

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

NEPR

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IN RE:

REVIEW OF GENERA PR, LLC
REQUEST TO OPERATE PALO SECO MP
AND MAYAGÜEZ CT WITH NATURAL
GAS AS PRIMARY FUEL

CASE NO.: NEPR-MI-2024-0004

SUBJECT: Motion to Show Cause Why
Sanctions Should Not Be Imposed in
Compliance with May 30th Order and Request
for Reconsideration.

**MOTION TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED IN
COMPLIANCE WITH MAY 30TH ORDER AND REQUEST FOR RECONSIDERATION**

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 counsel of record, and respectfully submits and prays as follows:

1. On January 9, 2025 the Governor of Puerto Rico issued an *Executive Order*, *EO-2025-005*, ("EO-2025-005") which created the Office of Energy Czar, and delegated the authority to coordinate with government agencies to propose and implement initiatives regarding power generation, among other prerogatives. The EO-2025-005 also delegated to the Energy Czar the supervision of actions related to Puerto Rico's electric system.

2. The *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* ("LGA OMA"), dated January 24, 2023, executed by and among PREPA, the Puerto Rico Public-Private Partnerships Authority ("P3A") and Genera is administered by P3A. Coincidentally the Director of P3A is also the Energy Czar.

¹ Pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* ("LGA OMA"), dated January 24, 2023, executed by and among PREPA, the Puerto Rico Public-Private Partnerships Authority and Genera, 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 provided by Genera under the LGA OMA.

3. On April 2, 2025, the Governor of Puerto Rico issued an *Executive Order*, *EO-2025-016* (“Executive Order”), which declared a state of emergency with respect to Puerto Rico’s electricity system and specifically stated:

“I hereby declare a modification and expansion of the state of emergency concerning Puerto Rico’s electric system, including—but not limited to—the transmission and distribution system, **as well as the generation system and the auxiliary infrastructure required to operate Puerto Rico’s electric system in a reliable and affordable manner and in compliance with applicable laws, including environmental regulations.** This declaration also seeks to **modernize and strengthen the system** in line with our current times and circumstances.”

4. On May 16, 2025, the United States Department of Energy (“DOE”) issued *Order No. 202-25-1* (“DOE Order”), following the Governor of Puerto Rico’s declaration of a state of emergency. The DOE Order likewise determined that an emergency exists in Puerto Rico due to a shortage of electric energy and generation resources.

5. On May 28, 2025, Genera filed a *Motion to Inform Commencement of Activities Pursuant to United States Department of Energy Order No. 202-25-1 for Fuel Swapping Conversion* (May 28th Motion), in Case No. NEPR-MI-2021-0002, informing the necessity of the rehabilitation of San Juan units 8 and 10, Cambalache unit 1, and fuel conversion of certain generating units, to maintain grid reliability and serve the public interest, as well as to comply with the aforementioned federal and state orders.

6. On May 29, 2025, at around 6:00 p.m., the Governor of Puerto Rico, Jennifer González Colón, issued her first State Message reiterating the importance of fuel conversion and outlining the need to transition to natural gas as a more affordable and less polluting alternative. In said message, the Governor highlighted the efforts and achievements from her administration, including those by the teams lead by Engineer Josué Colón, in his role as Energy Czar and Executive Director of the Public-Private Partnerships Authority in advancing the rehabilitation and

fuel conversion of generation units, further reaffirming Puerto Rico's public policy on energy transformation, environmental responsibility, and the transition to cleaner, more affordable fuel sources such as natural gas. Among these achievements, the Governor of Puerto Rico, Jennifer González Colón, stated the following:

(6) We currently have a request for proposals underway to supply natural gas to generation units that already operate with this fuel, as well as others that have been approved or are in the process of conversion. This includes the temporary units in Palo Seco and San Juan, the peaking units 5 and 6 in San Juan, **as well as the Mavagüez, Palo Seco, and Cambalache plants.** **These conversions will allow for the replacement of diesel and bunker C with natural gas—a more economical and less polluting alternative.** **The regulatory process is expected to be completed by mid-June,** subject to final approval from the Energy Bureau and the Financial Oversight and Management Board.

7. Notwithstanding the above, on May 30, 2025, at around 4:30 p.m., that is, less than twenty four hours after the Governor's message, the Energy Bureau issued an *Order to Cease and Desist and to Show Cause* ("May 30th Order") in which it ordered Genera to show cause, within ten (10) days from the date of notification of said Order, as to why it should not be fined under Section 6.36 of Act 57-2014, known as the Puerto Rico Energy Transformation and RELIEF Act, as amended ("Act 57-2014"), for attempting to proceed with "unauthorized" fuel conversion activities and for misinterpreting the scope of the DOE Order to circumvent regulatory requirements.

8. In other words, in its May 30th Order, instead of attempting to be consistent and allow Genera to comply with federal orders; to adhere to Puerto Rico's public policy related to the state of emergency concerning Puerto Rico's electric system declared by the Governor in her Executive Order or even try to meet the expected timeline for the conversion to natural gas as stated by the Governor in her State Message, the Energy Bureau continued to impede the conversion to natural gas.

9. Genera hereby respectfully requests the Energy Bureau reconsider its May 30th Order for the reasons stated below.

10. First, Genera would like to clarify it respectfully disagrees with the Energy Bureau's interpretation of preemption regarding the DOE Order. Although the Energy Bureau correctly asserted there is no express preemption by Congress, whenever state regulation could produce a result incompatible with the objectives of the federal government, the occupied field doctrine applies. This is meant to avoid regulatory conflicts between state and federal governments and to promote uniformity.

11. By neglecting Genera to commence using natural gas, the Energy Bureau would not only disregard the DOE Order, but it would also undermine both the federally and locally declared emergencies, as well as the public policy of **both the federal government and Puerto Rico**. However, and to clear the record, if the Energy Bureau wishes to proceed with its denial for natural gas conversion and doesn't grant this request for reconsideration of its May 30th Order, Genera will, once again, comply with the Energy Bureau's determination.

12. Second, Genera emphasizes Puerto Rico's public policy towards natural gas conversion. As previously stated, not twenty-four hours had elapsed since the Governor of Puerto Rico informed the Puerto Rican people of the proposal for conversion to supply natural gas to generation units when the Energy Bureau issued its May 30th Order ordering Genera to cease and desist of any fuel conversion operation —**which it had not even commenced.**

13. Third, Genera would like to clarify it has always been compliant with the Energy Bureau's orders prohibiting conversion to natural gas.

14. Moreover, in its May 28th Motion, Genera merely informed the Energy Bureau of its intention to commence operations of fuel conversion to natural gas since its reliability

efficiency, and resilient nature would strengthen grid reliability with minimal environmental impact.

15. Genera even considered the Energy Bureau's adamant negativity towards fuel swapping conversion and stated it would await ten (10) days for the Energy Bureau to issue a determination regarding the matter.

16. As such, Genera informs once again that it did not incur any expenses, nor had any work performed in connection with the initiation of fuel swapping operations at the specified Cambalache, Mayagüez and Palo Seco Units. No conversion to natural gas has been performed as of this date at the specified Cambalache, Mayagüez and Palo Seco Units. The Energy Bureau even recognizes as such in its May 30th Order. Therefore, there is no basis to assert that Genera uncompiled with any Energy Bureau order or violated any rule or law regarding the prohibition for fuel conversion to natural gas. There is no justification or legal grounds for the imposition of sanctions or fines suggested by the Energy Bureau in its May 30th Order.

17. In its May 30th Order, the Energy Bureau also repeated allegations that are not supported by the record and are not accurate. Specifically, the Energy Bureau claimed that their denial is based on "the need to avoid a concentration or monopoly of natural gas supply that could benefit specific entities". Genera, once again, clarifies that the gas supplier for Cambalache, Palo Seco and Mayaguez power plants, with an **existing and valid contract previously signed by PREPA and not Genera**, is the supplier for only 42.5% of the Liquefied Natural Gas (LNG) used in Genera operated facilities². Genera emphasizes that the supplier for the vast majority of 57.5% of the LNG used in Genera operated facilities is not affiliated with Genera in any way. Therefore,

² See Genera Motion to Show Cause why Genera Should not be Imposed Sanctions in Compliance with May 8 Order filed on May 15, 2025 in docket NEPR-MI-2024-0004.

Genera must emphasize that, according to Act 77 of June 25, 1964 (“Ley Antimonopolística”), no monopoly exists at all and Energy Bureau’s contention is legally unfounded.

18. The Energy Bureau also questioned the fuel cost savings estimates presented by Genera in fuel-swap requests. In the May 30th Order, the Energy Bureau noted that the claimed fuel cost savings have varied from \$18.26 million to \$48 million annually. The explanation for this is simple; the fuel cost savings will vary depending on the dispatch and hours of use of each unit, as is determined by the T&D Operator. However, in every scenario, the fuel swap will represent fuel cost savings for the ratepayers. As an example, assuming that the fuel cost saving was only \$18.26 million annually, from the date Genera submitted its reconsideration motion on February 20, 2025, the fuel cost savings that the ratepayers have lost due to the delay of the Energy Bureau in authorizing the fuel swaps represent \$5 million dollars.

19. Fourth, in its the May 30th Order the Energy Bureau warned Genera it attempts to sanction Genera for “attempting to proceed with unauthorized fuel conversion activities and for misinterpreting the scope of DOE Order No. 202-25-1 to circumvent regulatory requirements”. However, Section 6.36 of Act 57-2014 doesn’t allow the Energy Bureau to impose administrative fines for attempts to violate the act or an order, for misinterpretation of a federal order or for attempts to circumvent regulatory requirements—which are all denied—, but only for violations actually committed. As such, no fine or sanction of any kind is lawfully warranted.

20. Fifth, Genera respectfully emphasizes that the imposition of a \$250,000.00 daily fine is also legally unfounded. Pursuant to Section 6.36, a \$250,000.00 daily fine is only applicable for continued violations to order issues by the Energy Bureau. *See* 22 L.P.R.A. § 1054jj. However, as previously explained, Genera has not engaged in any fuel swapping activity. Therefore, there

has not even been a first instance of noncompliance. Therefore, no sanction is legally warranted under Section 6.36.

21. Lastly, Genera emphasizes that this motion is submitted to demonstrate its commitment to acting responsibly, lawfully, and in alignment with the public policy of the Governor of Puerto Rico, the President of the United States of America, as well as in compliance with federal authorities' orders, in addressing the island's energy crisis. Genera was acting under clear federal authority and with the express support of Puerto Rico's Energy Policy Coordinator (the "Energy Czar"), Engineer Josué Colón, who was cited by Governor Jennifer González Colón in her May 29, 2025, State Message.

WHEREFORE, Genera respectfully request that this Energy Bureau **take notice** of the above for all relevant purposes; **accept** Genera's *Motion to Show Cause Why Sanctions Should Not Be Imposed in Compliance with May 30th Order and Request for Reconsideration*; **reconsider** its May 30th Order; **not impose sanctions** for Genera not having commenced the conversion to natural gas; and **find** that the May 30th Order has been complied with.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 9th day of June 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 9th day of June 2025.

/s/ Jorge Fernández-Reboredo
Jorge Fernández-Reboredo

/s/ José Javier Díaz Alonso
José Javier Díaz Alonso