Id.*





LUMA identified the Vega Baja units as some of the poorest performers, excluding them from the list of available units. In addition, their replacement will support the urgent integration of battery storage, as the site, after executing the Proposed Decommissioning Plan, is designated for the installation of battery storage facilities. The integration of a battery storage facility at this location will further streamline the process due to the availability of specific interconnection facilities already present on-site.<sup>54</sup> Based on these reasons, the Energy Bureau finds that the retirement of the Vega Baja Power Station and the execution of the Proposed Decommissioning Plan is not inconsistent with the Approved IRP.

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A careful review of Genera's filings also shows that the proposed decommissioning of the Vega Baja Power Station aligns with energy public policy, as it meets the following objectives: (i) reducing Puerto Rico's reliance on fossil fuel-based energy sources and developing short-term plans to establish a well-balanced and optimal portfolio standard focused on renewable energy for Puerto Rico's Electrical System; (ii) aggressively reducing fossil fuel use, minimizing greenhouse gas emissions, and supporting climate change initiatives in Puerto Rico, specifically focusing on mitigation, adaptation, and resilience; and (iii) ensuring that the cost of electric power service in Puerto Rico is affordable, fair, and reasonable by decreasing reliance on fossil fuel-based energy sources.<sup>55</sup>

*E. LUMA's Agreement with the proposed retirement of the Vega Baja Power Station*

On May 31, 2021, the Energy Bureau conditionally approved LUMA's proposed System Operation Principles ("SOP")<sup>56</sup>, which set forth management guidelines for Puerto Rico's Bulk Power System after LUMA<sup>57</sup> assumed responsibility for the operation and maintenance of PREPA's Transmission and Distribution System ("T&D System") under the T&D OMA.<sup>58</sup> As outlined in the SOP, LUMA is responsible for coordinating all generation retirement requests.

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Under the SOP, LUMA evaluates the potential impacts of retiring a unit on the system, customers, regulatory policies, Approved IRP, and other relevant factors before submitting a recommendation to the Energy Bureau for review.<sup>59</sup> The Energy Bureau will decide whether to approve the unit's retirement based on this evaluation.<sup>60</sup> If retirement is not approved, the unit will be designated as a Reliability-Must-Run unit.<sup>61</sup> A new retirement request may be submitted once the issues identified with the unit's retirement have been resolved.<sup>62</sup>

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In response to Genera's petition, on March 18, 2024, LUMA sent to Genera the LUMA's Retirement Approval, evaluating the request to retire the combustion engines at the Vega Baja site (Vega Baja GT 1-1 and Vega Baja GT 1-2).<sup>63</sup> LUMA agreed with Genera's

<sup>54</sup> See Decommissioning Plan Discussion, p. 5. ("...the Main Power Transformer (MPT) [] will be used for the BESS Equipment).

<sup>55</sup> See, in general, Article 1.5 of Act 17-2019.

<sup>56</sup> See Final Resolution and Order issued on May 31, 2021 in *In Re: Review of T&D Operator's System Operation Principles*, Case No.: NEPR-MI-2021-0001.

<sup>57</sup> LUMA Energy, LLC as ManagementCo, and LUMA Energy ServCo, LLC as ServCo (collectively, "LUMA").

<sup>58</sup> See Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated as of June 22, 2020, by and among the Puerto Rico Electric Power Authority, the Puerto Rico Public-Private Partnerships Authority, and LUMA ("T&D OMA").

<sup>59</sup> See SOP, p. 14-15.

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> See LUMA's Retirement Approval, p. 1.



request, stating that, since the Resources Adequacy Report<sup>64</sup> and other analyses have consistently considered the Vega Baja Units as unavailable, retiring and replacing these units would be in the best interest of ratepayers.<sup>65</sup> LUMA further noted that this retirement would not affect system reliability or other essential factors.<sup>66</sup> As Appendix A to its letter, LUMA included an excerpt from the SOP detailing the general process for retiring a unit, and as Appendix B, it provided an example of the information that the requestor must submit when seeking approval for a unit's retirement.

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The Energy Bureau has evaluated LUMA's recommendation concerning the retirement of the Vega Baja Power Station and finds that, in general, the scope of LUMA's evaluation complies with the applicable SOP, as the project does not involve significant complexities related to resource availability. However, LUMA's evaluation lacks a discussion regarding the consistency of the proposed retirement with the Approved IRP and the Modified Action Plan, as well as an assessment of the timeline for substituting the retired capacity. Given the Energy Bureau's comprehensive evaluation of these issues, it does not find that LUMA's lack of discussion on the referenced topics hinders further evaluation of the Proposed Decommissioning Plan. **In future evaluations, however, LUMA shall incorporate these critical factors in addition to any other applicable SOP requirements.**

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**F. Employee Transition Plan**

Section 16.1 of the Generator OMA requires that the Decommissioning Plan includes reasonably acceptable provisions to facilitate the transition of Genera's employees (those who meet specified qualifications at a given Legacy Generation Asset and whose positions will be eliminated upon completion of the Decommissioning Services) into new roles or industries. This includes a training and/or severance plan (funded by PREPA) for employees who are not placed in successor jobs or industries, with Genera, PREPA, and the P3 Authority collaborating as needed to implement these arrangements. The Proposed Decommissioning Plan does not address these provisions outlined in Section 16.1 of the Generation OMA, as Genera states that no employees will be affected by the proposed decommissioning.<sup>67</sup>

Genera has not provided information on the number and classification of employees at the facility, nor on any employees who may work outside but provide services to the Vega Baja Power Generation Facility. Additionally, there is no explanation for the cost-effectiveness of transferring these employees to other facilities. Based on Genera's representation, the Energy Bureau will not require further explanation on this matter at this time. However, as part of the annual budget review process, Genera shall address any efficiencies associated with the transfer of employees due to the proposed decommissioning.

**G. Proposed Decommissioning Budget and Incentive Payment**

**1. Proposed Decommissioning Budget**

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In the April 17 Letter, Genera included a Decommissioning Budget of \$720,406.<sup>68</sup> Subsequently, in the Decommissioning Plan Discussion, this budget was increased to \$1,985,342.<sup>69</sup> Finally, in the Proposed Decommissioning Plan, the budget increased further to \$2,580,944 ("Proposed Decommissioning Budget"), resulting in a total increase of 358% from the original budget.<sup>70</sup>

<sup>64</sup> See, Resources Adequacy Report, *supra*.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> See Proposed Decommissioning Plan, p. 41.

<sup>68</sup> See April 17 Letter, Draft Decommissioning Plan, Table 8-2, p. 38.

<sup>69</sup> See Decommissioning Plan Discussion, p. 10.

<sup>70</sup> See Proposed Decommissioning Plan, Appendixes C and D.





The Proposed Decommissioning Budget estimation is based on a project maturity range of 1 to 15%, classifying it as a Class 4 estimate according to the Association for the Advancement of Cost Engineering ("AACE") International standards. A Class 4 estimate typically reflects a confidence interval of +/- 80% of the actual cost, indicating that the Proposed Decommissioning Budget is a preliminary, undeveloped estimate with substantial room for variation. As discussed below, this circumstance becomes significant given that incentives are being pursued based on potential reductions in the Proposed Decommissioning Budget.

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*TH* The Energy Bureau acknowledges that the Proposed Decommissioning Budget is, at this stage, an estimated figure subject to further adjustments. However, there are indications that the costs may be overstated. For instance, the budget incorporates a 30% contingency and accounts for an additional three (3) months of execution time, both of which significantly impact on the total budget.<sup>71</sup> These are in addition to the contingencies and escalators already factored into certain budget line items.<sup>72</sup> Moreover, the Proposed Decommissioning Budget includes expenses related to the removal, hauling, disposal, or demolition of equipment, supplies, and materials on site that could potentially be salvaged or preserved.<sup>73</sup> Additionally, improvident sums, likely not covered by FEMA, have been included in the Proposed Decommissioning Budget, specifically \$10,000 for a *groundbreaking ceremony* and another \$10,000 for an *inauguration event*.<sup>74</sup>

*am* In addition, the Proposed Decommissioning Budget is based on the assumption that PREPA will be responsible for the removal of all *chemicals and hazardous materials* and oil used in the transformers prior to the dismantling phase.<sup>75</sup> These items are presumed to be outside the scope of the current decommissioning budget. Since July 2023, Genera has been in charge of the operations at the Vega Baja Power Station, thereby assuming responsibility for all materials stored at the facility. The removal of these materials is an integral and inseparable part of the decommissioning activities. Accordingly, this removal must be undertaken by Genera as part of the decommissioning project and must be incorporated into the Proposed Decommissioning Budget.

*1* While the possibility of an incentive due to cost savings requires further evaluation and approval by the Energy Bureau, as stated in Part III(G)(3) of this Resolution and Order, it is determined that if, during such evaluation, it becomes apparent that the Proposed Decommissioning Budget is overstated or requires adjustment, the necessary modifications will be made for the purpose of determining any applicable incentive. Otherwise, Genera may be eligible for incentive payments based on unrealized or speculative cost reductions, which would not reflect legitimate cost efficiencies.

## 2. Proposed Decommissioning Budget Cap Exceedance

The Energy Bureau has reviewed the Proposed Decommissioning Budget in accordance with the Generator OMA's provisions, specifically regarding the cap on decommissioning costs as outlined in Section 16.2(b). According to this section, unless otherwise approved by the Energy Bureau, the Decommissioning Budget shall not exceed the sum of all costs related to the performance of O&M Services for the applicable Legacy Generation Asset, including the O&M Fixed Fee Adjustment, as set forth in Section I of Annex II of the Generation O&M.

*SP*  
<sup>71</sup> See Proposed Decommissioning Plan, Appendixes C and D.

<sup>72</sup> See Proposed Decommission Plan, pp. 28-33 and Appendixes C and D.

<sup>73</sup> See Proposed Decommission Plan, Table 8-1, pp. 39-40.

<sup>74</sup> See Proposed Decommissioning Plan, Section 4.3, p. 18.

<sup>75</sup> See Proposed Decommissioning Plan, Section 7.2.2, p. 18.





Furthermore, any adjustments to the O&M costs must be reflected in the amended Operating Budget, as described in Section 7.3(e)(ii) of the Generation OMA.

Genera has stated that the O&M services cost for Vega Baja GT Unit 1 and Unit 2 is \$0 for both 2023 and 2024, as they were not in service.<sup>76</sup> Given that the assets will no longer be operational by the time Decommissioning Services are expected to be executed, the O&M services cost will continue to remain at \$0 at the time of decommissioning. However, the O&M Fixed Fee Adjustment, originally set at \$238,500 in 2023 dollars for the Vega Baja Units, must be adjusted for consumer price index. With an estimated CPI of 260 for 2023 and 270 for 2024, the adjusted O&M Fixed Fee Adjustment for 2024 dollars is calculated at approximately \$247,673.08. Therefore, the cap for the Decommissioning Budget, after adjusting for CPI, is approximately \$247,673.08 (\$0 + \$247,673).

Despite this adjusted cap, the proposed Decommissioning Budget is \$2,580,944, which significantly exceeds the allowable limit. Given that this project is fully federally funded and that the incentive structure outlined in Section III.C.1 of Annex II of the Generation OMA will not affect PREPA's non-federally funded budgets (as established in Part III (G)(3) of this Resolution and Order), the Energy Bureau exercises its authority under Section 16.2(b) to approve the Proposed Decommissioning Budget in excess of the calculated cap. This approval is granted based on the project's federal funding structure and the need to ensure the successful completion of decommissioning. As such, the Energy Bureau authorizes a Proposed Decommissioning Budget of \$2,580,944<sup>77</sup>, notwithstanding its excess over the CPI-adjusted cap of approximately \$247,673.

### 3. Incentive

Genera represents that the proposed decommissioning will be **entirely federally funded**, meaning no funds will be required from Genera's Operating Budget, nor will PREPA be obligated to fund any accounts to cover costs related to the proposed decommissioning.<sup>78</sup> For the Vega Baja Decommissioning Project, ***Genera may only receive a cost savings incentive if FEMA funds are available and permissible under federal guidelines.*** According to FEMA procurement regulations under 2 C.F.R. Part 200, FEMA funds can be used for performance-based incentives, but only if such use complies with the allowable cost principles. If FEMA funds are not available or are not allowed to be used for the incentive, Genera will not be eligible to receive any incentive payments from other sources. In other words, if FEMA funds do not cover the cost savings incentive, **no alternative funding - whether from PREPA or other non-federal sources- can be used to pay the incentive.** The Proposed Decommissioning Plan, including the Decommissioning Budget discussion in the Executive Summary and any other relevant sections, shall be modified accordingly.<sup>79</sup>

In addition, any structure of incentives under FEMA regulations, including the 50% cost savings provision outlined in the Generation OMA, must be submitted to the Energy Bureau for evaluation and approval. The Energy Bureau must ensure that such incentives comply with both FEMA guidelines and local regulatory frameworks before any incentive payments can be authorized. This review process guarantees that any incentive arrangement aligns with federal funding requirements and local energy policies, ensuring transparency and accountability in the use of public funds.<sup>80</sup>

<sup>76</sup> See August 22 Motion, Exhibit B, Response 6, p. 7.

<sup>77</sup> Pending a downward adjustment of \$20,000 for the proposed improvident sums referenced in Part III (G)(1) of this Resolution and Order.

<sup>78</sup> See, Proposed Decommissioning Plan, Section 7.1, p. 28. [...the estimated decommissioning budget is expected to be entirely federally funded.]

<sup>79</sup> See Proposed Decommissioning Plan, p. IX.

<sup>80</sup> The Energy Bureau notes that the Proposed Decommissioning Budget includes a substantial contingency amount, which may surpass reasonable levels. This aspect will be closely monitored and considered in any





4. Additional justifications not to allow the use of Genera's Operating Budget or other PREPA's funds to pay incentives

Annex II of the Generation OMA, sets forth the compensation for the performance of the Operation and Maintenance Services ("O&M"). The compensation for Vega Baja GT Unit 1 and Vega Baja GT Unit 2 in 2024 is based on the O&M Fixed Fee structure. For each year of the contract, the O&M Fixed Fee starts at \$22.5 million and is adjusted by the Consumer Price Index (CPI) Factor. Since Vega Baja GT Unit 1 and Unit 2 are each allocated 0.53% of the total O&M Fixed Fee, their combined share is 1.06%. Therefore, the compensation for both units will be 1.06% of the O&M Fixed Fee for the year, subject to further adjustments if any decommissioning has begun or if the units are permanently or indefinitely removed from the scope of services. However, there will be no O&M Fixed Fee Adjustments from Contract Year 1 to Contract Year 5, regardless of whether Genera begins decommissioning any Legacy Generation Asset or if any such asset is permanently or indefinitely removed from the scope of O&M services during those years. The combined compensation for Vega Baja GT Unit 1 and Unit 2 for the year 2024 is approximately \$247,673.08 (adjusted by the CPI Factor).

According to the Generation OMA, Genera is entitled to continue receiving compensation for Vega Baja GT Units 1 and 2 until contract Year 5, even if decommissioning begins before the end of that year and the units are ultimately decommissioned. Since the contract began in July 2023, compensation for Vega Baja GT Unit 1 and Unit 2 will continue until June 30, 2028. This applies even though in this case Decommissioning Services will begin by the end of 2024 and are expected to be completed by mid-2025. Therefore, payment will continue to be received for units that are no longer operational. This results in approximately \$900,000,000<sup>81</sup> in compensation for the units after commencing decommissioning, which represents a reasonable financial benefit for Genera, considering that the decommissioning services were not expected to begin so early in the contract's life and, that according to Genera, the units were not operational in 2023 and 2024.<sup>82</sup>

Given this significant compensation already guaranteed to Genera, it further supports the conclusion that any additional incentive payments, especially those coming from Genera's FY 2026 Operating Budget or any other PREPA's funds, are not justified. Paying an incentive for unrealized or speculative cost reductions would impose an unnecessary financial burden on PREPA and the ratepayers, particularly when Genera will continue receiving substantial payments for assets that are no longer in service.

H. *Proposed Decommissioning Timeline*

As stated above, the Decommissioning Plan shall include provisions for permitting, demolition, decontamination, waste disposal, and either dismantling or preparing the Legacy Generation Asset for future use. Additionally, the plan must outline a timeline for the Decommissioning Services, specifying the start and completion dates for the proposed decommissioning.

In the April 17 Letter, Genera provided a comprehensive timeline covering all phases of the proposed decommissioning project, including the permitting and environmental process, contracting and procurement, demolition activities, and completion and finalization stages.<sup>83</sup> This timeline represented a well-rounded plan for managing each phase of the project. These

future assessment of applicable incentives, as it is essential to prevent the payment of savings shares resulting from speculative contingencies.

<sup>81</sup> Not fully adjusted by the CPI Factor.

<sup>82</sup> This will result in an additional payment to Genera of at least \$350,000 (not fully adjusted by the CPI factor) for units that are not operational.

<sup>83</sup> See April 17 Letter, Draft Decommissioning Plan, pp. 48-49 and Appendix A.





elements were reiterated and updated in the Decommissioning Plan Discussion.<sup>84</sup> However, in the Proposed Decommissioning Plan, Genera significantly narrowed the timeline's scope, choosing to include only demolition activities.<sup>85</sup> This truncated approach omits key phases, deviating from the comprehensive timeline originally proposed and deemed by the Energy Bureau to align with the Generation OMA's requirements.

The permitting and environmental processes, along with procurement, are essential phases in any decommissioning plan and must be included in the timeline. To accurately evaluate Genera's capability to efficiently execute a decommissioning project, it is essential that all relevant phases are incorporated into a comprehensive timeline. While the Energy Bureau acknowledges that timelines may require adjustment for unforeseen circumstances -as allowed by the Generation OMA,<sup>86</sup> omitting essential activities like permitting, environmental processes, and procurement from the timeline is unacceptable, as it hinders the Energy Bureau's and P3 Authority's ability to assess Genera's effectiveness in executing the Proposed Decommissioning Plan.

Genera also outlined a series of conditions, designated *Conditional Project Duration Risks*, that allegedly pose a risk to the proposed timeline for demolition activities. It proposes that, should these conditions arise, additional time be granted for the completion of demolition activities.<sup>87</sup> These conditions are outlined in Table 10-1 of the Proposed Decommissioning Plan.<sup>88</sup> The Energy Bureau regards the proposed conditions as too general, excessively broad, and therefore unacceptable. The Generation OMA already provides parameters for the parties to consider timeline extensions for executing activities in the Proposed Decommissioning Plan. Allowing Genera's broad and general conditions would create excessive leeway for subpar execution of decommissioning activities.

Based on the foregoing discussion, Genera **MUST DEVELOP** a new comprehensive timeline that includes permitting, procurement activities, and other relevant phases, and **MUST REMOVE** the unacceptable conditions identified in Table 10-1 from the Proposed Decommissioning Plan. This is not to say that some situations listed in Table 10-1 may not warrant timeline extensions. However, if and when these situations arise, the parties will consider them in line with the parameters established in the contract.

#### *I. Notice to Commence Demolition*

Genera is requesting that the Energy Bureau issue a *Notice to Commence Demolition* for the Vega Baja Power Station.<sup>89</sup> However, this request does not align with the contractual requirements. Under Section 16.1(a) of the Generation OMA, the required notice is a decommissioning notice, not a *Notice of Commencement of Demolition*, and it must be issued by the P3 Authority after consultation with PREB and the T&D Operator. The decommissioning notice is intended to formally initiate Decommissioning Services, which encompass more than just *demolition*, as discussed in Part III (H) of this Resolution and Order. In fact, the P3 Authority has already issued the required Notice of Decommissioning ("P3's Decommissioning Notice"). Genera's request does not follow the comprehensive process outlined in the Generation OMA.

<sup>84</sup> See Decommissioning Plan Discussion, pp. 8-9.

<sup>85</sup> See Proposed Demolition Plan, pp 42-46.

<sup>86</sup> Section 16.2(b) of the Generation OMA considers specific circumstances to address schedule delays, including: (i) Force Majeure Events, (ii) Owner Fault, and (iii) additional requirements imposed by the Owner, Administrator, or any other Governmental Body after the Decommissioning Budget's approval, each of which may cause or be reasonably expected to cause schedule delays.

<sup>87</sup> See Proposed Decommissioning Plan, Table 10-1, pp. 45-46.

<sup>88</sup> *Id.*

<sup>89</sup> See October 2 Motion, ¶13, p. 2 and September 26 Motion, ¶10, p. 5





Consequently, and as it is an improvident request, the Energy Bureau **WILL NOT** issue a *Notice to Commence Demolition*. The demolition phase must begin according to the final timeline established for implementing the Proposed Decommissioning Plan, as modified in accordance with the provisions outlined in Part III (H) of this Resolution and Order.

**IV. Conclusion**

The Energy Bureau **APPROVES** Genera’s Proposed Decommissioning Plan, subject to the limitations and conditions outlined in Parts III of this Resolution and Order. An updated version of the Proposed Demolition Plan, addressing the conditions set forth herein, must be submitted for the Energy Bureau’s review prior to commencing the plan’s execution.

The Energy Bureau **WARNS** Genera that:

- (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).

Be it notified and published.



Edison Avilés Deliz  
Chairman




Lillian Mateo Santos  
Associate Commissioner



Ferdinand A. Ramos Soegard  
Associate Commissioner



Sylvia B. Ugarte Araujo  
Associate Commissioner



Antonio Torres Miranda  
Associate Commissioner



**CERTIFICATION**

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on October 31, 2024. I also certify that on October 31, 2024, a copy of this Resolution and Order was notified by electronic mail to [jfr@sbgblaw.com](mailto:jfr@sbgblaw.com); [alopez@sbgblaw.com](mailto:alopez@sbgblaw.com); [legal@genera-pr.com](mailto:legal@genera-pr.com); [regulatory@genera-pr.com](mailto:regulatory@genera-pr.com), and I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, on October 31, 2024.



  
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Sonia Seda Gaztambide  
Clerk