

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

**NEPR**

**Received:**

**Nov 12, 2024**

**10:26 PM**

IN RE: 10-YEAR PLAN FEDERALLY  
FUNDED COMPETITIVE PROCESS

Case No.: NEPR-MI-2022-0005

Motion for Reconsideration of Resolution and  
Order of September 17, 2024, and Request for  
Administrative Hearing

**INFORMATIVE MOTION REGARDING FILING OF PETITION FOR JUDICIAL  
REVIEW**

**TO THE ENERGY BUREAU:**

**COMES NOW**, GENERA PR, LLC (“Genera”), through its undersigned counsel and,  
very respectfully, states and prays as follows:

1. Earlier today, November 12, 2024, Genera filed a *Petition for Judicial Review* in the present case, KLRA202400630. This Petition seeks review of the *Resolution and Order* issued and notified on September 17, 2024, by the Puerto Rico Energy Bureau (“PREB”), in which it held that Genera had purportedly engaged in misrepresentations in connection with the proceedings in the present case.

2. Genera hereby submits a sealed copy of the Petition for Judicial Review. (**Exhibit 1**).

WHEREFORE, Genera respectfully requests that the PREB take notice of the foregoing.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 12th day of November 2024.

It is hereby certified that this motion was filed using the electronic filing system of this Energy Bureau, and that electronic copies of this Motion will be notified to the following attorneys who have filed a notice of appearance in this case: **Lcdo. Alexis Rivera**, [arivera@gmlex.net](mailto:arivera@gmlex.net); **Lcda. Mirelis Valle Cancel**, [mvalle@gmlex.net](mailto:mvalle@gmlex.net); **Lcda. María Teresa Bustelo-García**, [mbustelo@gmlex.net](mailto:mbustelo@gmlex.net).

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## **Exhibit - 1**

ESTADO LIBRE ASOCIADO DE PUERTO RICO  
EN EL TRIBUNAL DE APELACIONES

GENERA PR, LLC

Parte Recurrente

vs.

NEGOCIADO DE ENERGÍA DE  
PUERTO RICO.

Parte Recurrída

KLRA2024 00630

Revisión Administrativa

CASO NÚM: NEPR-MI-  
2022-0005

Revisión procedente del  
Negociado de Energía de  
Puerto Rico

Sobre: Determinación de  
falsa representación;  
notificación defectuosa;  
violación a debido  
proceso de ley

SOLICITUD DE REVISIÓN JUDICIAL

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PRESENTADO  
SECRETARÍA  
TRIBUNAL DE APELACIONES  
2024 NOV 12 P 2:33

EN SAN JUAN, PUERTO RICO  
A 12 DE NOVIEMBRE DE 2024



ESTADO LIBRE ASOCIADO DE PUERTO RICO  
EN EL TRIBUNAL DE APELACIONES

GENERA PR, LLC		Revisión Administrativa
Parte Recurrente		CASO NÚM: NEPR-MI-2022-0005
vs.	KLRA2024	Revisión procedente del Negociado de Energía de Puerto Rico
NEGOCIADO DE ENERGÍA DE PUERTO RICO.		Sobre: Determinación de falsa representación; notificación defectuosa; violación a debido proceso de ley
Parte Recurrída		

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PRESENTADOS POR GENERA EN SU MOTIÓN  
DE RECONSIDERACIÓN.

**TERCER ERROR:** ERRO EL NEGOCIADO DE  
ENERGÍA AL AFECTAR DERECHOS  
PROPIETARIOS Y DE LIBERTAD DE GENERA  
SIN UN DEBIDO PROCESO DE LEY, AL HACER  
UNA ADJUDICACIÓN DE HECHOS  
CONTROVERTIDOS Y RESOLVER QUE  
GENERA HABÍA INCURRIDO EN FALSAS  
REPRESENTACIONES, SIN LA CELEBRACIÓN  
DE UNA VISTA EVIDENCIARIA EN LA QUE SE  
PUDIERA ESCUCHAR PRUEBA SOBRE LAS  
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ESTADO LIBRE ASOCIADO DE PUERTO RICO  
EN EL TRIBUNAL DE APELACIONES

<b>GENERA PR, LLC</b>  Parte Recurrente  <b>vs.</b>  <b>NEGOCIADO DE ENERGÍA DE PUERTO RICO.</b>  Parte Recurrida	<b>KLRA2024</b> _____	<i>Revisión Administrativa</i>  CASO NÚM: NEPR-MI- 2022-0005  Revisión procedente del Negociado de Energía de Puerto Rico  Sobre: Determinación de falsa representación; notificación defectuosa; violación a debido proceso de ley
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ESTADO LIBRE ASOCIADO DE PUERTO RICO  
EN EL TRIBUNAL DE APELACIONES

GENERA PR LLC

Parte Recurrente

vs.

NEGOCIADO DE ENERGÍA DE  
PUERTO RICO.

Parte Recurrida

KLRA2024

*Revisión Administrativa*

CASO NÚM: NEPR-MI-  
2022-0005

Revisión procedente del  
Negociado de Energía de  
Puerto Rico

Sobre: Determinación de  
falsa representación;  
notificación defectuosa;  
violación a debido  
proceso de ley

SOLICITUD DE REVISIÓN JUDICIAL

AL HONORABLE TRIBUNAL:

Comparece Genera PR LLC (en adelante, "Genera" o "la recurrente") por conducto de la representación legal que suscribe, y muy respetuosamente **EXPONE, ARGUMENTA** y **SOLICITA:**

I. INTRODUCCIÓN

El presente recurso plantea la comisión de varios errores por el foro administrativo que constituyen claras violaciones a las disposiciones de la Ley de Procedimiento Administrativo Uniforme del Gobierno de Puerto Rico ("LPAUG"), Ley Núm. 38-2017, 3 LPRA § 9601 *et seq.*, y principios básicos de debido proceso de ley. Concretamente, el 17 de septiembre de 2024, el Negociado de Energía de Puerto Rico ("NEPR" o "Negociado") notificó una *Resolución y Orden* mediante la cual resolvió, entre otras cosas, que Genera PR LLC ("Genera") supuestamente incurrió en unas alegadas falsas representaciones (*misrepresentations*) ante dicho foro, durante el proceso de solicitud de propuestas (*RFP*) que la Autoridad de Energía Eléctrica ("AEE") aprobó condicionalmente para la adquisición de un sistema de generación de emergencia (*peakers*) para las plantas de Jobos, Dagua y Palo Seco ("los Proyectos"). Apéndice de la Petición de Revisión Judicial ("Ap."), en la págs. 154A- 61. En específico, la alegada falsa representación surge de la comunicación enviada por Genera solicitando al NEPR que le ordene a la AEE a transferir toda la documentación del proceso a Genera, para este último completarlo. La *Resolución y Orden* de 17 de septiembre de 2024 carecía de advertencias para solicitar reconsideración o revisión judicial.

En específico, el NEPR resolvió que los aumentos en costos y fecha de terminación de los Proyectos—los cuales Genera originalmente estimó más económicos y cortos que los propuestos originalmente por la AEE—respondieron a alegadas representaciones incorrectas de Genera. Por consiguiente, el NEPR resolvió que, en el interés de mantener los términos originalmente representados, Genera tendría que completar el Proyecto y alcanzar una fecha de operación comercial (“COD”) para finales del segundo trimestre (Q2) del año 2026, según lo propuso la AEE en su proceso original. Más aún, el NEPR le advirtió a Genera que el incumplimiento con este término acarrearía la imposición de multas y sanciones administrativas de hasta \$25 mil por día, por cada día que los Proyectos permanezcan sin finalizar, a modo de penalidad contra dilaciones adicionales, de conformidad con el Artículo 6.36 de la Ley 57-2014.

A pesar de que Genera solicitó oportunamente la reconsideración del dictamen recurrido, el NEPR denegó el remedio solicitado *sin conceder vista y sin siquiera discutir los errores de derecho señalados*. Dichos errores, los cuales se reiteran y desarrollan en este recurso apelativo son, en síntesis, los siguientes.

*Primero*, la *Resolución y Orden* recurrida concluye que Genera incurrió en falsas representaciones, a base de determinaciones de hecho que se basan únicamente en las alegaciones de las partes en documentos y mociones. Es decir, el NEPR juzgó hechos controvertidos, muchos de los cuales surgen de estimados y pronósticos que luego se vieron afectados por eventos exógenos fuera del control de Genera, sin permitir que esta tuviera la oportunidad de presentar pruebas, y sin permitir que las cuestiones en controversia se adjudicaran ante un oficial examinador o un juez administrativo. Es decir, el NEPR resolvió que había motivos suficientes para creer que Genera incurrió en una tergiversación de hechos materiales sobre los ahorros de costos proyectados y el calendario para alcanzar el COD, por lo que determinó que Genera le hizo una falsa representación al Negociado al presentar su propuesta de trabajo y de costos durante el RFP. Sin embargo, el NEPR ni siquiera definió o explicó lo que significa el término *misrepresentation* desde un punto de vista jurídico, ni especificó cuáles son los elementos fundamentales del concepto o qué pruebas Genera tenía que presentar para satisfacer esos elementos.<sup>1</sup>

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<sup>1</sup> La *Resolución y Orden* de 17 de septiembre de 2024 fue emitida en el idioma inglés. Los escritos presentados por las partes en este caso también fueron redactados en el idioma inglés. Por tanto, en ánimo de claridad y precisión, en ocasiones citaremos el texto de las mociones, y de las decisiones del NEPR, en el idioma en que fueron presentadas; esto es, en el idioma inglés.



Así pues, la *Resolución y Orden* de 17 de septiembre de 2024 afecta intereses propietarios y de libertad de Genera en la medida en que un hallazgo y determinación de falsas representaciones y tergiversación afecta su reputación comercial y valor como empresa. La decisión del NEPR también afecta sus derechos bajo el *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* ("OMA"), del 24 de enero de 2023, pactado entre la AEE, Genera y la Autoridad de Alianzas Público-Privadas de Puerto Rico ("Autoridad P3"), incluyendo, entre otras, las Secciones 7.2, 7.7, 19.2, 19.3, 19.5. La *Resolución y Orden* de 17 de septiembre de 2024 también obliga a Genera a cumplir con un calendario de trabajo que no solo implica un aumento de costos que impactará a la empresa, sino que tampoco se ajusta a las condiciones y limitaciones expuestas por los proveedores y subcontratistas de Genera. Si este Honorable Tribunal no revoca la *Resolución y Orden* de 17 de septiembre de 2024 (es decir, si el NEPR no permite acuerdos que se ajusten y alineen con los calendarios de entrega presentados por los proponentes y subcontratistas en un proceso competitivo), entonces el proceso muy probablemente se detendrá. Además, el incumplimiento con el calendario y presupuesto impuesto por el NEPR en la *Resolución y Orden* recurrida, exponería a Genera a multas de hasta veinticinco mil dólares (\$25,000) por cada día que el proyecto permanezca incompleto más allá del plazo especificado. En este sentido, Genera sostiene que la *Resolución y Orden* del 17 de septiembre de 2024 viola su derecho constitucional al debido proceso, y es inconsistente con la Ley 57-2014 y la LPAU.

En segundo lugar, la *Resolución y Orden* no informa a Genera de su derecho a solicitar reconsideración y/o solicitar revisión judicial. Específicamente, la Sección 3.14 de la LPAU, 3 LPRA § 9654, requiere que las resoluciones finales y las órdenes de la agencia informen a las partes sobre el derecho a solicitar reconsideración y revisión judicial, y los términos para así hacerlo. La *Resolución y Orden* de 17 de septiembre de 2024, no contiene las notificaciones requeridas por la LPAU, y tampoco informa a Genera de cualquier otro recurso disponible en los estatutos y reglamentos aplicables del NEPR, limitando así su capacidad de impugnar una decisión que afecta sus intereses de propiedad y libertad.

Por las razones expuestas, y los argumentos que se discuten en el presente recurso, Genera solicita respetuosamente que, tras los trámites de rigor, este Honorable Tribunal revoque la *Resolución y Orden* de 17 de septiembre de 2024, y que se dejen sin efecto las conclusiones de hecho adversas allí contendidas. Genera solicita, además que el NEPR ordene que se celebre una

vista evidenciaria, bajo las Secciones 6.11 (b) y (c), 6.19 y 6.20<sup>2</sup> de la Ley 57-2014, para evaluar y adjudicar las alegaciones con respecto a las representaciones de Genera en relación con el calendario y los costos de los Proyectos, de conformidad con la ley aplicable y el debido proceso de ley.

## II. BASE JURISDICCIONAL

Este Honorable Tribunal de Apelaciones posee jurisdicción para entender en este recurso en virtud de los Artículos 4.002 y 4.006(c) de la Ley de la Judicatura de Puerto Rico, según enmendada por la Ley Núm. 201-2003, 4 LPRA §§ 24u y 24y; de la Sección 4.2 de la LPAU, Ley Núm. 38-2017, 3 LPRA § 9672; y de las Reglas 56 a 59 del Reglamento del Tribunal de Apelaciones, 4 LPRA Ap. XXII-B. También invocamos el Artículo 6.20 de la Ley 57-2014, 22 LPRA § 1054t, el cual dispone que “las decisiones y órdenes del NEPR estarán sujetas a la revisión del Tribunal de Apelaciones de Puerto Rico”. Este Tribunal puede revisar esta determinación administrativa en esta etapa procesal de conformidad con el citado Artículo 6.20 de la Ley 57-2014, 22 LPRA § 1054t, así como en virtud de la doctrina de orden colateral, pues resuelve de forma concluyente una cuestión de derecho separada y distinta de los méritos del caso, que advendría esencialmente irrevisable si se esperara a la finalización del proceso administrativo. Véase A. Matanzo Vicens & R. De Félix Dávila, *Derecho Procesal Civil*, 82 Rev. Jur. 310, 314-317 (2013). La doctrina de orden colateral se ha aplicado igualmente en el contexto del derecho administrativo para permitir la revisión de órdenes colaterales que cumplen con los criterios establecidos. *Chehazeh v. Attorney General of the U.S.*, 666 F.3d 118, 136 (3d Cir. 2012); *Hale v. Norton*, 476 F.3d 694, 698 (9th Cir.2007); *Rhode Island v. EPA*, 378 F.3d 19, 24-25 (1st Cir.2004).

## III. RESOLUCIÓN ADMINISTRATIVA DE LA CUAL SE RECURRE

Se recurre de la *Resolución y Orden* notificada por el NEPR el 17 de septiembre de 2024, mediante la cual dicho foro administrativo determinó, sin vista previa y sin evaluar prueba, que Genera incurrió en falsas representaciones y tergiversación (*misrepresentations*) cuando indicó al NEPR que era favorable cancelar el proceso de RFP de las *peakers* para la generación de energía las plantas de Jobos, Dagua y Palo Seco, y que fuera Genera quien manejara el proceso buscando que fuera más costo eficiente y rápido que el ofrecido por AEE. Ap. 154A- 61. El NEPR resolvió además que, en el interés de mantener los términos originalmente representados, Genera tendría

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<sup>2</sup> 22 LPRA §§ 1054j, 1054r y 1054s.



que completar el Proyecto y alcanzar una fecha de operación comercial (“COD”) para finales del segundo trimestre (Q2) del año 2026, según lo propuso la AEE. Más aún, el NEPR le advirtió a Genera que el incumplimiento con este término acarrearía la imposición de multas y sanciones administrativas de hasta \$25 mil por día, por cada día que los Proyectos permanezcan sin finalizar.

El 7 de octubre de 2024, Genera presentó una moción de reconsideración ante el NEPR, de conformidad con la Sección 3.15 de LPAU, 3 LPRA § 9655. Ap. 162. No obstante, el NEPR denegó dicha solicitud, sin citar a vista y sin discutir los errores planteados en la moción de reconsideración, mediante una Resolución notificada el 11 de octubre de 2024. Ap. 181A-182.

#### IV. RECURSOS PENDIENTES

Según nuestro mejor conocimiento, no existe ningún recurso pendiente ante este Honorable Tribunal que se relacione con este recurso.

#### V. RELACIÓN DE HECHOS PERTINENTES Y TRASFONDO PROCESAL

El 23 de enero de 2023, el NEPR emitió una *Resolución y Orden* (“Orden del 23 de enero”) mediante la cual aprobó condicionalmente el proceso de RFP de la AEE para la adquisición de sistemas de generación de “peakers” de emergencia en las plantas de Jobos, Dagua y Palo Seco (“los Proyectos”), sujeto a diversas condiciones. Ap. 1-5.

El 25 de mayo de 2023, antes del *Service Commencement Date*, Genera presentó un *Memorandum of Compliance with May 8 Order*,<sup>3</sup> en el que propuso al NEPR un enfoque y plan diferente para la adquisición de los *Black Start y Emergency Peaking Units*, y explicó que el enfoque propuesto sería más eficiente que el originalmente propuesto por la AEE. Ap. 23. En presentaciones posteriores ante el NEPR, Genera explicó por qué su enfoque costaría menos y estaría listo antes que la propuesta de la AEE.

El 16 de agosto de 2023, Genera presentó un escrito titulado *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* (“Moción del 16 de Agosto”). Genera incluyó como Anejo A el informe bimensual que describe el estado del proceso de adquisición de generación de emergencia y recomendaciones para cambios en los procesos de RFP. Ap. 31.

El 23 de agosto de 2023, el NEPR emitió una *Resolución y Orden* (“Orden del 23 de agosto”) en la que dispuso que los cambios propuestos por Genera en el Anejo A de la Moción del

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<sup>3</sup> La Orden de 8 de mayo de 2023 está disponible en Ap. 2-10.

16 de agosto eran consistentes con la Orden del Plan Integrado de Recursos (IRP, por sus siglas en inglés). En consecuencia, el NEPR permitió que el proceso de RFP continuara de la manera propuesta por Genera en el Anejo A de la Moción del 16 de agosto. Ap. 47.

El 8 de noviembre de 2023, el NEPR emitió otra *Resolución y Orden* (“Orden del 8 de noviembre”) mediante la cual aprobó el modelo de RFP presentado por Genera para la contratación de los servicios de *black start* y generación de emergencia. Ap. 49.

El 29 de febrero de 2024, Genera presentó un documento titulado *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* (“Moción del 29 de febrero”) en el cual Genera confirmó que la adjudicación inicial del RFP estaba programada para marzo de 2024. Ap. 54.

El 1 de julio de 2024, Genera presentó un escrito titulado *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* (“Moción del 1 de julio”), en la cual Genera incluyó como Anejo A el informe bi-semanal que describe el estado del *Emergency Generation and Black-Start Generation Procurement*. Genera también informó que, a partir del 1 de julio de 2024, de conformidad con la nota al calce 16 de la Orden del 23 de enero, los informes se presentarían trimestralmente, según los trimestres del año fiscal (*e.g.* del 1 de julio al 30 de septiembre para el primer trimestre, del 1 de octubre al 31 de diciembre para el segundo trimestre, y así sucesivamente), y que su próximo informe debía presentarse el 9 de octubre de 2024. Ap. 65.

El 30 de julio de 2024, el NEPR emitió una *Resolución y Orden* (“Resolución del 30 de julio”) en la que resolvió que el Anejo A de la Moción del 1 de julio no informó adecuadamente el progreso del RFP. Mediante la Resolución del 30 de julio, el NEPR también rechazó la solicitud de Genera de presentar informes trimestrales en lugar de informes bimensuales, y ordenó a Genera a presentar informes mensuales a partir del 15 de agosto de 2024. El NEPR también ordenó a Genera a incluir como parte del próximo informe mensual, y en los informes subsiguientes, un estimado del calendario de trabajo necesario para completar el Proyecto. El NEPR ordenó, además, que los informes incluyeran la siguiente información:

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 COD 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. Ap. 77.

La Resolución del 30 de julio concedió a Genera diez (10) días para informar cómo su enfoque ha reducido costos, y acelerado el COD, en comparación con el enfoque del RFP original de la AEE. El NEPR advirtió a Genera que el incumplimiento con dichas órdenes resultaría en la imposición de multas bajo la Ley 57-2014. *Id.*

El 9 de agosto de 2024, Genera presentó un documento titulado *Motion to Submit Comparison Report in Compliance with Resolution and Order Dated July 30, 2024* (“Moción del 9 de agosto”), en la que detalló las distinciones entre su enfoque y el originalmente propuesto por la AEE. El *RFP Process Comparison Report* contenido en la Moción del 9 de agosto articuló claramente las eficiencias y beneficios proyectados en la propuesta de Genera, en comparación con iniciativas anteriores, enfatizando el potencial de ahorros significativos en costos operativos y mejoras tecnológicas. Así pues, el *RFP Process Comparison Report* destacó las diferencias clave en las configuraciones de las unidades y las eficiencias operativas que se espera que produzcan ahorros de costos sustanciales a lo largo de la vida útil de los Proyectos. Ap. 80.

Además, el 19 de agosto de 2024, Genera presentó un documento titulado *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* (“Moción del 19 de agosto”). Específicamente, el Anejo A de la Moción del 9 de agosto, abordó en detalle cada uno de los criterios requeridos en la Resolución del 30 de julio. En cuanto a los costos y calendario de los Proyectos, Genera informó que el estimado preliminar para los Proyectos era de \$911,340,000.00, y proyectaba que se lograría el COD entre el primer y cuarto trimestre de 2027. Ap. 90.

El 28 de agosto de 2024, el NEPR ordenó a Genera a mostrar causa por la cual no debía imponer una multa administrativa de hasta veinticinco mil dólares (\$25,000) por alegadamente hacer faltas representaciones en el proceso de RFP (“Orden del 28 de agosto”). Además, el NEPR ordenó a Genera a proveer respuestas sobre lo siguiente:

- 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. Ap. 104.

El 5 de septiembre de 2024, Genera presentó un documento titulado *Motion in Compliance with Order to Show Cause*. En dicho escrito, Genera explicó que las discrepancias entre los resultados proyectados y el estado actual del proceso de RFP se deben a factores externos fuera de su control, y no a falsas representaciones o tergiversaciones. Genera explicó, además, que los sobrecostos y los retrasos en el calendario, eran el resultado de las condiciones del mercado y las propuestas de los proveedores y subcontratistas. Genera complementó su respuesta a través de varias mociones presentadas ante el NEPR posteriormente. Ap. 109. La AEE también compareció a exponer su posición al respecto. Ap. 143.

Los antecedentes procesales expuestos demuestran claramente que Genera cumplió con las órdenes y plazos impuestos por el NEPR en las órdenes de mostrar causa. Genera también respondió y proporcionó la información requerida con respecto a los criterios especificados tanto en la Resolución del 31 de julio como en la Orden del 28 de agosto. También explicó en detalle las razones detrás de los cambios en el calendario y los costos de los Proyectos. A pesar de ello, el 17 de septiembre de 2024, el NEPR emitió una *Resolución y Orden* en la que resolvió, en lo pertinente, lo siguiente:

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.

...

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. Ap. 154A-161.

El 7 de octubre de 2024, Genera presentó una moción de reconsideración ante el NEPR, de conformidad con la Sección 3.15 de LPAUG, 3 LPRA § 9655. No obstante, el NEPR denegó dicha



solicitud, sin citar a vista y sin discutir los errores planteados en la moción de reconsideración, mediante una Resolución notificada el 11 de octubre de 2024. Ap. 162.

Genera sostiene que la *Resolución y Orden* de 17 de septiembre de 2024 es incorrecta como cuestión de derecho, y es contraria al debido proceso de ley que se requiere en procesos administrativos. En consecuencia, Genera solicita, muy respetuosamente, que se revoque la *Resolución y Orden* recurrida.

## VI. SEÑALAMIENTOS DE ERROR

**PRIMER ERROR:** ERRÓ EL NEGOCIADO DE ENERGÍA AL NOTIFICAR LA RESOLUCIÓN Y ORDEN DE 17 DE SEPTIEMBRE DE 2024, PUES NO INCLUYÓ LAS ADVERTENCIAS SOBRE EL DERECHO DE LA PARTE AFECTADA POR LA DECISIÓN ADMINISTRATIVA DE SOLICITAR RECONSIDERACIÓN ANTE LA AGENCIA, Y DE PRESENTAR UN RECURSO DE REVISIÓN JUDICIAL, Y LA FORMA Y TÉRMINOS APLICABLES.

**SEGUNDO ERROR:** ERRÓ EL NEGOCIADO DE ENERGÍA AL NOTIFICAR LA RESOLUCIÓN DE 11 DE OCTUBRE DE 2024, PUES NO INCLUYÓ LAS ADVERTENCIAS SOBRE EL DERECHO DE LA PARTE AFECTADA POR LA DECISIÓN ADMINISTRATIVA DE SOLICITAR RECONSIDERACIÓN ANTE LA AGENCIA, Y DE PRESENTAR UN RECURSO DE REVISIÓN JUDICIAL, Y LA FORMA Y TÉRMINOS APLICABLES. ADEMÁS, EL NEPR TAMPOCO DISCUTIÓ NI ABORDÓ LOS ARGUMENTOS PRESENTADOS POR GENERA EN SU MOTIÓN DE RECONSIDERACIÓN.

**TERCER ERROR:** ERRÓ EL NEGOCIADO DE ENERGÍA AL AFECTAR DERECHOS PROPIETARIOS Y DE LIBERTAD DE GENERA SIN UN DEBIDO PROCESO DE LEY, AL HACER UNA ADJUDICACIÓN DE HECHOS CONTROVERTIDOS Y RESOLVER QUE GENERA HABÍA INCURRIDO EN FALSAS REPRESENTACIONES, SIN LA CELEBRACIÓN DE UNA VISTA EVIDENCIARIA EN LA QUE SE PUDIERA ESCUCHAR PRUEBA SOBRE LAS POSTURAS OPUESTAS DE LAS PARTES.

## VII. DISCUSIÓN DE LOS SEÑALAMIENTOS DE ERROR

- A. Errores primero y segundo:<sup>4</sup> La notificación de la *Resolución y Orden* de 17 de septiembre de 2024 fue defectuosa, pues no advirtió a Genera de su derecho a solicitar reconsideración y revisión judicial, y la forma y términos para hacerlo, en violación de la Sección 3.16 de la LPAU, 3 LPRA § 9656. La Resolución de 11 de octubre de 2024, mediante la cual se denegó la moción de reconsideración de Genera, también adolece del mismo defecto.

Una lectura de la *Resolución y Orden* de 17 de septiembre de 2024, así como de la Resolución de 11 de octubre de 2024, revela que el NEPR no informó a Genera de su derecho a solicitar la reconsideración o de interponer un recurso de revisión judicial ante el Tribunal de Apelaciones. Como se mencionó anteriormente, la determinación del NEPR afecta sus intereses y derechos propietarios y de libertad. Sin embargo, en la *Resolución y Orden* de 17 de septiembre de 2024, el

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<sup>4</sup> Por estar íntimamente relacionados, se discutirán los errores primero y segundo de forma conjunta. Además, por tratar los errores de error en la notificación sobre un tema jurisdiccional de umbral, se discute de manera preferente en este recurso.

NEPR no advierte ni notifica a Genera de su derecho a solicitar la reconsideración de la decisión, o solicitar la revisión judicial de esta, violentando así las disposiciones de la LPAUG.

La sección 3.16 de la LPAUG, 3 LPRA § 9656, establece que “[s]i la agencia concluye o decide no iniciar o continuar un procedimiento adjudicativo en un caso en particular, terminará el procedimiento y notificará por escrito mediante correo ordinario o electrónico a las partes, y a sus abogados de tenerlos, su determinación, los fundamentos para la misma y el recurso de revisión disponible, incluyendo las advertencias dispuestas en la Sección 3.14 de esta Ley”. A su vez, la Sección 3.14 de la LPAUG, 3 LPRA § 9654, dispone, en lo pertinente, que “[l]a orden o resolución advertirá el derecho de solicitar la reconsideración ante la agencia o de instar el recurso de revisión como cuestión de derecho en el Tribunal de Apelaciones, así como las partes que deberán ser notificadas del recurso de revisión, con expresión de los términos correspondientes. Cumplido este requisito comenzarán a correr dichos términos”.

El Tribunal Supremo de Puerto Rico ha sostenido que los requisitos de notificación de la Sección 3.14 de la LPAUG tienen su base en el debido proceso de ley. *Mun. de Caguas v. AT & T*, 154 D.P.R. 401, 414 (2001); *IM Winner, Inc. v. Mun. de Guayanilla*, 151 D.P.R. 30, 35–38 (2000). Específicamente, el Tribunal Supremo ha resuelto que el incumplimiento de cualquiera de estos requisitos por parte de una agencia hace que la determinación, y cualquier procedimiento posterior, sean inválidos, porque dicha notificación violaría el debido proceso. *Comisión Ciudadanos v. G.P. Real Property*, 173 D.P.R. 998, 1014 (2008); *Olivo Román v. Secretario de Hacienda*, 164 D.P.R. 165, 178-179 (2005). Y, según los términos mismos de la Sección 3.14 de la LPAUG, los términos para la reconsideración y la revisión judicial no comenzarán a correr hasta que se realice una notificación adecuada.

La *Resolución y Orden* del 17 de septiembre de 2024 tampoco informa a Genera de ningún otro recurso disponible en la Ley 57-2014 o el Reglamento 8543 como, por ejemplo, la oportunidad de solicitar una vista administrativa previa a la decisión final, privándola así de una oportunidad real de impugnar una decisión que afecta sus intereses propietarios y de libertad. En consecuencia, la *Resolución y la Orden* es incorrecta como cuestión de derecho, pues no cumple con los requisitos de notificación de la LPAUG, y ello constituye una violación al debido proceso de ley de Genera.

**B. Tercer error: La resolución de controversias de hecho y adjudicación de credibilidad requerían de la celebración de una vista evidenciaria, para cumplir con los requisitos mínimos del debido proceso de ley.**

La Orden del 28 de agosto instruyó a Genera a mostrar causa por la cual el NEPR no debería imponerle una multa administrativa de veinticinco mil dólares (\$25,000) por incurrir en alegadas



falsas representaciones en relación con el proceso de RFP de los Proyectos. El NEPR ordenó específicamente a Genera a presentar una respuesta que atendiera los siguientes elementos:

- 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.

El 5 de septiembre de 2024, Genera presentó un *Motion in Compliance with Order to Show Cause*, en la que demostró que las discrepancias entre los precios y calendario proyectados por Genera originalmente, y el estado actual del proceso de RFP, se debían a factores externos fuera de su control, y no a una tergiversación deliberada o intencional de en las propuestas. Genera explicó, además, que los costos adicionales y los retrasos que ahora se evidencian en el proyecto eran el resultado de dinámicas del mercado que afectaron los precios y fechas de entrega originalmente proyectados, y de ninguna manera eran el resultado de falsas representaciones. Genera complementó su respuesta a través de varias mociones presentadas posteriormente.

No obstante, el 17 de septiembre de 2024, el NEPR emitió una *Resolución y Orden* en la cual dictaminó que Genera había incurrido en falsas representaciones (*misrepresentations*), y requirió a Genera finalizar los Proyectos en un plazo y costos diferentes a los anunciados por Genera en su Moción del 19 de agosto, y advirtió que Genera estaría expuesta a una multa diaria de \$25,000.00 si no cumplía con alguna de las metas establecidas. Específicamente, el NEPR dispuso lo siguiente:

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.

Al así resolver, el NEPR no citó ninguna evidencia que refutara o desmintiera las razones ofrecidas por Genera para los cambios en precio y calendario (porque no la había), y emitió su determinación basada en una determinación de credibilidad en la que se evaluó únicamente las mociones presentadas. La *Resolución y Orden* del 15 de septiembre es improcedente como cuestión de derecho y debe ser revocada por las siguientes razones.

*En primer lugar*, el tracto procesal antes expuesto revela claramente que Genera cumplió con las órdenes y plazos impuestos por el NEPR en las órdenes de mostrar causa. Genera también respondió y proporcionó la información requerida de acuerdo con los criterios especificados tanto en la Resolución del 31 de julio como en la Orden del 28 de agosto, y explicó detalladamente las razones de los cambios en el calendario y los costos de los Proyectos. **Por lo tanto, el NEPR adjudicó hechos que fueron específicamente controvertidos por Genera sin darle la oportunidad de presentar pruebas, y sin permitir que las cuestiones en controversia se resolvieran ante un oficial examinador o un juez administrativo.** El récord demuestra que Genera negó categóricamente haber tergiversado los hechos relacionados con su propuesta para los Proyectos, y argumentó específicamente que los cambios que impactaron los costos y el calendario fueron provocados por eventos fuera de su control. **Es evidente que el NEPR realizó determinaciones de credibilidad basándose únicamente en las mociones presentadas.** Además, el NEPR ni siquiera definió, ni explicó de forma suficiente, qué significa el término “*misrepresentation*” desde un punto de vista jurídico, y cuáles son los elementos constitutivos del término. El NEPR tampoco explicó si el criterio subjetivo aplicable era uno de intención o uno menos exigente. **El trámite procesal que desembocó en la Resolución y Orden de 17 de septiembre es claramente inconsistente con los requisitos mínimos del debido proceso de ley.**

Aunque el NEPR tiene autoridad para imponer sanciones y multas cuando las partes en un procedimiento no cumplen con las órdenes y reglamentos, la situación aquí es diferente. En este caso, no se le imputa a Genera incumplir con una orden objetivamente clara y definida (por ejemplo, incumplir con un plazo). Es indiscutible que Genera cumplió con los plazos y abordó todos los factores establecidos por el NEPR en la Orden del 28 de agosto. **Genera también refutó directamente la imputación de que había incurrido en falsas representaciones.** Ante esta situación, lo que procedía era que el NEPR proporcionara una audiencia antes de adjudicar un asunto que presentaba varios hechos controvertidos. **Como veremos más adelante, las leyes y reglamentos aplicables, proveen al NEPR autoridad para designar a un oficial examinador o juez administrativo para que celebrara una vista y resolviera esta controversia, o emitiera un reporte y recomendación al respecto.** Sin embargo, aquí el NEPR no designó un oficial examinador o juez administrativo y resolvió que Genera había incurrido en *misrepresentations*, determinación que conllevó que se adjudicaran hechos en controversia, y se dirimiera credibilidad, a base únicamente de alegaciones contenidas en las mociones presentadas. Erró el NEPR al así resolver.



El Tribunal Supremo de Estados Unidos ha reconocido que determinaciones de falsa representación o tergiversación por parte de una agencia puede implicar un interés de propiedad o un interés de libertad y, en tales casos, el debido proceso generalmente requiere una vista previo a la adjudicación. Un interés de propiedad se considera implicado cuando una determinación de falsa representación afecta un derecho legal de la persona a algún beneficio como, por ejemplo, un empleo, relación contractual, beneficios gubernamentales o licencias. Véase *Bell v. Burson*, 402 U.S. 535 (1971); *Goldberg v. Kelly*, 397 U.S. 254 (1970). Del mismo modo, un interés de libertad puede verse implicado cuando la determinación de falsa representación de la agencia daña la reputación de una persona de una manera que altera significativamente su estatus legal, lo que podría afectar beneficios futuros u oportunidades comerciales. *Board of Regents v. Roth*, 408 U.S. 564 (1972) (el interés en la libertad de una persona está implicado cuando el gobierno hace una declaración estigmatizante, como una acusación de deshonestidad o tergiversación, que daña su reputación o afecta las oportunidades futuras); *Wisconsin v. Constantineau*, 400 U.S. 433 (1971) (el interés de libertad de una persona quedó afectado cuando el gobierno publicó avisos que prohibían la venta de ciertos productos a una persona debido a sus supuestas falsas representaciones o mala conducta); *McGrath*, 341 U.S. 123 (1951) (una acción del gobierno que etiquetó a ciertas organizaciones como subversivas sin una audiencia violó el debido proceso porque afectó la reputación de las personas asociadas con esas organizaciones).

Los intereses de propiedad y libertad de Genera se vieron afectados por la *Resolución y Orden* de 17 de septiembre de 2024 debido a que una determinación de *misrepresentations* tiene un impacto en su reputación e imagen comercial (*goodwill*). Dicha determinación también podría afectar los derechos de Genera bajo el *Operation and Maintenance Agreement* ("OMA") que pactó con la AEE y la Autoridad P3. La *Resolución y Orden* también exige a Genera cumplir con un calendario y presupuesto que tendrá un impacto económico adverso en la empresa, y que tendría un impacto en el servicio que se le brinda a los consumidores de Puerto Rico. Además, el incumplimiento del calendario y el presupuesto expondría a Genera a multas de hasta veinticinco mil dólares (\$25,000) por cada día que el Proyecto permanezca incompleto más allá del plazo especificado. Esta multa se pagaría de la compensación a Genera por sus servicios bajo el OMA lo que le priva de su derecho propietario.

Los tribunales también han sostenido que una agencia administrativa no puede adjudicar cuestiones de credibilidad sin celebrar una vista evidenciaria. Las determinaciones de credibilidad requieren la oportunidad de observar a los testigos, evaluar el comportamiento y contrainterrogar

la prueba, y para ello se requiere una vista evidenciaria. *Goldberg v. Kelly*, 397 U.S. 254, 268-270 (1970); *Green v. McElroy*, 360 U.S. 474, 496 (1959). Además, los tribunales han sostenido que las agencias no pueden hacer determinaciones de credibilidad basadas únicamente en alegatos escritos o pruebas documentales cuando los hechos son impugnados, y el testimonio de los testigos es fundamental. *Richardson v. Perales*, 402 U.S. 389, 406-407 (1971) (si bien el Tribunal confirmó el uso de informes médicos escritos en las vistas de incapacidad del Seguro Social, señaló que en situaciones en las que la credibilidad de los testigos es esencial, es posible que se requiera prueba testifical y contrainterrogatorios para garantizar el debido proceso).

De manera similar, el Tribunal Supremo de Puerto Rico ha dictaminado, en el contexto del derecho laboral, que se requiere una vista cuando el caso presenta una impugnación a un despido de un empleado que alega falta de justa causa. *López v. Tribunal Superior*, 90 DPR 304, 312-313 (1964). En *López*, el Tribunal Supremo de Puerto Rico enfatizó que la existencia o ausencia de causa justificada para el despido debe decidirse mediante una vista, y no exclusivamente a base del criterio del patrono, incluso si las razones del despido se consideran evidentes o justificadas para este.

Como se discutió anteriormente, el Tribunal Supremo de Puerto Rico ha sostenido consistentemente que los procedimientos administrativos que afectan la libertad o los intereses de propiedad de las personas deben cumplir con los requisitos mínimos del debido proceso de ley, a saber: (1) notificación adecuada; (2) proceso ante un adjudicador imparcial; (3) oportunidad de ser escuchado; 4) el derecho a interrogar a los testigos y a examinar las pruebas presentadas en su contra; (5) asistencia de un abogado; y (6) decisión basada en el expediente. *Rivera Rodríguez & Co. v. Lee Stowell*, 133 DPR 881, 888-889 (1993).

**En este caso no se cumplió ninguno de estos requisitos mínimos.** Además, durante el proceso que llevó a la *Resolución y Orden* del 17 de septiembre de 2024 no se utilizaron ninguno de los procedimientos establecidos en la Ley 57-2014 y el Reglamento 8543 del NEPR. Esos procedimientos contemplan el uso de oficiales examinadores y jueces administrativos, y permiten la celebración de vistas evidenciarias tanto en el contexto de un procedimiento adjudicativo formal como en de una notificación de incumplimiento.

Así, por ejemplo, señalamos que la Ley 57-2014, *Ley de Transformación y Alivio Energético de Puerto Rico* ("Ley 57-2014"), confirió autoridad al NEPR para, entre otras cosas, supervisar y asegurar la ejecución e implementación de la política pública sobre el servicio de energía eléctrica en Puerto Rico; supervisar la calidad, eficiencia y confiabilidad de los servicios



de energía eléctrica provistos por cualquier compañía de energía eléctrica certificada en Puerto Rico para asegurar una red robusta que atienda las necesidades de la Isla; celebrar audiencias públicas, requerir y recabar toda la información pertinente o necesaria para el adecuado cumplimiento de sus atribuciones y funciones; y adoptar las normas, órdenes y reglamentos necesarios para el cumplimiento de sus funciones, dictar órdenes e imponer multas para cumplir con las facultades otorgadas por la ley, así como para la implementación de esta Ley. Estas regulaciones se adoptarán de acuerdo con las disposiciones de la LPAUG. Sección 6.3(a),(d),(f) y (oo) de la Ley 57-2014, 22 LPRA § 1054b(a),(d),(f) y (oo).

En específico, la sección 6.11 de la Ley 57-2014, 22 LPRA § 1054j, establece la delegación de poderes a los oficiales examinadores y jueces administrativos para adjudicar asuntos ante el NEPR en los siguientes términos:

(a) El NEPR podrá, mediante orden, asignar, referir, o delegar cualquier asunto adjudicativo o no adjudicativo para su resolución en uno o más de los comisionados. En dichas órdenes, el NEPR especificará el nombre del comisionado y las facultades específicas del NEPR que se le estén delegando. El NEPR podrá delegar a sus comisionados las siguientes facultades:

- (1) administrar juramentos y tomar deposiciones;
- (2) emitir citaciones;
- (3) recibir y evaluar evidencia;
- (4) presidir las vistas; y

(5) celebrar conferencias para simplificar los procedimientos. Cualquier orden emitida por uno o más comisionados al amparo de este Artículo será notificada al NEPR el caso antes de su notificación al público y éste podrá dejar sin efecto, alterar o enmendar la orden mediante el voto mayoritario de sus comisionados.

(b) *Oficiales examinadores.* — El NEPR tendrá la autoridad para referir o delegar cualquier asunto adjudicativo a oficiales examinadores. El NEPR será quien asignará y distribuirá entre los oficiales examinadores del NEPR las tareas y asuntos delegados por el NEPR, tras lo cual, éstos tendrán el deber de emitir recomendaciones sobre la adjudicación del caso o del incidente procesal objeto de la asignación, referido o delegación del NEPR. Al emitir su decisión, el NEPR tendrá plena discreción para acoger o rechazar las recomendaciones de los oficiales examinadores. Todo oficial examinador que sea designado para presidir una vista o investigación tendrá los poderes que expresamente le delegue el NEPR en la orden de designación. Los oficiales examinadores serán designados y desempeñarán sus funciones según lo dispuesto por la [LPAUG].

(c) *Jueces administrativos.* — Según se dispone en este inciso, el NEPR tendrá la facultad de delegar a jueces administrativos con plena facultad decisonal la adjudicación de asuntos, casos y controversias a nombre del NEPR que puedan ser delegadas conforme a las disposiciones de este inciso. Los jueces administrativos podrán ser empleados de confianza o contratistas del NEPR. El NEPR tendrá la facultad de asignar y distribuir entre los jueces administrativos los asuntos, casos o controversias que sean delegados conforme a lo dispuesto en este inciso. El Negociado de Energía podrá, en el ejercicio de su discreción, delegar a jueces administrativos los casos y controversias relacionadas con la revisión de facturas a los clientes de servicios de energía eléctrica; los casos y controversias sobre el alegado incumplimiento de una compañía de servicio eléctrico con los reglamentos del Negociado de Energía sobre la calidad de los servicios a los clientes; los casos y controversias sobre el alegado incumplimiento de la Autoridad, su sucesora, sus subsidiarias o el Contratante de la red de transmisión y distribución, y una compañía



de energía o de un cliente de servicio eléctrico con sus obligaciones en relación con la interconexión de sistemas de generación distribuida o cualquier otro asunto que el NEPR disponga. El Negociado de Energía podrá delegar a sus jueces administrativos cualquier caso o controversia en que los remedios solicitados tengan un costo o valor total de veinticinco mil dólares (\$25,000.00) o menos. Los jueces administrativos serán designados y desempeñarán sus funciones según lo dispuesto por la [LPAUG].

A su vez, la Sección 6.19 de la Ley 57-2014, 22 LPRA § 1054r, establece que “[l]a Comisión establecerá mediante reglamento un sistema de circuito de vistas administrativas que viabilice la calendarización y celebración de vistas administrativas sobre los casos pendientes ante tales Comisiones en distintas regiones del Estado Libre Asociado de Puerto Rico”.<sup>5</sup>

Del mismo modo, el Artículo 6.20 de la Ley 57-2014, 22 LPRA § 1054t, dispone, en lo pertinente, lo siguiente:

Todos los procesos para los cuales esta Ley no provea disposiciones particulares, se regirán por la Ley 38-2017, según enmendada, conocida como “Ley de Procedimiento Administrativo Uniforme del Gobierno de Puerto Rico”. En virtud de ello, la citada Ley 38-2017 gobernará los procedimientos para la adopción de reglamentos, los procedimientos adjudicativos, la revisión judicial, el procedimiento para la concesión de certificaciones, franquicias, querellas de usuarios y entre compañías de energía y los procedimientos para inspecciones. Disponiéndose que, debido a la necesidad de comenzar prontamente las operaciones del NEPR, se podrá utilizar el mecanismo establecido en la Sección 2.13 de la Ley 38-2017 para la adopción de los primeros reglamentos del NEPR, sin necesidad de que el Gobernador emita certificación alguna. **Según lo dispuesto en dicha Ley, las decisiones y órdenes del NEPR estarán sujetas a la revisión del Tribunal de Apelaciones de Puerto Rico.** (Énfasis suplido).

De otra parte, es menester referirnos al Reglamento 8543, que fue aprobado por el NEPR el 18 de diciembre de 2014, en cumplimiento con los artículos 6.3, 6.4, 6.34 y 6.25 de la Ley 57-2015. El propósito del Reglamento 8643 fue establecer las normas que regirán los procedimientos adjudicativos ante el NEPR, en conjunto con, y complementando, las disposiciones de la LPAUG y su jurisprudencia interpretativa. Véanse los artículos 1.02 y 1.03 del Reglamento 8543. **La sección 1.03 del Reglamento 8543 establece, además, que este se aplica, junto con las disposiciones de la LPAUG y su jurisprudencia, tanto a las notificaciones de incumplimiento como a las investigaciones del NEPR.**

Los artículos 3.01 a 3.05 del Reglamento 8543 establecen los pasos para el inicio de un proceso de adjudicación. Los artículos 9.01 a 9.06 establecen la estructura y los procedimientos

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<sup>5</sup> La sección 1.3(j) de la Ley 57-2014, 22 LPRA § 1051a(j), define “Comisión” como:

(j) “Comisión” o “Comisión de Energía” — Significará el Negociado de Energía de Puerto Rico o NEPR, según establecido en virtud del Plan de Reorganización de la Junta Reglamentadora de Servicio Público de Puerto Rico, que es un ente independiente especializado creado por esta Ley encargado de reglamentar, supervisar y hacer cumplir la política pública energética del Gobierno de Puerto Rico. Toda referencia que esta Ley haga a “la Comisión o Comisión de Energía”, se entenderá que se refiere al Negociado de Energía de Puerto Rico.

que rigen las vistas administrativas. Y los artículos 12.01 a 14.08 rigen los procedimientos para la notificación de incumplimiento.<sup>6</sup> Es importante señalar que el artículo 14.04 del Reglamento 8543 dispone para la presentación de testimonios orales cuando (i) **parezca necesario demostrar la veracidad de los argumentos presentados** por la parte sujeta a la notificación de incumplimiento; (ii) **el testimonio es necesario para probar una defensa o para demostrar que la parte sujeta a la notificación no incumplió con la orden o regulación notificada**; y (iii) se considera que el testimonio no es redundante. (Énfasis suplido).

Durante el proceso que condujo a la *Resolución y Orden* del 17 de septiembre de 2024 no se utilizó ninguno de los procedimientos establecidos en la Ley 57-2014 y el Reglamento 8543. Debido a estas deficiencias, el proceso que desembocó en la *Resolución y Orden* de 17 de septiembre de 2024 incumplió con el debido proceso de ley, por lo que la referida decisión debe ser revocada.

Como apunte final, Genera subraya las implicaciones prácticas de que el NEPR mantenga la posición manifestada en la *Resolución y Orden* de 17 de septiembre de 2024. Como se indicó anteriormente en este recurso, si el NEPR no permite acuerdos que se alineen con los calendarios de entrega presentados por los proponentes y subcontratistas de Genera, es posible que el proceso no pueda completarse.

**C. Al resolver la controversia, el Tribunal debe hacer su propio análisis del derecho aplicable, y no debe otorgar deferencia automática e irrestricta a la interpretación administrativa.**

La presente controversia debe resolverse al palio de las disposiciones de la LPAUG pertinentes al alcance de la revisión judicial. Sobre el particular, la Sección 4.5 de la LPAUG, 3 LPRA § 9675, dispone que los tribunales apelativos sostendrán las determinaciones de hechos de las decisiones de las agencias, si se basan en evidencia sustancial que obra en el expediente administrativo; **revisará en todos sus aspectos las conclusiones de derecho**; y podrá conceder al recurrente el remedio apropiado si determina que a éste le asiste el derecho. Es decir, mediante la revisión judicial, este Honorable Tribunal debe evaluar si la decisión administrativa encuentra apoyo en la evidencia sustancial que obre en la totalidad del expediente administrativo; que el ente gubernamental haya realizado una aplicación o interpretación correcta de las leyes o reglamentos que se le ha encomendado administrar; y que el organismo haya actuado dentro de los parámetros

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<sup>6</sup> Es importante subrayar que aquí el procedimiento no se inició a través de la presentación de una queja o una notificación de incumplimiento. La presente controversia se deriva de una orden de mostrar causa dentro del caso NEPR-MI-2022-0005.



de su ley habilitadora, no de forma arbitraria, irrazonable ni haya **lesionado derechos constitucionales fundamentales**. Véase, *Torres Rivera v. Policía de PR*, 196 DPR 606, 628 (2016). Por consiguiente, al momento de justipreciar la valoración y razonabilidad de las decisiones administrativas adoptadas por las agencias administrativas, los tribunales tienen la obligación de ejercer un juicio independiente de las disposiciones legales para determinar si una agencia ha actuado o no dentro de los límites de su autoridad estatutaria, incluso en los casos de ambigüedad legislativa

Consistente con lo anterior, señalamos además que, en el caso de *Loper Bright Enterprises v. Raimondo*, 603 U.S. \_\_ (2024), 144 S. Ct. 2244, el Tribunal Supremo de Estados Unidos resolvió que la Ley de Procedimiento Administrativo Federal exige que los tribunales ejerzan su juicio independiente para decidir si un organismo administrativo ha actuado dentro de sus facultades legales, y los tribunales no pueden dar deferencia a la interpretación de la ley por parte de una agencia simplemente porque una ley sea ambigua. De esta forma, el Tribunal Supremo federal revocó la norma establecida en el caso de *Chevron U.S.A. v. Natural Res. Def. Council*, 467 U.S. 837 (1984).

Al así resolver, el Tribunal Supremo de Estados Unidos rechazó la postura de que debía dársele deferencia a la decisión administrativa a base de una presunción de “expertise” de la agencia. En su lugar, el Tribunal razonó que la resolución de la ambigüedad legal está dentro de la competencia de un tribunal, no de una agencia, y en la medida en que haya asuntos que puedan estar dentro del peritaje de una agencia, la agencia puede informar, pero no obligar, a un tribunal. El Tribunal Supremo también rechazó el razonamiento de que *Chevron* promueve la uniformidad, dada la desigualdad de su aplicación. Por último, concluyó que *el stare decisis* no requería la adhesión a la decisión en el caso *Chevron*, que había demostrado ser inviable en la práctica.

Muy respetuosamente postulamos que, de conformidad con las disposiciones de la Sección 4.5 de la LPAUG, 3 LPRA § 9675, y los pronunciamientos del Tribunal Supremo Federal en *Loper Bright Enterprises, supra*, este Honorable Tribunal debe resolver la controversia que nos ocupa a base de su interpretación independiente de los hechos y el derecho aplicable. Si bien el caso de *Loper Bright Enterprises, supra*, fue resuelto a base de una interpretación de la Ley de Procedimiento Administrativo Federal, lo cierto es que la LPAU es un estatuto estatal análogo, que se inspira en los mismos principios, y que, por tanto, debe analizarse e interpretarse de forma similar a su contraparte federal. Más aún, las propias disposiciones de la citada Sección 4.5 de la LPAUG, 3 LPRA § 9675, establecen que los foros apelativos revisarán en todos sus aspectos las

conclusiones de derecho, y podrán conceder al recurrente el remedio apropiado si determina que a éste le asiste el derecho. Véase *Sotomayor Dominguez v. Policía de Puerto Rico*, KLRA202400314 cons. KLRA202400315, 2024 WL 4369139 (TA 2024), el cual cita con aprobación la decisión de *Loper Bright Enterprises, supra*.

Por tanto, procede que este Honorable Foro evalúe las controversias aquí planteadas de forma independiente, y resuelva si el NEPR actuó dentro de los parámetros de su ley habilitadora, y no de forma arbitraria, irrazonable ni haya lesionado derechos constitucionales fundamentales. Véase, *Torres Rivera v. Policía de PR*, 196 DPR 606, 628 (2016).

### VIII. SÚPLICA

POR TODO LO CUAL, Genera solicita muy respetuosamente solicita que se REVOQUE la Resolución del NEPR de 17 de septiembre de 2024, así como la Resolución de 11 de octubre de 2024, por ser dichas decisiones contrarias a la LPAUG y el debido proceso de ley constitucional, por afectar derechos propietarios y de libertad de Genera sin una vista evidenciaria.

RESPECTUOSAMENTE SOMETIDO.

En San Juan, Puerto Rico, hoy 12 de noviembre de 2024.

**CERTIFICO:** Que en el día de hoy se ha enviado por correo certificado y correo electrónico copia fiel y exacta de este Recurso y su Apéndice a: **Ledo. Alexis Rivera**, [arivera@gmlex.net](mailto:arivera@gmlex.net), [agrivramedina@outlook.com](mailto:agrivramedina@outlook.com); **Leda. Mirelis Valle Cancel**, [mvalle@gmlex.net](mailto:mvalle@gmlex.net); **Leda. María Teresa Bustelo-García**, [mbustelo@gmlex.net](mailto:mbustelo@gmlex.net), 1509 López Landrón Building, Piso 7, San Juan, PR 00911-1933; y mediante entrega personal, correo certificado y correo electrónico al **Negociado de Energía**, Edificio World Plaza, 268 Avenida Muñoz Rivera, Suite 202, San Juan, PR. 00918, [nepr@jrsp.pr.gov](mailto:nepr@jrsp.pr.gov), [sseda@jrsp.pr.gov](mailto:sseda@jrsp.pr.gov), [secretaria@jrsp.pr.gov](mailto:secretaria@jrsp.pr.gov).

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ESTADO LIBRE ASOCIADO DE PUERTO RICO  
EN EL TRIBUNAL DE APELACIONES

<b>GENERA PR, LLC</b>  Parte Recurrente  <b>vs.</b>  <b>NEGOCIADO DE ENERGÍA DE PUERTO RICO.</b>  Parte Recurrída	<b>KLRA2024</b>	<i>Revisión Administrativa</i>  CASO NÚM: NEPR-MI- 2022-0005  Revisión procedente del Negociado de Energía de Puerto Rico  Sobre: Determinación de falsa representación; notificación defectuosa; violación a debido proceso de ley
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**GOVERNMENT OF PUERTO RICO  
PUBLIC SERVICE REGULATORY BOARD  
PUERTO RICO ENERGY BUREAU**

**IN RE:** PREPA'S 10 YEAR PLAN  
COMPETITIVE INFRASTRUCTURE  
PROCUREMENT PROCESSES

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

**SUBJECT:** Determination for the Project  
Application Package for the Seven (7)  
Additional Peakers to be used as Emergency  
Generation.

**RESOLUTION AND ORDER**

**I. Introduction**

On November 4, 2022, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("November 4 Resolution")<sup>1</sup> conditionally approving the procurement of additional peaking generation and ordering the Puerto Rico Electric Power Authority ("PREPA") to work with COR3<sup>2</sup> on the revision of the Project Application Package for the Seven Additional Peakers subject to the following conditions:

The Seven Additional Peakers shall be:

- (i) capable of being run using two types of fossil-fuel and Hydrogen or a mix of it. To avoid doubts, the Project Application Package must contemplate the infrastructure (as a conceptual design) to manufacture and supply Green Hydrogen. "Green Hydrogen" is defined as hydrogen produced by hydrolysis using electricity produced from renewable sources;
- (ii) mobile; and
- (iii) capable of being used as synchronous condensers to further facilitate the integration of renewables into the grid.

The November 4 Resolution also indicated that the location of the peaking generation should be considered in the MiniGrid Optimization proceeding.

On December 29, 2022, PREPA submitted to the Energy Bureau a Confidential Letter regarding a *Request for Approval to Proceed with Request for Proposals for New Emergency Generation Units at Jobos, Dagua and Palo Seco* ("December 29 Request"). The December 29 Request concerned an RFP for up to 50 MW of generation at the Jobos site, up to 60 MW of generation at the Dagua site, and up to 90 MW of generation at the Palo Seco site.

On January 5, 2023, the Energy Bureau issued a Resolution and Order ("January 5 Resolution") to request additional information from PREPA, and to order PREPA to respond to questions included in the Resolution and Order concerning the planned Project Application Package and associated Request for Proposals ("RFP").

On January 9, 2023, PREPA filed a document titled *Motion to Submit Responses in Compliance with the January 5 Order* ("January 9 Motion"). PREPA included an Annex A which contained the answers to the eight (8) questions from the January 5 Resolution.

<sup>1</sup> Resolution and Order, *In re: Review of the Puerto Rico Electric Power Authority's 10-Year Infrastructure Plan - December 2020*, case no. NEPR-MI-2021-0002, November 4, 2022.

<sup>2</sup> Central Office for Recovery, Reconstruction and Resiliency ("COR3").





## II. Discussion and Findings

The questions from the Energy Bureau covered the three conditions from the original November 4 Resolution:

In response to question 2, PREPA states that "fixed units are considered for long-term generation in a single site" and "Mobile Units are for multiple sites because they are easier to be relocated".<sup>3</sup> PREPA also states, in reference to fixed and mobile units, that they "both equally provide the resiliency needed in PREPA's electrical system." PREPA presents no additional information in support of the statement that they provide equal resiliency for the electrical system. PREPA does not indicate a preference for either type of peaking units.

In response to question number 3 PREPA stated the following about peaking generation unit quantities and the MW size of older gas turbine units at each of the Jobos, Dagua, and Palo Seco:

"Existing units at each location are 21 MW. The RFP intends to provide a range of MW, allowing multiple technology/manufacturers to bid their standard offerings".<sup>4</sup>

PREPA also indicated that it intends to also replace the older GT units at the Vega Baja station, but their operation is limited to daytime hours, due to compliance with noise control regulatory requirements.<sup>5</sup>

The January 5 Resolution and the November 4 Resolution indicated that the location of the generation should be considered in the MiniGrid Optimization proceeding. The MiniGrid optimization proceeding is concerned with determining the extent to which distributed resources can provide resiliency for the Puerto Rico electric system or provide resiliency of on-site energy service during times of extreme weather and electric system disruptions. Comparatively, resiliency can also be provided across a reliable, hardened T&D system accessing utility-scale generation such as the generation considered in PREPA's proposed RFP for emergency generation purposes, and for existing generation.

In addition to PREPA's proposed RFP for emergency generation, the Energy Bureau approved PREPA's request for the RFP for black start services, for procurement of up to 81 MW of black start capable generation.<sup>6</sup>

The Energy Bureau approved 844 MW of utility-scale solar PV renewable energy projects, 490 MW of utility-scale battery energy storage projects, and 17 MW of Virtual Power Plant battery energy storage capacity in Tranche 1 of the IRP procurement process.<sup>7</sup> The Energy Bureau's Independent Coordinator has issued an RFP and has received initial bids for renewable energy and battery energy storage, in Tranche 2 of the procurement process established in the IRP Order. Procurement of renewable energy and battery energy storage in Tranche 2 is of a similar magnitude as Tranche 1.

<sup>3</sup> January 9 Motion, Annex A. Question 2.

<sup>4</sup> *Id.*, Question 3.

<sup>5</sup> *Id.*, Question 4.

<sup>6</sup> Resolution and Order, *In re: 10 Year Plan Federally Funded Competitive Process*, Case No. NEPR-MI-2022-0005, December 19, 2022 ("December 19 Resolution").

<sup>7</sup> *In re: Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, Case No. NEPR-MI-2020-0012.





LUMA has indicated that behind-the-meter installations of small-scale solar PV and battery energy storage projects continue apace in Puerto Rico.<sup>8</sup> Puerto Rico anticipates further installations of small-scale solar PV and battery storage resiliency projects after the December 2022 passage of Federal legislation which included funding for such projects.<sup>9</sup> The Energy Bureau expects those installations to occur through mechanisms outside of the Energy Bureau's jurisdiction.<sup>10</sup> The timing of those installations is unknown.

On January 17, 2023, LUMA submitted its fifth update on the stabilization plan in response to Hurricane Fiona.<sup>11</sup> In the update, LUMA "identifies current operational issues and concerns and provides an update on LUMA's risk analyses."<sup>12</sup> LUMA notes that "barge generation may not be available" and that it is reviewing all feasible sources for trailer-mounted generation. LUMA states that "documentation packages have been turned over to FEMA for approximately 19 project locations" and indicates that the San Juan Power Plant, Palo Seco Power Plant, and Sabana Llana Transmission Center are being prioritized for installation of trailer-mounted mobile generators. Additional sites at Cambalache, Yabucoa, Aguirre and Jobos are being assessed as backup sites, "as needed".<sup>13</sup>

In its stabilization plan update LUMA states that "repeated site visits are underway...to assess physical, logistical, interconnection and other attributes of all feasible sites". LUMA also notes it has retained Black and Veatch to assist with data compilation and support required interconnection studies.<sup>14</sup>

PREPA is proposing to release its emergency generation RFP for peaking capacity at three (3) different sites – Palo Seco, Jobos, and Daguao - with the possibility of also considering a fourth site at Vega Baja. During this emergency generation RFP release and subsequent analyses and installations, other generation interconnection or pending interconnection studies and project installations will occur. The RFP activity will thus occur in a highly dynamic electric supply environment where i) temporary and permanent utility scale generation, both fossil-fueled and renewable, ii) utility-scale and small-scale battery energy storage, and iii) small-scale solar PV is slated for installation or assessment at locations all around Puerto Rico. The final size, ultimate location, or installation timing of at least some of this generation remains uncertain.

Keeping track of the full sweep of interconnection studies, and the input assumptions used in those studies, will require careful coordination and "assumption consistency" checks by LUMA and PREPA, as at least two interconnection study contractors will be engaged, Sargent and Lundy, and Black and Veatch. The Energy Bureau **ORDERS** PREPA to ensure consistency

<sup>8</sup> Case NEPR-MI-2019-0007, concerning underlying data for performance metrics filed by LUMA. LUMA is in the process of submitting updated public information on the total amount of small-scale solar PV and battery energy storage distributed resources connected to the Puerto Rico electric distribution system. As of September 2022, roughly 400- MW of solar PV and more than 800 MWh of battery energy storage are connected.

<sup>9</sup> HR 2617, Public Law 117-328, Consolidated Appropriations Act, 2023, Summary of Appropriations Provisions by Subcommittee, Title IV – Energy and Water Development, and Related Agencies, Department of Energy, including: "\$1 billion to increase the resilience of Puerto Rico's electric grid and assist low- and moderate-income households and households that include individuals with disabilities in purchasing and installing renewable energy, energy storage, and other grid technologies." Available at <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/FY23%20Summary%20of%20Appropriations%20Provisions.pdf> (last visit, January 19, 2023).

<sup>10</sup> The Energy Bureau understands that the programs are to run by the US Department of Energy.

<sup>11</sup> In re: LUMA's Response to Hurricane Fiona, Case Num. NEPR-MI-2022-0003, Fifth Update on Stabilization Plan for Temporary Emergency Generation Capacity filed by LUMA on January 17, 2023.

<sup>12</sup> *Id.*, page 4.

<sup>13</sup> *Id.*, Exhibit 1, Fifth Update on Stabilization Plan, Generation Stabilization Plan Discussion, January 15, 2023, slide 4, "Area of Focus Past Two Weeks was Site Assessment".

<sup>14</sup> *Id.*



TA003



of assumptions used for interconnection studies by its contractors with those assumptions used by LUMA's contractors through facilitation of engaged communications between the contractors. To comply with this order, PREPA must include as part of the reporting requirement ordered below a detailed listing of all key assumptions used by its selected contractor in interconnection studies for the emergency generation, and for the black start generation approved by the Energy Bureau in the December 19 Resolution. PREPA must also obtain from LUMA a similar detailed listing of all key assumptions used in interconnection studies conducted by LUMA's contractor. PREPA must provide in its reporting requirement a direct narrative stating how the key assumptions used by the two contractors are consistent for any given existing or planned generation facility. PREPA must also provide the interconnection studies for the emergency generation and the black start generation when completed.

201 The Energy Bureau is aware that conflicts may arise concerning the prioritization of interconnection options for any of the generation installations that arise from the IRP procurement tranches, the black start generation, this emergency generation, and the temporary generation that may result from LUMA's stabilization plan. In support of Puerto Rico public policy and the IRP Modified Action Plan, the Energy Bureau **ORDERS** PREPA to work with LUMA to prioritize interconnection of IRP procured renewable energy and battery energy storage over interconnection considerations for all other generation, where feasible while ensuring reliable system operation. The Energy Bureau **TAKES NOTE** that this generation is expected to be used for emergency purposes, not for daily "blue sky" generation needs and expects PREPA and LUMA to consider this in addition to the system conditions and assumptions when conducting its interconnection studies.

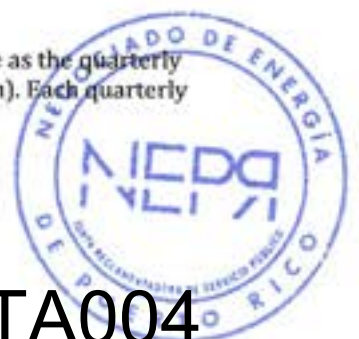
211 The Energy Bureau recognizes the importance of PREPA and LUMA coordinating the various streams of generation activity ongoing in Puerto Rico. The Energy Bureau also supports both PREPA and LUMA's goals of assuring a reliable electric power system for Puerto Rico. The Energy Bureau notes LUMA's stabilization plan's inclusion of "trailer-mounted mobile generators". The Energy Bureau reiterates the value of the availability of mobile generation units during a period of an uncertain trajectory of a "final" set of supply resources. The Energy Bureau's original November 4 Resolution recognized this, and the Energy Bureau confirms it here, in less absolute terms. The Energy Bureau **DETERMINES** that at least **three (3)** of the seven additional peaking units proposed for addition by PREPA **must** be mobile. The Energy Bureau notes that the major providers of peaking generation of the scale considered here have mobile unit alternatives.

221 The Energy Bureau further **ORDERS** PREPA to limit the total MW quantity of emergency generation to no more than **200 MW** nameplate capacity, and to no more than **seven (7)** individual units across the installation locations. The Energy Bureau also **ALLOWS** PREPA flexibility to consider the best mix of locations to install the emergency generation, but also **ORDERS** PREPA to continue to consider optimal locations and mobile vs. fixed attributes of emergency generation in any ongoing MiniGrid optimization proceeding activity.

231 The Energy Bureau further **ORDERS** PREPA to update the Energy Bureau with substantive information on the status of the emergency generation procurement ("Status Report"), at bimonthly intervals (2 Status Reports per month) during the first year commencing from the issuance of this Resolution and Order,<sup>15</sup> and quarterly<sup>16</sup> thereafter until installations are complete. This reporting is to include reporting on the status of the black start generation RFP and associated processes, and on the interconnection study assumption consistency between contractors as ordered above.

<sup>15</sup> The first Status Report is due February 28. The remaining Status Report for the first year shall be due on or before seven (7) business days after the end of each 15 days (Bimonthly) period until June 30, 2024.

<sup>16</sup> The quarterly Status Report shall commence July 1, 2024, and its periods shall be the same as the quarterly fiscal year reports (e.g., July 1 – September 30 (Q1), October 1 – December 31 (Q2), and so on). Each quarterly Status Report shall be filed on or before seven (7) business days after end of each quarter.



TA004



The Energy Bureau **CONDITONALLY APPROVES** the RFP and the Project Application Package with these six conditions:

1. At a minimum, at least three (3) of the seven additional peaking units must be mobile.
2. PREPA and LUMA must use consistent and reasonable input assumptions for all interconnection studies used in support of the emergency generation installation, considering that multiple contractors will be conducting interconnection studies for different purposes.
3. PREPA must give prioritization to interconnection of IRP-based generation and battery energy storage procurement over other generation installation interconnection, where feasible, while supporting reliable system operation.
4. Total emergency generation will not exceed 200 MW nameplate capacity and will not exceed seven (7) units.
5. PREPA will coordinate emergency generation location, sizing, and fixed or mobile attribute considerations with any ongoing MiniGrid optimization proceeding activity.
6. PREPA will 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 at quarterly intervals thereafter as stated above until installation.

Be it notified and published.

  
Edison Avilés Deliz  
Chairman

  
Lillian Mateo Santos  
Associate Commissioner

  
Ferdinand A. Ramos Soegaard  
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 January 23, 2023. I also certify that on January 23, 2023 a copy of this Resolution and Order was notified by electronic mail to [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law) 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, today January 23, 2023.

  
Sonia Seda Gaztambide  
Clerk



TA005

**GOVERNMENT OF PUERTO RICO  
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:** Procurement of Black-Start and  
Emergency Peaking Resources

**RESOLUTION AND ORDER**

**I. Introduction and Procedural Background**

On August 24, 2020, the Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") issued the IRP Order<sup>1</sup>, regarding the Integrated Resource Plan ("IRP") of the Puerto Rico Electric Power Authority ("PREPA"). The IRP Order approved a Modified Action Plan that included 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.<sup>2</sup>

After initial submissions by PREPA of a 10-Year Infrastructure Plan and the Energy Bureau Resolutions and Orders addressing deficiencies in those plans, on March 19, 2021, PREPA filed a document titled *Motion Submitting March 2021 Revised 10-Year Infrastructure Plan* ("March 19 Motion"). Through the March 19 Motion, PREPA filed a new updated version of the plan ("March 2021 Revised 10-Year Plan") which included new black start units at Aguirre and Costa Sur.

On March 26, 2021 ("March 26 Order"), in alignment with the IRP Order and the Modified Action Plan, the Energy Bureau, approved PREPA's request for black start units at Aguirre and Costa Sur.<sup>3</sup>

On April 14, 2021, PREPA filed a document titled *Motion in Compliance with the Resolution and Order Entered on March 26, 2021* ("April 14 Motion"), which included a list of projects under the categories of transmission, distribution, and substations.

On April 22, 2021, the Energy Bureau issued a Resolution and Order requesting additional information for each project in the April 14 Motion under the different project categories, including but not limited to Transmission Line Projects, Transmission and Distribution Substation Projects, and Distribution System Projects ("April 22 Order").

On July 6 2021, PREPA and LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively, "LUMA") filed a document titled *Joint Motion Submitting Updated 10-Year Infrastructure Work Plan* through which it filed an updated version of the 10-Year Infrastructure Plan, which included the Costa Sur and Aguirre Black Start Projects ("10-Year Infrastructure Plan, June 2021 Update")<sup>4</sup>.

<sup>1</sup> See, 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 ("IRP Order").

<sup>2</sup> IRP Order, pp. 275-276 ¶ 885.

<sup>3</sup> See, Resolution and Order, *In re: Review of the Puerto Rico Electric Power Authority's 10 year Infrastructure Plan December 2020*, Case No. NEPR-MI-2021-0002, March 26, 2021 ("March 26 Order").

<sup>4</sup> See, *In re: Review of the Puerto Rico Electric Power Authority's 10 year Infrastructure Plan December 2020*, Case No. NEPR-MI-2021-0002, *Joint Motion Submitting Updated 10-Year Infrastructure Work Plan*, July 6, 2021 ("July 6 Motion").



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On September 7, 2021, PREPA filed a document titled *Motion to Submit Second Group of Generation Projects Initial SOWS* ("September 7 Motion"). In the September 7 Motion, PREPA requested approval to substitute the Aguirre Black Start Project 5 for the Yabucoa Black Start Project.<sup>5</sup>

In a Resolution and Order issued on September 28, 2021, the Energy Bureau ("September 28 Order")<sup>6</sup>, approved PREPA's request to substitute the location of the New Black Start System from Aguirre to Yabucoa.

On August 2, 2022, PREPA filed before the Energy Bureau a document titled *Motion to Inform Reallocation of FEMA 404 HMGP Funds and Request for Approval of Generation Projects* ("August 2 Motion"). Through the August 2 Motion, PREPA notified the Energy Bureau its determination to allocate Hazard Mitigation Grant Program Funds ("404 HMGP Funds") in part to cover an updated cost estimate of \$190 million for the Costa Sur and Yabucoa Black-Start Units. PREPA asserted that the substantive price increase from the original \$90.4 million to the updated estimate was due to the recent disruption in the supply chain and inflation.

On August 18, 2022, the Energy Bureau issued a Resolution and Order ("August 18 Order") containing questions for PREPA to address, including the reasons for the about \$100,000,000.00 cost increase of the black start units compared to initial estimates. The August 18 Resolution also required PREPA to provide the work performed and diligences set forth by PREPA upon approval to acquire both Black Start Units close to a year ago.<sup>7</sup>

On September 7, 2022, PREPA filed a document titled *Motion to Submit Responses to Requests for Information Ordered in the August 18 Order* ("September 7 Order") in which PREPA responded to the August 18 Order. About the Black Start Units, PREPA indicated that the delay was caused by selecting Yabucoa as a better site and the engineering services to complete the studies and specifications required for the draft RFP submitted by Sargent & Lundy in March of 2022.<sup>8</sup>

On September 15, 2022, the Energy Bureau issued a Resolution and Order ("September 15 Resolution"), through which approved the \$100 million increase for the black start units as the updated cost assumption, versus the roughly \$90 million cost in the initial approval of Resolution June 8 Resolution and the September 28 Resolution. In its September 15 Order, the Energy Bureau emphasized **that PREPA's lack of diligence in procuring these projects will result in about one hundred million (\$100 MM) less to transform the Puerto Rico Electric System.**<sup>9</sup>

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 a Request for

<sup>5</sup> Included in the September 7 Motion: "PREPA respectfully asserts that, after further analysis, it has concluded that it would best serve system needs to install black-start units at the Yabucoa location instead of Aguirre. This project is therefore being submitted in place of, not in addition to, the New Black Start System at Aguirre project. With the approach as explained above, PREPA believes that black-start and continuous emergency operation services will be most maximized while complying with the Integrated Resource Plan (IRP) goals, by reaching a much broader area coverage and diversity of clients who provide critical services to the population. As an example, in the aftermath of Hurricane Marfa, the Yabucoa plant was responsible to provide continuous service on isolated, island mode for the region, as well as black-start services on several occasions to an important oxygen plant located in the Humacao industrial area, when oxygen for hospitals was urgently needed. In addition, the Yabucoa plant was also responsible for black starting the Aguirre Power Complex during the blackout caused by the earthquake on January 7, 2020. This project will be funded with the FEMA Section 404 Hazard Mitigation Grant Program."

<sup>6</sup> See, *Resolution and Order, In re: Review of the Puerto Rico Electric Power Authority's 10 year Infrastructure Plan December 2020*, Case No. NEPR-MI-2021-0002, September 28, 2021 ("September 28 Order").

<sup>7</sup> August 18 Resolution, p. 10.

<sup>8</sup> September 7 Motion, p. 9.

<sup>9</sup> September 15 Resolution, p. 3.



TA007



Proposal ("RFP") for black start generation units at Yabucoa and Costa Sur<sup>10</sup> ("November 10 Request"). Included in the filing was a draft RFP for the black start units, separate technical specifications for an EPC ("Engineering, Procurement, and Construction") contract, and draft contract forms for each of the Yabucoa and Costa Sur location ("November 10 Confidential Documents").

On December 5, 2022, the Energy Bureau issued a Resolution and Order ("December 5 Order") approving PREPA's request for an RFP process for the procurement of black start systems at Costa Sur and Yabucoa. The December 5 Order had specific conditions on the capacity of the resource to be procured and the types of resources eligible to participate in the solicitation and provide black start service. The December 5 Order also included relevant background on the submissions made by PREPA since the issuance of the IRP Order.

On January 23, 2023, the Energy Bureau issued a Resolution and Order ("January 23 Order") through which it conditionally approved PREPA's RFP process for the procurement of emergency generation at Jobos, Dagua, and Palo Seco subject to various conditions, including that PREPA would report to the Energy Bureau on the status of emergency generation and black start generation procurement.

In compliance with the January 23 Order, on March 16, 2023, PREPA filed before the Energy Bureau a document titled *Motion to Inform Status Report on the Emergency Generation and Black Start Generation Procurement in Compliance with the January 23, 2023 Order* ("March 16 Motion"). PREPA included as Annex A to the March 16 Motion a document titled *RFP 3784, Power Advocate Event 138790 New Black Start Units Yabucoa and Costa Sur Power Stations* ("RFP 3784 Status Report") about the black start generation procurement. As Annex B, PREPA included a document titled *RFP 3800, Power Advocate Event 139303 New Peaker Units for the Dagua, Jobos, and Palo Seco Power Stations* ("RFP 3800 Status Report") about the emergency generation procurement. PREPA also requested that the Energy Bureau determine that the status reports included as Annex A and B are confidential and maintain them under seal until the competitive procurement process is completed.<sup>11</sup>

On April 14, 2023, the Energy Bureau issued a Resolution ("April 14 Resolution") taking notice of the March 16 Motion and granting confidential designation and treatment to Annex A and B of the March 16 Motion. The April 14 Resolution also stated 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 LG OMA<sup>12</sup>, the Energy Bureau ENCOURAGES GeneraPR LLC 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.

## II. Analysis and Conclusions

As noted by the Energy Bureau in earlier Resolutions and Orders, it has been almost two years since the time that the Energy Bureau approved the Black Start resources at Costa Sur and Yabucoa, and over 8 months since it approved the procurement of the emergency generators at the Dagua, Jobos, and Palo Seco Power Stations. Since then, the estimated cost for the Black Start resources has increased by \$100 million, according to data provided by PREPA. In the meantime, GENERA is in the Pre-Mobilization stage of the LG OMA, with expected transfer of LG Generation operations and control to occur within the next several months. After that transfer, GENERA will have responsibility for operating and maintaining the LG Generation resources, and for leading planning and procurement activities related to those facilities, including procurement processes that include federal funding support. The expected transfer of operations and control of the

<sup>10</sup> Black Start Units at Yabucoa and Costa Sur ("Black Start Projects").

<sup>11</sup> March 16 Motion, p. 2, ¶. 6.

<sup>12</sup> *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement, between PREPA, the Puerto Rico Public-Private Partnerships Authority ("P3") and Genera PR, LLC, January 24, 2023* ("LG OMA").





LG Generation will occur before the conclusion of bid awards and contract execution related to PREPA's RFP 3784 and RFP 3899.

Therefore, the Energy Bureau **DETERMINES** it is vital for GENERA to immediately assume an active role in 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 Dagua, Jobos, and Palo Seco are being completed efficiently, and allow for efficient and low-cost procurement and future operations of such generation units. The Energy Bureau **DIRECTS** GENERA to, on or before five (5) business days from the notification of this Resolution and Order, 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. Any revisions suggested by GENERA must comply with previous Resolutions and Orders issued by the Energy Bureau. The filing of GENERA's compliance with this Resolution and Order shall be in the form of a Motion to the Energy Bureau in this docket.

However, this Resolution and Order **DOES NOT AUTHORIZE** any extensions to the existing procurement calendar. Any suggested revisions to the procurement process shall cause no delay to the existing procurement calendar.

The Energy Bureau **WARNS** GENERA and PREPA 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 Ayilés Deliz  
Chairman

  
Lillian Mateo Santos  
Associate Commissioner

  
Ferdinand A. Ramos Soegaard  
Associate Commissioner

  
Sylvia B. Ugarte Araujo  
Associate Commissioner

  
Antonio Torres Miranda  
Associate Commissioner



TA009

**CERTIFICATION**

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on May 8, 2023. I also certify that on May 8, 2023 a copy of this Resolution was notified by electronic mail to mvazquez@diazvaz.law; jmarrero@diazvaz.law; brannen@genera-services.com; kbolanos@genera-services.com; regulatory@genera-pr.com; and I have moved forward filing the Resolution issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today, May 8, 2023.

  
\_\_\_\_\_  
Sonia Seda Gaztambide  
Clerk





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

**NEPR**

**Received:**

**May 11, 2023**

**9:01 PM**

**IN RE: PREPA'S 10-YEAR PLAN  
COMPETITIVE INFRASTRUCTURE  
PROCUREMENT PROCESS**

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

**SUBJECT:**

PREPA's Response to Resolution and Order entered on May 8, 2023, Regarding Genera-PR's Intervention in Ongoing Public Procurement Process

**PREPA'S RESPONSE TO RESOLUTION AND ORDER ENTERED ON MAY 8, 2023,  
REGARDING GENERA-PR'S INTERVENTION IN ONGOING PUBLIC  
PROCUREMENT PROCESS**

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. Introduction**

By way of a Resolution and Order entered on May 8, 2023, the Puerto Rico Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") seeks to allow for the intervention of a private entity in a public procurement process contrary to the current legal framework that regulates public competitive bidding processes in Puerto Rico. Genera PR LLC ("Genera") will start providing services to PREPA beginning on July 1, 2023, pursuant to the LG OMA<sup>1</sup>, not before. As will be discussed below, nothing in either the LG OMA or Puerto Rico's legal structure would allow a private entity to have decisional making authority over an ongoing public competitive bidding process commenced by PREPA. Once Genera begins providing services to PREPA on July 1, 2023, it will have the opportunity to pursue those competitive bidding processes

<sup>1</sup> *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement, between PREPA, the Puerto Rico Public-Private Partnerships Authority ("P3") and Genera PR, LLC, January 24, 2023 ("LG OMA").*

allowed by the LG OMA and pursuant to its own procurement manual. To be certain, PREPA is wholeheartedly in agreement with allowing the Genera team to provide guidance, suggestions 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.”<sup>2</sup> Notwithstanding, PREPA is in disagreement with allowing any substantial change of this ongoing request for proposal (“RFP”) process at this advanced stage of the proceedings and much less permit Genera to have any decision making authority in this public process.

## II. Procedural Background

1. On August 24, 2020, the Energy Bureau issued the IRP Order<sup>3</sup>, regarding the Integrated Resource Plan (“IRP”) of PREPA. The IRP Order approved a Modified Action Plan that included 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.<sup>4</sup>
2. On March 19, 2021, PREPA filed a document titled *Motion Submitting March 2021 Revised 10-Year Infrastructure Plan* (“March 19 Motion”). Through the March 19 Motion, PREPA filed a new updated version of the plan (“March 2021 Revised 10-Year Plan”) which included new black start units at Aguirre and Costa Sur.

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<sup>2</sup> April 14, 2023, Resolution and Order

<sup>3</sup> See, 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 (“IRP Order”).

<sup>4</sup> IRP Order, pp. 275-276 ¶ 885.



3. On March 26, 2021 ("March 26 Order"), in alignment with the IRP Order and the Modified Action Plan, the Energy Bureau, approved PREPA's request for black start units at Aguirre and Costa Sur.<sup>5</sup>
4. On April 14, 2021, PREPA filed a document titled *Motion in Compliance with the Resolution and Order Entered on March 26, 2021* ("April 14 Motion"), which included a list of projects under the categories of transmission, distribution, and substations.
5. Thereafter, on April 22, 2021, the Energy Bureau issued a Resolution and Order requesting additional information for each project in the April 14 Motion under the different project categories, including but not limited to Transmission Line Projects, Transmission and Distribution Substation Projects, and Distribution System Projects ("April 22 Order").
6. On July 6, 2021, PREPA and LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively, "LUMA") filed a document titled *Joint Motion Submitting Updated 10-Year Infrastructure Work Plan* through which it filed an updated version of the 10-Year Infrastructure Plan, which included the Costa Sur and Aguirre Black Start Projects ("10-Year Infrastructure Plan, June 2021 Update")<sup>6</sup> and subsequently, on September 7, 2021, PREPA filed a document titled *Motion to Submit Second Group of Generation Projects Initial SOWS* ("September 7 Motion"). In the September 7 Motion, PREPA requested approval to substitute the Aguirre Black Start Project for the Yabucoa Black Start Project which the Energy Bureau approved on September 28, 2021.<sup>7</sup>
7. In response, on August 2, 2022, PREPA filed before the Energy Bureau a document titled *Motion to Inform Reallocation of FEMA 404 HMGP Funds and Request for Approval of*

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<sup>5</sup> See, Resolution and Order, *In re: Review of the Puerto Rico Electric Power Authority's 10-year Infrastructure Plan December 2020*, Case No. NEPR-MI-2021-0002, March 26, 2021 ("March 26 Order").

<sup>6</sup> See, *In re: Review of the Puerto Rico Electric Power Authority's 10 year Infrastructure Plan December 2020*, Case No. NEPR-MI-2021-0002, *Joint Motion Submitting Updated 10-Year Infrastructure Work Plan*, July 6, 2021 ("July 6 Motion").

<sup>7</sup> See, Resolution and Order, *In re: Review of the Puerto Rico Electric Power Authority's 10 year Infrastructure Plan December 2020*, Case No. NEPR-MI-2021-0002, September 28, 2021 ("September 28 Order").

*Generation Projects* ("August 2 Motion"). Through the August 2 Motion, PREPA notified the Energy Bureau its determination to allocate Hazard Mitigation Grant Program Funds ("404 HMGP Funds") in part to cover an updated cost estimate of \$190 million for the Costa Sur and Yabucoa Black-Start Units. PREPA asserted that the substantive price increase from the original \$90.4 million to the updated estimate was due to the recent disruption in the supply chain and inflation.

8. On August 18, 2022, the Energy Bureau issued a Resolution and Order ("August 18 Order") containing questions for PREPA to address, including the reasons for the about \$100,000,000.00 cost increase of the black start units compared to initial estimates. In compliance with the above, on September 7, 2022, PREPA filed a document titled *Motion to Submit Responses to Requests for Information Ordered in the August 18 Order* ("August 18 Order Response") in which PREPA responded to the August 18 Order. Regarding the Black Start Units, PREPA indicated among other rationale, that the delay was caused by selecting Yabucoa as a better site and the engineering services to complete the studies and specifications required for the draft RFP submitted by Sargent & Lundy in March of 2022.<sup>8</sup> The Energy Bureau approved the \$100 million increase on September 15, 2022 ("September 15 Resolution").

9. To commence the procurement process, 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 a RFP for black start generation units at Yabucoa and Costa Sur ("November 10 Request"). Included in the filing was a draft RFP for the black start units, separate technical specifications for an EPC ("Engineering, Procurement, and Construction") contract, and draft contract forms for each of the Yabucoa and Costa Sur location ("November 10 Confidential

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<sup>8</sup> See, *Resolution and Order, In re: Review of the Puerto Rico Electric Power Authority's 10 year Infrastructure Plan December 2020*, Case No. NEPR-MI-2021-0002, September 28, 2021 ("September 28 Order").



Documents”). The Energy Bureau, through Resolution and Order issued on December 5, 2022 (“December 5 Order”), approved PREPA’s request for an RFP process for the procurement of black start systems at Costa Sur and Yabucoa. The December 5 Order had specific conditions on the capacity of the resource to be procured and the types of resources eligible to participate in the solicitation and provide black start service.

10. Thereafter, on January 23, 2023, the Energy Bureau issued a *Resolution and Order* (“January 23 Order”) through which it conditionally approved PREPA’s RFP process for the procurement of emergency generation at Jobos, Dagua, and Palo Seco subject to various conditions, including that PREPA would report to the Energy Bureau on the status of emergency generation and black start generation procurement.

11. In compliance with the January 23 Order, on March 16, 2023, PREPA filed before the Energy Bureau a document titled *Motion to Inform Status Report on the Emergency Generation and Black Start Generation Procurement in Compliance with the January 23, 2023 Order* (“March 16 Motion”). Regarding the blackstart generation procurement process, PREPA included as Annex A to the March 16 Motion a status report titled *RFP 3784, Power Advocate Event 138790 New Black Start Units Yabucoa and Costa Sur Power Stations* (“RFP 3784 Status Report”). As Annex B, and regarding the emergency generation procurement, PREPA included a status report titled *RFP 3800, Power Advocate Event 139303 New Peaker Units for the Dagua, Jobos, and Palo Seco Power Stations* (“RFP 3800 Status Report”). PREPA also requested that the Energy Bureau determine that the status reports included as annexes A and B be maintained confidential and under seal until the competitive procurement process is completed.

12. On April 14, 2023, the Energy Bureau issued a *Resolution* (“April 14 Resolution”) taking notice of the March 16 Motion and granting confidential designation and treatment to

annexes A and B of the March 16 Motion. The April 14 Resolution also stated that, since the generation units being procured in RFP 3784 and RFP 3800 shall eventually be under the operation and maintenance of Genera as per the LG 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.

13. Thereafter, and completely unexpected by PREPA, on May 8, 2023 the Energy Bureau on its own accord issued a *Resolution and Order* ("May 8 Order") where **it determined that Genera had to immediately assume an active role in administration of these Request for Proposals ("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.**

14. Additionally, the Energy Bureau ordered Genera to, on or before five (5) business days from the notification of the May 8 Order, **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.

### **III. Discussion**

15. First and foremost, PREPA would like to state for the record that it has no issue with sharing with Genera the status of the process and allowing the Genera team to provide guidance, suggestions 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.” That is the nature of the transition process and PREPA is fully on board with this encouragement by the Energy Bureau. PREPA has in fact been sharing information with Genera regarding these RFP’s and has made Genera privy of the details of the process. Notwithstanding, PREPA wholeheartedly disagrees with the extent of the May 8 Order issued by this Energy Bureau, given that it goes beyond what is allowed during an open, ongoing procurement process by a public entity. Additionally, such an uncalled-for intervention by a private party in a public process when that party has yet to start its Service Commencement Date is not legally supportable. Lastly, the May 8 determination is an extremely drastic one that would further delay the proceedings that this Bureau has unfairly criticized PREPA so much for.

16. It is one thing for this Energy Bureau to empower Genera to request that it take an active role and, together with PREPA, participate in the RFP process to promote a cooperative working relationship and ensure that legacy generation assets are transferred appropriately, **but it is another thing altogether, to order Genera, out of the blue, in a short period of time and without any basis** 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 far black start and emergency generation resources **without even reaching the "Service Commencement Date" of the LG OMA.**

17. One of the essential provisions of the LG OMA is the Service Commencement Date, which as of now has been rescheduled for July 1, 2023. This is the date when Genera will start providing services in operation and maintenance of thermal generation facilities. Until that date, Genera

cannot formally engage in any proceedings, much less have any type of decision-making authority that would give them an unfair advantage over other interested parties or violate the terms of the agreement.

18. LG OMA in *Section 5.1 Services Generally* specifically states the following:

**Commencing on the Service Commencement Date**, and in exchange for Owner's payment to Operator of all amounts owing to Operator under this Agreement, Operator shall (i) provide **management, operation, maintenance, repair, restoration, replacement and other related services for the Legacy Generation Assets, as well as any optimization** (including fuel and efficiency) approved by PREB, in each case that are customary and appropriate, or as required by Applicable Law, including the services set forth in this Article 5 (O&M Services) and Annex IX (Scope of Services), and (ii) establish policies, programs and procedures with respect thereto, to the extent not already established in the Services Documentation (all such services, the "O&M Services"), in each case, in accordance with the Contract Standards and Applicable Law. It is the Parties' intent that except for the rights and responsibilities reserved to Owner and Administrator as set forth in Article 6 (Rights and Responsibilities of Owner and Administrator) or as may otherwise be expressly provided in this Agreement, Operator shall (A) be entitled to exercise all of the rights and perform the responsibilities of Owner in providing the O&M Services, and (B) have the autonomy and responsibility to operate and maintain the Legacy Generation Assets and establish the related plans, policies, procedures and programs with respect thereto as provided in this Agreement. In providing such O&M Services, Operator must comply with all requirements of Applicable Law, including the requirements of the Consent Decree.

19. The purpose of this provision is to ensure that all parties involved have a clear understating of each other's roles and rights during the different LG OMA stages. By adhering to these rules, the RFP's can be completed successfully, within the bounds of the law and with all parties benefiting from the partnership. Any action contrary to these clear contractual terms jeopardizes the orderly transition of the legacy assets operations as well as the legality of the RFP processes.

20. Genera **should not have any type of decisional authority in proceedings before the Service Commencement Date and must not be allowed to change the current RFP** because it could lead to a public procurement process beyond the bounds of what would be legal. Nothing in Puerto Rico's legal framework would allow a private party to be involved and/or make decisions



in what is public procurement process, much less change it. Further, nothing in Act 83-1941<sup>9</sup>, Act 120-2018<sup>10</sup>, Act 29-2009<sup>11</sup> or any other legal authority supports a proposition whereby a private actor takes any type of binding decision in a public competitive bidding process.

21. Upon the Service Commencement Date begins nothing will impede Genera from pursuing its own competitive bidding process within the confines of its own procurement manual and within the bounds of what is allowed pursuant to the LG OMA, until then PREPA is the entity in charge of conducting its own procurement processes.

22. This is not the time for the Energy Bureau to be going beyond its authority and giving rights to a private entity outside of what is allowed in the law. Further, these RFP processes have been conducted pursuant to Joint Regulation 8815<sup>12</sup>. Regulation 8815 dictates the parameters and requirements both PREPA and the Energy Bureau must adhere to in relation to a **public** procurement process. As relevant to this motion, the Energy Bureau's role in a procurement process dictated by Regulation 8815 is limited to those interventions strictly contemplated in such process, including approving the RFP content<sup>13</sup> and approving the contracts<sup>14</sup> once the RFP has been awarded. Nothing in said regulation would allow the Energy Bureau to actively intervene in an open and running procurement process without a clear amendment to Regulation 8815, much less to allow a private party to have decision making authority when such granting of authority has no precedent in law.

23. The RFPs are already at an advanced stage and proposals are expected as soon as May 20,

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<sup>9</sup> Act No. 83 of May 12, 1941, as amended "Puerto Rico Electric Power Authority Act"

<sup>10</sup> Act. No. 120 of June 21, 2018, as amended Puerto Rico Electric Power System Transformation Act

<sup>11</sup> Act No. 29 of June 8, 2009, as amended "Public-Private Partnership Authority Act"

<sup>12</sup> "Joint Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Contracts for the Purchase of Energy and the Procurement, Evaluation, Selection, Negotiation and Award Process for the Modernization of the Generation Fleet"

<sup>13</sup> Article 4.2 of Joint Regulation 8815

<sup>14</sup> Article 7.1 of Joint Regulation 8815

2023. PREPA's Evaluation Committee, the public servants' entity with authority over the RFP process, will adhere to the approved RFP to ensure the fairness and transparency of the process, complying with their fiduciary duty. By maintaining the highest standards of transparency in the procurement process, **PREPA can ensure** that the intended benefits of its programs would be far-reaching and sustainable, as has been tirelessly requested by this Energy Bureau.

24. PREPA's RFPs processes are bound and approved by the Energy Bureau. Once the Energy Bureau approves the competitive RFP process, it has relinquished its jurisdiction and authority over any alteration to the process that PREPA pursues and unless requested by PREPA it cannot be changed. Jurisdiction and oversight are key elements in the regulatory process. Once the RFP has been approved, any significant change to the contents would require starting the process anew, negating the benefits of the previous approval and adjudication. While the Energy Bureau has the authority to review and approve the RFP content before publication and later approve the contracts of the RFP awards, it does not have the authority to amend an ongoing RFP process and much less at the behest of a private party which has not decisional rights in this process. The Energy Bureau must seek to maintain a stable, comprehensive regulatory framework to ensure the uninterrupted supply of electricity to the island in an impartial and reliable fashion. Once an organized transition to the private operator ensues that private operator will have the ability to conduct its own competitive bidding processes within the bounds of the LG OMA, its procurement manual and the law.

**WHEREFORE,** for the reasons stated above, PREPA respectfully requests the Energy Bureau to (i) take notice of the arguments outlined above, (ii) clarify its May 8 Order to not allow for any changes to the ongoing RFP processes in the best interests of transparency and legal framework that regulates competitive bidding processes as well as (iii) allow the RFPs proceedings



to continue as they have been carried out to date.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 11<sup>th</sup> day of May 2023.

/s/ Maralíz Vázquez-Marrero  
Maralíz Vázquez-Marrero  
mvazquez@diazvaz.law  
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/s/ Joannely Marrero Cruz  
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### **CERTIFICATE OF SERVICE**

It is hereby certified that, on this same date, I have filed the above motion with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>.

In San Juan, Puerto Rico, this 11<sup>th</sup> day of May 2023.

s/ Joannely Marrero Cruz  
Joannely Marrero Cruz



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

NEPR

Received:

May 25, 2023

3:36 PM

**IN RE:**

10 YEAR PLAN FEDERALLY FUNDED  
COMPETITIVE PROCESS

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

**SUBJECT:** Memorandum of Law Requesting  
Confidential Designation and Treatment of  
Genera PR LLC's Proposed Process for the  
Procurement of Black-Start and Emergency  
Peaking Resources

**MEMORANDUM OF LAW REQUESTING CONFIDENTIAL DESIGNATION  
AND TREATMENT OF GENERA PR LLC'S PROPOSED PROCESS FOR THE  
PROCUREMENT OF BLACK-START AND EMERGENCY PEAKING RESOURCES**

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

**COMES NOW GENERA PR, LLC** ("Genera PR"), through its counsel of record, and respectfully submits and prays as follows:

**I. INTRODUCTION**

1. On May 8<sup>th</sup>, 2023, the Puerto Rico Energy Bureau of the Public Service Regulatory Board (the "Energy Bureau") issued a Resolution and Order (the "May 8<sup>th</sup> Order") in connection with the Request for Proposals ("RFP") processes initiated by the Puerto Rico Electric Power Authority ("PREPA"). These processes specifically concerned the procurement of the black start systems at Costa Sur and Yabucoa, designated under RFP 3784, and the procurement of emergency generators at the Jobos, Dagua, and Palo Seco Power Stations, as detailed under RFP 3899.<sup>1</sup>

2. Pursuant to the May 8<sup>th</sup> Order, the Energy Bureau directed Genera PR to submit, on or before May 15, 2023, any proposed amendments to the RFP process documents and bid

<sup>1</sup> See Resolution and Order, *In re: 10 Year Plan Federally Funded Competitive Process*, Case No. NEPR-MI-2022-0005, May 8, 2023 ("May 8<sup>th</sup> Order")

schedules for RFP 3784 and RFP 3899. The proposed changes were to outline a plan for the transition of RFP administration from PREPA to Genera PR. Moreover, Genera PR was also required to outline a proposed process for implementing its suggested modifications, as well as for managing the RFPs specifically pertaining to black start and emergency generation resources.

3. In compliance with the May 8<sup>th</sup> Order, Genera PR hereby submits to the Energy Bureau its proposed process for the procurement process of black-start and emergency peaking resources for this Energy Bureau's review and approval. See Exhibit 1, submitted under seal of confidentiality.

4. Additionally, Genera PR hereby formally requests that Exhibit 1 be kept confidential and, in support of this request, submits its Memorandum of Law below, elucidating the legal rationale under which Exhibit 1 should be filed under a seal of confidentiality. As will be expounded upon subsequently, the proposed RFP process outlined in Exhibit 1 warrants protection from public disclosure, as these documents encompass privileged and confidential information. This information includes but is not limited to details about Genera PR's technical analysis and additional data that may be classified as trade secrets.

## **II. REQUEST FOR CONFIDENTIAL DESIGNATION**

### **A. Applicable Law and Regulation to a request for confidentiality before the PREB**

5. The primary statute that oversees the handling of classified information submitted to this Honorable Energy Bureau is Section 6.15 of Act No. 57-2014, also known as the "Puerto Rico Energy Transformation and RELIEF Act." This section provides that "[i]f any person who is required to submit information to the Energy [Bureau] believes that the information to be submitted has any confidentiality privilege, such person may request the [Bureau] to treat such information as such..." 22 L.P.R.A. § 1054n. If, upon conducting a thorough evaluation, the Energy Bureau



deems that such information should be protected, “it shall grant such protection in a manner that least affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which allegedly confidential document is submitted.” *Id.* At Section 6.15(a). Accordingly, such information shall be kept out of public reach by the Energy Bureau, and “the information shall be duly safeguarded and delivered exclusively to the personnel of the Energy [Bureau] who needs to know such information under nondisclosure agreements.” *Id.* At Section 6.15(c). Thus, “[t]he Energy [Bureau] shall swiftly act on any privilege and confidentiality claim made by a person subject to its jurisdiction by means of a resolution to such purposes before any allegedly confidential information is disclosed.” *Id.* At Section 6.15(d).

6. In conjunction with the aforementioned, Energy Bureau Regulation 8815, also known as the *Joint Regulation for the Procurement, Evaluation, Selection, Negotiation, and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation, and Award Process for the Modernization of the Generation Fleet and other Resources* (“Regulation 8815”), provides clear and explicit safeguards for confidential information during competitive bidding procedures, as delineated in Articles 4.2 and 10.2.

7. In its pertinent part, Article 4.2 of Regulation 8815 mandates that “prior to launching any public procurement process, and after receiving the approval of the [Board of Directors] from PREPA to proceed with the proposed [p]roject and procurement process, the Executive Director [of PREPA] will notify in writing to the Energy [Bureau] the recommendations of the Project Committee with respect to<sup>2</sup>: (i) the proposed [p]roject, including all associated documents that explain the [p]roject; (ii) the proposed parameters to determine such profit margin

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<sup>2</sup> Article 2.21 of Regulation 8815, the project committee is designated to receive and evaluate qualifications and or proposals received in a Request for Qualifications or RFP process, negotiate with the highest ranking Proponent or Proponents, and make recommendations for selection, negotiation, and approval and signing of a contract.

and price escalators; (iii) consistence with the Integrated Resource Plan approved by the Energy [Bureau]; and (iv) compliance with Regulation 8815, the Acts, and other applicable regulations.”<sup>3</sup> Importantly, Article 4.2 further provides that this communicated **information should remain confidential while the administrative competitive procurement process is ongoing.**<sup>4</sup>

8. Additionally, in its relevant part, Article 10.2 of Regulation 8515 further provides guidance that:

Once the Contract has been executed, [PREPA] shall make public the report of the Project Committee which shall contain the information related to the procurement, evaluation, scoring, selection and negotiation process, and the information contained in the Proposal as required by law, except trade secrets, proprietary or privileged information of the Proponent clearly identified as such by the Proponent, or information that must otherwise be protected from publication according to law, unless otherwise ordered by a court order, in each case, if [PREPA] determines that the protection of such information is appropriate.”

9. In addition to the aforementioned, it is worth noting that under Act. No. 80-2011, also known as the *Industrial and Trade Secret Protection Act of Puerto Rico* (“Act. No. 80-2011”), certain information may be granted protection as a trade secret. Specifically, Act. No. 80-2011 provides that industrial or trade secrets are deemed to be any information:

- a. That has a present or a potential independent financial value or that provides a business advantage, insofar as such information is not common knowledge or readily accessible through proper means by persons who could make a monetary profit from the use or disclosure of such information, and
- b. For which reasonable security measures have been taken, as circumstances dictate, to maintain its confidentiality.

10. Furthermore, in the context of Act. No. 80-2011, information refers to knowledge that amplifies or clarifies existing understanding, including but not limited to formulas, compilations, methods, techniques, processes, recipes, designs, treatments, models, or patterns.

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<sup>3</sup> Article 4.2 of Regulation 8815.

<sup>4</sup> *Id.*



See Article 3 of Act. No. 80-2011. In addition, Puerto Rico's Supreme Court has delineated a trade secret as any process for manufacturing, treating, or preserving materials, a formula or recipe, a blueprint or pattern for the development of machinery, or even a list of specialized customers that constitute a distinct market, thereby bestowing a competitive advantage upon its owner. See Ponce Adv. Med. v. Santiago González, 197 DPR 891, 903-904 (2007).

#### **B. Grounds for Confidentiality**

11. While the provisions of Article 4.2 of Regulation 8815 primarily outline the relationship between the Executive Director of PREPA and the Energy Bureau in the process of RFP content approval by the Energy Bureau, Genera PR maintains that these provisions should apply to them, particularly in light of the nature of the information that the Energy Bureau has sought from Genera PR under the May 8<sup>th</sup> Order. Given the present stage of proceedings, revealing Genera PR's proposed RFP process could potentially compromise the impartiality of all forthcoming proposals offered by Proponents.

12. Furthermore, Genera PR's proposal results from an in-depth proprietary analysis built upon a comprehensive market understanding and assimilation of past experiences. It contains detailed strategic insights that, if disclosed, could provide undue advantage to other parties in the procurement process and compromise the fairness of competitive bidding. Hence, it is of paramount importance that the confidentiality of Genera PR's proposed RFP process is respected and upheld.

13. As a result, Genera PR respectfully requests the Energy Bureau to confirm the confidential status of these documents and information and to issue an order mandating their preservation under seal. Disclosure of these proposed RFP processes would provide an unfair advantage to potential proponents. Moreover, these comments are still draft forms subject to the

Energy Bureau's approval. As such, they represent communications leading to a competitive procurement process that could disrupt future proceedings if disclosed at this juncture.

**WHEREFORE**, for the reasons stated above, Genera PR respectfully requests that the Energy Bureau take **NOTICE** of this Motion, **ACCEPT** Genera's response included in Exhibit I to this Motion and the attachments to Exhibit I and **keep the same confidential**.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 25<sup>th</sup> day of May 2023.

**ECIJA SBGB**  
PO Box 363068  
San Juan, Puerto Rico 00920  
Tel. (787) 300.3200  
Fax (787) 300.3208

s/ Jorge Fernández-Reboredo  
Jorge Fernández-Reboredo  
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TSPR 9,669

s/ Alejandro López-Rodríguez  
Alejandro López-Rodríguez  
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TSPR 22,996



### **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 the attorney for Puerto Rico's Electric Power Authority (PREPA), Joannely Marrero-Cruz, at [jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law); and Maraliz Vázquez-Marrero, at [mvazquez@diazvaz.law](mailto:mvazquez@diazvaz.law).

In San Juan, Puerto Rico, this 25<sup>th</sup> day of May 2023

*s/ Jorge Fernández-Reboredo*  
Jorge Fernández-Reboredo

Exhibit 1



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

NEPR

Received:

Aug 16, 2023

6:24 PM

**IN RE:**

**10 YEAR PLAN FEDERALLY FUNDED  
COMPETITIVE PROCESS**

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

**SUBJECT:** Motion to Submit Bi-monthly Report on the Status of Emergency Generation and Black-Start Generation Procurement for the Period of August 1 to August 15, 2023, in Compliance with Resolution and Order Dated January 23, 2023

**MOTION TO SUBMIT BI-MONTHLY REPORT ON THE STATUS OF EMERGENCY  
GENERATION AND BLACK-START GENERATION PROCUREMENT FOR THE  
PERIOD OF AUGUST 1 TO AUGUST 15, 2023, IN COMPLIANCE WITH  
RESOLUTION AND ORDER DATED JANUARY 23, 2023**

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

**COMES NOW GENERA PR LLC** ("Genera"), as agent of the Puerto Rico Electric Power Authority ("PREPA"),<sup>1</sup> through its counsels of record, and respectfully submits and prays as follows:

**I. Procedural Background**

1. On November 10, 2022, PREPA filed a confidential letter under seal to the Puerto Rico Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") titled *Request for Approval to Proceed with Request for Proposals ("RFP") for the New Black-Start Systems at Costa Sur and Yabucoa*, seeking approval for the launch of a Request for Proposal ("RFP") for black-start generation units at Yabucoa and Costa Sur. The filing included a draft RFP for the black-

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

start units, separate technical specifications for an Engineering, Procurement, and Construction contract, and draft contract forms for each location.

2. On December 5, 2022, the Energy Bureau issued a Resolution and Order titled *Resolution and Order regarding Motion Requesting Expedited Approval of the RFP Process for the New Black-Start Systems at Costa Sur and Yabucoa, filed by the Puerto Rico Electric Power Authority* approving PREPA's request of November 10, 2022, for an RFP process to procure black-start systems at Costa Sur and Yabucoa ("RFP 3784").

3. On December 29, 2022, PREPA submitted to the Energy Bureau a confidential letter regarding a *Request for Approval to Proceed with Request for Proposals for New Emergency Generation Units at Jobos, Dagua and Palo Seco*. The request concerned an RFP for up to 50 MW at the Jobos site, up to 60 MW at the Dagua site, and up to 90 MW of generation at the Palo Seco site.

4. 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 23<sup>rd</sup> Order") through which it conditionally approved PREPA's RFP process for the procurement of emergency generation at Jobos, Dagua, 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.<sup>2</sup>

5. Effective 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.

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<sup>2</sup> See January 23 Order, p. 5.



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,<sup>3</sup> and July 17, 2023.<sup>4</sup>

6. Pursuant to Genera's obligation under the LGA OMA, and as recognized by this Energy Bureau in the July 13<sup>th</sup> Order and July 17<sup>th</sup> Resolution, Genera hereby submits a redacted document titled *Bi-Weekly Report – Period of August 1 – 15, 2023* ("Bi-Weekly Report"), attached as *Exhibit A* herein, detailing Genera's recent progress from August 1 to August 15, 2023, regarding the RFPs process in compliance with the January 23<sup>rd</sup> Order.

7. Genera respectfully further informs that an unredacted version of the Bi-Weekly Report is submitted under seal of confidentiality as it includes confidential information during the ongoing competitive procurement process. Therefore, in compliance with the Energy Bureau's Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 2016, and partially amended on September 16, 2016, Genera respectfully submits this memorandum of law, which explains the legal basis for the confidential treatment of the Bi-Weekly Report submitted herein as *Exhibit A*.

## **II. Memorandum of Law in Support of Confidential Treatment**

### **A. Applicable Law and Regulations**

The governing statute for the management of classified information submitted to this esteemed Energy Bureau is Section 6.15 of Act No. 57-2014, also known as the "Puerto Rico Energy Transformation and RELIEF Act." This section stipulates, "[i]f any person who is required to submit information to the Energy [Bureau] believes that the information to be submitted carries

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<sup>3</sup> See, Resolution and Order, *In re: 10-Year Plan Federally Funded Competitive Process*, Case No.: NEPR-MI-2022-0005, July 13, 2023 (July 13<sup>th</sup> Resolution).

<sup>4</sup> See, Resolution and Order, *In re: 10-Year Plan Federally Funded Competitive Process*, Case No.: NEPR-MI-2022-0005, July 17, 2023 (July 17<sup>th</sup> Resolution).



a confidentiality privilege, such person may request the [Bureau] to treat such information as confidential..." 22 L.P.R.A. § 1054n. If, after conducting a meticulous evaluation, the Energy Bureau determines that the information warrants protection, it is required to "grant such protection in a manner that minimally affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted." *Id.* at Section 6.15(a). Consequently, such information must be withheld from the public domain by the Energy Bureau and "must be duly safeguarded and provided exclusively to the personnel of the Energy [Bureau] who need to know such information under nondisclosure agreements." *Id.* at Section 6.15(c). Therefore, "[t]he Energy [Bureau] must swiftly act on any privilege and confidentiality claim made by a person under its jurisdiction through a resolution for such purposes before any potentially confidential information is disclosed." *Id.* at Section 6.15(d).

Additionally, the Energy Bureau's Policy on Management of Confidential Information detail the procedures a party should **follow to request confidential treatment for a document** or a portion of it. The Energy Bureau's Policy and Procedures on Confidential Information requires the identification of confidential information and the filing of a memorandum of law that explains the legal basis and support for a request to file information confidentially. *See* Section A of the Energy Bureau's Policy on Management of Confidential Information. The memorandum should also include a table that identifies the confidential information, a summary of the legal basis for the confidential designation, and an explanation of why each claim or designation conforms to the applicable legal basis for confidentiality. *Id.*

In conjunction with the aforementioned, Energy Bureau Regulation 8815, also known as the *Joint Regulation for the Procurement, Evaluation, Selection, Negotiation, and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation,*

*and Award Process for the Modernization of the Generation Fleet and other Resources* ("Regulation 8815"), provides clear and explicit safeguards for confidential information during competitive bidding procedures, as delineated in Articles 4.2.

In its pertinent part, Article 4.2 of Regulation 8815 mandates that "prior to launching any public procurement process, and after receiving the approval of the [Board of Directors] from PREPA to proceed with the proposed Project and procurement process, the Executive Director [of PREPA] will notify in writing to the Energy [Bureau] the recommendation of the Project Committee with respect to: (i) the proposed Project, including all associated documents that explain the Project; (ii) the proposed parameters to determine such profit margin and price escalators; (iii) consistence with the Integrated Resource Plan approved by the Energy [Bureau]; and (iv) compliance with Regulation 8815, the Acts, and other applicable regulations."<sup>5</sup> Notably, Article 4.2 further provides that this [complete sentence] should remain confidential while the administrative competitive procurement process is ongoing.<sup>6</sup>

Lastly, PREPA adopted Regulation 6285, also known as "*Regulation for the Program to Administer Documents of the Puerto Rico Electric Power Authority*", on January 10, 2001 ("Regulation 6285"). Pursuant to Regulation 6285, documents including information related to the evaluation of bids or requests for bids while the evaluation, adjudication and award processes are still ongoing, are confidential.<sup>7</sup>

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<sup>5</sup> See Article 4.2 of the Energy Bureau's Regulation 8815.

<sup>6</sup> *Id.*

<sup>7</sup> See Section V, ¶ 13, of the Energy Bureau's Regulation 6285.



## B. Request for Confidentiality and Supporting Arguments

In accordance with Article 4.2 of Energy Bureau Regulation 8815, the information within the Bi-Weekly Report relating to an ongoing public procurement process must remain confidential. The Bi-Weekly Report contains details pertaining to Genera's evaluation of offers and the current state of the adjudication process. Such information aligns with the nature of documents classified as confidential under Regulation 8815. Releasing this information would not serve the public interest. Rather, it could compromise the transparency and integrity of the ongoing procurement process, potentially prejudicing Genera's position.

Additionally, it is important to highlight that prior to August 1, 2023, PREPA was responsible for submitting these reports in accordance with the January 23<sup>rd</sup> Order. Such reports filed by PREPA were maintained confidential and under seal by the Energy Bureau. Therefore, Genera maintains that *Exhibit A* should be granted the same level of confidentiality and protected status that this Energy Bureau previously accorded to reports submitted by PREPA. While this request for confidentiality finds support in the aforementioned laws and regulations, it is also important to emphasize that preserving the confidentiality of these reports will ensure that information previously provided by PREPA, deemed confidential by this Energy Bureau, will not be inadvertently disclosed.

## C. Identification of Confidential Information

Document Name and Filing Date	Confidential Information	Summary of Legal Basis for Confidential Designation	Summary of why each claim or designation conforms to the applicable legal basis for confidentiality
Bi-Weekly Report – Period of August 1–15, 2023	Section III on pp. 2-4, Section IV on pp.4-5, and Section V on pp. 5 – 7.	Confidential information during ongoing competitive procurement process.	The Bi-Weekly Report's information on the ongoing procurement process, which includes Genera's evaluation of offers, must stay confidential to protect the procurement process's transparency, integrity and avoid potential prejudice to Genera.



**WHEREFORE**, for the reasons stated above, Genera respectfully requests the Energy Bureau to (i) **take notice** of the above; (ii) **accept** Genera's Bi-Weekly Report regarding the Status of RFP 3784 and RFP 3800 for the period of August 1, 2023, to August 15, 2023, submitted herein as *Exhibit A* to this Motion; (iii) **deem** Genera in compliance with the January 23<sup>rd</sup> Order; and (iv) **grant** this request for confidential treatment.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 16<sup>th</sup> day of August 2023.

**ECIJA SBGB**  
PO Box 363068  
San Juan, Puerto Rico 00920  
Tel. (787) 300.3200  
Fax (787) 300.3208

/s/ Jorge Fernández-Reboredo  
Jorge Fernández-Reboredo  
jfr@sbgbllaw.com  
TSPR 9,669

/s/ Alejandro López-Rodríguez  
Alejandro López-Rodríguez  
alopez@sbgbllaw.com  
TSPR 22,996

### 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 the attorney for Puerto Rico's Electric Power Authority, Joannely Marrero-Cruz, at [jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law); and Maralíz Vázquez-Marrero, at [mvazquez@diazvaz.law](mailto:mvazquez@diazvaz.law).

In San Juan, Puerto Rico, this 16<sup>th</sup> day of August 2023

/s/ Alejandro López-Rodríguez  
Alejandro López-Rodríguez



Exhibit A

Bi-Weekly Report – Period of August 1 – 15, 2023  
(Unredacted version submitted under seal of confidentiality)

**CONFIDENTIAL**

Docket Number: NEPR-MI-2022-0005

In Re: 10 Year Plan Federally Funded Competitive Processes

Re: Bi-weekly Report for the Period of August 1 – 15, 2023

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**I. Introduction**

On December 23, 2022, and January 27, 2023, two events called "Black Start" and "Peaker" were created under the profile of PowerAdvocate at PREPA. PREPA was in the process of procuring four (4) Black Start units and seven (7) Peaker units through RFPs no. 3784 and 3800, respectively, before the Service Commencement Date. As ordered by PREB, the requirements for the RFPs are:

**Black Start**

RFP no. 3784, issued on December 23, 2022, requested EPC proposals for:

- up to 60MW nameplate capacity at Costa Sur
- up to 60 MW nameplate capacity at Yabucoa
- two (2) units per site
- same output capacity
- capable of firing natural gas and diesel fuel
- ability in the future to fire biodiesel and a minimum of 30% hydrogen blended with natural gas as well
- peak capacity or reduction
- fast ramping
- load-following services
- open to all resources that can provide black start capability

**Peaker**

RFP No. 3800, issued on January 27, 2023, requested EPC proposals for:

- up to 50MW nameplate capacity at Jobos
- up to 60MW nameplate capacity at Daguaó
- up to 90MW nameplate capacity at Palo Seco

- total generation for the seven (7) units shall not exceed 200 MW nameplate capacity.
- at least three (3) of the seven (7) units must be mobile
- capable of firing natural gas and diesel fuel
- ability in the future to fire biodiesel and a minimum of 30% hydrogen blended with natural gas as well
- fast ramping
- black start
- synchronous condensing when offline
- provide load following services

## II. Summary of RFP 3784 and 3800 bids received

A summary of the bids received for both RFPs is attached as Annex A-1.

## III. Genera's proposed path forward

[REDACTED]

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Once PREB evaluates and enters an order regarding addressing Genera's proposal, Genera will prepare and submit the draft RFP for PREB's evaluation and approval.

**GOVERNMENT OF PUERTO RICO  
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 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 15, 2023, filed by Genera PR, LLC.

**RESOLUTION AND ORDER**

On July 13, 2023, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order whereby it determined that, given the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* ("LGA OMA") and the transition of responsibilities assumed on July 1, 2023, Genera PR, LLC ("Genera") was the sole entity responsible for managing, leading, and deciding on matters pertaining the Black Start and Peaking Units being procured in requests for proposals 3784 and RFP 3800 ("RFPs"). The Energy Bureau warned Genera that, as these are ongoing RFPs in advanced stages, it must move forward with completing this process without delay. The Energy Bureau further warned Genera it could not issue new RFPs nor amend existing RFPs, unless a duly justified request to that effect was approved by the Energy Bureau. In addition, the Energy Bureau ordered the Puerto Rico Electric Power Authority ("PREPA") to transfer on or before Thursday, July 20, 2023 all documentation related to the RFPs to Genera's designated representatives.

On July 17, 2023, the Energy Bureau reiterated that Genera was the sole entity responsible for managing, leading, and deciding on the Black Start units and Peaking units being procured in RFPs 3784 and 3800, respectively. The Energy Bureau further clarified that, as part of its responsibilities assumed on July 1, 2023, Genera was responsible for the operation and maintenance of the four (4) new Black Start Units replacing four (4) legacy generation assets (peaking units) listed in Annex I of the LGA OMA<sup>1</sup> and the seven (7) additional peaking facilities approved as part of the Optimization Proceeding (Case No.: NEPR-MI-2020-0016)<sup>2</sup> to optimize the development of the Minigrids strategy contemplated in the Proposed IRP.<sup>3</sup> The Energy Bureau also warned that any PREPA transaction shall be conducted in accordance with the Public Private Partnership's establishment process in Act No. 29-2009.<sup>3</sup>

Pursuant to its obligations under the LGA OMA, on August 1, 2023, Genera, as agent of PREPA, filed before the Energy Bureau the Bi-Monthly Report on the Status of Emergency Generation and Black-Start Generation Procurement for the Period from July 15 to July 31, 2023 ("August 1 Motion").

On August 16, 2023, Genera, as agent of PREPA, filed before the Energy Bureau the Bi-Monthly Report on the Status of Emergency Generation and Black-Start Generation Procurement for the Period from August 1 to August 15, 2023 ("August 16 Motion").

<sup>1</sup> Costa Sur GT Unit 1, Costa Sur GT Unit 2; Yabucoa CT Unit 1; and Yabucoa CT Unit 2.

<sup>2</sup> See 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 ("IRP Order").

<sup>3</sup> See Section 5(a) of the *Puerto Rico Electric Power System Transformation Act* ("Act 120-2018").





The Energy Bureau **TAKES NOTICE** of the August 1 and August 16 Motions. The Energy Bureau **GRANTS** confidential designation and treatment to Exhibit A of the August 1 and August 16 Motions, as requested by Genera.

The changes proposed by Genera in Exhibit A of the August 16 Motion are consistent with the IRP Order. Hence, the Energy Bureau **ALLOWS** the RFPs process to continue in the manner described by Genera in Exhibit A of the August 16 Motion. The Energy Bureau **ORDERS** Genera to submit the draft RFP for its review and approval **within ten (10) days of the notification of this Resolution and Order**. The Energy Bureau **WARNS** Genera that the Commercial Operation Date ("COD"), as per established in the *pro forma* contract as part of PREPA's RFPs, will remain unaltered. Therefore, the Energy Bureau **CAUTIONS** Genera that noncompliance with this Resolution and Order will result in the imposition of fines pursuant to Article 6.36 of Act 57-2014.<sup>4</sup> As such, in this case, the Energy Bureau will impose a fine of **twenty-five thousand dollars (\$25,000) per day of non-compliance** until compliance is achieved.

The Energy Bureau **ORDERS** Genera to ensure that federal funds are not debarred and that applicable requirements are met.


Be it notified and published.



Edison Avilés Deliz  
Chairman



Lillian Mateo Santos  
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 agreed on August 23, 2023. Also certify that on August 23, 2023, I have proceeded with the filing of this Resolution and Order and was notified by email to mvazquez@diazvaz.law; jmarrero@diazvaz.law; legal@genera-pr.com; regulatory@genera-pr.com; jfr@sbgblaw.com; alopez@sbgblaw.com. I also certify that on August 23, 2023, I have moved forward with filing the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign in San Juan, Puerto Rico, today, August 23, 2023.



Sonia Seda Gaztambide  
Clerk

<sup>4</sup> Puerto Rico Energy Transformation and RELIEF Act, as amended ("Act 57-2014").



TA048



**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 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

**RESOLUTION AND ORDER**

**I. Introduction**

On December 5, 2022, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") approved the Puerto Rico Electric Power Authority's ("PREPA") request for procurement of black start resources, to no more than 81 MW of combined net output capacity, at two sites, Costa Sur and Yabucoa.<sup>1</sup>

On January 23, 2023, the Energy Bureau conditionally approved PREPA's request for procurement of emergency generation ("January 23 Resolution"). The conditions included a maximum of 200 MW of total emergency generation, across no more than seven (7) units, at least three (3) of which must be mobile.<sup>2</sup> The conditions also included giving prioritization to interconnection of IRP-based generation and battery energy storage procurement over other generation installation interconnection, where feasible, while supporting reliable system operation.

On August 1, 2023, Genera PR, LLC ("Genera"), filed a *Motion to Submit Bi - Monthly Report on the Status of Emergency Generation and Black-Start Generation Procurement for the Period from July 15, 2023 to July 31, 2023, in Compliance with Resolution and Order Dated January 23, 2023* ("August 1 Motion"). Genera included as Exhibit A or Annex A the Bi-monthly report describing the status of the black start and emergency generation procurement process and requested confidential treatment for a portion of the material in the Bi-monthly report.

On August 16, 2023, Genera filed a *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 or Annex A the Bi-monthly report describing the status of the black start and emergency generation procurement process and requested confidential treatment for a portion of the material in the Bi-monthly report.

On August 23, 2023, the Energy Bureau granted Genera's request for confidential treatment of Exhibit A or Annex A of the August 1 Motion and the August 16 Motion. The Energy Bureau also noted that the changes proposed by Genera in Exhibit A of the August 16 Motion are consistent with the IRP Order. Hence, the Energy Bureau allowed the RFPs process to continue in the manner described by Genera in Exhibit A of the August 16 Motion. The Energy Bureau also ordered Genera to submit the draft RFP for its review and approval by September 4, 2023.

On August 25, 2023 LUMA Energy, LLC filed a *Motion Submitting One Scope of Work, Request for Confidentiality, And Supporting Memorandum of Law* ("August 25 Motion") concerning

<sup>1</sup> Energy Bureau Resolution and Order, NEPR-MI-2022-0005, Resolution and Order regarding *Motion Requesting Expedited Approval of the RFP Process for the New Black Start Systems at Costa Sur and Yabucoa*, filed by the Puerto Rico Electric Power Authority. December 5, 2022.

<sup>2</sup> Energy Bureau Resolution and Order, NEPR-MI-2022-0005, Determination for the Project Application Package for the Seven (7) Additional Peakers to be used as Emergency Generation. January 23, 2023.



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their planned Scope of Work ("SOW") for submittal to FEMA and COR3 for installation of a Transmission and Distribution project consisting of four (4), 25 MW, 4-hour duration (100 MWh) battery energy storage system ("BESS") interconnections on the LUMA System at the 38 kV voltage level.<sup>3</sup> The cost of the BESS systems in total (100 MW capacity) was estimated by LUMA at \$216.6 million, and LUMA estimated completion by June 2025.<sup>4</sup> LUMA also noted that the energy storage system "is being done to improve the reliability and resiliency of the Puerto Rico electric transmission system", and that "...fast frequency regulation will be the primary use case that shall be considered in the ESS sizing calculation".<sup>5</sup> Fast frequency regulation is an ancillary service that can also be provided by Genera's planned generation procurement for black start and emergency generation.

On August 30, 2023 the Energy Bureau approved LUMA's request to submit to FEMA and COR3 the four BESS projects indicated in the August 25 Motion.<sup>6</sup>

On September 1, 2023, Genera requested an extension to the September 4, 2023 deadline to submit the draft RFP.

On September 8, 2023, Genera filed *Motion to Submit Draft RFP in Compliance with Resolution and Order Dated August 23, 2023, and Request for Extension of Time to Supplement* ("September 8 Motion"), whereby Genera submitted under seal of confidentiality a copy of the document titled *Grid Support Units; Technical Specification for Power Generation Equipment* ("Draft Scope"), detailing the requirements and scope, in draft form, of the RFP that Genera will issue to purchase the units. Additionally, Genera requested an extension of time to submit a Memorandum of Law supporting its request for confidential treatment of the Draft Scope and an extension of time to submit supplemental RFP Package documents.

On September 15, 2023, Genera filed a *Memorandum of Law in Support of Confidential Treatment of RFP Draft Scope Submitted in Compliance with Resolution and Order Dated August 23, 2023* ("September 15 Motion"). Through the September 15 Motion, Genera requested confidential designation and treatment of the Draft Scope submitted on September 8, 2023 as Exhibit A.

On September 21, 2023, the Energy Bureau granted Genera's request of September 15 Motion for confidential treatment of Exhibit A.

On September 29, 2023, Genera filed *Motion to Submit Supplement to September 8, 2023 Motion in Compliance with Resolution and Order Dated August 23, 2023* ("September 29 Motion"). Genera included supplemental documents (under seal of confidentiality) to the RFP package and requested an extension to October 13, 2023 to file additional technical documents "essential for completing Genera's RFP Package".

On October 6, 2023, Genera submitted a *Memorandum of Law in support of Confidential Treatment for the Supplement to Genera's September 8 Motion, Submitted in September 29, 2023, in Compliance with Resolution and Order Dated August 23, 2023*. This was indicated as forthcoming in Genera's September 8<sup>th</sup> Motion.

On October 13, 2023 Genera submitted a *Motion to Submit Second Supplement to September 8, 2023, Motion in Compliance with Resolution and Order Dated August 23, 2023* ("October 13 Motion"). It contained Exhibits A through K (filed under seal of confidentiality) as a second set of supplemental documents to the September 8 Motion. Genera noted that the filed

<sup>3</sup> Case No. NEPR-MI-2021-0002, In Re: Review of the Puerto Rico Electric Power Authority's 10-Year Infrastructure Plan – December 2020. Exhibit 1 to LUMA's August 25 Motion consists of a redacted version of a "FEMA Project Initial Scope of Work" dated August 23, 2023.

<sup>4</sup> Ibid., pages 5 and 7 of 10 of "FEMA Initial Scope of Work Rev# 0".

<sup>5</sup> Ibid., pages 4 and 5.

<sup>6</sup> Available at: <https://energia.pr.gov/wp-content/uploads/sites/7/2023/08/20230830-MI20210002-Resolution-and-Order.pdf> (Last verified October 3, 2023).



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second supplement "brings Genera's RFP package close to completion. However, the package is still in draft form and may require further revisions." Thus, in the October 13 Motion Genera requested additional time, to October 20, 2023, to "finalize and submit the complete RFP package".

On October 16, 2023 Genera filed a *Motion to Submit Bi-Weekly Report on the Status of Emergency Generation and Black-Start Generation Procurement for October 1 to October 1, 2023 in Compliance with Resolution and Order Dated January 23, 2023* ("October 16 Motion"). The October 16 Motion included an Exhibit A, the Bi-Weekly Report, which indicated that Genera "Agreed with COR3 to move the peaker units to 406 FEMA Hazard Mitigation Grants and keep the black start units under 404 FEMA Hazard Mitigation Grants".

On October 19, 2023, the Energy Bureau issued a Resolution and Order ("October 19 Resolution") approving Genera's request to submit remaining supplements to the September 8 Motion by October 20, 2023, and granting confidential treatment to the documents requested in the September 29 Motion, 2023 and the October 13 Motion.

The October 19 Resolution also ordered Genera to file responses to questions posed by the Energy Bureau concerning battery energy storage systems presented as an option in the draft RFP scope included as an Exhibit attached to the September 8 Motion. The Energy Bureau also ordered Genera to explain how the potential presence of 100 MW of battery energy storage procurement by LUMA, described in the August 25 Motion, would impact the scope, scale, or other aspects of the RFP package for black start and emergency generation. The October 19 Resolution also directed Genera to answer a question concerning the nature of FEMA hazard mitigation grants under different FEMA program funding sources.

On October 20, 2023, Genera filed a *Motion to Submit Third Supplement to September 8, 2023, Motion and Response to Resolution and Order Dated October 19, 2023* ("October 20 Motion"). Genera included (filed under seal) in the October 20 Motion a third and final set of supplemental documents related to the "Draft Scope" of the RFP submitted with the September 8 Motion. Genera stated in the October 20 Motion that its filing "fulfills all the requirements outlined for Genera's RFP package" and that it "considers the RFP package to be complete and ready for final review and approval by the Energy Bureau".<sup>7</sup>

## II. Discussion and Findings

In the October 20 Motion Genera answered the FEMA program funding source question asked by the Energy Bureau through the October 19 Resolution.

In the October 20 Motion Genera did not explain how the LUMA battery energy storage procurement might impact the scope, scale or other aspects of the RFP package for black start and emergency generation. Genera did state that it has "decided to withdraw the battery requirements from the RFP" and Genera "submitted that the majority of the questions posed in the October 19 Order have become moot".<sup>8</sup> Genera also indicated it will "present a separate BESS project to the Energy Bureau, and the submittal will address the questions included in the October 19 Order".

The October 19 Resolution battery energy storage question to Genera specifically asking for an explanation of how the RFP package procurement will be impacted by LUMA's 100 MW battery procurement is not moot. The presence of an additional 100 MW of battery energy storage capacity, with the ability to provide ancillary services including black start, could impact the overall need for black start services being procured through Genera's RFP package for capacity including those services. Depending on power system circumstances including the ability to be recharged, the 100 MW battery energy storage capacity could also provide a form of emergency generation.

<sup>7</sup> October 20 Motion at paragraph 16, pages 5-6.

<sup>8</sup> October 20 Motion at paragraph 13, page 5.



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The Energy Bureau **TAKES NOTICE** of the Genera filing responding to the battery energy storage question.<sup>9</sup>

At a minimum, this information concerning the "separate BESS project" **MUST** include the magnitude (in MW, and duration), the purpose, the planned timing of installation and whether it is intended for one or for multiple locations across Puerto Rico.

The "Plant General Configuration" section A.1.2 of Exhibit J – Technical Specification for Power Generation Equipment of the RFP includes options for type and size of generation. The upper limit of the range of capacity (MW) sizing included in this section of the RFP **far exceeds the maximum of 200 MW of emergency generation and 81 MW of net plant output for black start services** approved by the Energy Bureau in the December 5 Resolution and the January 23 Resolution. The Energy Bureau provided PREPA the flexibility to consider the best mix of locations for emergency generation in its January 23 Resolution. However, the Energy Bureau **REMINDS** Genera that the total MW quantity of emergency generation and black start capacity procurement is limited by the conditions included in the approval orders.

Subject to the reminder above, the Energy Bureau **APPROVES** the RFP package submitted for procurement of black start and emergency generation services.

Be it notified and published.



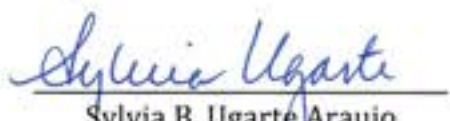
Edison Avilés Deliz  
Chairman




Ferdinand A. Ramos-Seegaard  
Associate Commissioner



Lillian Mateo Santos  
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 agreed on November 8, 2023. Also certify that on November 8, 2023, I have proceeded with the filing of this Resolution and Order and was notified by email to [jfr@sbgblaw.com](mailto:jfr@sbgblaw.com); [alopez@sbgblaw.com](mailto:alopez@sbgblaw.com); [jlago@sbgblaw.com](mailto:jlago@sbgblaw.com); [lionel.santa@prepa.com](mailto:lionel.santa@prepa.com); [legal@genera-pr.com](mailto:legal@genera-pr.com); [regulatory@genera-pr.com](mailto:regulatory@genera-pr.com). I also certify that on November 8, 2023, I have moved forward with filing the Resolution and Order issued by the Puerto Rico Energy Bureau.

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<sup>9</sup> Amended Motion for Leave to Submit Amendment to Project and 406 BESSs Initial Scope of Work, in re: Review of the Puerto Rico Electric Power Authority's 10-Year Infrastructure Plan-December 2020, Case No. NEPR-MI-2021-0002, October 27, 2023.



TA052

For the record, I sign in San Juan, Puerto Rico, today, November 8, 2023.

  
\_\_\_\_\_  
Wanda I. Cordero Morales  
Interim Clerk





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

NEPR

Received:

Feb 29, 2024

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IN RE:

10 YEAR PLAN FEDERALLY FUNDED  
COMPETITIVE PROCESS

CASE NO.: NEPR-MI-2022-0005

**SUBJECT:** 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

**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**

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

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

1. On January 23, 2023, the Puerto Rico Energy Bureau of the Public Service  
Regulatory Board ("Energy Bureau") entered an order with the subject *Determination for the  
Project Application Package for the Seven (7) Additional Peakers to be used as Generation*  
("January 23<sup>rd</sup> Order"). In this order, among other directives, PREPA was instructed to 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 as stated above until installation.

<sup>1</sup> 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.

2. In compliance with the January 23<sup>rd</sup> Order and pursuant to Genera's obligations under the LGA OMA, Genera submits as *Exhibit A* to this Motion a document titled *Bi-weekly Report for February 15 – 29, 2024* ("Bi-weekly Report"). This Bi-weekly Report outlines Genera's recent progress regarding the RFP process from February 15 to 29, 2024.

**WHEREFORE**, for the reasons stated above, Genera respectfully requests the Energy Bureau to **take notice** of the above and **deem** Genera in compliance with the January 23<sup>rd</sup> Order.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 29<sup>th</sup> day of February 2024.

**ECIJA SBGB**  
PO Box 363068  
San Juan, Puerto Rico 00920  
Tel. (787) 300.3200  
Fax (787) 300.3208

/s/ Jorge Fernández-Reboredo  
Jorge Fernández-Reboredo  
jfr@sbglaw.com  
TSPR 9,669

/s/ Alejandro López-Rodríguez  
Alejandro López-Rodríguez  
alopez@sbglaw.com  
TSPR 22,996

### **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 the attorney for Puerto Rico's Electric Power Authority, Lionel Santa Crispín, at [lionel.santa@prepa.pr.gov](mailto:lionel.santa@prepa.pr.gov).

In San Juan, Puerto Rico, this 29<sup>th</sup> day of February 2024.

/s/ Alejandro López-Rodríguez  
Alejandro López-Rodríguez



Exhibit A  
Bi-weekly Report – February 15 – 29, 2024

Docket Number: NEPR-MI-2022-0005

In Re: 10 Year Plan Federally Funded Competitive Processes

Re: Bi-weekly Report for February 15 – 29, 2024

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The following is a list of the activities and most significant events that happened in the last two weeks regarding the Project:

- Evaluation of the equipment bids is ongoing. In-person presentations of proposals were held this week. The initial award is scheduled for March 2024.
- Environmental permitting activities are ongoing. Environmental permitting is a critical path for the project.
- A coordination meeting took place with LUMA to review the upcoming projects and ensure that the necessary interconnection studies are completed. A follow-up meeting will be held next week. Given timelines for system impact and interconnection studies, this activity may become a critical path for the Project to achieve commercial operation date.
- The engineering contractor continues working on specifications, engineering studies and designs.
- A Technical Services Contractor is actively working on site surveying activities.

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

NEPR

Received:

Jun 5, 2024

7:35 PM

IN RE:

10 YEAR PLAN FEDERALLY FUNDED  
COMPETITIVE PROCESS

CASE NO.: NEPR-MI-2022-0005

**SUBJECT:** Motion to Submit the Grid Support  
Units Update Evaluation for the Emergency  
Generation and Black-Start Generation  
Procurement in Compliance with Resolution and  
Order Dated January 23, 2023

**MOTION TO SUBMIT THE GRID SUPPORT UNITS UPDATE EVALUATION FOR  
THE EMERGENCY GENERATION AND BLACK-START GENERATION  
PROCUREMENT IN COMPLIANCE WITH RESOLUTION AND ORDER DATED  
JANUARY 23, 2023**

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

**COMES NOW GENERA PR LLC** ("Genera"), as agent of the Puerto Rico Electric  
Power Authority ("PREPA"),<sup>1</sup> through its counsels of record, and respectfully submits and prays  
as follows:

1. On January 23, 2023, the Puerto Rico Energy Bureau of the Public Service  
Regulatory Board ("Energy Bureau") entered an order with the subject *Determination for the  
Project Application Package for the Seven (7) Additional Peakers to be used as Generation*  
("January 23<sup>rd</sup> Order"). In this order, among other directives, the Energy Bureau provided PREPA  
the flexibility to consider the best mix of locations for emergency generation. However, the Energy  
Bureau reminded PREPA that the total MW quantity of emergency generation and black start

<sup>1</sup> 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.



capacity procurement is limited by the conditions included in the December 5, 2022, Resolution and Order (“December 5<sup>th</sup> Order”).

2. On November 8, 2023, the Energy Bureau entered an order with the subject *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*. In this Order the Energy Bureau stated that the upper limit of the range of capacity (MW) sizing included in section A.1.2 of exhibit J of the RFP far exceeds the maximum of 200 MW of emergency generation and 81 MW of net plant output for black start services approved by the Energy Bureau in the December 5<sup>th</sup> Order and the January 23<sup>rd</sup> Order.

3. Pursuant to the January 23<sup>rd</sup> Order approving the flexibility to consider the best mix of capacity and locations for the emergency generation, when Genera received the bids for the competitive process, it conducted an evaluation titled *Grid Support Units Project Update*, (“GSUPU”), that among other things, considers the optimization of the purchasing process taking into consideration the benefits of reconfiguration of locations and different sizes of units. The analysis and the results are attached as Annex A. These results are also tied to the proposals received in the bidding process that was made in accordance with the process approved by PREB in the Resolution and Order entered on August 23, 2023.<sup>2</sup>

4. Genera respectfully requests that it be allowed to continue with the project as presented in the GSUPU. The GSUPU is consistent with the approach presented in Exhibit A of the August 16<sup>th</sup> Motion that was approved by the Energy Bureau on August 23, 2023. Should the Energy Bureau determine that the capacity of the units exceeds the amount previously approved, it is requested that it follow the same approach taken in the Resolution and Order entered on

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<sup>2</sup> *Bi-Monthly Report on the Status of Emergency Generation and Black-Start Generation Procurement for the Period from August 1 to August 15, 2023* filed by Genera on August 16, 2023.

December 19, 2022<sup>3</sup> when it determined that the dispatch of units purchased can be limited to a specific amount as determined by PREB. It is respectfully noted that, as the attached memorandum shows, the benefits of the units and configurations outweigh the limitation of the amount of megawatts purchased.

5. Additionally, Genera respectfully informs the Energy Bureau that the *Grid Support Units Project Update*, submitted as Exhibit A to this motion, is submitted under a seal of confidentiality, as it includes sensitive commercial information. Genera also respectfully requests the Energy Bureau to maintain Exhibit A under a seal of confidentiality pursuant to the Energy Bureau's Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 2016, and partially amended on September 16, 2016. In accordance with this policy, Genera informs that it will submit a Memorandum of Law supporting this request within the next ten (10) days.

**WHEREFORE**, for the reasons stated above, Genera respectfully requests the Energy Bureau to **take notice** of the above and allow Genera to continue with the proposed equipment configuration and the purchase of the units as set forth in the Exhibit A to this motion.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 5<sup>th</sup> of June 2024.

**ECIJA SBGB**  
PO Box 363068  
San Juan, Puerto Rico 00920  
Tel. (787) 300.3200  
Fax (787) 300.3208

/s/ Jorge Fernández-Reboredo  
Jorge Fernández-Reboredo  
[jfr@sbgblaw.com](mailto:jfr@sbgblaw.com)

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<sup>3</sup> Subject: *Resolution and Order regarding Motion Requesting Order Related to the RFP Process for the New Black Start Systems at Costa Sur and Yabucoa*, filed by the Puerto Rico Electric Power Authority.

TSPR 9,669

/s/ Alejandro López-Rodríguez

Alejandro López-Rodríguez

alopez@sbgblaw.com

TSPR 22,996



### **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. River Medina, at [arivera@gmlex.net](mailto:arivera@gmlex.net), and Mirelis Valle Cancel at [mvalle@gmlex.net](mailto:mvalle@gmlex.net).

In San Juan, Puerto Rico, this 5<sup>th</sup> day of June 2024.

/s/ Alejandro López-Rodríguez  
Alejandro López-Rodríguez

Exhibit A  
(submitted under seal of confidentiality)

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

NEPR

Received:

Jul 1, 2024

6:12 PM

IN RE:

10 YEAR PLAN FEDERALLY FUNDED  
COMPETITIVE PROCESS

CASE NO.: NEPR-MI-2022-0005

**SUBJECT:** 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

**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**

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

**COMES NOW GENERA PR LLC** ("Genera"), as agent of the Puerto Rico Electric Power Authority ("PREPA"),<sup>1</sup> through its counsels of record, and respectfully submits and prays as follows:

1. On January 23, 2023, the Puerto Rico Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") entered an order with the subject *Determination for the Project Application Package for the Seven (7) Additional Peakers to be used as Generation* ("January 23<sup>rd</sup> Order"). In this order, among other directives, PREPA was instructed to 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 as stated above until installation.

<sup>1</sup> 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.



2. In accordance with Footnote 15 of the January 23<sup>rd</sup> Order, reports are mandated to be rendered biweekly until June 30, 2024. Subsequently, starting July 1, 2024, and pursuant to Footnote 16 of the January 23<sup>rd</sup> Order, reports are required to 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). These reports must be submitted within seven business days following the end of each quarter. As this transition approaches, following the final biweekly filing on June 30, Genera will adjust its reporting schedule accordingly, with the next report due by October 9, 2024.

3. In compliance with the January 23<sup>rd</sup> Order and pursuant to Genera's obligations under the LGA OMA, Genera submits as *Exhibit A* to this Motion a document titled *Bi-weekly Report for June 16 – 30, 2024* ("Bi-weekly Report"). This Bi-weekly Report outlines Genera's recent progress regarding the development of the RFP process from June 16 to 30, 2024.

**WHEREFORE**, for the reasons stated above, Genera respectfully requests the Energy Bureau to **take notice** of the above and **deem** Genera in compliance with the January 23<sup>rd</sup> Order.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 1<sup>st</sup> day of July 2024.

**ECIJA SBGB**  
PO Box 363068  
San Juan, Puerto Rico 00920  
Tel. (787) 300.3200  
Fax (787) 300.3208

/s/ Jorge Fernández-Reboredo  
Jorge Fernández-Reboredo  
jfr@sbglaw.com  
TSPR 9,669

/s/ Alejandro López-Rodríguez  
Alejandro López-Rodríguez  
alopez@sbglaw.com

TSPR 22,996

### 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. River Medina, at [arivera@gmlex.net](mailto:arivera@gmlex.net), and Mirelis Valle Cancel at [mvalle@gmlex.net](mailto:mvalle@gmlex.net).

In San Juan, Puerto Rico, this 1<sup>st</sup> day of July 2024.

/s/ Alejandro López-Rodríguez  
Alejandro López-Rodríguez



Exhibit A  
Bi-weekly Report – June 16 – 30, 2024

Docket Number: NEPR-MI-2022-0005

In Re: 10 Year Plan Federally Funded Competitive Processes

Re: Bi-weekly Report for June 16 - 30, 2024

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The following is a list of the activities and most significant events that happened in the last two weeks regarding the Project:

- Equipment and LTSA contract negotiation with the selected RICE bidder are ongoing.
- Equipment and LTSA contract negotiation with the selected Gas Turbine bidder are ongoing.
- The environmental permitting contractor continues preparing local and federal permit applications.
- The geotechnical investigation contract with selected local bidders is being finalized.
- The topographic and geophysical survey contract with the selected local bidders is being finalized.
- The contract for asbestos and lead sampling, testing and analysis with selected local bidders has been finalized and initiated with the kickoff meeting.
- Engineering activities for decommissioning plans and T-line interconnection engineering are ongoing.

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

NEPR

Received:

Jul 8, 2024

9:03 PM

IN RE:

10 YEAR PLAN FEDERALLY FUNDED  
COMPETITIVE PROCESS

CASE NO.: NEPR-MI-2022-0005

SUBJECT: Motion to Submit Response to  
Request for Information in Compliance with  
Resolution and Order dated June 21, 2024

MOTION TO SUBMIT RESPONSE TO REQUEST FOR INFORMATION IN  
COMPLIANCE WITH RESOLUTION AND ORDER DATED JUNE 21, 2024

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

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

1. On January 23, 2023, the Puerto Rico Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") entered an order with the subject *Determination for the Project Application Package for the Seven (7) Additional Peakers to be used as Generation* ("January 23<sup>rd</sup> Order"). In this order, among other directives, the Energy Bureau provided PREPA the flexibility to consider the best mix of locations for emergency generation. However, the Energy Bureau reminded PREPA that the total MW quantity of emergency generation and black start capacity procurement is limited by the conditions included in the December 5, 2022, Resolution and Order ("December 5<sup>th</sup> Order").

<sup>1</sup> 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.



2. On November 8, 2023, the Energy Bureau entered an order with the subject *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*. In this Order the Energy Bureau stated that the upper limit of the range of capacity (MW) sizing included in section A.1.2 of exhibit J of the RFP far exceeds the maximum of 200 MW of emergency generation and 81 MW of net plant output for black start services approved by the Energy Bureau in the December 5<sup>th</sup> Order and the January 23<sup>rd</sup> Order.

3. On June 5, 2024, Genera submitted a document titled *Motion to Submit the Grid Support Units Update Evaluation for the Emergency Generation and Black-Start Generation Procurement in compliance with the Resolution and Order dated January 23, 2023* ("June 5<sup>th</sup> Motion"), whereby Genera included, as Exhibit A, an evaluation titled Grid Support Units Project Update ("GSUPU"), submitted under seal of confidentiality, which reviewed competitive bid proposals received and, among other considerations, focused on optimizing the purchasing process by evaluating the benefits of reconfiguring locations and varying the sizes of units.

4. Through the June 5<sup>th</sup> Motion, Genera sought approval from the Energy Bureau to continue with the proposed equipment configuration and purchase of the grid support units as set forth in Exhibit A to the June 5<sup>th</sup> Motion.

5. On June 17, 2024, Genera submitted a document titled *Memorandum of Law in Support of Confidential Treatment of the Grid Support Units Update Evaluation Submitted on June 5, 2024* ("June 17<sup>th</sup> Memorandum of Law"), whereby it requested the Energy Bureau to maintain the confidentiality of the GSUPU submitted as Exhibit A to the June 5<sup>th</sup> Motion.

6. On June 21, 2024, the Energy Bureau issued a Resolution and Order titled *Motion to Submit the Grid Support Units Update Evaluation – Requests for Information (ROI)* ("June 21<sup>st</sup>

Resolution”), through which the Energy Bureau informed that they were evaluating the submitted information and had identified the need for further clarification and additional details. Consequently, the Energy Bureau ordered Genera to submit a response to the Second Request for Information, outlined in Attachment A to the June 21<sup>st</sup> Resolution, no later than ten (10) business days after the June 21<sup>st</sup> Resolution, with the deadline being July 8, 2024.

7. In compliance with the June 21<sup>st</sup> Resolution, Genera respectfully submits as Exhibit A to this motion the responses to the Second Request for Information as outlined in Attachment A to the June 21<sup>st</sup> Resolution, adhering to the deadline stipulated therein.

8. The responses to the Second Request for Information outlined in Attachment A to the June 21<sup>st</sup> Resolution are intimately related to the GSUPU, which was originally submitted under seal of confidentiality with the June 5<sup>th</sup> Motion. Given the inclusion of proprietary commercial information within these responses, Genera respectfully requests that the Energy Bureau maintain the confidentiality of Exhibit A pursuant to the Energy Bureau’s Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 2016, and partially amended on September 16, 2016. Genera asserts that the information contained in Exhibit A warrants confidential treatment under the same legal precedents and arguments advanced in the June 17<sup>th</sup> Memorandum of Law. Accordingly, Genera respectfully requests the Energy Bureau to uphold the confidentiality of Exhibit A as submitted.

WHEREFORE, for the reasons stated above, Genera respectfully requests the Energy Bureau to **take notice** of the above; **accept** Genera’s responses to the Second Request for Information outlined in Attachment A to the June 21<sup>st</sup> Resolution, submitted herein as *Exhibit A*; **deem** Genera to be in compliance with the June 21<sup>st</sup> Resolution; and **grant** Genera’s request for

confidential treatment of its responses to the Request for Information outlined in Attachment A to the June 21<sup>st</sup> Resolution, submitted as Exhibit A herein.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 8<sup>h</sup> day of July 2024.

**ECIJA SBGB**  
PO Box 363068  
San Juan, Puerto Rico 00920  
Tel. (787) 300.3200  
Fax (787) 300.3208

/s/ Jorge Fernández-Reboredo  
Jorge Fernández-Reboredo  
jfr@sbgbllaw.com  
TSPR 9,669

/s/ Alejandro López-Rodríguez  
Alejandro López-Rodríguez  
alopez@sbgbllaw.com  
TSPR 22,996



### 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. River Medina, at [arivera@gmlex.net](mailto:arivera@gmlex.net), and Mirelis Valle Cancel at [mvalle@gmlex.net](mailto:mvalle@gmlex.net).

In San Juan, Puerto Rico, this 8<sup>th</sup> day of July 2024.

/s/ Alejandro López-Rodríguez  
Alejandro López-Rodríguez

**Exhibit A**  
Response to Request for Information  
(submitted under seal of confidentiality)

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 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.

RESOLUTION AND ORDER

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") RFP<sup>1</sup> process for the procurement of emergency peaker generation systems at Jobos, Dagua, 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, 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.<sup>2</sup>

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 Memorandum"), 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.**"<sup>3</sup>

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<sup>4</sup> processes, which Genera affirmed could **lead to significant cost savings and a reduction in completion time** by 9 to 12 months.<sup>5</sup>

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<sup>6</sup>. Considering Genera's assurance that

<sup>1</sup> Request for Proposal ("RFP").

<sup>2</sup> January 23 Order.

<sup>3</sup> May 25 Memorandum, p.4.

<sup>4</sup> Request for Proposal ("RFP").

<sup>5</sup> August 16 Motion, Annex A, p.5.

<sup>6</sup> 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").



TA077



the units would be purchased at a lower cost and be commissioned earlier than 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.<sup>7</sup>

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.

Additionally, Genera informs in the July 1 Motion that starting July 1, 2024, pursuant to Footnote 16 of the January 23 Order, reports will 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)<sup>8</sup>, and that their next report is due by October 9, 2024.

Upon review of the July 1 Motion, and the delay in the RFP process conducted by Genera in comparison with the expected time savings that would have occurred compared to the Puerto Rico Electric Power Authority ("PREPA") RFP award scheduling, which was scheduled to end July 31, 2023, the Energy Bureau determines that Exhibit A filed as the bi-monthly report does not adequately inform the progress in the procurement process nor provides 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 presented in Annex A-3 of the August 16 Motion. The Energy Bureau reminds Genera 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.<sup>9</sup>

It is in the best public interest to know if the Emergency Peaker Generation and Black-Start Generation Procurement will be in commercial operation by the time specified in the FY2023 Certified Fiscal Plan and the time scheduled promised by Genera.

Consequently, the Energy Bureau hereby **DENIES** Genera request to submit the Bi-monthly report to quarterly reports, and **ORDERS** Genera to submit monthly reports instead of bi-weekly on the Status of Emergency Generation and Black-Start Generation Procurement commencing August 15, 2024. Also, Genera **SHALL** 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 reports shall include, as a minimum, the following:

1. A breakdown of each task, estimated cost, cost amount consumed, and timeline for completion of such task.

<sup>7</sup> November 8 Order, p.4.

<sup>8</sup> January 23 Order, p. 5.

<sup>9</sup> Available at: <https://drive.google.com/file/d/1aqXCP728HU7s7uE1Ys-nHvchnI85dvjI/view> (last visited July 29, 2024).



TA078



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 COD<sup>10</sup> of the project.
4. Permit list, permits obtained, estimated timeline for each permit and status of such permit.
5. 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.
6. Permit and cost for each site to accommodate the project.

The Energy Bureau **ORDERS** Genera to inform with ten (10) days of the notice of this Resolution and Order 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 **WARNS** Genera's that, noncompliance with any provision of this Resolution and Order may result in the imposition of fines pursuant to Act 57-2014 and applicable Energy Bureau's regulations and any other appropriate administrative sanctions, as deemed appropriate by the Energy Bureau.

Be it notified and published.



Edison Avilés Deliz  
Chairman



Lillian Mateo Santos  
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 agreed on July 30, 2024. Associate Commissioner Ferdinand A. Ramos Soegaard did not intervene. Also certify that on July 30, 2024, I have proceeded with the filing of this Resolution and Order and was notified by email to arivera@gmlex.net; mvalle@gmlex.net; jfr@sbgbllaw.com; alopez@sbgbllaw.com; legal@genera-pr.com; regulatory@genera-pr.com.

I sign in San Juan, Puerto Rico, today, July 30, 2024.

  
Sonia Seda Gaztambide  
Clerk

<sup>10</sup> Commercial Operation Date ("COD").

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

NEPR

Received:

Aug 9, 2024

4:27 PM

IN RE:

10 YEAR PLAN FEDERALLY FUNDED  
COMPETITIVE PROCESS

CASE NO.: NEPR-MI-2022-0005

SUBJECT: Motion to Submit Comparison  
Report in Compliance with Resolution and  
Order Dated July 30, 2024

MOTION TO SUBMIT COMPARISON REPORT IN COMPLIANCE WITH  
RESOLUTION AND ORDER DATED JULY 30, 2024

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

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

1. On January 23, 2023, the Puerto Rico Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") entered an order with the subject *Determination for the Project Application Package for the Seven (7) Additional Peakers to be used as Generation* ("January 23<sup>rd</sup> Order"). In this order, among other directives, the Energy Bureau provided PREPA the flexibility to consider the best mix of locations for emergency generation.

2. On May 25, 2023, Genera submitted a document titled *Memorandum of Compliance with May 8 Order (subject: Procurement of Black Start and Emergency Peaking Resources)* ("May 25<sup>th</sup> Memorandum"), in which Genera proposed to the Energy Bureau a different

<sup>1</sup> 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.

TA080



approach and plan for the procurement of the Black Start and Emergency Peaking Resources and stated that their proposed approach would be more efficient.

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<sup>th</sup> 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.

4. 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 15, 2023, filed by Genera PR, LLC* ("August 23<sup>rd</sup> Order") in which it determined that the changes proposed by Genera in Exhibit A of the August 16<sup>th</sup> Motion were consistent with the IRP Order. Considering Genera's assurance that the units would be purchased at a lower cost and be commissioned earlier than expected, the Energy Bureau allowed the RFP process to continue in the manner described by Genera in Exhibit A of the August 16<sup>th</sup> Motion.

5. 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 8<sup>th</sup> Order") approving the RFP package submitted by Genera for the procurement of black start and emergency generation services.

6. 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<sup>th</sup> Motion"), in which Genera stated that the initial award was scheduled for March 2024.

7. 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 1<sup>st</sup> 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 1<sup>st</sup> Motion that starting July 1, 2024, pursuant to Footnote 16 of the January 23<sup>rd</sup> 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.

8. 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 30<sup>th</sup> Resolution"). Upon reviewing Genera's July 1<sup>st</sup> 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 16<sup>th</sup> Motion.

9. Consequently, the Energy Bureau, in the July 30<sup>th</sup> 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.



10. Additionally, in relevant part to this motion, the Energy Bureau ordered Genera to inform, within ten (10) days of the notice of the July 30<sup>th</sup> Resolution, how Genera's procurement approach has saved costs and accelerated the Commercial Operation Date compared to the PREPA RFP approach, which had a scheduled award date of July 31, 2023, whereas Genera's approach has not yet completed the award of its equipment RFP.

11. In compliance with the July 30<sup>th</sup> Resolution, Genera hereby respectfully submits the requested comparison report, detailing the distinctions between Genera's RFP process and PREPA's previous RFP process, as Exhibit A to this Motion.

**WHEREFORE**, Genera respectfully requests that the Energy Bureau **take notice** of the above; **accept** Genera's report detailing the distinctions between Genera's RFP process and PREPA's previous RFP process submitted herein as Exhibit A; and **deem** Genera to be in partial compliance with the July 30<sup>th</sup> Resolution.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 9<sup>th</sup> day of August 2024.

**ECIJA SBGB**  
PO Box 363068  
San Juan, Puerto Rico 00920  
Tel. (787) 300.3200  
Fax (787) 300.3208

/s/ Jorge Fernández-Reboredo  
Jorge Fernández-Reboredo  
jfr@sbglaw.com  
TSPR 9,669

/s/ Alejandro López-Rodríguez  
Alejandro López-Rodríguez  
alopez@sbglaw.com  
TSPR 22,996



### 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](mailto:arivera@gmlex.net), and Mirelis Valle Cancel at [mvalle@gmlex.net](mailto:mvalle@gmlex.net).

In San Juan, Puerto Rico, this 9<sup>th</sup> day of August 2024.

/s/ Alejandro López-Rodríguez  
Alejandro López-Rodríguez

Exhibit A

# Peaker Project RFP Process Comparison



August 2024



## RFP Process Comparison

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 proposals) 11 x 22 MW (1 proposal) Three proponents participated, not all OEMs.	
3. Location, Type, and Number of Units	CTG:		RICE:		CTG:	
	Costa Sur	2	Daguao	2	Daguao	2
			Yabucoa	2	Yabucoa	2
			Jobos	2	Jobos	2
			Costa Sur	1	Costa Sur	2
			San Juan	1	Palo Seco	3
4. Operational Cost Savings	<ul style="list-style-type: none"><li><b>Fuel Cost Savings: \$30,000,000</b> (NPV at 8% over unit life) or ~\$60 million undiscounted</li><li><b>Avg. Heat Rate (HHV) [NG]:</b> 9105 Btu/kWhr CTG &amp; RICE used 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.</li></ul> <p>Cost savings executing contracts directly with OEM. Final costs remain under negotiation.</p>				<ul style="list-style-type: none"><li>Higher fuel &amp; maintenance costs over life of units, accruing to rate payers</li><li><b>Avg. Heat Rate (HHV) [NG]:</b> 9528 Btu/kWhr CTG On the normalizing assumptions stated, this configuration will have a higher fuel cost by \$2.91M/yr</li></ul> <p>EPC applies overhead costs and profit margin to major equipment and engineering.</p>	



Peaker Project  
RFP Process Comparison

	Topic	Genera (Current)	PREPA (Previous)
4.	<b>Operational Costs Savings (cont.)</b>	<p>No maintenance penalties for starts/stop for RICE under the LTSA providing operational flexibility.</p> <ul style="list-style-type: none"> <li>• <b>Cleaner NOx 15% O<sub>2</sub> Emissions [NG]:</b> 50 MW CTG: 20 ppmvd 18 MW RICE: 6 ppmvd</li> </ul> <p>RICE provide <b>faster response</b>. Time to full load: 2 to 5 minutes. Fast ramp to compensate intermittency of renewables.</p> <p>50 MW CTG provides higher generator inertia</p>	<p>CTG's OEM penalize the starts/stops of their units under LTSA contracts. This limits operation and increases costs.</p> <ul style="list-style-type: none"> <li>• <b>NOx 15% O<sub>2</sub> Emissions [NG]:</b> 22 to 28 MW (Avg.): 22 ppmvd</li> </ul> <p>2 to 3 times slower than RICE.</p> <p>Lower generator inertia and low exhaust gas temperatures limit ability for heat recovery and use of steam turbine when compared to medium-sized CTGs</p>
5.	<b>Operational &amp; Technological Advances</b>	<p>RICE is efficient during part load operation and output is not affected by ambient temperatures.</p> <p>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.</p> <p>Owner-controlled LTSA negotiations increase opportunity of a better agreement.</p>	<p>Higher temperatures have an impact in CTG efficiency and operating at lower loads affect the emissions numbers</p> <p>Low exhaust gas temperatures limit ability for heat recovery and use of steam turbine</p> <p>EPC leads the negotiations and reduces the opportunity of a better agreement for the owner.</p>





Peaker Project  
RFP Process Comparison

	Topic	Genera (Current)	PREPA (Previous)
6.	Equipment Scope	<p>Genera included <b>all major, long-lead equipment</b>, including auxiliary equipment, step-up transformers, low- and medium-voltage switchgear, and high-voltage gas-insulated switchgear (GIS).</p>	<p>Some proposals <b>did not include long-lead items</b>. These items would have been needed before unit operation and would have delayed the project beyond proposal dates.</p>
7.	Timeline & Process	<p>Equipment supply procurement to be completed in Q3 2024, with <b>delivery across 2026–2027</b>.</p> <p>In the meantime, Genera advanced the following tasks:</p> <ul style="list-style-type: none"><li>• Data gathering and emissions calculations for federal and local permits, including Environmental Assessment</li><li>• Contracting for related services such as asbestos and lead-containing paint testing, geotechnical, GPR, and topographic surveys</li><li>• Development of decommissioning plans, as required on the OMA – a new mandatory process for Genera. Approval delay may impact project implementation.</li><li>• Development of technical specifications, terms and conditions, and drawings for demolition works required for new units’ facilities construction.</li></ul>	<p><b>No certainty over award date.</b> 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.</p> <p><b>No certainty over COD or pricing.</b> 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. Improbable that initially proposed delivery dates would hold or that remaining equipment could be procured to achieve proposed COD.</p>





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

NEPR

Received:

Aug 19, 2024

10:46 PM

IN RE:

10 YEAR PLAN FEDERALLY FUNDED  
COMPETITIVE PROCESS

CASE NO.: NEPR-MI-2022-0005

**SUBJECT:** 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

**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**

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

**COMES NOW GENERA PR LLC** ("Genera"), as agent of the Puerto Rico Electric Power Authority ("PREPA"),<sup>1</sup> through its counsels of record, and respectfully submits and prays as follows:

1. On January 23, 2023, the Puerto Rico Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") entered an order with the subject *Determination for the Project Application Package for the Seven (7) Additional Peakers to be used as Generation* ("January 23<sup>rd</sup> Order"). In this order, among other directives, the Energy Bureau provided PREPA the flexibility to consider the best mix of locations for emergency generation.

2. 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*

<sup>1</sup> 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.

of Black Start and Emergency Generation ("November 8<sup>th</sup> Order") approving the RFP package submitted by Genera for the procurement of black start and emergency generation services.

3. 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<sup>th</sup> Motion"), in which Genera stated that the initial award was scheduled for March 2024.

4. 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 1<sup>st</sup> 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 1<sup>st</sup> Motion that starting July 1, 2024, pursuant to Footnote 16 of the January 23<sup>rd</sup> 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.

5. 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 30<sup>th</sup> Resolution"). Upon reviewing Genera's July 1<sup>st</sup> 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 16<sup>th</sup> Motion.



6. Consequently, the Energy Bureau, in the July 30<sup>th</sup> 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.<sup>2</sup> 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.

7. On August 14, 2024, Genera submitted a document titled *Urgent Request for Extension of Deadlines Following Tropical Storm Ernesto* ("August 14<sup>th</sup> Motion"). In the August 14<sup>th</sup> Motion, Genera requested an extension until August 19, 2024, for all impending deadlines,

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<sup>2</sup> See July 30<sup>th</sup> Resolution, p. 2. It is important to note that while the July 30<sup>th</sup> 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 23<sup>rd</sup> Order.



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.

8. In compliance with the July 30<sup>th</sup> Resolution and pursuant to the August 14<sup>th</sup> Motion, Genera respectfully submits the inaugural monthly report on the status of Emergency Generation and Black-Start Generation Procurement, included herein as Exhibit A.

**WHEREFORE**, Genera respectfully requests that the Energy Bureau **take notice** of the above; **accept** Genera's report on the status of Emergency Generation and Black-Start Generation Procurement submitted herein as *Exhibit A*; and **deem** Genera to be in partial compliance with the July 30<sup>th</sup> Resolution.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 19<sup>th</sup> day of August 2024.

**ECIJA SBGB**  
PO Box 363068  
San Juan, Puerto Rico 00920  
Tel. (787) 300.3200  
Fax (787) 300.3208

/s/ Jorge Fernández-Reboredo  
Jorge Fernández-Reboredo  
jfr@sbglaw.com  
TSPR 9,669

/s/ Alejandro López-Rodríguez  
Alejandro López-Rodríguez  
alopez@sbglaw.com  
TSPR 22,996

### 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](mailto:arivera@gmlex.net), and Mirelis Valle Cancel at [mvalle@gmlex.net](mailto:mvalle@gmlex.net).

In San Juan, Puerto Rico, this 19<sup>th</sup> day of August 2024.

/s/ Alejandro López-Rodríguez  
Alejandro López-Rodríguez

Exhibit A

Report on the status of Emergency Generation and Black-Start Generation Procurement



Docket Number: NEPR-MI-2022-0005  
In Re: 10 YEAR PLAN FEDERALLY FUNDED COMPETITIVE PROCESS  
Re: Monthly Progress Report

**GPR-PREB-NEPRMI20220005- 20240730#1(a)**

On the July 30<sup>th</sup> Resolution and Order the Energy Bureau 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. Additionally, the Energy Bureau ordered Genera to include, as part of the next and subsequent monthly progress reports, at a minimum, the following:

- a. breakdown of each task, estimated cost, cost amount consumed, and timeline for completion of such task.

**Response:**

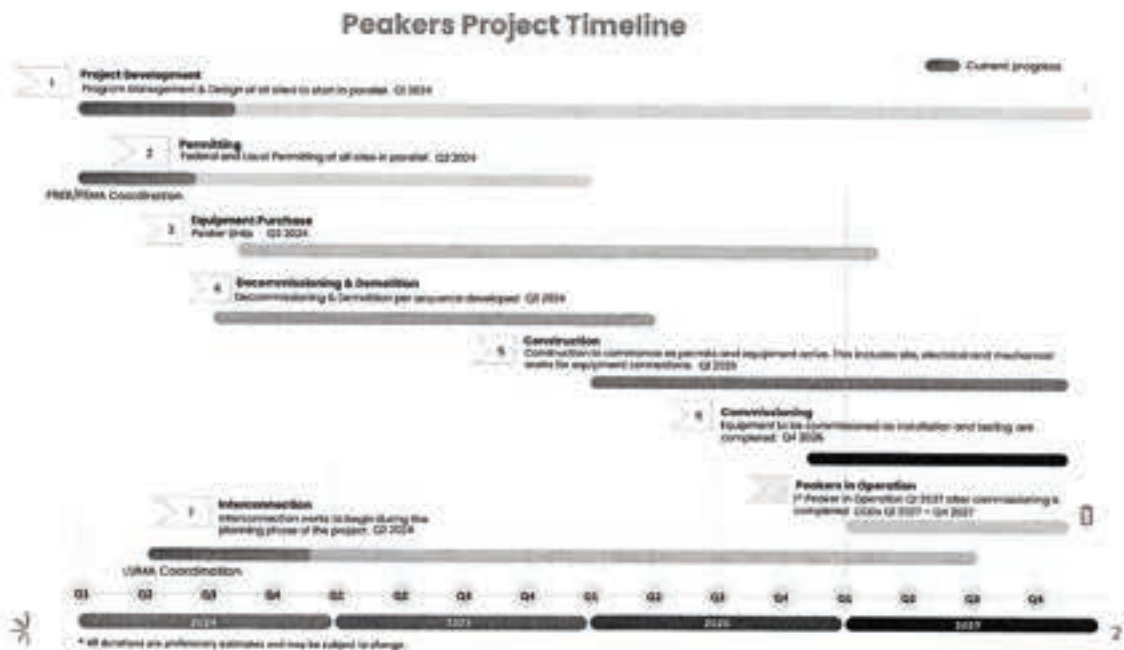
Peakers Project Preliminary Cost Estimate

Equipment Purchase	\$432,920,000
Site Development & Construction	\$478,420,000
Project Development	
Permitting	
Decommissioning & Demolition	
Construction	
Commissioning	
Interconnection	
	\$911,340,000.00

GPR-PREB-NEPRMI20220005-20240730 #1(b)

b. The stages of each task, timeline, present status and estimated time for completion.

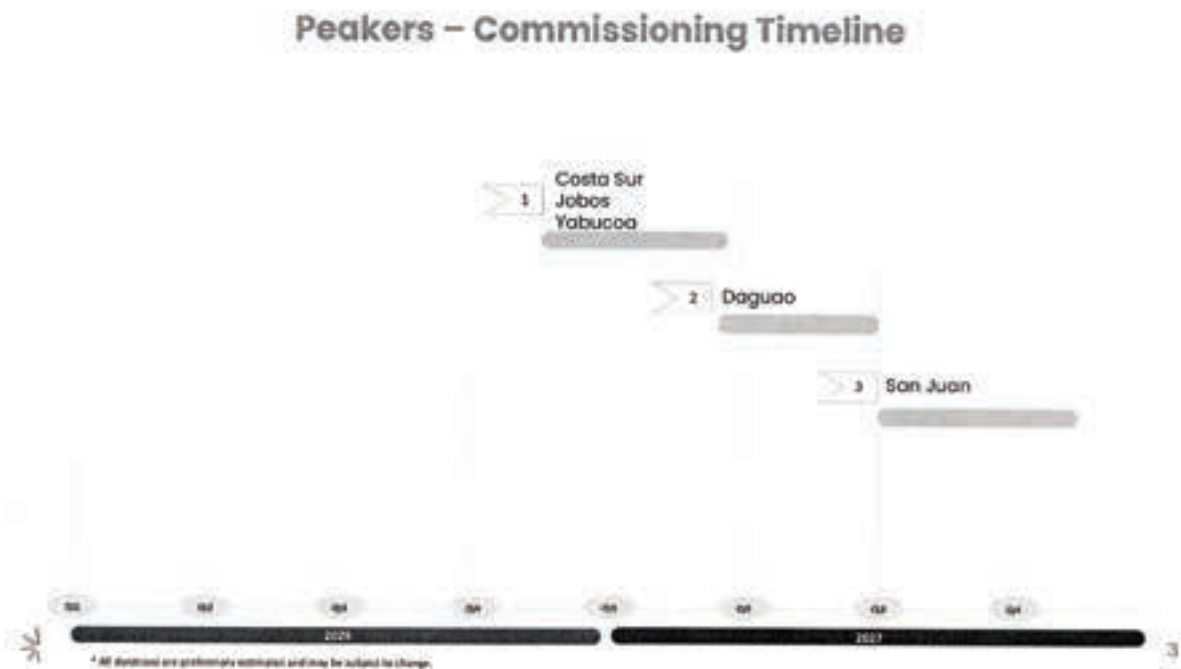
Response:



GPR-PREB- NEPRMI20220005 -20240730 #1(c)

c. Project timeline chart (e.g. Gantt Chart) with critical path for the Commercial Operation Date ("COD") of the project.

Response:





**GPR-PREB- NEPRMI20220005 -20240730 #1(d)**

d. Permit list, permits obtained, estimated timeline for each permit and status of such permit.

**Response:**

NEPA Permit Status				
Permit	Applicable Sites	Status	Estimated Submittal	Estimated Approval
EHP Review	All Peaker projects	DSOW Drafted	Aug/Sept 2024	May 2025
NEPA Review (Environmental Assessment expected)	All Peaker projects	Gathering data for EA	Feb/March 2025	May 2025
Coastal Zone Consistency Certification	San Juan Costa Sur	Drafted – will submit to FEMA with DSOW	Aug/Sept 2024	Jan/Feb 2025
Biological Resources Endangered Species Act (ESA) Section 7	All Peaker projects	Memo to FEMA being prepared	Sept 2024	N/A <small>*If FEMA agrees with no effects determination no USFWS consultation required</small>
National Historic Preservation Act Consultation	All Peaker projects	Drafted – will submit to FEMA with DSOW	Sept 2024	Dec 2024

Note: All dates are preliminary estimates and are subject to change



Local Permit Status

Permit	Applicable Sites	Status	Estimated Submittal	Estimated Approval
DNER Rule 141 – Environmental Impact Documentation	All Peaker projects	General Arrangement Plans being finalized prior to filing.	January 2025	March 2025
PRFC Fire Review	All Peaker projects	Will be filed by Contractor	Q2 2025	60 days after submission
Permiso Unico Incidental (PUI)	All Peaker projects	Will be filed by Contractor	Q2 2025	30 days after submission
DNER Asbestos/Lead Removal	All Peaker projects	Will be filed by Contractor	Q2 2025	30 days after submission

Note: All dates are preliminary estimates and are subject to change.



**GPR-PREB- NEPRMI20220005 - 20240730 #1(e)**

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.

**Response:**

See responses to questions a through d.




**GPR-PREB- NEPRMI20220005 - 20240730 #1(f)**

f. Permit and cost for each site to accommodate the project.

**Response:**

NEPA Permit Costs		
Permit	Applicable Sites	Estimated Cost
EHP Review	All Peaker sites	\$250,000+ for all sites. Includes EHP Review coordination and EA prep tasks
NEPA Review (Environmental Assessment expected)	All Peaker sites	
Coastal Zone Consistency Certification	San Juan Costa Sur	\$8,000/site
Biological Resources Endangered Species Act (ESA) Section 7	All Peaker projects	\$15,000/site
National Historic Preservation Act Consultation	All Peaker projects	\$15,000/site

 Note: All costs are preliminary estimates and are subject to change

Local Permit Costs

Permit	Applicable Sites	Estimated Cost
DNER Rule 141 – Environmental Impact Documentation	All Peaker projects	\$35,000/site
PRFC Fire Review	All Peaker projects	\$3,000/site
Permiso Unico Incidental (PUI)	All Peaker projects	\$25,000/site
DNER Asbestos/Lead Removal	All Peaker projects	\$15,000/site

Note: All costs are preliminary estimates and are subject to change

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: Order to Show Cause Regarding  
\$25,000 Fine for Misrepresentation

ORDER TO SHOW CAUSE

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") RFP<sup>1</sup> process for the procurement of emergency peaker generation systems at Jobos, Dagua, 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, 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.<sup>2</sup>

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 Memorandum"), 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.**"<sup>3</sup>

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<sup>4</sup> processes, which Genera affirmed could **lead to significant cost savings and a reduction in completion time** by 9 to 12 months.<sup>5</sup>

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<sup>6</sup>. **Considering Genera's assurance that the units would be purchased at a lower cost and be commissioned earlier than expected, the Energy Bureau allowed the RFPs process to continue in the manner described by Genera in Exhibit A of the August 16 Motion.**

<sup>1</sup> Request for Proposal ("RFP").

<sup>2</sup> January 23 Order.

<sup>3</sup> May 25 Memorandum, p.4.

<sup>4</sup> Request for Proposal ("RFP").

<sup>5</sup> August 16 Motion, Annex A, p.5.

<sup>6</sup> 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").





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.<sup>7</sup>

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.

Additionally, Genera informs in the July 1 Motion that starting July 1, 2024, pursuant to Footnote 16 of the January 23 Order, reports will 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)<sup>8</sup>, and that their next report is due by October 9, 2024.

Upon 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 to the Puerto Rico Electric Power Authority ("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 presented 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.<sup>9</sup> 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.

Consequently, 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 commencing August 15, 2024.

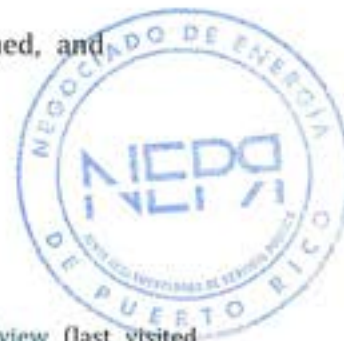
The Energy Bureau also ordered Genera to include as part of the next and subsequent monthly progress report its best estimate of the expected schedule and timetable for completing the critical steps up to project completion. The Energy Bureau further ordered that the reports include, as a minimum, the following:

1. A breakdown of each task, estimated cost, cost amount consumed, and timeline for completion of such task.

<sup>7</sup> November 8 Order, p.4.

<sup>8</sup> January 23 Order, p. 5.

<sup>9</sup> Available at: <https://drive.google.com/file/d/1aqXCP728HU7s7uE1Ys-nfVchnJ85dyJJ/view> (last visited August 28, 2024).





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 COD<sup>10</sup> of the project.
4. Permit list, permits obtained, estimated timeline for each permit and status of such permit.
5. 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.
6. Permit and cost for each site to accommodate the project.

*JA* 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 pursuant to Act 57-2014.<sup>11</sup>

*LM* 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.

*AM* 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.

*LM* As evidenced in Genera's multiple filings with the Energy Bureau, Genera has 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 Commercial Operation Date (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.

*LM* Nonetheless, Genera's August 9 and August 19 Motions illustrate that the actual costs associated with the projects under Genera have 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 within eighteen (18) months, while it now ascertains completion time across 2027.

The Energy Bureau **DETERMINES** there is sufficient cause to believe that Genera may have engaged in misrepresentation of material facts concerning the projected cost savings and COD timeline, thereby potentially misleading the Energy Bureau in granting them authorization to continue with their proposed approach.

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:

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


<sup>10</sup> Commercial Operation Date ("COD").

<sup>11</sup> Puerto Rico Energy Transformation and RELIEF Act, as amended ("Act 57-2014").








- 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.


 The Energy Bureau **WARNS** Genera that failure to comply and submit a timely response will result in the imposition of a \$25,000 fine, and/or any other sanctions the Energy Bureau deems appropriate, in accordance with Art. 6.36 of Act 57-2014. The Energy Bureau reserves the right to take any additional actions as may be deemed necessary based on the Genera's future filing in compliance with this Order, including but not limited to further financial penalties, recovery of any excess costs, or referral to other regulatory or legal authorities.

The Energy Bureau **WARNS** Genera that, in accordance with Section 6.36 of Act 57-2014:

  
 (a) The Energy Bureau shall 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**. Said fines shall never exceed five percent (5%) of the gross sales, fifteen percent (15%) of the net income, or ten percent (10%) of the net worth of the sanctioned person or the electric power company. The greater of the aforementioned amounts corresponding to the most recent taxable year shall be the amount of the fine.

 (b) If the person or certified electric power company commits a subsequent violation of this Act, the Energy Bureau may impose penalties of up to a maximum of twenty-five thousand dollars (\$25,000) per day. In such case and by unanimous determination of the Energy Bureau, it may impose fines up to twice the limitations on the basis of sales, income or assets set forth in subsection (a) of this Section and up to five hundred thousand dollars (\$500,000).

(c) Any claim or cause of action authorized by law filed by any person with legal standing shall not affect the powers granted under this Section to impose administrative sanctions.

 (d) **Any person who intentionally violates any provision of this Act, omits, disregards, or refuses to obey, observe, and comply with any rule or decision of the Energy Bureau shall commit a misdemeanor** and upon conviction shall be punished by imprisonment for a term not to exceed six (6) months, or by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), at the discretion of the Energy Bureau. In the event of recurrence, the established penalty shall increase to a fine of not less than ten thousand dollars (\$10,000) nor more than twenty thousand dollars (\$20,000), at the discretion of the Energy Bureau.

(e) The Energy Bureau may resort to the pertinent forums to seek any remedy, including account garnishment, to ensure compliance with the penalties imposed.

The Energy Bureau **WARNS** Genera that the payment of any fine must be satisfied using the money it receives as payment (i.e., fee) under its contract; such payment shall not be considered, construed or treated as a cost attributable to consumers or pass thru.

The Energy Bureau further **WARNS** Genera that the failure to respond or provide adequate justification will be considered as a deliberate and intentional obstruction of the functions of the Energy Bureau, which could lead to additional legal actions and other sanctions as provided in Article 6.36 of Act 57-2014.

Be it notified and published.



TA107



Be it notified and published.



Edison Avilés Deliz  
Chairman



Lillian Mateo Santos  
Associate Commissioner



Ferdinand A. Ramos Soegarra  
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 has so agreed on August 28, 2024. I also certify that on August 28, 2024, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau, and was notified by electronic mail to [arivera@gmlex.net](mailto:arivera@gmlex.net); [mvalle@gmlex.net](mailto:mvalle@gmlex.net); [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).

I sign this in San Juan, Puerto Rico, on August 28, 2024.



Sonia Seda Gaztambide  
Clerk



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

NEPR

Received:

Sep 5, 2024

11:15 PM

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"),<sup>1</sup> 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 28<sup>th</sup> 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

<sup>1</sup> 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 28<sup>th</sup> 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 28<sup>th</sup> 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 28<sup>th</sup> 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 23<sup>rd</sup> Order") through which it conditionally approved PREPA's RFP process for the procurement of emergency generation at Jobos, Dagua, 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,<sup>2</sup> and July 17, 2023.<sup>3</sup>

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*

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<sup>2</sup> See, Resolution and Order, *In re: 10-Year Plan Federally Funded Competitive Process*, Case No.: NEPR-MI-2022-0005, July 13, 2023 (July 13<sup>th</sup> Resolution).

<sup>3</sup> See, Resolution and Order, *In re: 10-Year Plan Federally Funded Competitive Process*, Case No.: NEPR-MI-2022-0005, July 17, 2023 (July 17<sup>th</sup> Resolution).



15, 2023, filed by Genera PR, LLC ("August 23<sup>rd</sup> 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 16<sup>th</sup> 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 8<sup>th</sup> 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 29<sup>th</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> Motion that starting July 1, 2024, pursuant to Footnote 16 of the January 23<sup>rd</sup> 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 30<sup>th</sup> Resolution"). Upon reviewing Genera's July 1<sup>st</sup> 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 16<sup>th</sup> Motion.

Consequently, the Energy Bureau, in the July 30<sup>th</sup> 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.<sup>4</sup> 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.

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<sup>4</sup> See July 30<sup>th</sup> Resolution, p. 2. It is important to note that while the July 30<sup>th</sup> 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 23<sup>rd</sup> Order.

On August 14, 2024, Genera submitted a document titled *Urgent Request for Extension of Deadlines Following Tropical Storm Ernesto* ("August 14<sup>th</sup> Motion"). In the August 14<sup>th</sup> 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 19<sup>th</sup> Motion"). In the August 19<sup>th</sup> 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 28<sup>th</sup> 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 28<sup>th</sup> Order to Show Cause.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 5<sup>th</sup> day of September 2024.

**ECIJA SBGB**  
PO Box 363068  
San Juan, Puerto Rico 00920  
Tel. (787) 300.3200  
Fax (787) 300.3208

/s/ Jorge Fernández-Reboredo  
Jorge Fernández-Reboredo  
jfr@sbgbllaw.com  
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/s/ Alejandro López-Rodríguez  
Alejandro López-Rodríguez  
alopez@sbgbllaw.com  
TSPR 22,996

### 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](mailto:arivera@gmlex.net), and Mirelis Valle Cancel at [mvalle@gmlex.net](mailto:mvalle@gmlex.net).

In San Juan, Puerto Rico, this 5<sup>th</sup> 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

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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:

**GPR-PREB-NEPRMI20220005-20240808-#1**

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

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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 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 achieved 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.



**GPR-PREB-NEPRMI20220005-20240808-#2**

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.



**GPR-PREB-NEPRMI20220005-20240808-#3**

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.	<b>Unit Configuration</b>	2 Combustion Turbine Generators (CTG)  8 Reciprocating Internal Combustion Engines (RICE)	11 CTGs (combined over two RFPs)
2.	<b>Capacity</b>	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.	<b>Location, Type, and Number of Units</b>	<b>CTG:</b> Costa Sur 2	<b>RICE:</b> Daguao 2 Yabucoa 2 Jobos 2 Costa Sur 1 San Juan 1	<b>CTG:</b> Daguao 2 Yabucoa 2 Jobos 2 Costa Sur 2 Palo Seco 3
4.	<b>Operational Cost Savings</b>	<ul style="list-style-type: none"><li>• <b>Fuel Cost Savings:</b> ~\$80,000,000 (over an expected 20-yr unit life)</li><li>• <b>Avg. Heat Rate (HHV) [NG]:</b> 9105 Btu/kWhr CTG &amp; 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.</li></ul>		<ul style="list-style-type: none"><li>• Higher fuel &amp; maintenance costs over life of units, accruing to rate payers</li><li>• <b>Avg. Heat Rate (HHV) [NG]:</b> 9528 Btu/kWhr CTG On the normalizing assumptions stated, this configuration will have a higher fuel cost by \$2.91M/yr</li></ul>
		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.	<b>Operational Costs Savings (cont.)</b>	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	<p>• <b>Cleaner NOx 15% O<sub>2</sub> Emissions [NG]:</b></p> <p>50 MW CTG: 20 ppmvd</p> <p>18 MW RICE: 6 ppmvd</p>	<p>• <b>NOx 15% O<sub>2</sub> Emissions [NG]:</b></p> <p>22 to 28 MW (Avg.): 22 ppmvd</p>
	<p>RICE provide <b>faster response</b>. Time to full load: 2 to 5 minutes. Fast ramp to compensate intermittency of renewables.</p>	<p>2 to 3 times slower than RICE.</p>
	<p>50 MW CTG provides higher generator inertia.</p>	<p>Lower generator inertia and low exhaust gas temperatures limit ability for heat recovery and use of steam turbine when compared to medium-sized CTGs.</p>
	<p>RICE is efficient during part load operation and output is not affected by ambient temperatures.</p>	<p>Higher temperatures have an impact in CTG efficiency and operating at lower loads affect the emissions numbers.</p>
	<p>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.</p>	<p>Low exhaust gas temperatures limit ability for heat recovery and use of steam turbine.</p>
	<p>Owner-controlled LTSA negotiations increase opportunity of a better agreement.</p>	<p>EPC leads the negotiations and reduces the opportunity of a better agreement for the owner.</p>
6. Equipment Scope	<p><b>Genera included all major, long-lead equipment, including</b> auxiliary equipment, step-up transformers, low- and medium-voltage</p>	<p><b>Some proposals did not include long-lead items. These items would have been needed before unit operation and would have</b></p>



		switchgear, and high-voltage gas-insulated switchgear (GIS).	<b>delayed the project beyond proposal dates.</b>
7. <b>Timeline &amp; Process</b>		<p>Equipment supply procurement to be completed in Q3 2024, with <b>delivery across 2026–2027</b>.</p> <p>In the meantime, Genera advanced the following tasks:</p> <ul style="list-style-type: none"> <li>• Data gathering and emissions calculations for federal and local permits, including Environmental Assessment.</li> <li>• Contracting for related services such as asbestos and lead-containing paint testing, geotechnical, GPR, and topographic surveys.</li> <li>• Development of decommissioning plans, as required on the OMA – a new mandatory process for Genera. Approval delay may impact project implementation.</li> <li>• Development of technical specifications, terms and conditions, and drawings for demolition works required for new units' facilities construction.</li> </ul>	<p><b>No certainty over award date.</b> 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.</p> <p><b>No certainty over COD or pricing.</b> 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.</p>



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.



**GPR-PREB-NEPRMI20220005-20240808-#4**

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.



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

NEPR

Received:

Sep 12, 2024

9:45 PM

IN RE:

10 YEAR PLAN FEDERALLY FUNDED  
COMPETTITIVE PROCESS

CASE NO.: NEPR-MI-2022-0005

SUBJECT: Motion to Submit a Supplement to  
the Response to the Order to Show Cause Dated  
August 28, 2024

MOTION TO SUBMIT A SUPPLEMENT TO THE RESPONSE TO THE 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"),<sup>1</sup> through its counsels of record, and respectfully submits and prays  
as follows:

1. On August 28, 2024, the Energy Bureau of the Puerto Rico Public Service  
Regulatory Board ("Energy Bureau") issued a Resolution and Order titled Order to Show Cause  
Regarding \$25,000 Fine for Misrepresentation ("August 28<sup>th</sup> 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 procurement of the Black Start  
and Emergency Peaking Resources would be more efficient than PREPA's, and that the actual costs

<sup>1</sup> 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.

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. 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 28<sup>th</sup> Order within five (5) business days of its notification.

2. On September 5, 2024, Genera filed a document in response to the August 28<sup>th</sup> Order, titled *Motion in Compliance with Order to Show Cause dated August 28, 2024* (“September 5<sup>th</sup> Motion”). In the September 5<sup>th</sup> Motion, Genera submitted that discrepancies between projected outcomes and the current status of the RFP process originate from external factors that significantly exceeded its control, rather than from deliberate or willful misrepresentation.

3. Genera, in its commitment to transparency and clarity, respectfully submits supplemental information, as *Exhibit A* to this Motion, aiming to provide the Energy Bureau with a detailed account of the factors contributing to the delay in the awarding of the RFPs. Throughout the awarding process for PREPA’s RFPs 3784 and 3800, numerous exceptions and clarifications from proponents were encountered and received, necessitating thorough review and consideration. To bridge these complexities with the Energy Bureau’s oversight, *Exhibit A* catalogs each clarification and exception reported by the proponents.

4. Genera trusts that this documentation will facilitate a thorough evaluation of the operational intricacies previously discussed in the September 5<sup>th</sup> Motion. Genera aims to ensure that all aspects of its approach to the RFP process are fully understood, thereby enabling the Energy Bureau to make an informed decision on the matters at hand.



5. Furthermore, Genera respectfully informs the Energy Bureau that it has submitted the supplemental information, designated as *Exhibit A*, under a seal of confidentiality due to its inclusion of sensitive commercial details related to an RFP process. Genera requests that the Energy Bureau maintain this confidentiality in line with its Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 2016, and subsequently amended on September 16, 2016. Genera will also provide a Memorandum of Law within the next ten (10) days to support this confidentiality request, as stipulated by the policy.

**WHEREFORE**, Genera respectfully requests that the Energy Bureau **take notice** of the above and **accept** Genera's supplemental information to the September 5<sup>th</sup> Motion, submitted herein under seal of confidentiality as *Exhibit A* to this Motion.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 12<sup>th</sup> day of September 2024.

**ECIJA SBGB**  
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San Juan, Puerto Rico 00920  
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/s/ Alejandro López-Rodríguez  
Alejandro López-Rodríguez  
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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](mailto:arivera@gmlex.net), and Mirelis Valle Cancel at [mvalle@gmlex.net](mailto:mvalle@gmlex.net).

In San Juan, Puerto Rico, this 12<sup>th</sup> day of September 2024.

/s/ Alejandro López-Rodríguez  
Alejandro López-Rodríguez

Exhibit A  
(Submitted under seal of confidentiality)

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 Dagua, 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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**From:** [Francisco Santos Rivera](#)  
**To:** [Luis Roman](#)  
**Subject:** Fw: NEPR-MI-2022-0005 Resolution and Order  
**Date:** Monday, November 11, 2024 4:33:59 PM  
**Attachments:** [Outlook-djdtwcy1.png](#)  
[20240917\\_MI20220005 Resolution and Order.pdf](#)

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**From:** Sonia Seda <sseda@jrsp.pr.gov>  
**Sent:** Tuesday, September 17, 2024 6:56 PM  
**To:** Lcdo. Alexis Rivera <arivera@gmlex.net>; 'mbustelo@gmlex.net' <mbustelo@gmlex.net>; Lcda. Mirelis Valle Cancel <mvalle@gmlex.net>; Jorge Fernandez-Reboredo <jfr@sbgblaw.com>; 'alopez@sbgblaw.com' <alopez@sbgblaw.com>; Genera PR Legal <legal@genera-pr.com>; Regulatory Genera PR <Regulatory@genera-pr.com>  
**Subject:** NEPR-MI-2022-0005 Resolution and Order

**[CAUTION]** This email originated from outside the organization. Do not open suspicious links or attachments. Report concerns to [cybersecurity@genera-pr.com](mailto:cybersecurity@genera-pr.com)  
**[PRECAUCIÓN]** Este correo electrónico se originó fuera de la organización. No abra enlaces o archivos adjuntos sospechosos. Informe a [cybersecurity@genera-pr.com](mailto:cybersecurity@genera-pr.com)

Notificamos Resolución y Orden emitida hoy en el asunto de referencia por el Negociado de Energía de la Junta Reglamentadora de Servicio Público de Puerto Rico.

Favor confirmar recibo de este correo.

Gracias por permitirme servirle.



TA154-A

**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") RFP<sup>1</sup> process for the procurement of emergency peaker generation systems at Jobos, Dagua, 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.<sup>2</sup>

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 EPA<sup>3</sup> 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.**"<sup>4</sup>

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.**<sup>5</sup>

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

<sup>1</sup> Request for Proposal ("RFP").

<sup>2</sup> January 23 Order.

<sup>3</sup> USA Environmental Protection Agency ("EPA").

<sup>4</sup> May 25 Motion, p.4.

<sup>5</sup> August 16 Motion, Annex A, p.5.

<sup>6</sup> 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.<sup>7</sup>

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)<sup>8</sup>, 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.<sup>9</sup> 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:

<sup>7</sup> November 8 Order, p.4.

<sup>8</sup> January 23 Order, p. 5.

<sup>9</sup> 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 COD<sup>10</sup> 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.

*SM* 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.<sup>11</sup>

*SM* 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.

*SM* 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.

*SM* 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

<sup>10</sup> Commercial Operation Date ("COD").

<sup>11</sup> 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.<sup>12</sup> According to Genera, initial cost overruns and projected delays, though substantial, resulted from evolving market dynamics.<sup>13</sup> Genera stressed that the project was affected by a broader economic downturn, unforeseen regulatory changes, and supply chain disruptions.<sup>14</sup> Genera further argued that COD and estimated costs from PREPA cannot be used as a basis for comparing Genera's project outcomes.<sup>15</sup> Genera maintained that PREPA's projections were never validated, and that Genera's process demonstrates that those projections were unachievable.<sup>16</sup> Genera supported this argument referencing alleged hundreds of exceptions that PREPA received in response to its proposed EPC<sup>17</sup> project.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup> 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

<sup>12</sup> September 5 Motion, p. 11.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, p. 12.

<sup>15</sup> *Id.*

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

<sup>17</sup> Engineer, Procure, and Construct ("EPC").

<sup>18</sup> September 5 Motion, p. 12.

<sup>19</sup> *Id.*

<sup>20</sup> September 12 Motion, p. 2, ¶ 3.





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

On September 13, 2024, PREPA filed a document titled *Motion in Compliance with the Resolution and Order Dated September 6<sup>th</sup>, 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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> In addition, PREPA indicated that the proposals received were secured with a bid bond, ensuring the project's viability within the RFP parameters.<sup>25</sup> PREPA further stated that the delivery periods for the units and the completion date were set by the proponents, not by PREPA.<sup>26</sup> 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.<sup>27</sup>

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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup>

## 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,

<sup>21</sup> *Id.*, p. 3, ¶ 5.

<sup>22</sup> September 13 Motion, pp. 6 – 7.

<sup>23</sup> *Id.*, p. 7.

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

<sup>25</sup> *Id.*, pp. 7 – 8.

<sup>26</sup> *Id.*, p. 8.

<sup>27</sup> *Id.*

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

<sup>29</sup> *Id.*, p. 9.

<sup>30</sup> *Id.*, pp. 9 – 10.

<sup>31</sup> *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.



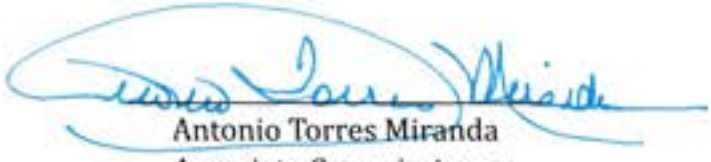
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Edison Avilés Deliz  
Chairman

  
Lillian Mateo Santos  
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](mailto:arivera@gmlex.net); [mbustelo@gmlex.net](mailto:mbustelo@gmlex.net); [mvalle@gmlex.net](mailto:mvalle@gmlex.net); [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 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





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

NEPR

Received:

Oct 7, 2024

9:10 PM

IN RE: 10-YEAR PLAN FEDERALLY  
FUNDED COMPETITIVE PROCESS

Case No.: NEPR-MI-2022-0005

Motion for Reconsideration of Resolution and  
Order of September 17, 2024, and Request for  
Administrative Hearing

**MOTION FOR RECONSIDERATION OF RESOLUTION AND ORDER OF  
SEPTEMBER 17, 2024, AND REQUEST FOR ADMINISTRATIVE HEARING**

**TO THE ENERGY BUREAU:**

COMES NOW, GENERA PR, LLC ("Genera"), through its undersigned counsel and,  
very respectfully, states and prays as follows:

**I. INTRODUCTION**

On September 17, 2024, the Puerto Rico Energy Bureau ("PREB") issued a *Resolution and Order* in which it ruled, among other things, that Genera PR LLC ("Genera") had purportedly engaged in misrepresentations in connection with its proposal for the procurement process conditionally approved by the Puerto Rico Electric Power Authority ("PREPA") for establishing peaker generation systems at Jobos, Dagua, and Palo Seco ("the Projects"). Specifically, the PREB held that the increased costs and timeline of the Projects—which Genera originally estimated would be cheaper and shorter than the PREPA estimates—were due to alleged misrepresentations by Genera, particularly in Genera's **commitment** to improve the original cost estimates and timeline proposed by PREPA. Therefore, the PREB ruled that, in the interest of maintaining the terms originally represented, Genera was ordered to complete the project and achieve COD by the end

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of the Second Quarter (Q2) of 2026, consistent with PREPA’s approach. The PREB went further to specifically reiterate that “any agreed timeline between Genera and the proponents must not extend beyond the end of Q2 2026”. The PREB advised Genera that failure to meet this deadline may carry the imposition of fines and administrative sanctions of up to \$25,000 per day, for each day the project remains, “which shall serve as a deterrent for further delays, under Art. 6.36 of Act 57-2014.”

Genera respectfully requests the reconsideration of the *Resolution and Order* of September 17, 2024, under Section 3.15 of the Puerto Rico Administrative Procedure Act (“LPAU”, in its Spanish acronym), 3 L.P.R.A. § 9655, for the reasons set forth below. In short, the PREB’s ruling affects liberty and proprietary interests of Genera insofar as a finding of misrepresentation impacts its commercial reputation and goodwill. The ruling also affects its rights under the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement (“OMA”) dated as of January 24, 2023, by and among PREPA, Genera and the Puerto Rico Private-Public Partnership Authority (“P3 Authority”), including, among others, Sections 7.2, 7.7, 19.2, 19.3, 19.5. The *Resolution and Order* of September 17, 2024, also requires Genera to comply with a timeline that not only implies a further increase in costs that could impact the company but also does not resemble what proponents in the current procurement process say they can actually achieve. If no reconsideration is given (i.e., if the PREB will not permit agreements that align with the delivery schedules submitted by proponents in a competitive process), then the process will stall. Additionally, failure to comply with the timeline and budget would expose Genera to fines of up to twenty-thousand dollars (\$25,000) for each day the project remains incomplete beyond the specified deadline. As such, Genera posits that the *Resolution and Order* of September 17, 2024, violates its constitutional right to due process, and is inconsistent with Act 57-2014 and the LPAU for two main reasons.



*First*, it contains findings of fact that are based solely on allegations by the parties. That is, the PREB adjudicated controverted facts, many of which arise from estimates and forecasts that were later affected by exogenous events, without allowing Genera the opportunity to present evidence and have the issues in controversy adjudicated before an examining officer or administrative judge. The Energy Bureau deemed there was sufficient cause to believe that Genera actually engaged in misrepresentation of material facts about the projected cost savings and COD timeline, thus actually misleading the Energy Bureau in granting them authorization to continue with their proposed approach. But the PREB did not even define or meaningfully explain what the term “misrepresentation” means from a legal standpoint, what the fundamental elements of the concept are, or what evidence satisfied those elements.

*Second*, the *Resolution and Order* did not advise Genera of its right to request reconsideration and/or seek judicial review. Specifically, Section 3.14 of the LPAU, 3 L.P.R.A. § 9654, requires that final agency resolution and orders advise the parties of the right to request reconsideration and judicial review. The *Resolution and Order* of September 17, 2024, does not contain the required notices, and also fails to advise Genera of any other remedy available in the applicable agency statutes and regulations, effectively depriving it of any alternative to contest a decision that affects its liberty and property interests.

For the reasons stated above, and the arguments discussed in this motion, Genera respectfully requests the reconsideration of the *Resolution and Order* of September 17, 2024, and that the adverse findings of fact made therein be set aside. Genera further requests that the PREB orders that a hearing be conducted, under Sections 6.11 (b) & (c), 6.19 and 6.20<sup>1</sup> of Act 57-2014,

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<sup>1</sup> 22 L.P.R.A §§ 1054j, 1054r & 1054s.

to evaluate and adjudicate the allegations regarding Genera’s representations in connection with the timeline and costs of the Projects, consistent with the applicable law and due process.

## **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

On January 23, 2023, the PREB issued a *Resolution and Order* (“January 23 Order”) that conditionally approved PREPA’s RFP process for the procurement of emergency peaker generation systems at Jobos, Dagua, and Palo Seco (“the Projects”), subject to various conditions.

On May 25, 2023, before its Service Commencement Date, Genera submitted a document titled *Memorandum of Compliance with May 8 Order*, in which Genera proposed to the PREB a different approach and plan for the procurement of the Black Start and Emergency Peaking Resources and explained that its proposed approach would be more efficient. In subsequent filings before the PREB, Genera explained why its approach would cost less, and be ready earlier, than the other alternative.

On August 16, 2023, Genera filed a *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.

On August 23, 2023, the PREB 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. Accordingly, the PREB allowed the RFP process to continue in the manner described by Genera in Exhibit A of the August 16 Motion.



On November 8, 2023, the PREB issued another *Resolution and Order* (“November 8 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-weekly 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 a *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 on July 1, 2024, pursuant to 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), and that their next report was due by October 9, 2024.

On July 30, 2024, the PREB issued a *Resolution and Order* (“July 30 Resolution”) in which it stated that Exhibit A that was filed along with the July 1 Motion purportedly failed to adequately inform the progress in the procurement process. Through the July 30 Resolution, the PREB also denied Genera’s request to submit quarterly reports instead of bimonthly reports and ordered Genera to submit monthly reports beginning on August 15, 2024.<sup>2</sup> The PREB also ordered Genera to include as part of the next and subsequent monthly progress report its best estimate of the

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<sup>2</sup> Pursuant to footnote 15 of the January 23 Order, reports are mandated to be rendered biweekly until June 30, 2024. Subsequently, starting July 1, 2024, and according to footnote 16 of the January 23 Order, reports were required to 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).

expected schedule and timetable for completing the critical steps up to project completion. The Energy Bureau further ordered that the reports include the following information:

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 COD 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.

The July 30 Resolution 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. The PREB warned Genera that noncompliance with such orders would result in the imposition of fines under Act 57-2014.

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”), in which it detailed the distinctions between Genera’s RFP process and PREPA’s previous RFP process. The RFP Process Comparison Report contained in the August 9 Motion 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 Projects’ lifespan.

Moreover, 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”). Specifically, the inaugural monthly report on the status of the Emergency Generation and Black-Start



Generation Procurement, submitted as Attachment A to the August 9 Motion, addressed in detail each one of the criteria laid out in the July 30 Resolution. As for the costs and timeline of the Projects, Genera informed in the August 19 Motion that the preliminary estimate for the peaker projects was \$911,340,000.00 and projected that COD would be achieved between the first and fourth quarters of 2027.

On August 28, 2024, the PREB ordered Genera to show cause as to why it 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 emergency peaking generation systems (“August 28 Order”). The PREB 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*. In it, Genera unequivocally stated that the 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. Genera further explained that initial cost overruns and projected delays, though substantial, resulted from evolving market dynamics. Genera supplemented its response through various motions filed thereafter. PREPA also appeared to state its position on this matter.

**The procedural background clearly shows that Genera complied with the orders and deadlines imposed by the PREB in the orders to show cause. Genera also responded and**

supplied the information required regarding the criteria specified on both the July 31 Resolution and the August 28 Order, and carefully explained the reasons for the changes in timeline and costs of the Projects. Nevertheless, on September 17, 2024, the PREB issued a *Resolution and Order* in which it ruled, in relevant part, as follows:

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.

...

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.<sup>3</sup>

Genera submits that the *Resolution and Order* of September 17, 2024, is incorrect as a matter of law, and inconsistent with the procedures required in the administrative context as a matter of due process. Accordingly, Genera respectfully asks that the ruling be reconsidered, and

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<sup>3</sup> Genera disagrees with the language in the *Resolution and Order* that purports to limit the pass-through nature of fines from the PREB. Genera reserves its right to challenge this assertion, and to defend any and all of its rights under the OMA, during this process or any related procedural event.

the finding of misrepresentation set aside until the issues in controversy are adjudicated in a hearing consistent with due process requirements.

### **III. APPLICABLE LAW**

#### **A. Due process requirements under the United States and Puerto Rico Constitutions.**

Article II, Sec. 7 of the Constitution of Puerto Rico, and the Fifth and Fourteenth Amendments to the United States Constitution, L.P.R.A., vol. 1, guarantee that no person shall be deprived of his or her liberty or property without due process of law. Due process of law assumes two different dimensions: substantive and procedural. Under substantive due process, courts examine the validity of a law or regulation in order to protect fundamental individual rights. On the other hand, *procedural* due process imposes on the State the obligation to guarantee that any interference with individual liberty and property interests will take place through a fair and equitable procedure. *Rivera Rodriguez & Co. v. Lee Stowell, etc.*, 133 D.P.R. 881, 887-888 (1993). The Puerto Rico Supreme Court has consistently held, based on the federal precedent of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), that administrative proceedings that affect proprietary and liberty interests of individuals shall comply with the minimum requirements of the due process of law, namely: (1) adequate notice; (2) process before an impartial adjudicator; (3) opportunity to be heard; (4) the right to cross-examine witnesses and examine the evidence presented against him/her; (5) assistance of counsel; and (6) decision based on the record. *Álvarez v. Arias*, 156 D.P.R. 352, 364-365 (2002); *Rivera Rodriguez & Co. v. Lee Stowell*, 133 D.P.R. at 888-889.

Moreover, the Puerto Rico Supreme Court has also held that when an agency establishes procedures and protections through its regulations, those measures become part of the liberty and property interests of the individual and part of the process due by the entity. An administrative



agency cannot arbitrarily depart from the very processes that it has established through its regulatory powers. *Fuentes Bonilla v. ELA*, 200 D.P.R. 364, 397 (2018) (“an agency cannot depart from the processes established by statute or regulation”). (Translation ours).

## **B. Act No. 57-2014**

The *Puerto Rico Energy Transformation and Relief Act* (“Act 57-2014”), was approved on May 27, 2014. Act 57-2014 vested on the PREB authority for, among other things, overseeing and ensuring the execution and implementation of the public policy on the electric power service in Puerto Rico; overseeing the quality, efficiency, and reliability of the electric power services provided by any electric power company certified in Puerto Rico to ensure a robust network that addresses the needs of the Island; holding public hearings, require and gather any pertinent or necessary information to properly carry out its powers and duties; and adopting the rules, orders, and regulations needed to carry out its duties, issue orders, and impose fines to comply with the powers granted by law, as well as for the implementation of this Act. These regulations shall be adopted in accordance with Act No. 38-2017, as amended, known as the ‘Government of Puerto Rico Uniform Administrative Procedure Act’. Section 6.3(a),(d),(l) & (oo) of Act 57-2014, 22 L.P.R.A § 1054b(a),(d),(l) & (oo).

Section 6.11 of Act 57-2014, 22 L.P.R.A. § 1054j, provides for the delegation of powers to hearing officers and administrative judges to adjudicate matters before the PREB. Specifically, Section 6.11 states, in relevant part, as follows:

- (a) PREB may issue orders to assign, refer, or delegate the resolution of any adjudicative or non-adjudicative matter to one or more of the commissioners. In said orders, PREB shall specify the name of the commissioner and the specific powers of PREB that are being delegated to him. PREB may delegate to its commissioners the following powers:
- (1) administer oaths and take depositions;
  - (2) issue summons;
  - (3) receive and evaluate evidence;
  - (4) preside over hearings; and
  - (5) hold conferences to simplify procedures.

Any order issued by one or more commissioners pursuant to this Section shall be notified to PREB before it is made public, and PREB may modify, amend, or render the order ineffective by a majority vote of its commissioners.

**(b) *Hearing Officers.*** —

PREB shall have the authority to refer or delegate any adjudicative matter to hearing officers. PREB shall assign and distribute among its hearing officers the tasks and matters to be delegated by PREB, after which the hearing officers shall be responsible for issuing recommendations regarding the adjudication of the case or a procedural incident subject to PREB's assignment, referral, or delegation. In issuing a decision, PREB shall have full discretion to accept or reject the recommendations of hearing officers. Any hearing officer appointed to preside over a hearing or investigation shall have the powers expressly delegated to him by PREB in the designation order. Hearing officers shall be designated and shall carry out their duties as provided in Act No. 38- 2017, as amended, known as the "Government of Puerto Rico Uniform Administrative Procedure Act."

**(c) *Administrative Judges.*** —

As provided in this subsection, PREB shall be empowered to delegate to administrative judges, with full decision-making powers, the adjudication of any matter, case, and dispute on behalf of PREB, as these may be delegated in accordance with the provisions of this subsection... In exercising its discretion, the Energy Bureau. may delegate to administrative judges cases and disputes related to the review of customers' electricity bills; cases and disputes alleging noncompliance by an electric power service company with the regulations of the Energy Bureau in connection with the quality of the services provided to its customers; cases and disputes alleging noncompliance by the Authority, its successor, subsidiaries, the transmission and distribution network Contractor or an electric power service company or customer with its obligations in connection with the interconnection of distributed generation systems or any other matter that PREB may provide. The Energy Bureau may delegate to its administrative judges any case or dispute in which the total value or cost of the remedies sought is twenty-five thousand dollars (\$25,000.00) or less. Administrative judges shall be appointed and shall carry out their duties as provided in Act No. 38-2017, known as the "Government of Puerto Rico Uniform Administrative Procedure Act."

In turn, Section 6.19 of Act 57-2014, 22 L.P.R.A. § 1054r, states that "[t]he Commission shall prescribe through regulations an administrative hearing circuit system that allows for the scheduling and holding of administrative hearings on pending cases before the Commission in the different regions of the Commonwealth of Puerto Rico."<sup>4</sup>

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<sup>4</sup> Section 1.3(j) of Act 57-2014, 22 L.P.R.A. § 1051a(j), defines "Commission" as:

**(j) "Commission" or "Energy Commission"** — Shall mean the Puerto Rico Energy Bureau or PREB as established by virtue of the Reorganization Plan of the Puerto Rico Public Service Regulatory Board, which is a specialized independent entity created by virtue of this Act, in charge of regulating, overseeing, and enforcing the public policy on energy of the Government of Puerto Rico. Any reference in this Act to the 'Commission or Energy Commission' shall be construed as a reference to the Puerto Rico Energy Bureau.

Moreover, Section 6.20 of Act 57-2014, 22 L.P.R.A. § 1054t, provides, in pertinent part, as follows:

Any process for which this Act does not specifically provide, shall be governed by Act No. 38-2017, as amended, known as the ‘Government of Puerto Rico Uniform Administrative Procedure Act.’ Therefore, Act No. 38-2017, *supra*, shall govern the procedures pertaining to the adoption of regulations, adjudications, judicial review, the granting of franchises, certifications, grievances from subscribers and between electric power companies, and inspections...As provided in the aforementioned Act, the decisions and orders of PREB shall be subject to review by the Court of Appeals of Puerto Rico.

### **C. Regulation 8543-PREB’s Adjudicative Processes**

Regulation 8543 was approved on December 18, 2014 pursuant to Sections 6.3, 6.4, 6.34 and 6.25 of Act 57-2015, with the purpose of establishing the rules that will govern the adjudicative procedures before the PREB, in conjunction with and supplementing the provisions of the LPAU and its case law. *See* Sections 1.02 & 1.03 of Regulation 8543.<sup>5</sup> Section 1.03 of Regulation 8543 further provides that it applies, in conjunction with and supplementing the provisions of the LPAU and its case law, to notices of noncompliance and of investigations.

Articles 3.01 through 3.05 of Regulation 8543 sets forth the steps for the commencement of an adjudicative process. Sections 9.01 through 9.06 establish the structure and procedures that govern administrative hearings. And Sections 12.01 through 14.08 govern the procedures for notice of noncompliance.<sup>6</sup> Specifically, Section 14.04 of Regulation 8543 provides for the presentation of oral testimony when (i) it appears necessary to show the veracity of the arguments presented by the party subject to the notice of noncompliance; (ii) the testimony is necessary to prove a defense or to show that the party subject to the notice did not fail to comply with the order or regulation noticed; and (iii) the testimony is deemed not to be redundant.

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<sup>5</sup> All translations to provisions of Regulation 8543 are provided by us.

<sup>6</sup> It is important to underscore that here the procedure did not commence through the filing of a complaint or a notice of noncompliance. The present interlocutory issue stems from an order to show cause in miscellaneous matter NEPR-MI-2022-0005.



None of the procedures established in Act 57-2014 and Regulation 8543 were used during the process leading to the *Resolution and Order* of September 17, 2024.

#### IV. ANALYSIS AND DISCUSSION

##### A. Resolution of issues of fact and determination of credibility required a hearing that met the minimum requirements of due process.

The August 28 Order instructed Genera to show cause as to why the PREB should not impose an administrative fine of twenty-five thousand dollars (\$25,000) for misrepresentation in connection with the RFP process involving the Projects. The PREB specifically ordered Genera to submit a written response addressing the following criteria:

- 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 *Motion in Compliance with Order to Show Cause*, in which it showed that the 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, intentional, or willful misrepresentation. Genera further explained that initial cost overruns and projected delays, though substantial, resulted from evolving market dynamics. Genera supplemented its response through various motions filed thereafter. Nevertheless, on September 17, 2024, the PREB issued a *Resolution and Order* in which it ruled that Genera had engaged in misrepresentation, required Genera to finalize the Projects by a deadline and costs different than those announced by Genera in its August 19 Motion, and warn that Genera would be exposed to a daily fine of \$25,000.00 if it failed to meet any of the goals established. **In so ruling, the PREB did not cite to any evidence that challenged or undermined Genera's**

assertions (because there were none), and issued its determination presumably based on a determination of credibility grounded only on the papers filed. The *Resolution and Order* of September 15 is flawed as a matter of law and should be reconsidered and set aside for the following reasons.

**First, the procedural background clearly shows that Genera complied with the orders and deadlines imposed by the PREB in the orders to show cause. Genera also responded and supplied the information required consistent with the criteria specified on both the July 31 Resolution and the August 28 Order, and carefully explained the reasons for the changes in timeline and costs of the Projects.** Thus, the PREB adjudicated facts that were specifically controverted by Genera without allowing Genera the opportunity to present evidence and have the issues in controversy adjudicated before an examining officer or administrative judge. Genera categorically denied having misrepresented the facts relating to its proposal for the Projects, and specifically argued that the changes that impacted the costs and timeline was driven by events outside of its control. It is evident that the PREB made determinations as to credibility based solely on the papers filed. **Moreover, the PREB did not even define, or meaningfully explained, what the term “misrepresentation” means from a legal standpoint, and what are the constitutive elements of the concept.** It did not explain whether the standard applied was one of intention or a less exacting one. This procedural background is clearly inconsistent with the minimum requirements of due process.

Although the PREB has the authority to impose sanctions and fines when the parties to a proceeding fail to comply with orders and regulations, the situation here is different. Here, Genera did not simply fail to comply with an objectively clear order (i.e. missed a deadline). It is uncontested that Genera met the deadlines and addressed all of the factors established by the PREB in the August 28 Order. Genera also directly refuted that it had conducted itself with the intention

to mislead. On this record, the PREB was required to provide a hearing prior to adjudicating a matter that featured several contested facts.

The United States Supreme Court has recognized that an agency's finding of misrepresentation can implicate either a property interest or a liberty interest and, in such cases, due process generally requires a hearing for adjudication. A property interest is typically implicated when the finding of misrepresentation affects a person's legal right to some benefit, such as employment, contract relationship, government benefits or licenses. *See Bell v. Burson*, 402 U.S. 535 (1971); *Goldberg v. Kelly*, 397 U.S. 254 (1970). Likewise, a liberty interest can be implicated when the agency's finding of misrepresentation harms a person's reputation in a way that significantly alters their status under law, potentially affecting future benefits or business opportunities. *Board of Regents v. Roth*, 408 U.S. 564 (1972) (a person's liberty interest is implicated when the government makes a stigmatizing statement, such as an accusation or dishonesty or misrepresentation, that harms their reputation or affects future opportunities); *Wisconsin v. Constantineau*, 400 U.S. 433 (1971) (a person's liberty interest was implicated when the government posted notices prohibiting the sale of certain products to an individual due to his alleged misrepresentation or misconduct); *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123 (1951) (a government action labeling certain organizations as subversive without a hearing violated due process because it harmed the reputation of individuals associated with those organizations).

The proprietary and liberty interests of Genera were affected by the *Resolution and Order* of September 15, 2024 because a finding of misrepresentation has an impact on its commercial reputation and goodwill. These findings could also affect Genera's rights under the OMA. The *Resolution and Order* also requires Genera to comply with a timeline and budget that could have an economic impact on the company. Additionally, failure to comply with the timeline and budget



would expose Genera to fines of up to twenty-thousand dollars (\$25,000) for each day the project remains incomplete beyond the specified deadline.

The courts have also held that an administrative agency cannot adjudicate credibility issues without holding a hearing. Credibility determinations often require the opportunity to observe witnesses, assess demeanor, and cross-examine testimony, all of which are typically part of a formal hearing. *Goldberg v. Kelly*, 397 U.S. 254, 268-270 (1970); *Green v. McElroy*, 360 U.S. 474, 496 (1959). Moreover, courts have held that agencies cannot make credibility determinations solely based on written submissions or documentary evidence when the facts are contested, and witness testimony is central. *Richardson v. Perales*, 402 U.S. 389, 406-407 (1971) (while the Court upheld the use of written medical reports in Social Security disability hearings, it noted that in situations in which the credibility of witnesses is essential, live testimony and cross-examination may be required to ensure due process).

Similarly, the Puerto Rico Supreme Court has ruled, in an employment law context, that a hearing is required when the case presents a challenge to a dismissal of an employee who claims lack of good cause. *López v. Tribunal Superior*, 90 D.P.R. 304, 312-313 (1964). In *López*, the Puerto Rico Supreme Court emphasized that the existence or absence of good cause must be decided by through a hearing, not by the sole understanding of the employer, even if the reasons for the dismissal are considered evident or justified for the employer.

As discussed earlier, the Puerto Rico Supreme Court has consistently held that administrative proceedings that affect liberty or proprietary interests of individuals shall comply with the minimum requirements of the due process of law, namely: (1) adequate notice; (2) process before an impartial adjudicator; (3) opportunity to be heard; (4) the right to cross-examine witnesses and examine the evidence presented against him/her; (5) assistance of counsel; and (6)

decision based on the record. *Rivera Rodríguez & Co. v. Lee Stowell*, 133 D.P.R. 881, 888-889 (1993).

**None of these minimum requirements were observed here.** Additionally, **none of the procedures established in Act 57-2015 and Regulation 8543—as discussed in the previous section—were used during the process leading to the *Resolution and Order* of September 17, 2024.** Those proceedings contemplate the use of hearing officials and administrative judges and allow for an evidentiary hearing both in the context of a formal adjudicative proceeding or a notice of noncompliance. Because of these shortcomings, the *Resolution and Order* of September 17, 2024 fails as a matter of due process and should be set aside.

As a final note, Genera underscores the practical implications of the PREB maintaining the position manifested in the *Resolution and Order* of September 17, 2024. As stated earlier in this motion, if the PREB does not permit agreements that align with the delivery schedules submitted by proponents in a competitive process, it is possible that the peaker process will likely fail.

**B. The *Resolution and Order* of September 17, 2024 fails to notify Genera of its right to seek reconsideration and judicial review, and also fails to notify of any other remedy available in the applicable agency statutes and regulations.**

A review of the *Resolution and Order* of September 17, 2024 shows that it did not advise Genera of its right to request reconsideration and/or seek judicial review. As discussed above, the PREB’s ruling affects its rights and property. Yet, the PREB did not afford Genera the right to contest the adverse ruling or seek appellate review, thus disregarding key provisions of the LPAU.

Section 3.16 of the LPAU, 3 L.P.R.A. § 9656, states that “[i]f an agency concludes or decides not to conduct or continue an adjudicative proceeding in response to a particular case, it shall terminate the proceeding and serve notice of its determination in writing by certified mail return receipt requested upon the parties stating the grounds therefor and of any review process available,

including the warnings provided in Section 3.14 of this Act.”<sup>7</sup> In turn, Section 3.14 of LPAU, 3 L.P.R.A. § 9654, provides, in relevant part, that “[t]he order or decision shall notify the right to request reconsideration by the agency or to file a petition for review as a matter of law before the Court of Appeals, as well as the parties to be served with notice of said petition for review, and the pertinent time limits therefor. The aforementioned time limits shall start to run once these requirements have been met.”

The Puerto Rico Supreme Court has held that the notification requirements in Section 3.14 of the LPAU are grounded on due process considerations. *Mun. de Caguas v. AT & T*, 154 D.P.R. 401, 414 (2001); *IM Winner, Inc. v. Mun. de Guayanilla*, 151 D.P.R. 30, 35–38 (2000). Specifically, the Supreme Court has held that an agency’s failure to meet any of these requirements renders the determination and any subsequent proceeding invalid, because such notification would violate due process. *Comisión Ciudadanos v. G.P. Real Property*, 173 D.P.R. 998, 1014 (2008); *Olivo Román v. Secretario de Hacienda*, 164 D.P.R. 165, 178-179 (2005). And, as per the very terms of Section 3.14 of LPAU, the terms for reconsideration and for judicial review will not begin to run until a valid notification is made.

The *Resolution and Order* of September 15, 2024, also fails to advise Genera of any other remedy available in Act 57-2014 or Regulation 8543, like the opportunity to request an administrative hearing prior to the final ruling, effectively depriving it of any alternative to contest a decision that affects its liberty and property interests. Consequently, the *Resolution and Order* is incorrect as a matter of law because it does not comply with the notification requirements of LPAU and the concomitant due process infirmities such a disregard implies.

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<sup>7</sup> The citations to the LPAU contained in this motion are from the official English translation of the statute available in the LPRA collection (Laws of Puerto Rico Annotated).



WHEREFORE, for the reasons set forth in this motion, Genera respectfully requests the PREB to reconsider the *Resolution and Order* of September 17, 2024, and that the adverse findings of fact made therein be set aside. Genera further requests that the PREB orders that a hearing be conducted, under Sections 6.11 (b) & (c), 6.19 and 6.20 of Act 57-2014, to adjudicate the allegations regarding Genera's representations in connection with the timeline and costs of the Projects, consistent with the applicable law and due process.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 7th day of October, 2024.

It is hereby certified that this motion was filed using the electronic filing system of this Energy Bureau, and that electronic copies of this Motion will be notified to the following attorneys who have filed a notice of appearance in this case: **Lcdo. Alexis Rivera**, [arivera@gmlex.net](mailto:arivera@gmlex.net); **Lcda. Mirelis Valle Cancel**, [mvalle@gmlex.net](mailto:mvalle@gmlex.net); **Lcda. María Teresa Bustelo-García**, [mbustelo@gmlex.net](mailto:mbustelo@gmlex.net).

**ROMAN NEGRÓN LAW, PSC**  
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s/Luis R. Román Negrón  
Luis R. Román Negrón  
RUA 14,265  
[lrm@roman-negron.com](mailto:lrm@roman-negron.com)

**From:** [Sonia Seda](#)  
**To:** ["arivera@gmlex.net"](#); ["mvalle@gmlex.net"](#); [Luis Roman](#); ["legal@genera-pr.com"](#); [regulatory@genera-pr.com](#)  
**Subject:** NEPR-MI-2022-0005 Resolution  
**Date:** Friday, October 11, 2024 5:23:31 PM  
**Attachments:** [image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[20241011 MI20220005 Resolution.pdf](#)

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Notificamos Resolución emitida hoy en el asunto de referencia por el  
Negociado de Energía de la Junta Reglamentadora de Servicio Público de  
Puerto Rico.

**Favor confirmar recibo de este correo.**

Gracias por permitirme servirle.



JUNTA  
REGLAMENTADORA  
DE  
SERVICIO PÚBLICO  
DE PUERTO RICO



**SONIA SEDA GAZTAMBIDE**  
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TA181-A

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 pertaining to *Motion for Reconsideration of Resolution and Order of September 17, 2024, and Request for Administrative Hearing*, filed by Genera PR, LLC.

**RESOLUTION**

On September 17, 2024, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("September 17 Resolution"), whereby it determined that project delays and cost increases associated to the procurement of Black-Start and Emergency Peaking Resources resulted from misrepresentations by Genera PR, LLC ("Genera"), particularly in their commitment to improve the original cost estimates and timeline originally proposed by the Puerto Rico Electric Power Authority ("PREPA"), which led to the Energy Bureau's RFPs<sup>1</sup> reconfiguration approval.

In the interest of maintaining the terms originally represented by Genera, through the September 17 Resolution, the Energy Bureau ordered Genera to complete the project and achieve COD<sup>2</sup> by the end of the Second Quarter (Q2) of 2026, consistent with PREPA's approach. With regards to project costs, the Energy Bureau acknowledged that, as stated by Genera, project costs will be covered by funds from the Federal Emergency Management Agency ("FEMA") and that cost overruns are eligible for reimbursement. Accordingly, the Energy Bureau determined that consumers will not be held accountable for any cost overruns directly related to the mismanagement of the RFPs; such costs not covered by FEMA are to be borne by Genera.

Although no fines were imposed through the September 17 Resolution, the Energy Bureau warned Genera that if it failed to meet the specified deadline, it would be subject to a daily fine of up to twenty-five thousand dollars (\$25,000) for each day the project remains incomplete beyond the deadline, which shall serve as a deterrent for further delays, in accordance with Art. 6.36 of Act 57-2014.<sup>3</sup> The Energy Bureau further warned Genera that additional misrepresentations would result in the imposition of fines and 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.

On October 7, 2024, Genera filed a document titled *Motion for Reconsideration of Resolution and Order of September 17, 2024, and Request for Administrative Hearing* ("October 7 Motion"). In its October 7 Motion, Genera argued that the Energy Bureau's September 17 Resolution contains findings of facts based solely on allegations by the parties, without granting Genera the opportunity to present evidence and have the issues in controversy adjudicated before an Examining Officer or Administrative Judge.<sup>4</sup> Genera also contended that the September 17 Resolution failed to notify Genera of its right to seek reconsideration and judicial review.<sup>5</sup> Genera further requested that the Energy Bureau conduct a hearing to

<sup>1</sup> Request for Proposal ("RFP").

<sup>2</sup> Commercial Operation Date ("COD").

<sup>3</sup> Puerto Rico Energy Transformation and RELIEF Act, as amended ("Act 57-2014").

<sup>4</sup> October 7 Motion, p. 3.

<sup>5</sup> *Id.*



TA181




evaluate and adjudicate the allegations regarding Genera’s representations in connection with the timeline and costs of the project.<sup>6</sup>

Upon review of the October 7 Motion, the Energy Bureau **REAFFIRMS** its September 17 Resolution and **DENIES** Genera’s request that a hearing be held.

As such, the Energy Bureau **REITERATES** that Genera must complete the project and achieve COD **by the end of the Second Quarter (Q2) of 2026**. 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**.

The Energy Bureau also **REITERATES** that consumers will not be held responsible for cost overruns, and **should FEMA fail to assume the additional costs incurred, due to the reconfiguration of the RFP, the Energy Bureau may impose on Genera the full responsibility of covering any excess costs**.

Be it notified and published.

  
Edison Avilés Deliz  
Chairman

  
Lillian Mateo Santos  
Associate Commissioner

  
Ferdinand A. Ramos Seegaard  
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 11, 2024. Associate Commissioner Sylvia B. Ugarte Araujo did not intervene. I also certify that on October 11, 2024, a copy of this Resolution and Order was notified by electronic mail to arivera@gmlex.net; mvalle@gmlex.net; lrn@roman-negron.com; legal@genera-pr.com; 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 11, 2024.

  
Sonia Seda Gaztambide  
Clerk



<sup>6</sup> *Id.*, pp. 3 – 4.

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

NEPR

Received:

Oct 15, 2024

7:33 PM

IN RE: 10-YEAR PLAN FEDERALLY  
FUNDED COMPETITIVE PROCESS

Case No.: NEPR-MI-2022-0005

Motion to Submit Monthly Report on the  
Status of Emergency Generation and Black-  
Start Generation Procurement in Compliance  
with *Resolution and Order* of July 30, 2024

**MOTION TO SUBMIT MONTHLY REPORT ON THE STATUS OF EMERGENCY  
GENERATION AND BLACK-START GENERATION PROCUREMENT IN  
COMPLIANCE WITH RESOLUTION AND ORDER OF JULY 30, 2024**

**TO THE ENERGY BUREAU:**

COMES NOW, GENERA PR, LLC ("Genera"), through its undersigned counsel and,  
very respectfully, states and prays as follows:

1. On January 23, 2023, the Puerto Rico Energy Bureau ("PREB") issued a *Resolution and Order* ("January 23 Order") that conditionally approved PREPA's RFP process for the procurement of emergency peaker generation systems at Jobos, Dagua, and Palo Seco ("the Projects"), subject to various conditions.
2. On November 8, 2023, the PREB issued another *Resolution and Order* ("November 8 Order") approving the RFP package submitted by Genera for the procurement of black start and emergency generation services.
3. On February 29, 2024, Genera filed 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* ("February 29 Motion"), in which Genera stated that initial award was scheduled for March 2024.



4. On July 1, 2024, Genera filed 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 on July 1, 2024, pursuant to 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), and that their next report was due by October 9, 2024.

5. On July 30, 2024, the PREB issued a *Resolution and Order* ("July 30 Resolution") in which, in relevant part, denied Genera's request to submit quarterly reports instead of bimonthly reports, and ordered Genera to submit monthly reports beginning on August 15, 2024.

6. In compliance with the July 30 Resolution, Genera respectfully submits its monthly report on the status of Emergency Generation and Black-Start Generation Procurement for the month of September, included herein as Exhibit A.

WHEREFORE, Genera respectfully requests that the PREB **take notice** of the above; **accept** Genera's report on the status of Emergency Generation and Black-Start Generation Procurement for the month of September, included herein as Exhibit A; and **deem** Genera in partial compliance with the July 30 Resolution.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 15th day of October, 2024.

It is hereby certified that this motion was filed using the electronic filing system of this Energy Bureau, and that electronic copies of this Motion will be notified to the following attorneys who have filed a notice of appearance in this case: **Lcdo. Alexis Rivera**, [arivera@gmlex.net](mailto:arivera@gmlex.net);



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Exhibit A – Monthly Report (September 2024)

Docket Number: NEPR-MI-2022-0005  
In Re: 10 YEAR PLAN FEDERALLY FUNDED COMPETITIVE PROCESS  
Re: Monthly Progress Report

GPR – PREB – NEPR-MI-2022-0005 – 20240730#1(a)

On the July 30<sup>th</sup> Resolution and order the Energy Bureau 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. Additionally, the Energy Bureau ordered Genera to include, as part of the net and subsequent monthly progress reports, at a minimum, the following:

- a. Breakdown of each task, estimated cost, cost amount consumed and timeline for completion of such task.

Response:

**Peakers Project Preliminary Cost Estimate**

Equipment Purchase	\$432,920,000
Site Development & Construction	\$476,420,000
Project Development	
Permitting	
Decommissioning & Demolition	
Construction	
Commissioning	
Interconnection	
	<b>\$911,340,000.00</b>





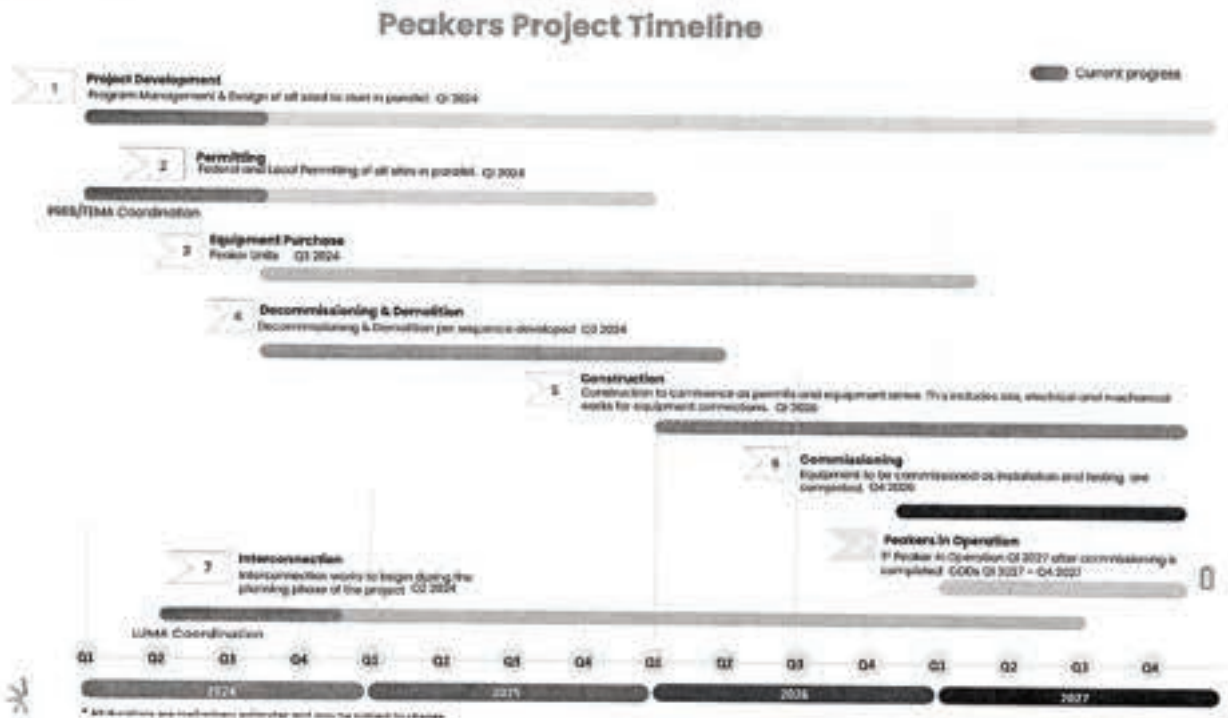
### Peakers Project Timeline

We are currently exploring ways to improve last month's timeline by engaging in negotiations with proponents and revisiting the construction sequences. Our goal is to identify areas where adjustments can be made to optimize construction efficiency without compromising quality. By collaborating closely with equipment proponents, we aim to streamline processes, eliminate bottlenecks, and reconfigure certain phases of construction. This approach will help us potentially exceed our original project deadlines while ensuring smooth workflow. An updated timeline reflecting these adjustments will be provided in next month's report.

GPR-PREB-NEPRMI20220005-20240730#1(b)

- b. The stages of each task, timeline, present status and estimated time for completion.

Response:



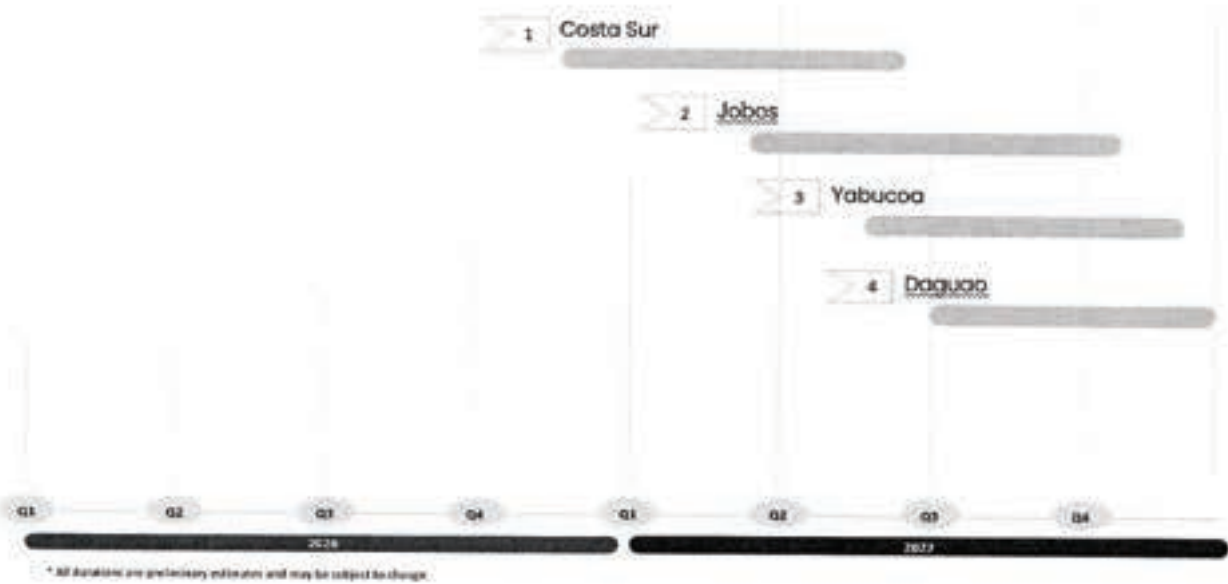
American International Plaza  
250 Av. Luis Muñoz Rivera, Suite 1200  
San Juan, PR 00918

GPR-PREB-NEPRMI20220005-20240730#1(c)

- c. Project timeline chart (e.g. Gant Chart) with critical path for the Commercial Operation Date (COD) of the project.

Response:

**Peakers – Commissioning Timeline**  
From Precommissioning Start to Commissioning Completion





GPR-PREB-NEPRMI20220005-20240730#1(d)

- d. Permit list, permits obtained, estimated timeline for each permit and status of such permit.

Response:

NEPA Permit Status

Permit	Applicable Sites	Status	Submittal Date	Estimated Approval
EHP NEPA Review (Record of Environmental Consideration expected)	All Peaker projects	DSOW submitted 9/18/24.  Originally an EA was expected to be required. In recent talks, FEMA has indicated they think an EA will not be needed, and that the <u>Peakers</u> could be processed under a REC.	9/18/24	Dec 2024-Jan 2025
Coastal Zone Consistency Certification	Costa Sur	Peakers expected to be covered under FEMA and PRPB's existing blanket Coastal Certification (in effect until 2028)	9/18/24	N/A
Biological Resources Endangered Species Act (ESA) Section 7	All Peaker projects	Information submitted with DSOW.	9/18/24	N/A *If FEMA agrees with no effects determination no USFWS consultation required
National Historic Preservation Act Consultation	All Peaker projects	Archaeological reports submitted with DSOW	9/18/24	Dec 2024-Jan 2025

Note: All dates are preliminary estimates and are subject to change

## Local Permit Status

Permit	Applicable Sites	Status	Estimated Submittal	Estimated Approval
DNER Rule 141 – Environmental Impact Documentation	All Peaker projects	General Arrangement Plans being finalized prior to filing.	January 2025	March 2025
PRFC Fire Review	All Peaker projects	Will be filed by Contractor	Q2 2025	60 days after submission
Permiso Unico Incidental (PUI)	All Peaker projects	Will be filed by Contractor	Q2 2025	30 days after submission
DNER Asbestos/Lead Removal	All Peaker projects	Will be filed by Contractor	Q2 2025	30 days after submission

Note: All dates are preliminary estimates and are subject to change

GPR-PREB-NEPRMI20220005-20240730#1(e)

- e. Task 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.

Response:

See responses to questions a through d.



GPR-PREB-NEPRMI20220005-20240730#1(f)

f. Permit and cost for each site to accommodate the project.

Response:

NEPA Permit Costs		
Permit	Applicable Sites	Estimated Cost
EHP/NEPA Review	All Peaker sites	\$150,000 for all sites. Includes EHP Review coordination
Coastal Zone Consistency Certification	San Juan Costa Sur	\$8,000/site
Biological Resources Endangered Species Act (ESA) Section 7	All Peaker projects	\$15,000/site
National Historic Preservation Act Consultation	All Peaker projects	\$15,000/site

 Note: All costs are preliminary estimates and are subject to change

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American International Plaza  
250 Av. Luis Muñoz Rivera, Suite 1200  
San Juan, PR 00918

Local Permit Costs

Permit	Applicable Sites	Estimated Cost
DNER Rule 141 – Environmental Impact Documentation	All Peaker projects	\$35,000/site
PRFC Fire Review	All Peaker projects	\$3,000/site
Permiso Unico Incidental (PUI)	All Peaker projects	\$25,000/site
DNER Asbestos/Lead Removal	All Peaker projects	\$15,000/site

Note: All costs are preliminary estimates and are subject to change