

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

NEPR

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IN RE:

GENERA PR LLC FUEL OPTIMIZATION
PLAN

CASE NO.: NEPR-MI-2023-0004

SUBJECT: Motion to Reconsider Final
Resolution and Order on Genera Fuel
Optimization Plan from November 22, 2024

**MOTION TO RECONSIDER FINAL RESOLUTION AND ORDER ON
GENERA’S FUEL OPTIMIZATION PLAN FROM NOVEMBER 22, 2024**

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:

I. Initiative 8: Asset Supplementation

1. On November 22, 2024, the Puerto Rico Energy Bureau (“PREB”) notified Genera of its Resolution and Order (“Final Resolution”) on the administrative proceeding commenced on July 1, 2023, regarding the *Fuel Optimization Plan* for Fiscal Year 2024 (“FOP”), submitted to PREB by Genera, in compliance with the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* (“LGA OMA”), on September 15, 2023.

2. In its Final Resolution, PREB rejected without prejudice the methods described in Initiative #8 of the FOP, among others, and requested Genera to “resolve the issues identified for

¹ Pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* (“LGA OMA”), dated January 24, 2023, executed by and among the Puerto Rico Electric Power Authority (“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 the Energy Bureau with respect to any matter related to the performance of any of the O&M Services provided by Genera under the LGA OMA.

each of these initiatives in this Resolution and Order before an updated FOP is submitted for the Energy Bureau's evaluation and approval." The rejection without prejudice appears to be based on PREB's understanding that Genera has not yet implemented Initiative #8. Additionally, PREB determined that calculating the savings from the initiative requires identifying the fuel costs avoided through the operation of the supplemental assets. [See Sections VI and VIII of the Final Resolution.]

3. However, Genera had, in fact, implemented through an affiliate and has claimed savings from an asset supplementation initiative for its first contract year. Discussions with the P3 Authority regarding the related payment have been slowed by the lack of an approved calculation methodology for the initiative. Genera requests the PREB to acknowledge Genera's notice of implementing an asset supplementation initiative, revisit and approve Initiative #8 and confirm it can be applied over the term of the OMA.

4. Initiative #8 of Genera's FOP focuses on bringing supplemental assets to bear in the grid system, which may include power generation related equipment and infrastructure, such as regasification assets, to enable the operation of generation and the transition to more cost-efficient fuel sources. The objectives of the initiative are expected fuel savings and minimum or no upfront capital investment by PREPA.

5. For awareness, in FY24, thanks to the efforts and negotiations of Genera, Genera's affiliate made regasification infrastructure available to PREPA to enable the running of certain generation units at San Juan and Palo Seco on natural gas rather than diesel, consistent with Initiative #8. The infrastructure allowed the conversion of liquefied natural gas ("LNG") into a usable form, thereby reducing energy costs and contributing to more efficient power generation. Genera's affiliate had invested over \$29 million in this equipment, which included regasification

systems, vaporizers, piping, and other critical components necessary for LNG operation, and additionally, over \$3.5 million for backup fuel handling equipment to ensure diesel supply as a contingency. Since the termination of FEMA and USACE contracts, Genera's affiliate has not received any rental payments for the infrastructure.

6. PREPA did not purchase or need to bear any capital cost for these assets, yet it captured significant savings from their use over several months. The cost reduction resulting from the substitution of LNG for higher-cost diesel fuels at these sites amounted to approximately \$64.97 million, entitling Genera to a Fuel Optimization Payment under the OMA. The initiative highlights the economic and operational benefits of using this infrastructure, which was funded and implemented independently by a Genera affiliate, and ensures that the benefits of fuel transition—particularly the cost savings—are recognized and accounted for as part of Genera's efforts to optimize fuel usage and costs, which in the end, will result in a benefit to energy consumers in Puerto Rico. Genera is currently seeking recognition from the P3 Authority of these benefits, as further outlined in its report on incentives and penalties.

7. Legally and regulatorily, Initiative #8 complies with the LGA OMA and PREB's requirements, as outlined in docket NEPR-MI-2023-0004. Under Section 4.2(t) of the OMA Genera must submit to the PREB the FOP for its review and approval. However, the FOP is defined in this section as “a plan intended to take effect from the Service Commencement Date and describing the Fuel Cost Savings Initiatives and outlining **the expected methods and estimated fuel savings** to be achieved during the Term of the Agreement”. Thus, Genera is only required, as it did, to provide the general methods and estimated fuel savings, but not the specific projects and exact fuel costs which would be avoided through the operation of the supplemental assets.

8. Moreover, if Genera affiliate decides to remove its owned regasification infrastructure being used for these generation units, it will take up to a year to design, procure and install a new regasification infrastructure, which will require a capital investment from PREPA equal to or higher than Genera's affiliate, not to mention the substantial increase in fuel costs for the operation of these units with ULSD until new regasification infrastructure is installed.

9. For these reasons, Initiative #8 aligns directly with the objectives of the FOP by reducing costs, improving efficiency, and enhancing the reliability of Puerto Rico's energy supply. In the specific example under review by the P3 Authority, the regasification infrastructure has allowed for the widespread use of LNG, resulting in substantial monthly savings that directly benefit ratepayers. Additionally, it provides a stable fuel source, reducing reliance on more expensive and less efficient alternatives.

10. Genera acknowledges that the term "Asset Supplementation" may lead to some confusion and will propose different terminology in future FOPs. The focus is entirely on the economic and operational savings made possible by bringing supplemental assets and infrastructure for use by or together with existing generation as negotiated by Genera. Initiative #8 is, in essence, a claim for cost savings in fuel usage achieved through the enormous efforts made by Genera for its affiliate to maintain in place the regasification infrastructure, rather than a claim for the infrastructure itself.

11. Initiative #8 represents a crucial component of Genera's FOP and directly supports the broader objectives of reducing energy costs and improving system efficiency in Puerto Rico. It complies with all relevant legal and regulatory requirements, aligns with industry standards, and provides measurable savings to ratepayers. Genera respectfully requests that PREB approve

Initiative #8 as an effective and lawful initiative within the regulatory framework, recognizing its value in achieving operational and economic efficiencies for Puerto Rico's energy sector.

12. Genera respectfully requests that PREB recognize Initiative #8 as a legitimate, practical, and effective initiative for achieving the FOP's objectives and approve it under the regulatory framework. Thus, allowing for the present Reconsideration and vacating November 22, 2024, Resolution and Order with respect to this initiative only, hence confirming Initiative as provided.

II. The Resolution and Order of November 22, 2024, did not include warnings about the affected party's right to request reconsideration before the agency or to file a judicial review, including the applicable procedures and deadlines.

13. Although the Final Resolution of the PREB affects Genera's proprietary and liberty interests, PREB failed to notify or warn Genera of its right to request reconsideration of the decision or to seek judicial review of the same, thus violating the provisions of the Puerto Rico Uniform Administrative Procedure Act ("LPAU"). Specifically, the Final Resolution states as follows:

I also certify that on November 22, 2024, a copy of this Resolution and Order was notified by electronic mail to the to the following: alopez@sbgbllaw.com; jfr@sbgbllaw.com; kbolanos@genera-pr.com. legal@genera-pr.com; regulatory@genera-pr.com. I also certify that today, November 22, 2024, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

14. Section 3.16 of the LPAU, 3 LPRA § 9656, establishes that:

If the agency concludes or decides not to initiate or continue an adjudicative proceeding in a particular case, it will terminate the procedure and notify the parties and their attorneys, if any, in writing via regular or electronic mail of its determination, the grounds for it, **and the available review recourse, including the warnings provided in Section 3.14 of this Act.** *Id.* (emphasis added)

15. Additionally, Section 3.14 of the LPAU, 3 LPRA § 9654, stipulates that:

The order or resolution will warn of the right to request reconsideration before the agency or to file a review appeal as a matter of law before the Court of Appeals, as well as the parties that must be notified of the review appeal, specifying the applicable deadlines. These deadlines will commence only once this requirement is met. Id.

16. The Puerto Rico Supreme Court has held that the notification requirements of Section 3.14 of the LPAU are rooted in due process. Municipality of Caguas v. AT&T, 154 D.P.R. 401, 414 (2001); IM Winner, Inc. v. Municipality of Guayanilla, 151 D.P.R. 30, 35-38 (2000). Specifically, the Supreme Court has ruled that the failure of an agency to meet any of these requirements invalidates the determination and any subsequent proceedings because such notification would violate due process. Citizens Commission v. G.P. Real Property, 173 D.P.R. 998, 1014 (2008); Olivo Román v. Secretary of Treasury, 164 D.P.R. 165, 178-179 (2005). **Furthermore, according to the terms of Section 3.14 of the LPAU, the deadlines for reconsideration and judicial review will not commence until proper notification is made.**

17. The Final Resolution also does not inform Genera of any other remedies available under Act No. 57-2014 or Regulation 8543, such as the opportunity to request an administrative hearing prior to the final decision, thereby depriving it of a real opportunity to challenge a decision that affects its proprietary and liberty interests. Consequently, **the Final Resolution is incorrect as a matter of law, as it fails to meet the notification requirements of the LPAU, constituting a violation of Genera's due process rights.**

WHEREFORE, Genera respectfully requests that the Energy Bureau **take notice** of the above for all purposes; **accept** Genera's **Motion to Reconsider Final Resolution and Order on General Fuel Optimization Plan from November 22, 2024**; and vacate the current November 22nd Resolution and Order.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 23rd day of January 2025.

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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 23rd day of January 2025.

/s/ Alejandro López Rodríguez
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