

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

NEPR

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IN RE:

REQUEST FOR APPROVAL OF THE
VEGA BAJA DECOMMISSIONING
PLAN

CASE NO.: NEPR-MI-2024-0003

SUBJECT: Motion to Inform Limited Waiver of
Incentive Payment Request in the
Decommissioning of Vega Baja Power Station

**MOTION TO INFORM LIMITED WAIVER OF INCENTIVE PAYMENT REQUEST
IN THE DECOMMISSIONING OF VEGA BAJA POWER STATION**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

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

1. On October 31, 2024, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order titled *Approval of the Vega Baja Decommissioning Plan* ("October 31st Resolution"). In the October 31st Resolution, the Energy Bureau determined that the decommissioning of the Vega Baja Power Station submitted by Genera aligns with the Approved Integrated Resource Plan ("Approved IRP")² and the strategic initiatives for transitioning Puerto Rico's energy infrastructure towards renewable sources. While acknowledging the Proposed Decommissioning Plan's general compliance with regulatory

¹ Pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* ("LGA OMA"), dated January 24, 2023, executed by and among PREPA, Genera, and the Puerto Rico Public-Private Partnerships Authority ("P3A"), 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 Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan, *In re. Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, August 24, 2020 ("Approved IRP"). Minor modifications and/or clarifications to the Approved IRP were introduced through a Resolution and Order on Reconsiderations issued by the Energy Bureau on December 2, 2020, in case: *In re. Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001.

requirements, the Energy Bureau noted the need for adjustments in several substantive elements, such as the decommissioning budget, project timeline, and the consultation processes involved in the decommissioning notice. Furthermore, the October 31st Resolution ordered Genera to modify the Proposed Decommissioning Plan, including the Decommissioning Budget discussion in the Executive Summary and any other relevant sections concerning the cost savings incentive. The Energy Bureau specified that Genera would not be eligible to receive any incentive payments from other sources, as the proposed decommissioning would be fully federally funded.

2. On November 12, 2024, Genera filed a document titled *Motion to Submit Amendment to the Decommissioning Plan for the Vega Baja Power Station* ("November 12th Motion"). Through the November 12th Motion, Genera submitted a revised version of the Proposed Decommissioning Plan as Exhibit A ("Updated Decommissioning Plan") along with a table outlining the changes and addressing the comments, recommendations or orders stated by the Energy Bureau in the October 31st Resolution.

3. On November 13, 2024, the Energy Bureau issued a Resolution and Order titled *Approval of the Vega Baja Decommissioning Plan* ("November 13th Resolution"). In the November 13th Resolution, the Energy Bureau expressed that, from a preliminary review of the Updated Decommissioning Plan, the cost savings incentive section had not been modified. Consequently, the Energy Bureau requested that Genera discuss in its filing of the Decommissioning Plan any unmodified provisions, accompanied by a detailed justification for reconsideration of the original determinations regarding such conditions.

4. Lastly, in the November 13th Resolution, the Energy Bureau additionally noted that Genera must ensure that the Updated Decommissioning Plan presented includes all modifications required in the October 31st Resolution. The Energy Bureau further mandated Genera to submit a

redlined version reflecting the changes made to the Proposed Decommissioning Plan along with a detailed justification for any reconsiderations of its initial determinations as outlined in the October 31st Resolution.

5. On November 18, 2024, Genera filed a document titled *Request for Reconsideration of October 31, 2024, Determinations and Motion to Submit Response in Compliance with Resolution and Order Dated November 13, 2024* (“November 18th Motion”). Through the November 18th Motion, Genera submitted the redlined version of the Updated Decommissioning Plan. Additionally, through the November 18th Motion, Genera clarified that it has not unilaterally rejected the Energy Bureau's mandates as suggested in the November 13th Resolution. Instead, Genera respectfully requested the deferral of the incentive interpretation matter to ensure continuous progress on the decommissioning activities without delays, emphasizing that the determination regarding incentives can be addressed separately from the execution of the decommissioning plan to advance Puerto Rico’s energy transition.

6. Furthermore, in the November 18th Motion, Genera objected to new requirements imposed by the Energy Bureau in the October 31st Resolution, which deviated from the provisions of the LGA OMA. Specifically, the Energy Bureau determined that Genera may only receive cost savings incentives if FEMA funds are available and permissible under federal guidelines, and that no alternative funding from PREPA or other non-federal sources can be used to pay the incentive. Genera argued that the Energy Bureau did not cite any provision in the LGA OMA to support these new conditions, and that imposing such requirements negatively impacts Genera's legal rights and deviates from the agreement established by the parties.

7. Further articulated within the November 18th Motion Genera emphasized that the fixed compensation and incentive structure, a fundamental component of the LGA OMA, should

not be subject to alteration based upon subjective assessments of the compensation's significance. Genera highlighted the additional operational responsibilities undertaken without proportional fixed fee benefits, including the management of generation assets beyond those specified in the LGA OMA. Consequently, Genera urged the Energy Bureau to sanction the deferment of the incentive applicability assessment and to accept the Updated Decommissioning Plan as submitted with the November 12th Motion, without requiring further modifications. Moreover, Genera solicited the Energy Bureau to reconsider its determinations presented in the October 31st Resolution and permit Genera to procure Incentive Payments from non-federal funding sources for the project.

8. Notwithstanding the aforementioned, and in an effort to expedite the approval process of the decommissioning activities, Genera hereby voluntarily waives its request for Incentive Payments **specifically** related to the decommissioning of the Vega Baja Power Station. This waiver is made solely for this specific to the implementation of the Vega Baja Decommissioning Plan to facilitate the immediate commencement and completion of the decommissioning activities and to prevent any further delays that might hinder the progress of Puerto Rico's transition to renewable energy sources. **Importantly, this waiver is provided without prejudice and should not be construed as acceptance or endorsement of the Energy Bureau's methodology, interpretations, or determinations regarding incentive eligibility as stated in the October 31st Resolution.** Genera remains steadfast in its commitment to the contractual terms established in the LGA OMA and asserts that this waiver is made **only** in the interest of promoting the swift advancement of Puerto Rico's energy infrastructure modernization.

9. Genera explicitly asserts that this voluntary waiver does not establish any precedent for future projects, nor does it alter, modify, or diminish any of Genera's rights or obligations under

the LGA OMA. Genera does not accept or agree with the Energy Bureau's interpretations, methodologies, or conditions regarding incentive payments as outlined in the October 31st Resolution. Specifically, Genera disputes the Energy Bureau's assertions that incentive payments are inapplicable when projects are federally funded or that alternative funding sources cannot be utilized for such incentives. By making this waiver, Genera is not conceding any legal arguments or positions and expressly reserves all rights to dispute, challenge, or contest the Energy Bureau's interpretations in any future proceedings or contexts. This waiver is made **without prejudice** to Genera's contractual rights and should not be interpreted as acceptance to any deviations from the terms agreed upon in the LGA OMA.

10. Furthermore, Genera unequivocally reserves the right to seek and claim Incentive Payments for Decommissioning Cost Efficiencies in all other current and future decommissioning plans and projects, regardless of the source of funding, whether federal, local, or otherwise. Genera maintains that the provisions of the LGA OMA expressly entitle it to such incentives and that these entitlements are integral to the contractual agreement between the parties. Genera intends to continue presenting requests for incentives in alignment with the terms and conditions agreed upon in the LGA OMA for all applicable projects moving forward. Genera's position is that the incentive structure established in the LGA OMA is a critical component designed to promote efficiency, cost savings, and effective project execution, and should be fully honored and upheld in all subsequent decommissioning activities.

WHEREFORE, Genera respectfully requests the Energy Bureau to **take notice** of the above for all purposes; **acknowledge** Genera's voluntary waiver of the Incentive Payment request for the Vega Baja Decommissioning Project; and **approve** the Updated Decommissioning Plan as submitted with the November 12th Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 29th day of November 2024.

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CERTIFICATE OF SERVICE

We hereby certify that a true and accurate copy of this motion was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System.

In San Juan, Puerto Rico, this 29th day of November 2024.

/s/ Alejandro López-Rodríguez
Alejandro López-Rodríguez