

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

**IN RE:** GENERA PR, LLC, FUEL  
OPTIMIZATION PLAN

**CASE NO:** NEPR-MI-2023-0004

**SUBJECT:** Resolution on Genera's January 23,  
2025 Motion

**Resolution**

**I. Introduction**

The Puerto Rico Electric Power Authority ("PREPA"), the Puerto Rico Public-Private Partnerships Authority ("P3 Authority") and Genera PR, LLC ("Genera") entered into an agreement for the Puerto Rico Thermal Generation Facility Operation and Maintenance.<sup>1</sup> Under the Generation OMA, Genera is responsible for developing and submitting a *Fuel* Optimization Plan ("FOP") that details initiatives, methodologies, and anticipated savings aimed at reducing fuel costs for PREPA's ratepayers.<sup>2</sup> Before approval, the proposed plan must be submitted to the P3 Authority for comments and evaluation of its suitability. A revised version will then be submitted to the Puerto Rico Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") for final approval.<sup>3</sup> Upon approval, and in compliance with Section 4.2(t) of the Generation OMA, Genera shall, at a minimum, submit an annual updated version of the FOP for review and approval.

The Energy Bureau conducted a review of the most recent version of the Fuel Optimization Plan filed by Genera on April 29, 2024, in the captioned case ("Proposed FOP"). On November 22, 2024, the Energy Bureau issued a Resolution and Order approving various initiatives outlined in the Proposed FOP while rejecting, without prejudice, certain initiatives ("November 22 Resolution"). On January 23, 2025, sixty-two (62) days later, Genera filed a document titled Motion to Reconsider Final Resolution and Order on Genera's Fuel Optimization Plan from November 22, 2024 ("January 23 Motion"), seeking to set aside specific determinations included in the November 22 Resolution.

In light of certain preliminary agreements under consideration by Genera, PREPA, and the P3 Authority to amend the Generation OMA, particularly regarding the potential removal of the incentive provisions contained therein, the Energy Bureau determined that the issues raised in the January 23 Motion could potentially become moot. Accordingly, the Energy Bureau prudently deferred resolution of the January 23 Motion pending the outcome of those negotiations. However, given that such potential amendments have not materialized as of this date, the Energy Bureau deems it appropriate to proceed with the resolution of the matters set forth in the January 23 Motion. Therefore, the Energy Bureau addresses those matters in the present Resolution.

Before resolving the issues, the Energy Bureau is compelled to state that Genera's contention in the January 23 Motion is deeply concerning. As discussed below, the circumstances surrounding its claim for additional compensation of approximately \$32.48 million are not only unfounded but are being pursued before the P3 Authority under highly atypical, troubling, and non-transparent conditions. Equally troubling is the way the P3 Authority has handled the matter, including the lack of transparency and the failure to provide the Energy Bureau with the necessary information. This is particularly serious given that the Generation OMA expressly requires that any claim for incentive payments be notified to the Energy Bureau, accompanied by all supporting details required under the contract. Even though the Energy Bureau advised the P3 Authority of this obligation through official communication

<sup>1</sup> Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement, dated January 24, 2023, executed by and among PREPA, the P3 Authority and Genera ("Generation OMA").

<sup>2</sup> See, Section 4.2(t) of the Generation OMA.

<sup>3</sup> *Id.*

dated January 27, 2025, the P3 Authority has failed to take any action to address the lack of notification. While the obligation to notify the Energy Bureau of the incentive payment claim rests with Genera under the Generation OMA, once the P3 Authority was informed of the deficiency, it was reasonably expected to take appropriate steps to ensure compliance. This concern is underscored by the fact that the claim seeks a \$32.48 million payment, the burden of which would fall directly on ratepayers.

To this date, the Energy Bureau has not received from Genera the required notice or the supporting information mandated by the Generation OMA. Furthermore, a letter from Genera to the P3 Authority dated January 27, 2025 (copied to the Energy Bureau) suggests that the P3 Authority was, to some extent, in agreement with the incentive payment, although it did not proceed with the disbursement.

## **II. Procedural Background**

On July 18, 2023, the Energy Bureau issued a Resolution and Order commencing this administrative proceeding. On September 15, 2023, Genera submitted a Proposed FOP claiming that it was agreed upon by the P3 Authority. On October 19, 2023, the Energy Bureau issued a Resolution and Order that required Genera to respond to questions regarding the Proposed FOP. On November 10, 2023, Genera responded to the Energy Bureau's requests of information ("November 10 Motion").

On November 15, 2023, Genera filed a document titled Motion to Submit Requests for Certification of Initiatives for Contracts Awarded by Genera PR LLC ("November 15 Motion"). In that Motion, Genera stated that it has awarded contracts for Ultra Low Sulfur Diesel ("ULSD") and Fuel Oil No. 6 Oil and identifies that these procurements are related to a set of specified initiatives described in the Proposed FOP. In the November 15 Motion, Genera further requested the Energy Bureau to "certify" the executed contracts under the listed initiatives in the FOP.

On December 20, 2023, the Energy Bureau issued a Resolution and Order ("December 20 Resolution") in which it took three steps to further its evaluation of Genera's FOP: (1) it made further requirements of information ("ROIs") from Genera; (2) it scheduled a Technical Conference with Genera to discuss the FOP; and (3) it formally welcomed stakeholders to provide written feedback on the Proposed FOP and the supplemental information given in response to the Energy Bureau's ROIs.

On January 8, 2024, Genera filed a document titled *Informative Motion Regarding the Revised Fuel Optimization Plan and Request for Confidential Treatment with Supporting Memorandum of Law* ("January 8 Motion") in which it informed "that on January 4, 2024, Genera presented a revised FOP (the "January 4 Revised Fuel Optimization Plan") to the P3 Authority, which is under evaluation". The January 4 Revised Fuel Optimization Plan included "two additional sections identified by Genera's Fuels Office: Section VII - Fuel Change Initiatives, which now includes in its Item 8 a Fuel Swap and Fuel Conversion Initiatives; and Section VIII -Asset Enhancement Initiatives, which includes in its Item 9 an Asset Supplement Initiative". Because the January 4 Revised Fuel Optimization Plan, submitted as Exhibit A of the January 8 Motion, was under consideration by the P3 Authority, Genera requested the Energy Bureau to maintain the January 4 Revised Fuel Optimization Plan under seal of confidentiality pursuant to the Energy Bureau's Policy on Management of Confidential Information.

On January 10, 2024, Genera filed a document titled *Motion Submitting Response to Request for Information in Compliance with Resolution and Order Dated December 20, 2023, and Revision to the Fuel Optimization Plan* ("January 10 Motion") in which it submitted responses to the ROI's outlined in Attachment A of the December 20 Order. Genera presented a new revised FOP ("January 9 Revision of the Fuel Optimization Plan").

On January 10, 2024, the Energy Bureau issued a Resolution and Order ("January 10 Order") in which it addressed the procedural and confidentiality matters related to Genera's revised FOP. Among other actions, the Energy Bureau directed the filing of an updated version of the FOP following input from the P3 Authority, issued a stay of related proceedings to allow time

for review, reminded Genera of the requirements for requesting confidential treatment of documents, and granted confidential treatment to certain materials submitted by Genera.

On February 21, 2024, Genera filed a document titled *Motion Submitting Revision to the Fuel Optimization Plan in Compliance with Resolution and Order Dated January 10, 2024* ("February 21 Motion") in which it: (a) presented a subsequent revision of the FOP and requested that it be evaluated and approved and (b) informed the Energy Bureau that on February 16, 2024, Genera received the P3 Authority's approval of the updated FOP, subject to several comments listed therein ("P3 Authority Letter").

On February 21, 2024 the Energy Bureau also received a letter from Genera regarding a *Request for Leave to Operate Palo Seco MP and Mayagüez CT with Natural Gas as Primary Fuel* ("February 21 Request") that was the effectuation of one of the fuel cost savings measures identified in the updated FOP (Initiative #8: Fuel Swap and Fuel Conversion Initiatives; Phase 1): fuel change from diesel to natural gas for Mayagüez combustion turbines and Palo Seco's mobile pack.

On April 15, 2024, the Energy Bureau issued a Resolution and Order requiring Genera to provide additional information, scheduling a technical conference, and requesting stakeholder comments on the updated FOP ("April 15 Resolution"). This Resolution and Order also required Genera to resolve any ongoing discrepancies with the P3 Authority and file a final FOP with the Energy Bureau. The Resolution and Order further discussed the proposed fuel swap and stated that the fuel swap would be evaluated in this procedure. The Energy Bureau then, through a Resolution and Order issued on May 9, 2024, reconsidered its decision to address the approval of the fuel swap in the FOP case, and instead opened a separate case, *In re: Review of Genera PR, LLC Request to Operate Palo Seco MP and Mayaguez CT with Natural Gas as Primary Fuel*, Case No. NEPR-MI -2024-0004.

On April 24, 2024, Genera filed responses to the ROIs related to the April 15, Resolution. On April 29, 2024, Genera moved to clarify the record relating to different filed versions of the FOP, which includes the P3 Authority Approved FOP ("Final 2024 FOP") as Appendix C, and the P3 Authority's letter approving this FOP as Appendix B.

On May 23, 2024, the Energy Bureau held a Technical Conference ("Technical Conference"), attended by Genera and the Independent Consumer Protection Office ("OIPC" by its Spanish acronym), to address various issues and questions related to the Final 2024 FOP. On June 7, 2024, OIPC, Queremos Sol, and Convergent Strat filed stakeholder comments.

On June 28, 2024, Genera filled a document titled *Motion in Compliance with Bench Orders Issued During May 23rd Technical Conference and Request of Approval of Process Proposal* ("June 28 Motion") in which it: (a) responded to different bench orders from the May 23, 2024, Technical Conference and (b) presented proposals to address the raised concerns about misaligned incentives resulting from the way Genera has proposed to calculate savings for Initiative #1 and Initiative #7.

On November 22, 2024, the Energy Bureau issued a Resolution and Order approving various initiatives outlined in the Proposed FOP, while rejecting, without prejudice, some initiatives ("November 22 Resolution"). Thereafter, Genera filed the January 23 Motion. On January 28, 2025, the Energy Bureau issued a Resolution and Order taking notice of the January 23 Motion and commenced its evaluation on Genera's arguments ("January 28 Resolution"). On April 23, 2025, the Energy Bureau issued a Resolution announcing its intention to resolve the January 23 Motion within thirty (30) days from April 23, 2025 ("April 23 Resolution").

### **III. Scope of a FOP Review**

In the November 22 Resolution, the Energy Bureau detailed the scope of its evaluation of a proposed FOP under the Generation OMA, including the criteria and standards to be applied in determining whether a proposed initiative qualifies for approval.<sup>4</sup> To summarize, under

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<sup>4</sup> See November 22 Resolution, pp. 2-4.

the Generation OMA, Genera is responsible for developing and submitting an FOP for review and approval by the Energy Bureau.<sup>5</sup> The Energy Bureau emphasized that achieving fuel savings is not the sole criterion for evaluating fuel optimization initiatives, particularly since incentives of this nature should not be granted to Genera merely for fulfilling its contractual obligations or for applying the expertise for which it was originally engaged.<sup>6</sup>

The Energy Bureau determined that the principles established for performance incentive mechanisms will serve as the basis for evaluating the FOP initiatives.<sup>7</sup> Notably, the Energy Bureau resolved that, consistent with the framework established under Regulation 9137, it will, to the extent reasonable, apply the following guiding principles when evaluating the initiatives included in the Proposed FOP.<sup>8</sup> The initiatives and the associated savings calculation methodologies will: (a) promote behavior aligned with public policy objectives that would not otherwise materialize to a sufficient extent; (b) be clearly defined, readily interpretable, and capable of straightforward verification; (c) emphasize performance areas within Genera's reasonable sphere of control; (d) be structured to maximize net customer benefits; (e) limit the total financial incentives to no more than what is necessary to align Genera's performance with the public interest; and (f) complement, without duplicating or distorting, the financial incentives already in place, ensuring that Genera is neither under- nor overcompensated for achieving the desired results.<sup>9</sup>

Once approved, the Generation OMA requires Genera to update the FOP at least once per year, with each update subject to evaluation and approval by the Energy Bureau.<sup>10</sup> The Energy Bureau has consistently maintained that the FOP shall not be implemented unless and until formal approval has been granted.<sup>11</sup> Consistent with the foregoing, the Energy Bureau deems that entitlement to an incentive payment should not arise independently of its approval of the corresponding initiative within an approved FOP.

In sum, Genera may request incentive payments only pursuant to a FOP that has been duly approved by the Energy Bureau. Furthermore, such payments may be requested solely in connection with the initiatives that have received formal approval. Any interpretation to the contrary would undermine the very purpose of the Energy Bureau's evaluation and approval of the FOP, effectively rendering the approval process meaningless. It would also allow the claiming of incentive payments to become a non-transparent exercise, subject to Genera's unilateral discretion in determining what constitutes a FOP initiative over the course of a year, in contravention of the principles of regulatory oversight and accountability established under the Generation OMA and the applicable energy public policy.<sup>12</sup> Moreover, absent clearly established parameters for identifying applicable initiatives and the corresponding fuel savings calculation methodologies, Genera could unexpectedly assert entitlement to incentive payments at the end of the fiscal year -payments to which it may

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<sup>5</sup> See Section 4.2(t) of the Generation OMA.

<sup>6</sup> See November 22 Resolution, p. 4.

<sup>7</sup> *Id.*

<sup>8</sup> See, in general, *Regulation for Performance Incentive Mechanisms*, Regulation 9137, Energy Bureau, December 13, 2019 ("Regulation 9137").

<sup>9</sup> *Id.*

<sup>10</sup> See Section 4.2(t) of the Generation OMA.

<sup>11</sup> See, for example, the *Resolution and Order* dated April 15, 2024, issued in the case *In Re: Genera PR, LLC Fuel Optimization Plan*, Case No.: NEPR-MI-2023-0004, in which the Energy Bureau stated that:

*[a]ccording to Section 4.2(t) of the Generation OMA, the fuel optimization plan will not take effect until it is approved by the Energy Bureau (...the Fuel Optimization Plan shall not be effective until approved by the [P3 Authority] and the [Energy Bureau]).*

<sup>12</sup> As further discussed below, in or around the end of December 2024, the Energy Bureau learned for the first time that Genera was asserting a claim for \$32.48 million in incentive payments for an initiative that had not only failed to be presented for evaluation and approval but was also based on questionable grounds and actions undertaken by Genera and its alleged affiliate.

have no right- thereby circumventing the structured regulatory process and undermining the principles of transparency, fairness, and due oversight that govern the Generation OMA.

Relevant to the issue presented in the January 23 Motion, as a prerequisite for procuring an incentive payment, and pursuant to Section 7.1(c)(ii) of the Generation OMA, Genera is required to submit to the Energy Bureau a copy of the Incentives and Penalties Report, which must include the separate Fuel Optimization Report along with all supporting information.<sup>13</sup>

### III. Genera's January 23 Motion

In the January 23 Motion, Genera contends that the Energy Bureau rejection of Initiative #8 of its Proposed FOP was based on a misunderstanding or incorrect assumption regarding the implementation and nature of the initiative. According to Genera, Initiative #8, which describes the use of supplemental generation-related infrastructure, referred to as *Asset Supplementation*, to enable the operation of certain generation units on liquefied natural gas ("LNG") instead of diesel had, in fact, already been implemented by a Genera affiliate during the first contract year. The initiative, Genera explains, is designed to produce *expected fuel savings* for PREPA with *minimum or no upfront capital investment* by PREPA.

Genera highlights that during Fiscal Year 2024 ("FY24"), through its negotiations and efforts, its affiliate made available regasification infrastructure to PREPA to allow the continued operation of certain generation units at San Juan and Palo Seco using LNG instead of diesel. This infrastructure enabled the conversion of LNG into usable gas form and consisted of systems valued at over \$29 million, including regasification systems, vaporizers, piping, and other critical components, along with an additional \$3.5 million in backup fuel-handling equipment for contingency diesel supply. Genera emphasizes that these assets were privately funded by its affiliate and that, following the termination of FEMA and USACE contracts, the affiliate has not received rental payments for the continued availability of the infrastructure.

According to Genera, PREPA bore no capital cost for this infrastructure yet directly benefited from reduced fuel expenses, with avoided fuel costs estimated at approximately \$64.97 million. Genera therefore claims it is entitled to a *Fuel Optimization Payment* under the Generation OMA. Genera argues that it satisfied the requirements of Section 4.2(t) of the Generation OMA by submitting a plan that *describ[es] the Fuel Cost Savings Initiatives and outlin[es] the expected methods and estimated fuel savings* to be achieved during the term of the Generation OMA. It contends that the Generation OMA does not require the submission of project-specific details or exact avoided fuel costs at the initial FOP approval stage. Accordingly, Genera maintains that Initiative #8 "complies with all relevant legal and regulatory requirements" and should be recognized and approved as a valid and effective component of the Proposed FOP.

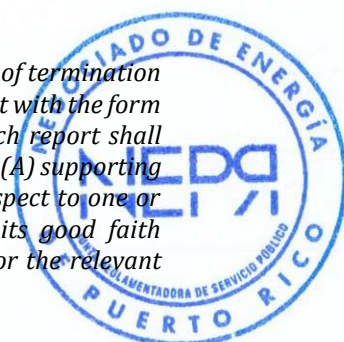
The January 23 Motion also cautions that if the affiliate-owned infrastructure is withdrawn due to lack of acknowledgment or approval of the requested incentive, it could take up to a year to design, procure, and install replacement regasification infrastructure, requiring significant capital investment from PREPA and causing increased fuel costs due to continued reliance on ULSD in the interim.

Genera alleges that the term "Asset Supplementation" may have caused confusion and states that it intends to adopt different terminology in future filings. However, it emphasizes that the focus of Initiative #8 is on the cost savings achieved through the continued use of the infrastructure, not on claiming ownership or reimbursement for the infrastructure itself. It

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<sup>13</sup> Section 7.1(c)(ii) of the Generation OMA states:

(ii) No later than thirty (30) days following the end of a Contract Year or the date of termination of this Agreement, Operator shall submit a report in a form substantially consistent with the form attached to the Mobilization Plan (the "Incentives and Penalties Report"), which report shall include the separate Fuel Optimization Report, **to Administrator and PREB** with (A) supporting performance data, information and reports evidencing its performance with respect to one or more of the categories of Incentives and Penalties and (B) based thereon, its good faith calculation of the proposed Incentive Payment and/or Penalties, in each case for the relevant Contract Year(s)...



describes the initiative as “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.”

Additionally, Genera argues that the Energy Bureau’s November 22 Resolution failed to include the procedural advisories required by Sections 3.14 and 3.16 of the *Puerto Rico Uniform Administrative Procedure Act*, Act No. 138 of June 30, 2017, as amended (“Act 38-2017”), including notice of the right to request reconsideration or to seek judicial review. On that basis, Genera requests that the Energy Bureau vacate the November 22 Resolution solely with respect to Initiative #8 and approve said initiative as a valid and lawful component of the Proposed FOP.

#### IV. Analysis and Evaluation

##### A. Nature of the FOP Review Process; Reconsideration; and Judicial Review

The proceeding for the evaluation of a proposed FOP is not adjudicative in nature. Rather, it constitutes a non-adversarial, *ex parte* regulatory process intended to assess the Proposed FOP’s compliance with Puerto Rico’s energy public policy and its consistency with the terms of the Generation OMA. The process does not involve identifiable parties asserting adverse legal interests, nor does it exhibit the adversarial structure characteristic of adjudicative proceedings. Accordingly, it does not result in the adjudication of individual rights or obligations that would trigger the contested-case procedures set forth in the Act 138-2017. In light of the non-adjudicative nature of this process, the Energy Bureau is not required to include a notice of reconsideration or judicial review pursuant to Article 3.14 of Act 38-2017.

Even if there is some right to reconsideration involved, to the extent that Genera is seeking reconsideration of the November 22 Resolution **beyond sixty-two (62) days from the date of its issuance**, such a request is deemed **UNTIMELY** pursuant to the procedural limitations set forth in Article 3.15 of Act 38-2017 and Puerto Rico’s Supreme Court case law. Any reconsideration request, where applicable, must be submitted within twenty (20) days from the date of notification of the resolution.

The Supreme Court of Puerto Rico applied the doctrine of undue delay (*incuria*) to reject a due process challenge based on lack of formal notice.<sup>14</sup> The Supreme Court held that even if a party was not properly notified under the Act 138-2017, the claim may still be barred if the party had actual or constructive knowledge of the adverse decision and failed to act within a reasonable time.<sup>15</sup> The Supreme Court has consistently stated that even if the notice requirements were not strictly complied with, if the party had actual or imputed knowledge of the determination and failed to act with due diligence, the doctrine of undue delay (*incuria*) may operate against it.

Under the circumstances of this case, where Genera does not dispute having received the November 22 Resolution on the date of its issuance and has failed to act with due diligence or to articulate any justification for its delay, the doctrine of undue delay (*incuria*) squarely applies. A party that, despite actual notice, unreasonably delays in asserting its rights forfeits any entitlement to reconsideration or judicial review. Accordingly, Genera is barred from seeking further relief in this proceeding. The foregoing analysis, in and of itself, is sufficient to warrant the **DENIAL** of the January 23 Motion. Nevertheless, the circumstances of this case warrant that the Energy Bureau also expresses its views regarding Genera’s unfounded claims, particularly for the purpose of providing guidance that it expects Genera to follow in any future related action.

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<sup>14</sup> See in general, *IM Winner, Inc. v. Municipio de Guayanilla*, 151 D.P.R. 30 (2000); *Horizon v. JTA. Revisora, RA Holdings*, 191 DPR 228, 235-236 (2014); *Molini Gronau v. Corp. PR Dif. Púb.*, 179 DPR 674, (2010); *Comisión Ciudadanos v. G.P Real Property*, 173 DPR 998 (2008); and *Eco Park, Inc., et. al., v. Municipio de Yauco*, 202 DPR 525 (2019).

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



*B. Denial of Proposed Initiative #8*

Initiative #8 in the Proposed FOP contemplates producing fuel cost savings through the use of additional generation units located at the sites of Legacy Generation Assets.<sup>16</sup> In the Proposed FOP Genera cites the Generation OMA, which lists one possible source of fuel savings to be the “addition of power generation equipment which is more fuel efficient and/or can operate on an alternative and more economical fuel.”<sup>17</sup> The Proposed FOP further states that Genera would minimize or avoid capital investment by “leasing generation units instead of outright acquisition” and that the “leasing cost of the units will be covered by the fuel savings achieved on each implementation.”<sup>18</sup> Regarding the timeline for implementation, the Proposed FOP states that “the precise timeline is unknown at this time, but the first project implementation could begin as early as 4QFY24” (that is the fourth quarter of fiscal year 2024, running from April 1, 2024 to June 30, 2024).<sup>19</sup>

The Proposed FOP also states that “[a]ll works related to asset supplementing initiatives must be evaluated are subject to PREB and regulatory approvals.”<sup>20</sup> In the February 21 FOP draft, Genera did not include this equivalent language. When asked about that omission by the Energy Bureau in question 13(a) of the Energy Bureau’s requirements of information of April 15, Genera stated that: “Genera plans to seek the approval of Energy Buraus (sic) for projects under this initiative.”<sup>21</sup> The Energy Bureau also required Genera to detail the “suggested protocol and plan of action” for the execution of each project under this initiative. Genera responded with a process that includes a filing with the Energy Bureau detailing the proposed project’s savings model, legal, regulatory, and policy alignment, and an explanation of the source of funds.<sup>22</sup>

Based on the Proposed FOP, Genera’s response to requirements of information, and discussion during the Technical Conference, the Energy Bureau came to two conclusions: (a) Genera’s proposed method for quantifying savings from Initiative #8 was flawed, and (b) Genera had not implemented Initiative #8 during FY24, and it was therefore not necessary to correct the flaws in the savings methodology for at that time. It is worth recalling that Genera itself stated that the timeline for implementation was unknown and that it would await the Energy Bureau’s determination on the matter.

Genera’s proposed savings method in the Proposed FOP fails to account for the impact of a lower marginal cost of generation from the supplemental power generation equipment on system dispatch. Genera’s proposed method would therefore overstate system-wide fuel cost savings from the supplemental power generation equipment. In response to the Technical Conference, Genera provided an alternative method for quantifying savings for Initiative #7 (which covers fuel swaps and conversions, and about which the Energy Bureau expressed similar dispatch concerns). Genera’s proposed method for Initiative #7 in a situation with changes in dispatch is to use the method for Initiative #8. Genera provided no method that would cure the Energy Bureau’s concerns regarding systemwide fuel cost changes from supplemental power generation assets. In addition, in the November 22 Resolution, the Energy Bureau stated that Initiative #8 -adding new generation assets to existing sites-raises unresolved issues regarding the calculation of avoided fuel costs. The Energy Bureau believe that Genera of the need to resolve this issue and likely to coordinate with LUMA in developing a savings calculation method based on system dispatch data. However, the current record contains no evidence that Genera has addressed the Energy Bureau’s concerns regarding the savings methodology for Initiative #8.

We emphasized that, in describing Initiative #8 in the Proposed FOP and in its responses to the Energy Bureau’s ROIs, Genera clearly indicated that it would make appropriate filings with the Energy Bureau prior to implementing any action that could qualify under Initiative

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<sup>16</sup> See Proposed FOP, p. 38.

<sup>17</sup> *Id.*

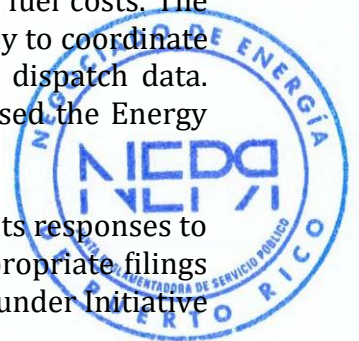
<sup>18</sup> *Id.*

<sup>19</sup> *Id.*, p. 39.

<sup>20</sup> *Id.*, p. 38.

<sup>21</sup> See April 24 Motion, Exhibit A, p.21.

<sup>22</sup> *Id.*, p.p. 22-23.



#8. Genera also stated that it might implement such an action in the fourth quarter of FY24, but it did not submit any filings indicating that it had undertaken such an action.

As discussed above, the denial of Initiative #8 is supported by the evidentiary record in this case. Accordingly, the Energy Bureau sustains its determination to deny Initiative #8.

*C. Genera's Request of \$32.48 million Incentive Payment Under Initiative #8*

As discussed above, Initiative #8 was described by Genera as the procurement of “**power generation equipment** which is more fuel efficient and/or can operate on an alternative and more economical fuel.” However, in a surprising departure from that representation, Genera now seeks, through its January 23 Motion, the approval of an incentive payment of \$32.48 million—not for the procurement of power generation equipment, but for certain fuel savings allegedly achieved through investment in LNG regasification infrastructure procured and installed by an affiliate at PREPA's Palo Seco and San Juan facilities. The nature of this activity is fundamentally inconsistent with the scope of Initiative #8 as proposed (but never approved) which clearly contemplates the procurement of **power generation equipment**. It is likewise inconsistent with the description of Initiative #8 provided by Genera in the Proposed FOP, in its responses to the Energy Bureau's ROI's, and in the statements made by Genera's representatives during the Technical Conference.

In this case, neither Genera nor its affiliate procured the power generation equipment proposed under Initiative #8 (and in compliance with the requirements of the Generation OMA).<sup>23</sup> That fact alone is sufficient to **REJECT** any attempt by Genera to get an incentive payment for an activity that was not even proposed within the scope of the rejected Initiative #8. Likewise, Genera's attempt to characterize this activity as falling within the scope of Initiative #8 constitutes a serious effort to secure a payment to which it is not entitled. This impudent attempt is further exacerbated by the fact that Genera failed to submit to the Energy Bureau copy of the Incentives and Penalties Report, which must include the separate Fuel Optimization Report along with all supporting information, that would have allowed for a proper assessment of the appropriateness of the claimed payment. By withholding this critical information, Genera effectively deprived the Energy Bureau of the opportunity to evaluate the validity and alignment of the activity with Initiative #8, thereby further undermining its claim.<sup>24</sup> The Energy Bureau also stresses that, to date, the required report has not been submitted by Genera. This failure not only precludes consideration of the \$32.48 million incentive payment requested in the January 23 Motion, but also bars any other incentive payment claims, including the purportedly undisputed amount of \$15.71 million<sup>25</sup> that Genera is seeking to recover. Accordingly, at this time, Genera is not entitled to any incentive payment under the Generation OMA.

*D. Alleged Investment of Genera's Affiliate in Regasification Infrastructure*

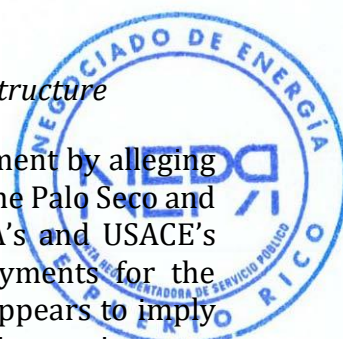
Genera also purports to justify the requested \$32.48 million incentive payment by alleging that an affiliate made an investment in LNG regasification infrastructure at the Palo Seco and San Juan facilities. Genera asserts that, following the conclusion of FEMA's and USACE's temporary emergency missions, its affiliate has not received rental payments for the continued use of such regasification infrastructure. Furthermore, Genera appears to imply that, absent the requested payment, its affiliate may remove the regasification equipment - an action that could potentially disrupt fuel supply operations and compromise system reliability. Specifically, Genera asserts that if the affiliate-owned infrastructure is withdrawn due to lack of acknowledgment or approval of the requested incentive, it could take up to a

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<sup>23</sup> Note that Section 5.6 of the Generation OMA sets forth the framework under which Genera or its Affiliates may make capital investments in the generation system. Specifically, it provides that Genera or its Affiliates shall not undertake any capital investment in the generation assets unless such investment has been previously reviewed and approved by Energy Bureau, in accordance with the procedures established in the Generation OMA and the applicable law.

<sup>24</sup> See Section 7.1(c)(ii) of the Generation OMA.

<sup>25</sup> This amount (\$15.71 million) has been referenced by Genera in correspondence on which the Energy Bureau has been copied; however, the report purportedly supporting that payment has never been submitted to the Energy Bureau.



year to design, procure, and install replacement regasification infrastructure, requiring significant capital investment from PREPA and causing increased fuel costs due to continued reliance on ULSD in the interim. This statement may be reasonably interpreted as an implicit threat by Genera and/or its Affiliate toward PREPA, suggesting that failure to authorize the requested payment could result in the removal of critical regasification infrastructure. Such implications are deeply concerning and raise questions about the appropriateness of the tactics employed in support of the incentive payment request.

We first start noting that in the January 23 Motion, Genera failed to specifically identify which Affiliate allegedly incurred the referenced costs, nor does it clarify the conditions under which such costs were incurred or the authority that purportedly justifies such activities. Moreover, Genera failed to identify who authorized the alleged investment, when such authorization was granted, when the investment and related works were executed, and under whose supervision these activities were carried out. After all, Genera is requesting a payment of approximately \$32.48 million to be funded by PREPA's ratepayers, and at a minimum, they deserve comprehensive and well-substantiated justification for such a significant expenditure.

Given Genera's failure to clearly explain the fundamental basis of its claim, the Energy Bureau is obliged to consider the request as unfounded and, once again, as an improper tactic to support a claim for an incentive payment. Nevertheless, the Energy Bureau is compelled to remind Genera of certain facts that may bear directly on the validity of its claim.

First, the temporary generation units installed at the behest of FEMA and USACE in Palo Seco and San Juan were, from the outset, designed to operate using LNG as the primary fuel and ULSD as backup. This configuration was not the result of any action taken by Genera or its affiliates. Second, following the conclusion of the FEMA and USACE emergency mission, the Energy Bureau approved PREPA's scope of work for the acquisition of the temporary generation units installed at Palo Seco and San Juan, which expressly included the regasification infrastructure.<sup>26</sup> In fact, FEMA's approved scope of work itself encompassed the regasification infrastructure, as recognized by PREPA in filings before the Energy Bureau.<sup>27</sup> Third, after the end of the FEMA and USACE mission, PREPA entered into an agreement for LNG supply with a Genera affiliate -an entity that is a subsidiary of New Fortress Energy, Inc. Under that agreement, the fuel supplier is obligated to provide the required regasification infrastructure at no additional cost to PREPA.<sup>28</sup> Fourth, Genera has claimed that it undertook significant efforts with its affiliate to secure continued use of LNG

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<sup>26</sup> See *Resolution and Order* dated February 21, 2024 issued in case *In Re: LUMA's Response to Hurricane Fiona*, Case No. NEPR-MI-2022-0003, page 2. <https://energia.pr.gov/wp-content/uploads/sites/7/2024/02/20240221-MI20220003-MI20210002-Resolution-and-Order.pdf>.

<sup>27</sup> See, for example, the description of additional equipment at Palo Seco as follows: [...*The additional equipment to be purchased as part of the Scope of Work includes the following: Two (2) natural gas fired water bath heaters for liquefied natural gas (LNG) vaporization, each with a natural gas firing capacity of 25 million British thermal units per hour (MMBtu/hr)...* LNG storage and handling equipment]. *Urgent Motion Submitting for Review and Approval the Scope of Works for the Transfer/Ownership to PREPA of the Temporary Generation Units* dated January 14, 2024 filed by PREPA in case *In Re: Review of the Puerto Rico Electric Power Authority's 10-Year Infrastructure Plan – December 2020*, Case No. NEPR-MI-2021-0002, Exhibit 11, DR-4339-PR Hurricane Maria FEMA Public Assistance, Project Scope of Work with Cost Estimates, Submittal to COR3 and FEMA, 1/9/2024, page 10. <https://1drv.ms/b/s!Ar65W98d0ALjvRfIYOMSDh4Yq6-OA?e=CBpdbl>.

<sup>28</sup> See, *Natural Gas Sale and Purchase Agreement* by NFEnergía LLC, subsidiary of New Fortress Energy, Inc., and Puerto Rico Electric Power Authority, dated March 15, 2024, p. 6. [...*WHEREAS, to address such requirement, the 3PPO issued the Request for Proposal 3PPO-0118-04-FA on February 17, 2024 in which it seeks bids to deliver LNG to the sites of the Generation Units, provide for the vaporization of such LNG, and deliver Natural Gas to the Generation Units and Seller was selected to supply such Natural Gas pursuant to the 3PPO-0118-04-FA*]; *Id.*, p. 14 [*Seller shall deliver LNG in ISO Containers for inland sites by truck, or by alternative means as agreed by the Parties in writing, to the areas designated by Buyer for placement of ISO Containers, revaporize such LNG using the relevant Regas Equipment (owned or contracted for by Seller), and deliver Natural Gas to Buyer at the Delivery Points in the quantities nominated by Buyer and as directed by Buyer pursuant to Article V*].

at the Palo Seco and San Juan facilities. If that is indeed the case, Genera should assess whether any such actions may have constituted a violation of the conflict-of-interest policies that govern transactions between PREPA and Genera's affiliates.

In addition, it is worth noting that in its filings related to the acquisition of the temporary units, PREPA initially asserted that the breakdown of equipment in the FEMA SOW was not the same as the breakdown of equipment included in the proposed asset purchase agreement.<sup>29</sup> PREPA insisted that the purchase agreement must include the liquefied natural gas regasification systems, the receipt bays of the ISO tanks built at the Palo Seco and San Juan plants, and the natural gas totalizer meter at both plants.<sup>30</sup> PREPA has also identified that some material clauses from prior drafts were deleted and, thus, are not part of the *Execution Version* of the asset purchase agreement.<sup>31</sup> Specifically, with regard to the regasification equipment, PREPA requested the inclusion of language in the asset purchase agreement to ensure that the \$1.00 lease for the regasification equipment remains in effect (1) regardless of whether NFE continues as the gas supplier, and (2) regardless of whether Genera continues as the operator of the Legacy Generation Assets -thereby eliminating any risk that the regasification equipment would be removed from the units during their temporary operation.<sup>32</sup> Despite recognizing that some of the conditions it requested were not approved at closing, PREPA requested that the Energy Bureau approved the transaction.<sup>33</sup> The Energy Bureau clarifies that it approved the SOW not the asset purchase agreement.<sup>34</sup>

In sum, although the Energy Bureau does not have the benefit of all relevant facts, largely due to Genera's failure to provide the necessary information, when viewed collectively, the circumstances surrounding this request raise serious concerns. It appears that Genera is seeking an incentive payment under highly dubious conditions. If that is so, it is a direct consequence of Genera's own failure to disclose the information that might otherwise establish its entitlement to the requested incentive payment. Moreover, the questionable nature of Genera's claim is further compounded by the conflicting information and contradictions it has introduced into the record of this case. These inconsistencies

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<sup>29</sup> See *Urgent Motion to Submit the Execution Version of the Asset Purchase Agreement* dated March 15, 2024, filed by PREPA in case *In Re: Request for Approval of the Asset Purchase Agreement between NFE Power PR LLC and The Puerto Rico Electric Power Authority*, Case No. NEPR-AP-2024-0001, page 3-4. <https://energia.pr.gov/wp-content/uploads/sites/7/2024/03/20240315-MI20210004-Urgent-Motion-to-Submit-The-Execution-Version-of-The-Asset-Purchase-Agreement.pdf>

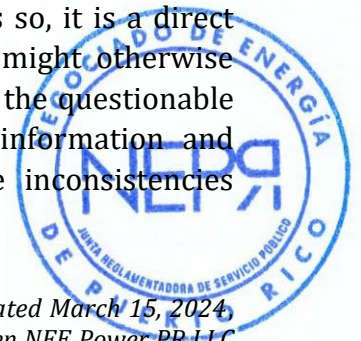
<sup>30</sup> *Id.*

<sup>31</sup> See *Urgent Motion to Submit the Execution Version of the Asset Purchase Agreement* dated March 15, 2024, filed by PREPA in case *In Re: Request for Approval of the Asset Purchase Agreement between NFE Power PR LLC and The Puerto Rico Electric Power Authority*, Case No. NEPR-AP-2024-0001, page 3-4. <https://energia.pr.gov/wp-content/uploads/sites/7/2024/03/20240315-MI20210004-Urgent-Motion-to-Submit-The-Execution-Version-of-The-Asset-Purchase-Agreement.pdf>

<sup>32</sup> See *Urgent Motion to Submit the Execution Version of the Asset Purchase Agreement* dated March 15, 2024, filed by PREPA in case *In Re: Request for Approval of the Asset Purchase Agreement between NFE Power PR LLC and The Puerto Rico Electric Power Authority*, Case No. NEPR-AP-2024-0001, page 3-4. <https://energia.pr.gov/wp-content/uploads/sites/7/2024/03/20240315-MI20210004-Urgent-Motion-to-Submit-The-Execution-Version-of-The-Asset-Purchase-Agreement.pdf>

<sup>33</sup> See *Motion in Compliance with the March 15th Resolution and Order* dated March 15, 2024 filed by PREPA in case *In Re: Request for Approval of the Asset Purchase Agreement between NFE Power PR LLC and The Puerto Rico Electric Power Authority*, Case No. NEPR-AP-2024-0001, pages 2-5. <https://energia.pr.gov/wp-content/uploads/sites/7/2024/03/20240315-AP20240001-Motion-in-compliance.pdf>.

<sup>34</sup> See *Resolution and Order* issued on March 15, 2024 in case *In Re: Request for Approval of the Asset Purchase Agreement between NFE Power PR LLC and The Puerto Rico Electric Power Authority*, Case No. NEPR-AP-2024-0001, page. 2. <https://energia.pr.gov/wp-content/uploads/sites/7/2024/03/20240315-AP20240001-Resolution-and-Order-1.pdf>.



undermine the credibility of its assertions and further preclude the Energy Bureau from making a well-founded determination in support of the requested incentive payment.

## V. Conclusion

In light of the preceding discussion, the Energy Bureau hereby **DENIES** the January 23 Motion. This determination **AFFIRMS** the rejection status of Initiative #8 and, consequently, Genera's requested \$32.48 million incentive payment shall be **DEEMED INCONSISTENT** with the FOP approved through the November 22 Resolution.

## VI. Judicial Review

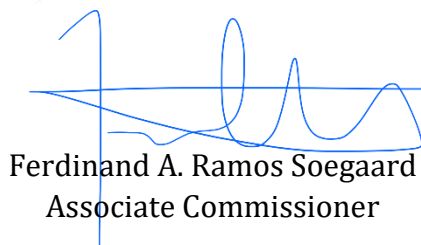
**NOTWITHSTANDING THE ENERGY BUREAU'S DETERMINATION IN PART IV(A), IF GENERA CONSIDERS THAT THIS RESOLUTION IS SUBJECT TO JUDICIAL REVIEW, IT MAY SEEK SUCH REVIEW BEFORE THE COURT OF APPEALS IN ACCORDANCE WITH THE GENERAL PROVISIONS OF ACT 38-2017 AND ACT 57-2014<sup>35</sup>, AND IT SHALL HAVE THIRTY (30) DAYS FROM THE DATE OF NOTIFICATION OF THIS RESOLUTION TO FILE A PETITION FOR JUDICIAL REVIEW.**

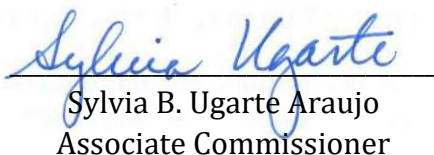
The issuance of this cautionary notice does not imply that the Energy Bureau considers this Resolution to be subject to review at this time before the Court of Appeals, nor does it constitute a waiver of its right to challenge the Court of Appeals' jurisdiction should the situation arise. This cautionary notice is provided to inform Genera of the appropriate forum in which determinations of the Energy Bureau are generally subject to review, as well as the applicable term within which such review may be sought, where appropriate.

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



<sup>35</sup> Article 6.5(c) of Act 54-2014 provides that, in accordance with the provisions of Act 38-2017, the final decisions or resolutions of commissions **in adjudicative proceedings** shall be subject to review by the Court of Appeals of Puerto Rico. See also Article 6.20 of Act 57-2014.

## CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on May 23, 2025. I also certify that on May 23, 2025 a copy of this Resolution and Order was notified by electronic mail to [jfr@sbgblaw.com](mailto:jfr@sbgblaw.com); [legal@genera-pr.com](mailto:legal@genera-pr.com); [regulatory@genera-pr.com](mailto:regulatory@genera-pr.com). I also certify that on May 23, 2025, I proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, on May 23 2025.



A handwritten signature in blue ink, appearing to read "S. Seda", written over a horizontal line.

Sonia Seda Gaztambide  
Clerk