

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

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

SUBJECT: Resolution on Genera's February
20, 2025 Motion.

RESOLUTION

I. Procedural Background

On January 31, 2025, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued two Resolutions and Orders conditionally approving requests related to natural gas conversions. First, through the Resolution and Order for *Request for Leave to Operate Mayaguez CTs with Natural Gas as Primary Fuel* ("January 31 Resolution for the Mayaguez CTs"), the Energy Bureau conditionally approved the fuel swap for the Mayaguez CTs, subject to fulfillment of certain conditions and criteria outlined therein to safeguard the public interest. That same day, in a separate *Resolution and Order for Request for Leave to Operate Palo Seco MP with Natural Gas as Primary Fuel* ("January 31 Resolution for the Palo Seco MPs"), the Energy Bureau likewise conditionally approved the conversion of the Palo Seco MPs, also subject to specific conditions.¹

On February 20, 2025, Genera PR LLC ("Genera") filed a document titled *Motion for Reconsideration of Resolution and Order dated January 31, 2025* ("February 20 Motion"), in which Genera requests the Energy Bureau to reconsider the January 31 Resolution for the Mayaguez CTs and the January 31 Resolution for the Palo Seco MPs, vacate the current directives, and reinstate the previously approved terms. On March 6, 2025, the Energy Bureau issued a Resolution and Order taking notice of the February 20 Motion and commenced its evaluation on Genera's arguments ("March 6 Resolution").

On May 6, 2025, Genera informed the Energy Bureau of its intention to commence testing and commissioning procedures for the fuel conversion at Palo Seco ("May 6 Motion"). Genera asserted it would move forward with commissioning activities based on its own interpretation of public interest and anticipated cost savings. This filing occurred while Genera's motion for reconsideration of prior conditional approvals remained pending before the Energy Bureau. On May 8, 2025, the Energy Bureau issued a resolution, *Cese and Desist Order* and *Order to Show Cause* through which it ordered Genera to cease and desist from initiating the testing and commissioning process or any activity aimed at enabling the conversion of the Palo Seco MPs to operate with natural gas. It ordered Genera to show cause as to why it should not be fined for each day following the commencement of such unauthorized fuel conversion ("May 8 Resolution").

On May 9, 2025, Genera filed a document titled *Motion Informing Compliance and Requesting Reconsideration of May 8, 2025 Resolution, Cease and Desist Order, and Order to Show Cause* through request to the Energy Bureau reconsider the May 8 Resolution and permit Genera to continue the commissioning of the Palo Seco MP units, including preparing the units to be gas ready ("May 9 Motion"). On May 15, 2025, Genera filed a document titled *Motion to Show Cause why Genera Should not be Imposed in Compliance with May 8 Order* ("May 15 Motion"). Through this motion, Genera requests that no sanctions be imposed, arguing that it has not commenced the conversion to natural gas. On May 15, 2025, the Energy Bureau issued a Resolution announcing its intention to resolve the February 20 Motion within thirty (30) days from May 20, 2025 ("May 15 Resolution").

¹ The January 31 Resolution for the Mayaguez CTs and the January 31 Resolution for the Palo Seco MPs are collectively referred to in this Resolution and Order as the "January 31st Resolutions".



On May 28, 2025, Genera filed a document titled *Motion to Inform Commencement of Activities Pursuant to United States Department of Energy Order No. 202-25-1 for Fuel Swapping Conversion* ("May 28 Motion"). In its May 28 Motion, Genera informed the Energy Bureau of its intention to initiate fuel conversion operations at the Cambalache and Mayagüez plants, asserting authority under the United States Department of Energy ("DOE") Order No. 202-25-1 ("DOE Order"). Genera claimed that the DOE Order authorizes the Puerto Rico Electric Power Authority ("PREPA") and its agents to undertake urgent actions, including fuel conversion, in response to an energy emergency in Puerto Rico. Genera further asserted that absent a determination by the Energy Bureau, within ten (10) days, it would proceed with implementation. On May 30, 2025, the Energy Bureau issued an Order through which it ordered Genera to immediately cease and desist from all activities related to the fuel conversion of generating units, including but not limited to Cambalache and Mayaguez until explicit authorization was granted by the Energy Bureau ("May 30 Resolution"). The Energy Bureau also ordered Genera to show cause as to why it should not be fined for attempting to proceed with unauthorized fuel conversion activities and for misinterpreting the scope of the DOE Order to circumvent regulatory requirements.

On June 9, 2025, Genera filed a document titled *Motion to Show Cause why Sanctions Should not be Imposed in Compliance with May 30th Order and Request for Reconsideration* ("June 9 Motion"), whereby it argued that by neglecting Genera to commence using natural gas, the Energy Bureau would disregard the DOE Order and it would also undermine both federally and locally declared emergencies, as well as the public policy of both federal government and Puerto Rico. Genera also alleges that no conversion to natural gas has been performed, hence there was no basis to assert Genera violated any rule, law, or order.

In this Resolution and Order, the Energy Bureau will limit its analysis solely to the February 20 Motion filed in response to the determinations in the January 31st Resolutions. The Energy Bureau will address independently the arguments raised about the fuel swap for the Palo Seco MPs and the fuel swap for the Mayagüez CTs. All other matters related to the Orders to Show Cause referenced above will be addressed separately through independent Resolutions and Orders to be issued by the Energy Bureau later. This Resolution and Order is limited in scope and does not resolve or adjudicate any issues beyond those specifically addressed.

II. Genera's February 20 Motion

Through the February 20 Motion, Genera seeks reconsideration of the January 31 Resolution for the Mayaguez CTs and the January 31 Resolution for the Palo Seco MPs. Genera contends these resolutions imposed new, unjustified conditions and improperly denied the classification of the fuel conversion projects as "Fuel Cost Savings Initiatives" eligible for incentive payments under the Generation OMA.²

Genera argues that the Energy Bureau overstepped its authority by unilaterally altering the terms of the Generation OMA.³ Specifically, Genera argues that the Energy Bureau's refusal to recognize natural gas fuel conversions as cost-saving initiatives undermines Genera's contractual rights to receive incentive compensation.⁴ Genera claims these projects fall within the definition of Fuel Cost Savings Initiatives as established in the Generation OMA, and that documented reductions in fuel costs should entitle the operator to incentives.⁵ The Energy Bureau's interpretation, according to Genera, introduces undefined standards requiring performance "beyond contractual obligations," effectively rewriting the

² Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement, dated January 24, 2023, executed by and among PREPA, the Puerto Rico Public-Private Partnerships Authority ("P3 Authority") and Genera ("Generation OMA").

³ See February 20 Motion, pp. 3, 14.

⁴ See February 20 Motion, pp. 12-15.

⁵ See February 20 Motion, pp. 13-14.



agreement and depriving Genera of its proprietary interest in obtaining lawful compensation.⁶

In the February 20 Motion, Genera also raises concerns about due process. Genera alleges that the January 31 Resolution for the Mayagüez CTs and the January 31 Resolution for the Palo Seco MPs, failed to provide proper notice of its right to seek reconsideration or judicial review, as required under the Act 38-2017⁷. According to Genera, this omission denied it the opportunity to timely challenge the adverse determinations and undermined its procedural rights.

Additionally, Genera objects to the Energy Bureau's action of invalidating the previously issued conditional approval dated October 11, 2024 ("October 11 Resolution"), without allowing Genera to correct the alleged deficiencies.⁸ Genera alleges that the new conditions imposed in the January 31 Resolution for the Palo Seco MPs were introduced without clear rationale or an opportunity for comment, which Genera views as arbitrary and procedurally deficient.

III. Analysis and Evaluation

A. Consideration of Fuel Swaps as Fuel Cost Savings Initiatives under the FOP

In the February 20 Motion, Genera requests that the Energy Bureau determine that the proposed fuel swaps for the Mayagüez CTs and the Palo Seco MPs constitute Fuel Cost Savings Initiatives eligible for savings under the Generation OMA.⁹ Genera presents a legal argument that includes specific interpretations regarding the scope of various provisions of the Generation OMA.¹⁰ Through this argumentation, Genera seeks to establish that the proposed gas conversions qualify as Fuel Cost Savings Initiatives as defined under the Generation OMA, and therefore, that such conversions would entitle Genera to receive a financial incentive if they are implemented. Genera's argument, as presented in the February 20 motion, attempts to broaden the scope of the Generation OMA by characterizing the proposed fuel conversions as Fuel Cost Savings Initiatives eligible for incentive compensation. However, such an interpretation departs from the plain language and intent of the relevant provisions and improperly seeks to obtain economic benefits without undergoing the required regulatory scrutiny or prior approval.

Notwithstanding the foregoing, the Energy Bureau has stated repeatedly in this proceeding, and as emphasized in the January 31st Resolutions, that the consideration of the proposed Fuel Swaps as Fuel Cost Savings Initiatives will not be made in the context of this case.¹¹

⁶ See February 20 Motion, pp. 2, 13-14.

⁷ Known as the *Puerto Rico Uniform Administrative Procedure Act*, Act No. 138 of June 30, 2017, as amended ("Act 38-2017").

⁸ Through the October 11 Resolution the Energy Bureau of Puerto Rico conditionally approved the proposed fuel conversion of the Palo Seco MPs, subject to the fulfillment of the specific terms and conditions set forth therein.

⁹ See February 20 Motion, pp. 3, 11-15.

¹⁰ See February 20 Motion, pp. 11-15.

¹¹ For example, see January 31 Resolution for the Mayaguez CTs, pp. 3, 13 and 16.



Rather, any such determination will be made, if and when appropriate, in the separate case about the evaluation of the Genera's updated Fuel Optimization Plan ("FOP").¹²

The Energy Bureau recognizes that, in the January 31st Resolutions, it expressed a preliminary inclination to conclude that the referenced fuel swaps, even if they are implemented by Genera or any other party, do not constitute Fuel Cost Savings Initiatives to qualify for savings incentives under the Generation OMA. However, the Energy Bureau has not issued a final determination on that matter. Genera's arguments in this proceeding as to whether such actions qualify as Fuel Cost Savings Initiatives warrant no further consideration beyond acknowledging the Energy Bureau's previously stated preliminary view: that it believes such actions did not meet the criteria to be considered Fuel Cost Savings Initiatives eligible for savings under the Generation OMA.

B. Palo Seco Fuel Swap

In the January 31 Resolution for the Palo Seco MPs, the Energy Bureau replaced the conditions imposed for the Palo Seco MPs fuel conversion established in the October 11 Resolution. Genera objects to this determination on the grounds that the Energy Bureau did not afford it a meaningful opportunity to correct the deficiencies identified by the Energy Bureau, which ultimately prompted the issuance of the determination.¹³ Genera further contends that the new conditions imposed in the January 31 Resolution for the Palo Seco MPs were introduced without clear rationale or an opportunity for comment, which Genera views as arbitrary and procedurally deficient.¹⁴ These arguments are without merit and establish no basis for altering or reconsidering the determination issued by the Energy Bureau.

Regarding the Palo Seco MPs Fuel Swap, Genera was afforded ample opportunity to submit the necessary documentation and explanations to justify the approval of the conversion. The administrative record, however, reflects that Genera submitted conflicting and insufficient information, which prompted multiple Requests for Information ("ROIs") from the Energy Bureau. Even after the issuance of conditional approval, Genera was granted sufficient time to submit additional information to demonstrate compliance with the established conditions. It bears emphasizing that the issue is not merely whether information was submitted, but whether such information satisfied the specific requirements set forth by the Energy Bureau, **which did not occur**. Therefore, the Energy Bureau had ample grounds to set aside the conditional approval of the Palo Seco MPs.

Nevertheless, rather than denying the proposed fuel conversion outright, which would have also been a reasonable and legally supported determination, the Energy Bureau chose to preserve the opportunity to move forward with the Palo Seco MPs conversion initiative by maintaining a pathway for compliance with a new set of conditions. Contrary to Genera's assertion, the conditions imposed by the Energy Bureau in the January 31 Resolution for the Palo Seco MPs (concerning the proposed conversion of the Palo Seco MPs) were expressly supported by the rationale in the January 31 Resolution for the Mayagüez CTs regarding the Mayagüez CTs. That rationale was explicitly incorporated by reference into the January 31 Resolution for the Palo Seco MPs and supports the conditions established therein.¹⁵ It is

¹² See *Id.*, at p. 16, in which the Energy Bureau stated that:

*[t]he Energy Bureau **CLARIFIES** that this conditional approval of the fuel swap for the Mayagüez CTs does not constitute, nor shall it be deemed, construed, or interpreted as a determination regarding the request for a fuel swap at any other site or any initiatives under Genera's FOP. As previously stated, the evaluation of the fuel swap for the Mayagüez CTs as a potential fuel-saving measure shall be conducted in accordance with the applicable criteria and procedures governing such matters, should the proposal be formally submitted in the future.*

¹³ See February 20 Motion, pp. 2-3.

¹⁴ *Id.*

¹⁵ See January 31 Resolution for the Palo Seco MPs, p. 2.



inconsistent for Genera to accept the rationale and conditions applied to the Mayagüez CTs Fuel Swap yet reject that same rationale and conditions when applied to the Palo Seco MPs Fuel Swap. This selective and inconsistent approach to the Energy Bureau's directives is both incomprehensible and unjustified.

The detailed rationale for the imposition of the conditions applicable to the proposed fuel swaps is articulated in the January 31 Resolution for the Mayagüez CTs, which was expressly incorporated by reference into the corresponding resolution for the Palo Seco MPs Fuel Swap.¹⁶ It has been, and continues to be, evident that the risks identified by the Energy Bureau in connection with the proposed conversion of the Mayagüez CTs equally apply to the proposed conversion of the Palo Seco MPs. The conditions were established **not only to ensure compliance with the applicable regulatory framework, but also to safeguard the interests of ratepayers and to prevent exposure to uncompetitive practices by fuel suppliers that could establish a de facto monopoly in the natural gas supply chain, as explained in the January 31 Resolution for the Mayaguez CTs.**¹⁷

Based on the foregoing discussion, the Energy Bureau determines that it is in the public interest to maintain the conditions established in the January 31 Resolution for the Palo Seco MPs. The February 20 Motion seeking to alter or set aside that determination is **DENIED**.

To avoid doubt, and **to prevent the dissemination of misinformation regarding the fuel swaps**, the Energy Bureau reiterates that **it is not denying the conversion of the Palo Seco MPs for dual-fuel use.**¹⁸ Rather, the Energy Bureau reiterates that such fuel conversion shall proceed under the conditions established in the January 31 Resolution for the Palo Seco MPs, which remain in full force and effect. The Energy Bureau emphasizes this fuel swap is permitted primarily to benefit PREPA's ratepayers, as it may result in certain cost savings for the electric service. It is not intended to safeguard the economic interests or financial stability of Genera or its Affiliates, nor to serve as a mechanism for securing financial advantages for Genera absent demonstrable benefits to the public interest.

C. *Nature and Procedural Character of the Administrative Process*

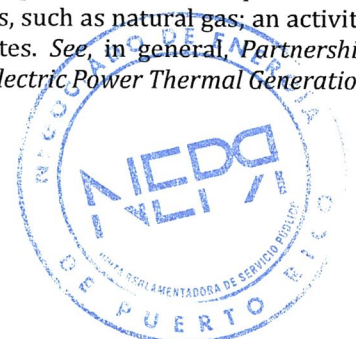
Genera contends that the January 31 Resolution for the Mayagüez CTs and the January 31 Resolution for the Palo Seco MPs, failed to provide proper notice of its right to seek reconsideration or judicial review, as required under the Act 38-2017. According to Genera, this omission denied it the opportunity to timely challenge the adverse determinations and undermined its procedural rights. Genera also implies that it possesses a vested proprietary interest in carrying out the proposed fuel conversion. That is incorrect. No such interest has been acquired by Genera under the Generation OMA or any applicable law.¹⁹ Any assertion by Genera of an acquired right is therefore unfounded. These arguments are without merit.

¹⁶ See January 31 Resolution for the Palo Seco MPs, p. 2.

¹⁷ See January 31 Resolution for the Mayagüez CTs, pp. 7, 15

¹⁸ The Fuel Swap requests do not involve an increase in the capacity of the units, nor do they require repairs or improvements necessary to maintain the units in their current operational condition **or to reduce their outage rate.** In sum, the requests do not positively impact the overall capacity of PREPA's existing generation fleet and will not provide the type of additional generation the Government is seeking through other processes. On the contrary, although not properly addressed by Genera, the proposed modifications are likely to affect the availability of the units during the period required to implement the necessary alterations to the units and the associated fuel handling infrastructure.

¹⁹ It is worth noting that, at the time Genera submitted its bid and subsequently entered into the Generation OMA, the applicable legal and regulatory framework did not contemplate the fuel conversions of existing generation units. In addition, during the selection process for the operator of the Legacy Generation Assets, Genera presented itself as having significant expertise in fuel management and procurement. Its expertise was not premised on the conversion of legacy generation units to alternative fuels, such as natural gas; an activity that may now create unfair competitive advantages in favor of its Affiliates. See, in general, *Partnership Committee Report, Puerto Rico Public-Private Partnership for the Puerto Rico Electric Power Thermal Generation Facilities* dated October 17, 2022, amended on January 18, 2023.



In addition, any Fuel Cost Savings Initiative is inextricably linked to the Fuel Optimization Plan, which, under the Generation OMA, must be submitted for evaluation and approval by the Energy Bureau. By contractual agreement, the parties voluntarily deferred to the Energy Bureau -not only in recognition of its applicable regulatory authority, but also as an express term of the Generation OMA- the responsibility to evaluate and approve the Fuel Optimization Plan. This includes the Energy Bureau's exclusive authority to determine what actions or measures may properly be classified as Fuel Cost Savings Initiatives.

The proceeding for the evaluation of the requested fuel conversions is not adjudicative. Rather, it constitutes a discretionary process. This process does not involve identifiable parties asserting adverse legal interests, nor does it exhibit the adversarial structure characteristic of adjudicative proceedings. It does not result in the adjudication of individual rights or obligations that would trigger the contested-case procedures in the Act 38-2017. Given the non-adjudicative nature of this process, the Energy Bureau is not required to include a notice of reconsideration or judicial review under Article 3.14 of Act 38-2017.

D. Further Clarifications

The conditions imposed by the Energy Bureau in the January 31st Resolutions are unequivocally clear. Nevertheless, certain recent actions by Genera suggest that it interprets those conditions in a manner inconsistent with their plain language and intended purpose.²⁰ More than a mere misreading, such interpretations are openly contrary to the unambiguous meaning of the conditions imposed. These actions reflect a construction that is erroneous and at odds with the clear and express terms established by the Energy Bureau.

The Energy Bureau finds it necessary to clarify that Genera **is not authorized** to unilaterally undertake the conversion of the Mayagüez CTs or the Palo Seco MPs. While **such conversions may proceed**, they are not necessarily to be executed by Genera. Rather, the conditions established in the January 31st Resolutions set forth the methodology that the Energy Bureau expects the Public-Private Partnerships Authority ("P3") and the Third-Party Procurement Office ("3PPO") to follow in selecting the entities that may carry out such conversions. These entities may, or may not, be affiliates or parent companies of Genera. The foregoing does not mean that, to a certain extent, Genera, even if its affiliates are ultimately selected to carry out the conversions or to supply fuel, will have no role in the conversion process. On the contrary, Genera will necessarily be involved, as coordination with the Operator of the Legacy Generation Assets is essential to the successful execution of any conversion of the referenced units.

The Energy Bureau expects to evaluate and approve any agreement negotiated by P3 through the 3PPO to implement the conversions, ensuring that such agreements are consistent with the public interest. The Energy Bureau emphasizes that any proposed fuel conversion must result in substantial fuel cost savings. It does not anticipate approving long-term agreements that merely replicate the pricing levels observed in short-term contracts. On the contrary, long-term agreements are expected to yield sufficient commercial advantages to the selected entities to enable the provision of significantly reduced natural gas prices. To be clear, the Energy Bureau will not be amenable to approving long-term contracts that reflect the elevated pricing observed in existing arrangements.²¹

IV. Conclusion

In view of the foregoing analysis and determinations, the Energy Bureau concludes that the arguments presented by Genera in its February 20 Motion lack merit and justify no alteration of the conditions in the January 31st Resolutions. Although the Energy Bureau is inclined to

²⁰ May 6 Motion and May 28 Motion.

²¹ Natural Gas Sale and Purchase Agreement, Natural Gas Supply (Palo Seco, San Juan and Other Generation Units Around the Island, between NFEnergía LLC and Puerto Rico Electric Power Authority dated March 15, 2024 (the "Temporary-Units Contract"). See, Request to Make Responses to Case No.: NEPR-MI-2021-0014 April 11, 2024 Order Part of the Docket of the Case of Caption, pages 67-137.



determine that the proposed fuel conversions at the Palo Seco MPs and Mayagüez CTs do not qualify as recognized Fuel Cost Savings Initiatives eligible for incentive compensation under the Generation OMA, that determination will not be made in this proceeding. That determination, if appropriate, shall be made in the context of the separate proceeding about Genera’s updated Fuel Optimization Plan.

Regarding the Palo Seco MPs, the Energy Bureau finds that Genera was afforded ample opportunity to demonstrate compliance with regulatory requirements yet failed to submit information that met the standards previously established. The Energy Bureau finds that the new conditions imposed in the January 31 Resolution for the Palo Seco MPs were reasonable, procedurally sound, and grounded in the public interest.

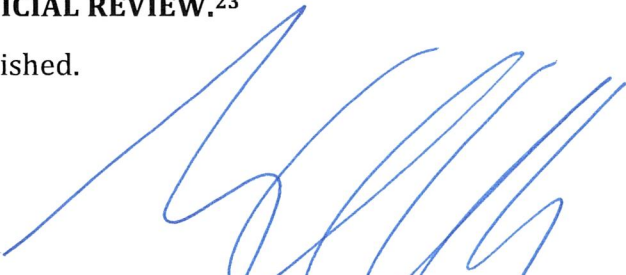
The Bureau also **REJECTS** Genera’s due process claims, reaffirming that the current process is discretionary and non-adjudicative in nature, and therefore not subject to the contested-case requirements of Act 38-2017. No vested right exists for Genera to carry out the fuel conversions, and no procedural entitlement has been violated.

The Energy Bureau **DENIES** the February 20 Motion in its entirety.

V. Judicial Review

NOTWITHSTANDING THE ENERGY BUREAU'S DETERMINATION IN PART III(C), IF GENERA CONSIDERS THAT THIS RESOLUTION IS SUBJECT TO JUDICIAL REVIEW, IT MAY SEEK SUCH A REVIEW BEFORE THE COURT OF APPEALS IN ACCORDANCE WITH THE GENERAL PROVISIONS OF ACT 38-2017 AND ACT 57-2014²², AND IT SHALL HAVE THIRTY (30) DAYS FROM THE DATE OF NOTIFICATION OF THIS RESOLUTION TO FILE A PETITION FOR JUDICIAL REVIEW.²³

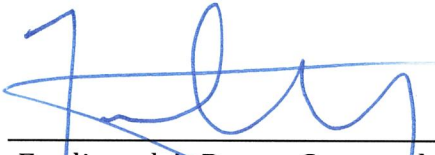
Be it notified and published.



Edison Avilés Deliz
Chairman



Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



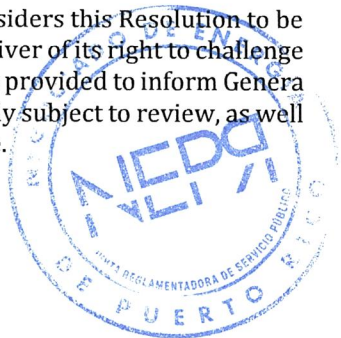
Sylvia B. Ugarte Araujo
Associate Commissioner



Antonio Torres Miranda
Associate Commissioner

²² 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.

²³ 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.




CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on June 20, 2025. I also certify that on June 20, 2025 a copy of this Resolution was notified by electronic mail to jdiaz@sbgblaw.com; jfr@sbgblaw.com; legal@genera-pr.com; regulatory@genera-pr.com. I also certify that on June 20, 2025, I have proceeded with the filing of the Resolution issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, on June 20, 2025.





Sonia Seda Gaztambide
Clerk