

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

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

CASE NO.: NEPR-MI-2024-0003

SUBJECT: Acceptance of Genera limited
waiver for the Vega Baja
Decommissioning Plan.

RESOLUTION AND ORDER

On October 31, 2024, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("October 31 Resolution") approving, with certain limitations and conditions, the proposed decommissioning plan of the Vega Baja plant ("Proposed Decommissioning Plan") submitted by Genera PR, LLC ("Genera"). The Energy Bureau also ordered Genera to submit an updated version of the Proposed Decommissioning Plan prior to commencing the plan's execution.

M
Jim
On November 12, 2024, Genera filed a document titled *Motion to Submit Amendment to the Decommissioning Plan for the Vega Baja Power Station* ("November 12 Motion"). In this filing, Genera submitted an updated version of the Proposed Decommissioning Plan as Exhibit A ("Updated Decommissioning Plan"). Additionally, Genera included as Exhibit B a table allegedly outlining the changes or addressing the comments, recommendations or orders stated by the Energy Bureau in the October 31 Resolution.¹ However, Genera did not submit a redline version of the Updated Decommissioning Plan, which substantially prevented the Energy Bureau verifying the modifications. Furthermore, the Energy Bureau noted that the Updated Decommissioning Plan did not include some of the modifications ordered in the October 31 Resolution.

JAB
On November 13, 2024, the Energy Bureau issued a *Resolution and Order* requiring Genera to submit a redline version of the Updated Decommissioning Plan reflecting the changes made to the Proposed Decommissioning Plan. The order required Genera to ensure that the Updated Decommissioning Plan submitted to the Energy Bureau includes all modifications required in the October 31 Resolution. Additionally, Genera was instructed to provide detailed justification explaining why the Energy Bureau should reconsider any of its original determination as stated in the October 31 Resolution.

ASD
AM
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 the Resolution and Order dated November 13, 2024* ("November 18 Motion"). In this filing, Genera submitted a redline version of the Updated Decommissioning Plan.² Additionally, Genera requested the Energy Bureau to reconsider its interpretations outlined in the November 13 Resolution, which concluded that Genera had unilaterally disregarded the Energy Bureau's mandates. Genera also sought approval for deferring the future evaluation of the applicability of the incentive payment and the approval of the Updated Decommissioning Plan. Moreover, Genera requested reconsideration of the decision, denying its alleged right to receive incentive payments from non-federal funding sources.

On November 29, 2024, Genera filed a document titled *Motion to Inform Limited Waiver of Incentive Payment Request in the Decommissioning of Vega Baja Power Station* ("November 29 Motion"). In this motion, Genera voluntarily withdraws its request for incentive payments

¹ See November Motion, pages 4-5.

² It is not possible to determine which version Genera used to create the redlined document.



associated with the decommissioning of the Vega Baja Power Station and seeks approval for the Updated Decommissioning Plan submitted as part of the November 12 Motion.

The Energy Bureau has reviewed the Updated Decommissioning Plan and concludes that Genera has not yet complied with the directives outlined in the October 31 Resolution. Notably, the October 31 Resolution required Genera to remove Table 10-1 from the Proposed Decommissioning Plan. Specifically, the Energy Bureau stated:

...

Genera also outlined a series of conditions, designated Conditional Project Duration Risks, that allegedly pose a risk to the proposed timeline for demolition activities. It proposes that, should these conditions arise, additional time be granted for the completion of demolition activities.³ These conditions are outlined in Table 10-1 of the Proposed Decommissioning Plan.⁴ The Energy Bureau regards the proposed conditions as too general, excessively broad, and therefore unacceptable. The Generation OMA already provides parameters for the parties to consider timeline extensions for executing activities in the Proposed Decommissioning Plan. Allowing Genera's broad and general conditions would create excessive leeway for subpar execution of decommissioning activities.

*Based on the foregoing discussion, Genera **MUST DEVELOP** a new comprehensive timeline that includes permitting, procurement activities, and other relevant phases, and **MUST REMOVE** the unacceptable conditions identified in Table 10-1 from the Proposed Decommissioning Plan. This is not to say that some situations listed in Table 10-1 may not warrant timeline extensions. However, **if and when these situations arise**, the parties will consider them in line with the parameters established in the contract.⁵*

Additionally, the Energy Bureau directed Genera to revise the discussion of the Decommissioning Budget in the Executive Summary, as well as any other relevant sections, to address the cost savings incentive.⁶ The Energy Bureau stated:

...

*Genera represents that the proposed decommissioning will be **entirely federally funded**, meaning no funds will be required from Genera's Operating Budget, nor will PREPA be obligated to fund any accounts to cover costs related to the proposed decommissioning.⁷ For the Vega Baja Decommissioning Project, **Genera may only receive a cost savings incentive if FEMA funds are available and permissible under federal guidelines**. According to FEMA procurement regulations under 2 C.F.R. Part 200, FEMA funds can be used for performance-based incentives, but only if such use complies with the allowable cost principles. If FEMA funds are not available or are not allowed to be used for the incentive, Genera will not be eligible to receive any incentive payments from other sources. In other words, if FEMA funds do not cover the cost savings incentive, **no alternative funding -whether from PREPA or other non-federal sources- can be used to pay the incentive**. The Proposed Decommissioning Plan, including the Decommissioning Budget discussion in the*

³ See Proposed Decommissioning Plan, Table 10-1, pages 45-46.

⁴ *Id.*

⁵ See October 31 Resolution, page 12.

⁶ See October 31 Resolution, page 10.

⁷ See, Proposed Decommissioning Plan, Section 7.1, p. 28. [...the estimated decommissioning budget is expected to be entirely federally funded.]



*Executive Summary and any other relevant sections, shall be modified accordingly.*⁸

However, despite the Energy Bureau's explicit instructions, Genera has not implemented the required modifications in the Updated Decommissioning Plan. Accordingly, the Energy Bureau **DIRECTS** Genera to submit, within **three (3) business days** of the notification of this Resolution and Order, a revised version of the Updated Decommissioning Plan, along with a redlined version. In this revised version, Genera:

1. **SHALL** delete the following sentence from the discussion of the Decommissioning Budget in the Executive Summary: "Any incentives earned in accordance with the Legacy Generation Asset Operation and Maintenance Agreement in respect of this budget will be factored into Genera's FY2026 budget,"⁹ and instead add the following sentence: "As directed by the Energy Bureau, despite Genera's initial objection and subsequent limited waiver, Genera will not be entitled to any incentive payment for implementing the Decommissioning Plan."
2. **SHALL** delete Section 7.1.1¹⁰ and Table 7-1 (*Conditional Project Duration Risks*) from the Execution Timeline section¹¹ of the Updated Decommissioning Plan, along with any references to them or the concepts discussed therein.

To the extent that Genera complies with these explicit orders, no further review of the updated version of the Vega Baja Decommissioning Plan will be required. The Energy Bureau **RECOGNIZES** Genera's waiver which shall **FORBID** Genera to request any incentive payments¹² related to the approved Vega Baja Decommissioning Plan. Therefore, the Energy Bureau will not address the appropriateness of the incentive payment, as it is no longer a matter of dispute.

The Energy Bureau **WARNS** Genera that:

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

Be it notified and published.

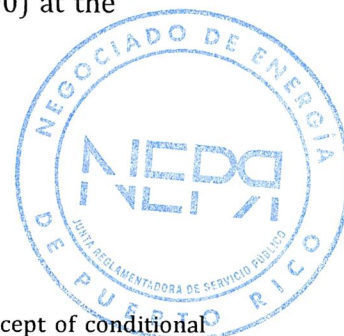
⁸ See Proposed Decommissioning Plan, page IX.

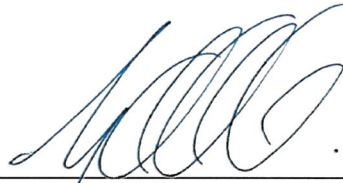
⁹ See Updated Decommissioning Plan, page IX.

¹⁰ See Updated Decommissioning Plan, p. 29. The Energy Bureau reaffirms that the concept of conditional project duration risks shall not be included in any part of the new Updated Decommissioning Plan. Any issues related to project delays will be addressed if and when they arise under the force majeure provisions of the Generation OMA, as established in the October 31 Resolution.

¹¹ See Updated Decommissioning Plan, pages 33-34.

¹² This includes federal and non-federal funds.

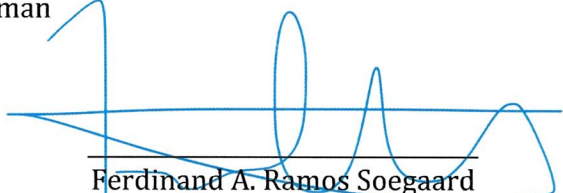




Edison Avilés Deliz
Chairman



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 December 13, 2024. I also certify that on December 13, 2024, a copy of this Resolution and Order was notified by electronic mail to jfr@sbgblaw.com; alopez@sbgblaw.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 December 13, 2024.


Sonia Seda Gaztambide
Clerk