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

IN RE: GENERA PR LLC FY2024 INCENTIVES AND PENALTIES REPORT	**CASE NO.:** NEPR-MI-2025-0002 **SUBJECT:** Motion in Compliance with Section 7.1(c)(ii) of the Operations and Maintenance Agreement.

RESOLUTION AND ORDER

I. Relevant Background and Evaluation Framework

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 ("Generation OMA").[1] On July 1, 2023, Genera assumed operation of PREPA's Legacy Generation Assets and began providing Operation and Maintenance ("O&M") Services in accordance with the Generation OMA.

According to the Generation OMA, in each Contract Year, Genera is eligible to receive an incentive for performance in five of the O&M Service Categories ("Incentive Categories"): (i) Operation Cost Efficiency, (ii) generation based load and peaking units performance based on Equivalent Availability Factors ("EAF"), (iii) Safety Compliance, (iv) Environmental Compliance, and (v) Fuel Savings. The maximum, yearly, incentive amount payable to Genera by PREPA is equal to the sum of the five Incentive Categories minus the amount of any penalties, not to exceed $100 million.[2]

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.[3] The FOP 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.[4] Under the Generation OMA, the FOP is not effective until approved by the P3 Authority and the Energy Bureau.[5] 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.

Following a comprehensive proceeding, Genera submitted multiple versions of its proposed FOP.[6] The process included revisions proposed by the P3 Authority, various requests for information issued by the Energy Bureau, and corresponding responses from Genera, as well as a technical conference.[7] Through a Resolution and Order dated November 22, 2024 ("November 22 Resolution"), the Energy Bureau approved certain initiatives proposed by

[1] 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"). Unless otherwise defined in this Resolution, capitalized terms shall have the meaning ascribed to them in the Generation OMA.

[2] *Id.*

[3] Section 4.2(t) of the Generation OMA.

[4] *Id.*

[5] *Id.*

[6] *See* In re Genera PR, LLC Fuel Optimization Plan, Case No. MI-2023-0004.

[7] *Id.*

Genera in the April 29, 2024, version of its Fuel Optimization Plan ("Proposed FOP"),[8] while rejecting others without prejudice.

On January 23, 2025, Genera filed a motion[9] requesting that the Energy Bureau set aside its prior denial of Genera's proposed Initiative #8 ("Asset Supplementation") as stated in the November 22 Resolution. Through a Resolution issued on May 23, 2025,[10] the Energy Bureau denied Genera's January 23 Motion. As further discussed below, in the May 23 Resolution, the Energy Bureau also found Genera's request for a $32.48 million incentive payment for Fiscal Year 2024 ("FY2024"), presented as part of the January 23 Motion, to be inconsistent with the fuel optimization initiatives approved in the November 22 Resolution, and therefore not recommended for payment.[11]

In accordance with Section 7.1(c)(ii) of the Generation OMA, Genera is also required to deliver an Incentives and Penalties Report, including a Fuel Optimization Report, to the P3 Authority and the Energy Bureau no later than thirty (30) days following the end of a Contract Year. The Incentives and Penalties Report (including the Fuel Optimization Plan initiatives) shall include supporting performance data, information, and documentation evidencing Genera's performance and its good faith calculations of the proposed Incentive Payment and/or any applicable Penalties.[12]

On May 30, 2025, Genera filed the with the Energy Bureau a document titled *Motion in Compliance with Section 7.1(c)(ii) of the Operations and Maintenance Agreement* ("May 30 Motion"). Attached as Exhibit A, Genera included a document titled *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement FY2024 Incentive and Penalties Report*, dated July 2024 (the "Incentive Report"). The Incentive Report also included several attachments. Genera requests a net incentive payment of $48.19 million for FY2024.[13]

In this Resolution and Order, the Energy Bureau evaluates the Incentive Report and the corresponding request for incentive payments and issues its recommendations to the P3 Authority for further action. This referral and the recommendations issued by the Energy Bureau to the P3 Authority are made without prejudice to any regulatory actions the Energy Bureau may take in connection with the incentive payment requested by Genera, as well as any penalties related thereto.

II. Evaluation of FY2024 Incentives and Penalties Report

As a threshold matter, the Energy Bureau determines that Genera submitted the Incentive Report in an untimely manner. The Incentive Report was filed with the Energy Bureau 334 days after the date on which it was due. The Energy Bureau finds that Genera failed to comply with the requirements listed in the Generation OMA regarding the timely submission of the Incentive Report. This circumstance is problematic, considering that, through subsequent communications, the Energy Bureau learned of the inclusion in the Incentive Report of certain claims it deemed improper.[14] It is important to highlight that the P3 Authority also failed to notify the Energy Bureau of the submission of the report, which has prevented the Energy Bureau, for a prolonged period, from expressing its position on the matter and may

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[8] *See Resolution and Order, In re: Genera PR, LLC Fuel Optimization Plan,* Case No.: MI-2023-0004, November 22, 2024.

[9] *See In re: Genera PR, LLC Fuel Optimization Plan,* Case No.: MI-2023-0004, *Motion to Reconsider Final Resolution and Order on Genera's Fuel Optimization Plan from November 22, 2024* filed by Genera on January 23, 2025 ("January 23 Motion").

[10] *See Resolution and Order, In re: Genera PR, LLC Fuel Optimization Plan,* Case No.: MI-2023-0004, May 23, 2025 ("May 23 Resolution").

[11] *Id.*, pp.7-11.

[12] Generation OMA, Section 7.1 (c)(II).

[13] *See* Incentive Report, p. 2.

[14] *See* May 23 Resolution.

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have placed at risk the disbursement of a payment that could ultimately prove to be improper.[15] After all, the submission of the Incentive Report to the Energy Bureau, together with all supporting information, serves a purpose to allow the Energy Bureau, in the exercise of its expertise and within the scope of its regulatory jurisdiction, to determine whether the payment of the amounts claimed is justified. This becomes important considering that the Energy Bureau is the entity responsible for approving Genera's FOP and, therefore, is in a better position, than P3 Authority, to assess whether the Incentive Report complies with the requirements set forth therein. Additionally, the Energy Bureau establishes Genera's Operational Budget, including the allocation of funds across the budgetary items and projects. Accordingly, it is also in a better position to determine whether the operational savings claimed by Genera, in fact, constitute actual savings.

In this document, the Energy Bureau reviews each of the five Incentive Categories for which Genera claims an Incentive Payment or recognizes a Penalty. The review includes an assessment of whether the Incentive Report provides adequate explanations, supporting data, and information to evaluate the claims under the requirements of the Generation OMA, the November 22 Motion (approved FOP initiatives), and the regulatory framework established by the Energy Bureau.

A. Fuel Optimization[16]

Section III B.6 of the Generation OMA allows Genera to receive a Fuel Optimization Payment of fifty percent (50%) of any Actual Fuel Savings achieved during the relevant Contract Year. Through the Incentive Report, Genera requests Incentive Payments for the following Fuel Optimization Initiatives: (i) Reduction of the Fixed Premium for ULSD,[17] (ii) Fuel Reliability Enhancements for ULSD,[18] (iii) Spot Purchases for Fuel Oil and ULSD,[19] and (iv) Asset Supplementation.[20] As further discussed below, the Energy Bureau, in the November 22 Resolution, authorized only the following three initiatives and their associated calculation methodologies, and limited their applicability to FY2024: (1) Initiative #1: Reduce the fixed premium for ULSD;[21] (2) Initiative #2: Fuel reliability enhancements for ULSD;[22] and (3) Initiative #4: Spot purchase option for Fuel Oil and ULSD.[23]

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[15] *See* May 23 Motion.

[16] It is worth noting that during the selection process for the operator of the Legacy Generation Assets, Genera presented itself as having significant expertise in fuel management and procurement. Notably Genera's expertise was based on its capacity and experience -as well as that of its affiliates- in procuring fuel under terms favorable to PREPA, which, in turn, would translate into savings for ratepayers. *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. However, the Incentive Report reveals that Genera's efforts in this regard have been minimal, and the results equally limited. In fact, even the most significant reduction presented in the Incentive Report, which, although approved as part of the FOP, does not necessarily reflect the level of skill and capability that Genera originally represented it possessed in these matters. The reduction in the adders of the fuel procurement contracts, reflecting more favorable terms, should, to some extent, be viewed with caution, as those adders were originally elevated not necessarily because PREPA failed to negotiate the original contracts adequately, but rather due to the need to amend the initially approved diesel supply contract to comply with environmental requirements mandating a switch to ULSD. Under those circumstances, the higher adders were not the result of a competitive procurement process but instead stemmed from an amendment to an existing contract.

[17] *See* Incentive Report, pp. 6-7.

[18] *Id.*, p. 7.

[19] *Id.*, pp. 7-8.

[20] *Id.*, pp. 8-11.

[21] November 22 Resolution, pp. 7-8.

[22] *Id*, p. 8.

[23] *Id*, pp. 8-9.

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a) Reduce the Fixed Premium for ULSD

i. Genera reported performance

Genera states it achieved a $2.85 reduction in the adder per barrel for diesel transported by marine vessel and a $1.85 reduction in the adder per barrel for diesel transported by truck through a request for proposals ("RFP") for new ULSD suppliers conducted in the first half of Contract Year 1.[24]

In the Incentive Report, Genera uses the formula for calculating savings as approved by the Energy Bureau in the November 22 Resolution: (FY2023 total premium paid - FY2024 total premium paid) x 2024 barrels.[25] Genera's calculations are as follows:

Marine ULSD: ($10.60 -$7.75) x 2,509,060.49 = $7,150,822 in savings.

Transport ULSD: ($10.60 -$8.75) x 233,813.65 = $432,555 in saving

The ULSD savings are reported to be $7.6 million compared to the ULSD budgeted item, which results in a claimed Fuel Optimization payment of approximately $3.8 million.[26]

ii. Discussions and determinations

The calculation of savings uses the formula approved in the November 22 Motion. In addition, the Energy Bureau reviewed Genera's calculations as included in the Incentive Report and corroborated the 2024 ULSD purchase quantity in the supporting workbooks.[27] However, Genera did not submit supporting information regarding the savings premiums ("reduced adders") used, nor the source of the FY2023 adder applied in the calculation. The Incentive Report lacks external references or source documentation to substantiate the reported adder values.

The Energy Bureau was able to independently verify the adders in certain contracts that, although not provided by Genera, were presumably used in the calculation of the claimed savings, an outcome that usually indicates the proffered calculations are correct.[28]

The Energy Bureau recommends this initiative for payment, subject to the condition that the P3 Authority requests and reviews the relevant information from Genera regarding the applicable adders and can confirm that such information was properly used in calculating the claimed incentive.

b) Fuel Reliability Enhancements for ULSD

i. Genera reported performance

Genera indicates that it also modified the fuel RFP process in Contract Year 1 to implement fuel reliability enhancements.[29] Specifically, Genera alleges that it eliminated a prior

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[24] Incentive Report, p. 6.

[25] *Id.*

[26] Incentive Report, pp. 6-7.

[27] It is clarified that the Energy Bureau has not had before it the internal information related to fuel purchases, including invoices or any other documentation concerning such transactions. However, based on the information contained in the Workbooks, it is possible to corroborate that the amounts represented by Genera are linked to specific purchases. The P3 Authority, to the extent it deems appropriate, may conduct any audit it considers necessary to assess the accuracy, veracity, and reliability of such information.

[28] *See Third Amendment Fuel Oil Purchase Contract 901-11-21* dated November 16, 2022, Contract No. 2022-P00024C, p. 4, and *Diesel Fuel Purchase Contract San Juan, Palo Seco, Aguirre, Mayaguez, Cambalache, and Various Gas Turbine Generating Stations* dated October 27, 2023, Contract No. 2024-G00122, p. 20.

[29] Incentive Report, p. 7.

requirement from PREPA's RFP mandating that suppliers use an additional barge for the delivery of USDL. According to Genera, the new ULSD contract for FY2024 requires (1) an increase in the minimum stock reserve and (2) a requirement that the supplier uses a minimum-size barge to optimize marine deliveries to all plants capable of receiving ULSD via water.[30]

Genera calculates the savings by multiplying the monthly cost for a second barge in 2024 ($510,000) by 7.5 months that the second barge was in service in 2023, which results in total savings of $3.825 million.[31] Genera states those savings result in a Fuel Optimization Payment of approximately $1.9 million.[32]

ii. Discussions and determinations

The Energy Bureau reviewed Genera's calculations as included in the Incentive Report and finds that Genera applied the formula approved in the November 22 Motion. However, Genera did not provide the underlying source information supporting either the monthly cost of the second barge or the specific months of service used in calculating the total savings.

The Energy Bureau recommends the P3 Authority approve the incentive payment for this initiative for FY2024. Nevertheless, the P3 Authority should request and review information regarding the barge costs and the specific months in which such costs were incurred, to confirm the final calculation.

c) Spot Purchases for Fuel Oil and ULSD

i. Genera reported performance

According to Genera, it retained an option in the Fuel Oil[33] and ULSD purchase contracts to procure up to 25% of its annual requirements through spot purchases, rather than through the annual contracts for both fuels.[34] In the first Contract Year, Genera alleges that it implemented a fuel spot purchase program under which it monitored the market for potential spot purchases and negotiated with suppliers willing to sell ULSD or Fuel Oil at prices lower than those established in the contractual agreements.[35]

Genera states it made eight spot fuel purchases in FY2024.[36] To calculate the savings, Genera compared the reduced adder associated with each spot fuel purchase to the contract adder in effect on the day of the purchase, or to an average value over time in multiple purchases.[37] Genera claims that the total savings for the purchases came to approximately $755,000, which results in a Fuel Optimization Payment of approximately $377,500.[38]

ii. Discussions and determinations

The Energy Bureau reviewed Genera's calculations in the Incentive Report and finds it used the formula approved in the November 22 Motion for this initiative. The Energy Bureau

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] The term *Fuel Oil* denotes bunker fuel; a heavy residual fuel used in certain of PREPA's Legacy Generation Assets operated by Genera.

[34] Incentive Report, p. 7.

[35] *Id.*

[36] *Id.*, pp. 7-8.

[37] *Id.*, p. 8.

[38] *Id.*

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matched spot purchase volumes as included in the savings calculations in the Incentive Report for both ULSD and Fuel Oil with the data in the supporting workbooks.[39] However, Genera provides no information related to the spot purchase reduced adder on the day of the purchase and the Energy Bureau cannot verify the source of the adder.

The Energy Bureau recommends this initiative for payment, subject to the condition that the P3 Authority requests and reviews the relevant information from Genera regarding the applicable reduced adders of each spot purchase and can confirm that such information was properly used in calculating the claimed incentive.

d) Asset Supplementation

i. Genera reported performance

Genera alleges that PREPA did not procure the necessary regasification and fuel supply equipment -referred to as the "Supplemental Power Generation Equipment"-required to operate fourteen temporary power generation units ("TMPs") near the Palo Seco and San Juan Generation Sites using natural gas instead of diesel.[40] According to Genera, it arranged for its Affiliate to make the Supplemental Power Generation Equipment available to PREPA at no cost.[41]

Genera further asserts that integrating the Supplemental Power Generation Equipment into PREPA's generation fleet, described by Genera as a form of joint investment in the broader TMP-project, allowed the TMPs to operate using natural gas, which Genera characterizes as a significantly more economical and environmentally cleaner fuel.[42] Genera contends this arrangement was implemented before PREPA's acquisition of the TMPs.

Genera claims that because of this early investment, executed requiring no upfront capital contribution from PREPA, using natural gas in the TMPs produced measurable fuel savings. In the Incentive Report Genera states, that it calculated an avoided cost of $64.97 million by comparing the cost of natural gas (*i.e.*, LNG) to the cost of the next highest fuel substituted by the enabled generation, namely the Aguirre combined cycle, Mayagüez, and Cambalache units, based on the applicable merit order. Based on these assertions, Genera claims it is entitled to receive a Fuel Optimization Payment of approximately $32.48 million.[43]

ii. Discussions and determinations

In the May 23 Resolution, the Energy Bureau conducted a detailed evaluation of the arguments presented by Genera in the January 23 Motion about Initiative No. 8. These same arguments were reproduced almost in their entirety in the Incentive Report. The Energy Bureau undertook a comprehensive and thorough review of the issues related to Genera's claim. As an initial matter, the Energy Bureau reaffirmed its prior rejection of Initiative No. 8, determining that it should not be considered an initiative properly included in an approved FOP. The Energy Bureau emphasized that, even assuming the validity of Initiative No. 8 as formulated by Genera, the specific activities described in both the January 23 Motion and the Incentive Report, on which Genera bases its claim for an Incentive Payment, were inconsistent with the structure and scope of the proposed Initiative No. 8.

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[39] It is clarified that the Energy Bureau has not had before it the internal information related to fuel purchases, including invoices or any other documentation concerning such transactions. However, based on the information contained in the Workbooks, it is possible to corroborate that the amounts represented by Genera are linked to specific purchases. The P3 Authority, to the extent it deems appropriate, may conduct any audit it considers necessary to assess the accuracy, veracity, and reliability of such information.

[40] *Id.*

[41] *Id.*, p. 10.

[42] *Id.*, pp. 10-11.

[43] *Id.*, p. 11.

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The Energy Bureau incorporates by reference all the factual and legal analysis previously set forth in connection with Initiative #8 and the $32.48 million incentive claim as included in the May 23 Resolution. For the same reasons, the Energy Bureau concludes that the claim in the Incentive Report is inconsistent with the initiatives approved in the FOP and, therefore, **does not recommend** approval of the requested incentive payment. To avoid doubt, the determinations and findings in the May 23 Resolution about the Asset Supplementation claim shall be deemed incorporated into, and made part of, this Resolution and Order.

B. Operation Cost Efficiency

a) Genera reported performance

The Generation OMA, in Annex II Section III B.1, states that the approved Operating Budget for each Contract Year will serve as a benchmark to measure Genera's cost efficiency in such Contract Year, subject to adjustment s for Force Majeure or Owner Fault.[44]

Genera asserts that actual O&M expenditures for FY2024 were approximately $292.13 million, compared to the approved budget of $319.25 million, resulting in $27.1 million in savings.[45] After excluding labor-related savings due to budget adjustments during the year,[46] Genera calculates eligible savings of $19.25 million and requests an Incentive Payment equal to 50% of that amount, totaling $9.625 million.[47]

b) Discussions and determinations

The requested incentive corresponds to fifty percent (50%) of the purported $19.25 million in non-labor related cost savings achieved under the FY2024 Operating Budget. However, Genera has failed to provide adequate evidentiary support demonstrating these savings resulted from identifiable, verifiable, and attributable initiatives within the scope of Section III(B)(1) of Annex II of the OMA. This Section provides that Genera is eligible for incentives related to **cost efficiencies**. These cost efficiencies are expected to result from Genera's industry expertise and should produce measurable reductions in the electric system costs across various business areas, including procurement, operations, and overhead.

Although the Incentive Report references broad categories of operational and procurement initiatives, such as vendor negotiations, inventory optimization, contract renegotiations, and reductions in insurance premiums, Genera does not present itemized documentation, quantifiable linkage, or audit-level substantiation establishing that these actions directly resulted in the claimed non-labor savings. The Incentive Report lacks a breakdown of specific savings per initiative and does not provide supporting documentation (e.g., amended contracts, procurement records, or cost analysis) necessary to verify causation or magnitude of the alleged savings.

On the other hand, the requested Incentive Payment is based on preliminary, unaudited financial results submitted within thirty days of the end of Fiscal Year 2024 (July 2024). While the figures have not been audited or formally reviewed, **it would be reasonable,** under the circumstances, for the P3 Authority or PREPA to request supporting information or conduct a separate review to provide greater confidence in the accuracy of the claimed savings.

In addition, as a matter of prudent regulatory practice, savings calculations used to support incentive payments should be verified through an external audit or other equally reliable methods. We reiterate that although audited financial statements may not be available

[44] Incentive Report, p. 5.

[45] *Id.*

[46] *Id.*

[47] *Id.*

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In its FY2024 Incentive Request, for example, Genera claimed that it achieved $8.48 million in savings in Necessary Maintenance Expenses ("NME"), thereby qualifying for the corresponding incentive payment. However, the Energy Bureau notes that the NME Budget is approved at an itemized project level. Genera did not provide sufficient supporting information to demonstrate that these reported NME savings reflect actual cost efficiencies on projects that were properly executed, rather than delays or cancellations of approved projects. Nor would it be reasonable to allow an incentive payment due to a lack of diligence by Genera in the implementation of the projects. Even if the projects could not be implemented due to external factors beyond Genera's control, this would not entitle Genera to receive an incentive merely because the corresponding expenditure was not reflected in FY 2024.

The Energy Bureau reiterates that all operational cost efficiencies **must be evaluated at the project level**, based on the approved budget, and that claimed savings must result from genuine efficiencies, not from deferred, delayed, or cancelled project activities.

Thus, consistent with the principle that incentive payments under the Generation OMA must be grounded in demonstrable and documented results rather than general assertions, the Energy Bureau concludes that the information submitted in the Incentive Report is insufficient to support approval of the claimed Operation Cost Efficiency incentive. The Energy Bureau **does not recommend** that the P3 Authority approve the requested Incentive Payment in $9.625 million.

C. Safety Compliance

a) Genera reported performance

The Generation OMA Section III B.3. sets forth safety compliance targets with associated incentives and penalties across three categories. Within Exhibit A, Genera provides its safety performance for each category as included in Tables 1, 2, and 3 below.[48]

Table 1. OSHA Lost Time Incidents (LTI)

Number of LTI Incidents	Incentives / Penalties	Genera FY24 Performance
3 or less	Operator receives an Incentive Payment of US$10,000	12
Between 3 and 5	Operator receives an Incentive Payment of US$5,000	
>5	Operator pays a Penalty of US$100,000	

Table 2. OSHA Recordable Injury or Illness (I&I)

Number of I&I Incidents	Incentives / Penalties	Genera FY24 Performance
0	Operator receives an Incentive Payment of $10,000	21
Between 1 and 3	Operator receives an Incentive Payment of $5,000	
>3	Operator pays a Penalty of $100,000	

Table 3. OSHA Fatality or Severa Injury

Number of Fatalities or Severe Injuries	Incentives / Penalties	Genera FY24 Performance
0	Operator receives an Incentive Payment of $10,000	0
≥1	Operator pays a Penalty of $100,000	

[48] Incentive Report, Exhibit A, Detailed Calculations Excel Worksheet.

Genera indicates that it met one target and failed to meet two, resulting in Penalty of $190,000.[49]

b) Discussions and determinations

Regarding this potential incentive or penalty, no official or otherwise reliable information has been provided that would allow the Energy Bureau to verify the representations made by Genera. The Energy Bureau recommends approval of this penalty amount if the P3 Authority requests and is able to review supporting documentation of the type and level of detail that reasonably substantiates Genera's representations and provides sufficient certainty as to their accuracy. For example, Genera may provide official records, compliance certifications, agency correspondence, safety audit reports, and other credible documentation sufficient to demonstrate the absence of safety violations and to support a reasonable level of regulatory certainty. This request is made given that, although Genera acknowledges having incurred certain penalties in the amount stated in its Incentive Report, additional information that the P3 Authority may need to evaluate could establish that the applicable penalties are higher than those represented by Genera.

D. Environmental Compliance

a) Genera reported performance

The Generation OMA Section III B.4. includes a performance target for environmental compliance. If, during any Contract Year, Genera has zero (0) Violation of Consent Decrees and/or Notice of Violations (NOVs), it is eligible to receive an incentive payment of $10,000.[50] Should Genera receive NOVs, it must pay a penalty of $25,000 for each NOV.

In Exhibit A, Genera reports zero violations in FY24 and therefore requests an incentive of $10,000.[51]

b) Discussions and determinations

Regarding this potential incentive or penalty, no official or otherwise reliable information has been provided that would allow the Energy Bureau to verify the representations made by Genera. The Energy Bureau recommends approval of this incentive payment only if the P3 Authority requests and is able to review supporting documentation of the type and level of detail that reasonably substantiates Genera's representations and provides sufficient certainty as to their accuracy. For example, Genera may provide official records, compliance certifications, agency correspondence, environmental audit reports, and other credible documentation sufficient to demonstrate the absence of environmental violations and to support a reasonable level of regulatory certainty.

E. Reporting Obligations

a) Genera reported performance

The Generation OMA Section III B.5. includes a penalty only target related to the reporting obligations under Section 5.14(c)(iii) (Information – Information Access) and Section 7.1(d) (Service Fee – Reporting Obligation Charge) of the Generation OMA. For every fifteen (15) sequential days during which Genera fails to respond to a reasonable request for information from to the P3 Authority, Genera shall pay a penalty of $100,000 (the "Reporting Obligation Charge").

[49] Incentive Report, p. 11.

[50] Incentive Report, Exhibit A, Detailed Calculations Excel Worksheet.

[51] Incentive Report, p. 11.

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In Exhibit A, Genera reports it did not receive a Reporting Obligation Charge as of June 30, 2024.[52]

b) Discussions and determinations

Regarding this potential penalty, no official or otherwise reliable information has been provided that would allow the Energy Bureau to verify the representations made by Genera. The Energy Bureau recommends approval only if the P3 Authority is able to confirm that no Reporting Charge was issued to Genera during FY2024.

F. Equivalent Availability Factor (EAF)

a) Genera reported performance

Genera are obligated under Section 4.2(v) of the Generation OMA to develop the Annual Performance Test, which will provide a baseline for Capacity and Heat Rate, that Genera will consider when proposing EAF targets. Annex II, Section III B.2 of the Generation OMA states that should Genera's EAF for a Contract Year exceed the EAF targets it is eligible to receive a graduated O&M Incentive Payment. To the extent the EAF falls below the targets, Genera could receive up to $10 million in penalties.

Genera does not present calculations for either an EAF incentive or penalty in the Incentive Report. Genera indicates that the EAF should not be considered given the challenges with the approval of the Annual Performance Test.

b) Discussions and determinations

As reflected in the administrative record of the case of the establishment of the generation units performance test,[53] the Energy Bureau has acted proactively when evaluating the approval of the performance tests required under the Generation OMA. However, this proceeding has extended beyond what is reasonably necessary. Additionally, for reasons apparently attributable to Genera, the company has, on several occasions, suspended or delayed the performance tests necessary to establish the Equivalent Availability Factor, which is essential for implementing the incentive and penalty mechanisms to which Genera may be subject under this section. This situation is concerning, as unit availability and forced outages were frequent occurrences in Puerto Rico during FY2024.

Considering these circumstances, it is critically important that all contractual protections established in the Generation OMA be implemented, protections which are not only intended to provide monetary incentives to Genera, but also to ensure that the company is held accountable if the units are not available as required. The potential penalties associated with non-compliance may amount to up to five million dollars ($5,000,0000) for baseload generation units and an additional five million dollars ($5,000,000) for peaking or gas turbine units.

Therefore, regarding this matter, it is recommended that the P3 Authority conduct an audit to determine whether there are grounds to impose penalties on Genera under the Generation OMA for its failure to complete the performance test implementation process. This recommendation is made without prejudice to any future independent investigation or action that the Energy Bureau may deem necessary outside the scope of the Generation OMA regarding this matter.

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[52] *Id.*

[53] *See In re:* Annual Performance Test Procedure-Thermal Generation Equipment, Case No.: NEPR-MI-2023-0003.

III. Additional Procedural Matters

Act 57-2014[54] establishes that any person having the obligation to submit information to the Energy Bureau, can request privilege or confidential treatment to any information that the party submitting understands deserves such protection.[55] Specifically, Act 57-2014 requires the Energy Bureau to treat as confidential the submitted information provided that "the Energy Bureau, after the appropriate evaluation, believes such information should be protected".[56] In such case, the Energy Bureau "shall grant such protection in a manner that least affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted."[57]

The Energy Bureau has conducted a preliminary evaluation of the arguments presented by Genera regarding the confidentiality of the Incentive Report and has determined that much of the information in the report is public. In light of these circumstances, the Energy Bureau **ORDERS** Genera to submit, **within five (5) days** from the notification of this Resolution and Order, a memorandum providing a detailed justification for maintaining the Incentive Report as confidential, specifically identifying those portions that Genera believes warrant confidential treatment, considering that a significant portion of the information submitted is evidently public.

In addition, without affecting the validity and/or enforceability of this Resolution and Order on the date of notification, the Energy Bureau **ORDERS** Genera to inform, **within two (2) days following the notification of this Resolution and Order**, whether any part thereof should remain confidential under applicable law. **SHOULD THE SPECIFIED PERIOD LAPSE WITHOUT THE RECEIPT OF GENERA'S POSITION, THE CLERK OF THE ENERGY BUREAU SHALL PROCEED TO PUBLICLY DISCLOSE THIS RESOLUTION AND ORDER.**

IV. Conclusion

Based on the evaluation set forth above, the Energy Bureau **CONCLUDES** that Genera's FY2024 Incentives and Penalties Report does not provide sufficient verified information to support full approval of the requested Incentive Payments. While certain initiatives are recommended for payment, subject to further verification by the P3 Authority, other claims, particularly those related to Operation Cost Efficiency and Asset Supplementation, do not meet the applicable standards under the Generation OMA and the Energy Bureau's regulatory framework.

Regarding Operation Cost Efficiency, Genera failed to submit adequate evidentiary support demonstrating that the claimed savings resulted from identifiable, verifiable, and attributable initiatives. The Incentive Report lacks itemized documentation, quantifiable linkage, or audit-level substantiation to support an incentive payment of this magnitude.

Regarding Asset Supplementation, the Energy Bureau previously determined that the initiative was not included in the Fuel Optimization Plan approved in the November 22 Resolution. In addition, the activities described by Genera in support of this claim were inconsistent with the structure and scope of the proposed initiative, even assuming its formulation as presented by Genera.

Upon conducting the pertinent evaluation, the Energy Bureau **FINDS** that Genera may be eligible to receive a payment of up to approximately **$5,901,703.50**[58], subject to the conditions in this Resolution and Order and to a determination by the P3 Authority that the imposition of additional penalties under the Generation OMA is not warranted. **It is noted**

[54] Known as *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

[55] Section 6.15 of Act 57-2014.

[56] *Id.*

[57] *Id.*

[58] *See.* Attachment A to this Resolution and Order.

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that, should such additional penalties under the Generation OMA ultimately be deemed applicable, and depending on their amount, the payment Genera is eligible to receive could be reduced accordingly, or Genera could instead be obligated to pay penalties to PREPA.[59]

The Energy Bureau refers this matter to the P3 Authority with the corresponding recommendations and reiterates this referral is made without prejudice to any future regulatory actions the Energy Bureau may deem appropriate in connection with Genera's performance or compliance under the Generation OMA.[60]

THE CLERK OF THE ENERGY BUREAU SHALL NOTIFY THIS RESOLUTION AND ORDER TO GENERA AND P3 AUTHORITY[61] **ONLY AND SHALL KEEP IT CONFIDENTIAL UNTIL OTHERWISE INSTRUCTED BY THE ENERGY BUREAU.**

BE IT NOTIFIED AND NOT 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

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[59] It is clarified that, through this Resolution and Order, the Energy Bureau is not determining that the P3 Authority is required to make any payment to Genera. What is being determined are the amounts for which Genera may be eligible to receive payment. However, the Energy Bureau is not conducting any comprehensive evaluation of the provisions of the Generation OMA that may, in any way, authorize the P3 Authority to withhold such payment or to make deductions pursuant to other applicable provisions of the Generation OMA.

[60] For the avoidance of doubt, this Resolution and Order shall not be construed as a waiver of the Energy Bureau's authority to determine, in accordance with applicable law and following the appropriate procedures, that the incentive requested by Genera does not comply with applicable laws and regulations. Nor shall it be interpreted in any way that impairs, restricts, relinquishes, or abridges the Energy Bureau's authority to evaluate Genera's request for Incentive Payments pursuant to applicable laws, regulations, and the Generation OMA Contract Standards.

[61] Given that this Resolution and Order may contain confidential information, the P3 Authority is hereby requested to maintain the confidentiality of this document until the Energy Bureau determines otherwise in this proceeding.

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on June 25, 2025. I also certify that on June 25, 2025 I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau and notified a copy of it by electronic mail to josue.colon@p3.pr.gov; lrn@roman-negron.com; legal@genera-pr.com; regulatory@genera-pr.com.

For the record, I sign this in San Juan, Puerto Rico, on June 25, 2025.

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Sonia Seda Gaztambide
Clerk

ATTACHMENT A

Eligible Incentive Amount

	Initiative	Amount Claimed
1	ULSD Fixed Premium Reduction Initiative	$7,150,822.00
		$432,555.00
2	ULSD Fuel Reliability Enhacements Initiative	$3,825,000.00
3	Fuel Spot Purchase Option Initiative	$117,964.00
		$105,140.00
		$104,467.00
		$105,417.00
		$105,417.00
		$105,483.00
		$5,436.00
		$105,706.00
	Total Claimed Savings	$12,163,407.00
	50% of Claimed Savings	$6,081,703.50
	Environmental Compliance	$10,000.00
	Penalty	**-$190,000.00**
	Eligible Incentive Amount	**$5,901,703.50**

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