

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

**NEPR**

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**IN RE:** PUERTO RICO ELECTRIC  
POWER AUTHORITY RATE REVIEW

**Case No.:** NEPR-AP-2023-0003

**Subject:** Motion for Reconsideration of the April 15  
Final Resolution and Order on Electricity Rates

**MOTION FOR RECONSIDERATION OF THE APRIL 15 FINAL RESOLUTION AND  
ORDER ON ELECTRICITY RATES**

**TO THE HONORABLE PUERTO RICO ENERGY BUREAU:**

**COMES NOW**, Genera PR LLC (“Genera”), as agent of the Puerto Rico Electric Power Authority ("PREPA")<sup>1</sup>, through its undersigned counsel, and respectfully states and requests the following:

**I. Introduction and Preliminary Statement**

Genera, as operator of the Legacy Generation Assets under the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* ("LGA OMA"), respectfully requests reconsideration of the *Final Resolution and Order on Electricity Rates* entered on April 15, 2026 (the "Final Order"). This motion is submitted under Section 11.01 of Regulation No. 8543 and the applicable provisions of Act 38-2017, the *Uniform Administrative Procedure Act of the Government of Puerto Rico* (“LPAU,” Spanish acronym).<sup>2</sup>

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<sup>1</sup> Pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement*, dated January 24, 2023, executed by and among PREPA, Genera, and the Puerto Rico Public-Private Partnerships Authority, Genera is the sole operator and administrator of the Legacy Generation Assets (as defined in the LGA OMA) and the sole entity authorized to represent PREPA before the Energy Bureau with respect to matters related to the performance of any of the O&M Services provided by Genera under the LGA OMA.

<sup>2</sup> Regulation No. 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*; Act No. 38-2017, Sec. 3.15, 3 L.P.R.A. sec. 9655. The docket in this case identifies the April 15, 2026 Final Order and the February 12, 2025 *Resolution and Order Establishing Scope and Procedures for Rate Case* as controlling docket entries.

The Final Order itself recognizes the objective reality sustaining Genera's request: Puerto Rico is operating in a generation emergency. The Final Order states that Puerto Rico lacks sufficient, reliable generation capacity, that customers faced risk of service interruptions during peak season on 93 separate days arising from generation alone, that expected forced outage rates for the average baseload unit were approximately 20 percent compared with a mainland fossil generation figure of 8.5 percent, and that generation inadequacy has triggered rolling blackouts or intentional load-shedding to maintain system stability.<sup>3</sup>

The Puerto Rico Energy Bureau (“Energy Bureau” or “Bureau”) also recognized that the system's present condition did not arise from Genera's lack of diligence. It follows years of underspending, a revenue requirement that did not increase from 2017 through July 2025 even for inflation, catastrophic hurricanes, PREPA's bankruptcy, lack of access to external capital, and the practical reality that ratepayers are being asked to fund upfront repairs that a normal utility would finance over time.<sup>4</sup>

Surprisingly, and against that record, the Energy Bureau denied approximately \$321.1 million in Genera capital expenditures, removed approximately 167 generation projects totaling about \$252.8 million from base rates because the Bureau could not rule out federal funding pathways, retroactively eliminated the Plant Maintenance Services / Generation Maintenance Reserve (“GMR”), disallowed the LGA OMA Reserve Account, and approved only \$250,000 for BESS O&M despite the record evidence that the Tesla BESS equipment supply structure requires a long-term service agreement or Tesla-validated service provider for maintenance and warranty

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<sup>3</sup> Final Order, Chapter One at 1-2; Chapter Four at 1-2, 45 (noting a system-wide Loss of Load Expectation of 32.5 days per year and forced outage rates averaging 20 percent).

<sup>4</sup> *Id.*, Chapter One at 3-6 (discussing years of underspending, 2017-level rates, hurricanes, lack of external capital, and the unusual ratemaking difficulties in Puerto Rico).

support.<sup>5</sup> They also have practical operational consequences because the eliminated or reduced mechanisms were presented in the record as tools for maintenance execution, outage response readiness, reliability improvement efforts, and compliance with Genera's obligations under the LGA OMA. These adverse rulings should be reconsidered for various independent reasons.

First, the Final Order applies a federal funding standard that is materially more stringent than the statutory burden of proof and that, in practical effect, assigns non-federal capital a value of zero when a federal pathway *cannot be disproven*. This is a defective finding that lacks substantial evidence and is unsupported by the record. Second, the Final Order treats liquidity mechanisms as optional or duplicative even though the record shows that planned maintenance and emergent maintenance serve distinct functions. The result does not connect the remedy to the findings and is likewise unsupported by substantial evidence, making the Bureau's conclusions defective. Third, the Bureau allocated \$0 to contractually required reserve funding and communications budget, ignoring the LGA OMA, and thus erring in the correct treatment of the contract dispositions. Fourth, the Order's disallowances are not reconciled with its own reliability findings: the same Final Order recognizes a generation emergency and a system-wide LOLE 325 times above the industry standard, yet denies or defers funding for repairs, services, and reserves designed to reduce that risk.<sup>6</sup> Fifth, the Order effectively eliminates the provisional budgeted rate after ten months of the fiscal year, leaving only two months to complete the year. As a result, Genera incurred expenses, executed contracts, and procured parts in reliance on the budget

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<sup>5</sup> *Id.*, Chapter Four at 130-31 (summarizing approximately \$324.7 million in operating-expense reduction and approximately \$321.1 million in capital-expenditure reductions); Chapter Four at 55-57 (excluding 167 projects totaling approximately \$252,793,474); Chapter Four at 27-28 (BESS O&M and LTSA discussion; approving only \$250,000 total BESS O&M); *Genera Initial Brief on Revenue Requirement* at 41-42, paras. 188-194 (LTSA and Tesla BESS testimony).

<sup>6</sup> *Genera Initial Legal and Policy Issues Brief* at 16-21 (burden of proof, federal-funding uncertainty, and obligation-based treatment); *Genera Initial Brief on Revenue Requirement* at 36-37, paras. 157-163 (GMR, NME, and Reserve Account distinctions).

assigned by the Energy Bureau, and may now be forced to suspend or terminate ongoing work and contractual commitments due to this retroactive determination. This shift creates material exposure to legal claims by vendors and suppliers against Genera and PREPA.

Accordingly, the practical effect of the Final Order for Genera is that despite the Bureau's acknowledgment of a generation emergency caused by years of underfunding and lack of adequate maintenance, the Bureau has substantially diminished Genera's budget, thereby jeopardizing the adequate stabilization and modernization of the generation assets. To avoid the consequences of this underfunding, including load shedding events, forced outages and service interruptions, Genera respectfully requests that the Energy Bureau:

- A. Reconsider and modify the federal funding exclusion standard as applied to Genera projects so that a project is removed from rates only when federal funding is actually available, obligated, and administratively executable during the rate period, subject to a reconciliation mechanism to prevent double recovery. Just as the substantial record evidence requires.
- B. Reconsider and approve, at minimum, a conditional rate recovery mechanism, rider, escrow, or true-up for the 167 projects excluded from base rates unless and until federal funds are obligated or awarded and determined usable by the federal grantee for the specific project scope, amount, and schedule, in conformity with the substantial evidence in the record and the Bureau's own findings.
- C. Reconsider and approve NME funding sufficient to fund the constrained maintenance work the record identifies as critical to reliability, or, alternatively, adopt project-specific milestones requiring rate funding when federal obligation does not occur or federal funds are not available by defined dates, in conformity with the substantial evidence in the record

and the Bureau's own findings.

- D. Reconsider and reinstate the Plant Maintenance Services / GMR funding to cover emergent reliability needs not captured in asset specific NME projects as required with the substantial evidence and in harmony with the Bureau's own findings.
- E. Reconsider and approve the LGA OMA Reserve Account funding or an equivalent replenishable liquidity mechanism (rider) consistent with the LGA OMA and the Bureau's own recognition that OMA reserve amounts are legitimate contract obligations that the annual revenue requirement must reflect, in harmony with the requirements of Act 120-2018.
- F. Reconsider and approve the BESS LTSA-related O&M funding requested by Genera, or at least approve conditional escrowed recovery tied to execution of the Tesla LTSA or a Tesla-validated service provider arrangement, to preserve warranty, availability, and safe operation of the BESS assets as required by substantial record evidence.
- G. Reconsider and approve the contractually mandated communications budget in conformity with the requirements of the LG OMA and the substantial record evidence.

Genera does not seek reconsideration of the Bureau's general duty to balance reliability, affordability, and executability. Genera seeks reconsideration because these pointed disallowances rest on unsupported legal and evidentiary standards that convert federal funding uncertainty into a conclusive bar to rate recovery, eliminate contractual and operational liquidity protections, and underfund the very maintenance work the record demonstrated is necessary to avoid forced outages and load shedding events.

## **II. Applicable Law and Standard for Reconsideration**

A motion for reconsideration is appropriate where the affected party identifies material findings of fact, conclusions of law, or remedial determinations that should be corrected before the decision becomes final for purposes of judicial review. Regulation No. 8543, Section 11.01, and the LPAU permit the affected party to ask the Energy Bureau to reconsider final action; the Energy Bureau's own orders routinely advise parties that reconsideration may be sought under those provisions.<sup>7</sup>

The Supreme Court of Puerto Rico has repeatedly held that administrative findings must rest on substantial evidence—that is, evidence that a reasonable mind could accept as adequate to support a conclusion.<sup>8</sup> And while agencies are ordinarily accorded institutional respect within their sphere of expertise, that deference is not unbounded: it may be displaced when no rational basis explaining or justifying the administrative determination appears from the record.<sup>9</sup> Reconsideration is particularly warranted where an agency applies an unreasonable evidentiary standard, effectively requires proof of a negative, reaches conclusions inconsistent with its own findings elsewhere in the determination, or fails to articulate a rational connection between the evidentiary record and the result reached. The reviewing court generally affords deference to agency fact-finding were supported by substantial evidence, but deference does not validate a determination that is arbitrary, capricious, unreasonable, contrary to law, or unsupported by the record. The Supreme Court of Puerto Rico has reiterated these principles in *Capó Cruz v. Jta.*

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<sup>7</sup> Regulation No. 8543, Sec. 11.01; Act 38-2017, Sec. 3.15, *supra*; see also Final Order, Chapter Eight at 42 (advising affected parties of reconsideration under Regulation 8543 and the LPAU).

<sup>8</sup> *Capó Cruz v. Jta. Planificación et al.*, 204 D.P.R. 581, 591 (2020) (quoting *Rebollo v. Yiyi Motors*, 161 D.P.R. 69, 77 (2004)) (our translation).

<sup>9</sup> *Rolón Martínez v. Supte. Policía*, 201 D.P.R. 26, 36 (2018). See also *Super Asphalt v. AFI y otro*, 206 D.P.R. 803, 819 (2021) (warning that a reviewing court may not place an automatic correction stamp on administrative determinations that are unreasonable, illegal, or contrary to law) (our translation).

*Planificación et al., Graciani Rodríguez v. Garage Isla Verde, Torres Rivera v. Policía de PR, González Segarra et al. v. CFSE*, and related administrative law cases.<sup>10</sup>

Classic utility ratemaking precedent asks the order's "total effect" and whether the resulting rate structure permits the system to "operate successfully" and preserve "financial integrity."<sup>11</sup> Puerto Rico law has long recognized that only when an administrative determination is grounded in the record of the case are the parties assured a fair opportunity to challenge the agency's reasoning and obtain meaningful review.<sup>12</sup> Likewise, findings on disputed matters cannot rest on material first appearing in the decision itself; otherwise, due process becomes a dead letter.<sup>13</sup> Relatedly, reconsideration is warranted where the resulting decision does not adhere to the agency's own factual findings. Here, several challenged rulings recognize the operational necessity of the underlying function, cite evidentiary support for the need, yet remove the only dedicated funding mechanism without justification in the record, failing to identify a substitute funding source, a timing mechanism compatible with the work window, or a clear path for prospective recovery. In this scenario, the Bureau must reconsider and adjust the relief so that the Final Order remains reasoned, in the interest of the system's reliability and supported by the record.<sup>14</sup>

Genera respectfully requests that the Energy Bureau reconsider its Final Order because it: (1) departs from substantial evidence in the record; (2) applies a federal funding standard that effectively requires proof of a negative; (3) fails to give adequate effect to the LGA OMA and Act 120-2018 protections for partnership contract rights; (4) arbitrarily treats contractually and operationally distinct funding mechanisms as duplicative; (5) materially impairs mechanisms

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<sup>10</sup> *Capó Cruz v. Jta. Planificación et al., supra; Graciani Rodríguez v. Garage Isla Verde*, 202 D.P.R. 117 (2019); *Torres Rivera v. Policía de Puerto Rico*, 196 D.P.R. 606 (2016); *González Segarra et al. v. CFSE*, 188 D.P.R. 252 (2013); Act 38-2017, Sec. 4.5, 3 L.P.R.A. sec. 9675.

<sup>11</sup> *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 602-05 (1944).

<sup>12</sup> *Magriz v. Empresas Nativas*, 143 D.P.R. 63, 71 (1997).

<sup>13</sup> *Mayagüez Sugar Co. v. Tribl. de Apelación*, 60 D.P.R. 753, 767 (1942).

<sup>14</sup> See *Capó Cruz v. Jta. Planificación et al., supra*, at 591; *Rolón Martínez v. Supte. Policía, supra*, at 36.

presented in the record as supporting Genera’s operational responsibilities under the LGA OMA, including maintenance execution, outage response readiness, and related performance obligations; (6) fails to adequately account for reliability consequences; and (7) denies or defers costs necessary to provide adequate, safe, reliable, efficient, and nondiscriminatory service.<sup>15</sup>

### **III. Factual and Regulatory Background**

#### **A. The Energy Bureau ordered a comprehensive rate case to determine the true cost of service**

On February 12, 2025, the Energy Bureau established the scope and procedures for this rate case. The order required the operators to submit optimal and constrained budgets, supported by testimony and work papers, so that the Bureau could determine base rates and a permanent FY2026 budget, projected FY2027 and FY2028 rates, and the full range of costs associated with providing electric service in Puerto Rico.<sup>16</sup>

Genera developed its budget through a bottom-up process. Its Finance Department required department-level input from responsible department heads and personnel and then consolidated those inputs into a company-level budget aligned with LGA OMA obligations, industry-standard operational requirements, maintenance needs, federal cost-share needs, and the Energy Bureau's filing requirements and procedural framework.<sup>17</sup>

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<sup>15</sup> Act 57-2014, *Puerto Rico Energy Transformation and RELIEF Act*, Secs. 6.21 and 6.25, 22 L.P.R.A. Secs. 1054t, 1054x; Act 17-2019, *Puerto Rico Energy Public Policy Act*, Sec. 8.3; *Genera Initial Legal and Policy Issues Brief* at 3-8, 16-21, 29-31.

<sup>16</sup> *Resolution and Order Establishing Scope and Procedures for Rate Case* (Feb. 12, 2025); *Genera Initial Brief on Revenue Requirement* at 7-8.

<sup>17</sup> *Genera Initial Brief on Revenue Requirement* paras. 11-19, 38-46, 72-78.

**B. Genera operates the legacy thermal fleet under the LGA OMA and has a duty to stabilize the fleet until replacement resources are available**

Genera assumed responsibility for the operation and maintenance of the Legacy Generation Assets on July 1, 2023, under the LGA OMA. The assets include the Aguirre, Costa Sur, Palo Seco, San Juan, Mayagüez, Cambalache, Daguao, Yabucoa, Jobos, Vega Baja, Vieques, and Culebra generation facilities. The LGA OMA allocates responsibilities among PREPA, P3A, and Genera, and includes service account funding obligations, incentive and penalty structures, performance metrics, and protections designed to enable the operator to stabilize and optimize the legacy fleet until replacement resources are available.<sup>18</sup>

These contractual commitments are not incidental. The Legislature, through Act 17-2019 and Act 120-2018, instructed that partnership contracts in PREPA transactions be respected and not impaired by subsequent administrative action. This legal structure and recognition were further validated by the Energy Bureau's Energy Compliance Certificate<sup>19</sup> which certified that the partnership contract complied with the Puerto Rico energy public policy and its regulatory framework. Accordingly, the Energy Bureau may regulate rates and performance, but it must do so in a manner that recognizes the LGA OMA's funding structure, does not transform Genera's contractual obligations into unfunded mandates and does not materially impair the mechanisms through which those obligations are intended to be performed.<sup>20</sup>

To the extent regulatory determinations alter the practical availability of contractually contemplated funding mechanisms, reserve structures, or operational cost recovery, such

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<sup>18</sup> Final Order, Chapter One at 6-7; *Genera Initial Legal and Policy Issues Brief* at 7-8.

<sup>19</sup> *Resolution and Order (Certificate of Energy Compliance)*, Case No. NEPR-AP-2022-0001 (Jan. 15, 2023).

<sup>20</sup> Act 17-2019, Sec. 8.3; *Genera Initial Legal and Policy Issues Brief* at 4, 7-8.

determinations may have consequences under the LGA OMA's allocation of rights, duties, and regulatory risk. It will also have consequences related to Bureau ordered performance metrics.

**C. The record establishes a generation emergency and the risks of underfunding repairs**

The Final Order recognizes that neither T&D improvements nor customer-side programs can prevent load shedding unless there is sufficient generation capacity. It also recognizes the Priority Stabilization Plan's generation measures: extension of TM2500 temporary generation, additional temporary emergency generation, deployment of 430 MW of BESS, and deployment of flexible generation/peakers at Dagua, Yabucoa, Jobos, and Costa Sur.<sup>21</sup>

Genera's record evidence tied its requested spending to forced outage and derate history. Genera reviewed FY2023-FY2025 outage and derate logs, daily generation reports, reliability tracking sheets, and root-cause analyses, coded events by failure category and equipment type, and used IEEE 762-2006 reliability methodology. Genera represented that its proposed operational expense budget supports a strategy to reduce forced outages, increase planned maintenance, modernize aging infrastructure, and support transition to a cleaner, more reliable power system.<sup>22</sup>

The consequences of underfunding are direct and significant. Deferring asset specific and plant wide maintenance increases forced outage rates, prolongs mean time to repair, reduces equivalent availability factor, increases reliance on temporary generation, increases emergency repair costs, and elevates the risk of load shedding. Those consequences are directly contrary to

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<sup>21</sup> Final Order, Chapter Four at 6-8.

<sup>22</sup> *Genera Initial Brief on Revenue Requirement*, paras. 13-16.

Sections 6.21 and 6.25 of Act 57-2014, which require adequate, safe, reliable, efficient, and nondiscriminatory service at just and reasonable rates.<sup>23</sup>

#### **IV. Evidentiary Record Supporting the Request for Reconsideration**

Chapter Four of the Final Order begins by recognizing a generation emergency in Puerto Rico and cites a Loss of Load Expectation (“LOLE”) of 32.5 days per year, far above the 0.1-day-per-year standard; forced outage rates near 20%, as compared with 8.5% on the mainland; and the need for immediate and sustained interventions to avoid load shedding and restore resource adequacy.<sup>24</sup> The Final Order also recognizes that the PSP (Priority Stabilization Plan) requires, among other things, TM2500s, 430 MW of BESS, and 244-268 MW of peakers; that the capital cost of BESS and peakers is funded with federal dollars; and that the O&M of those resources is a customer responsibility recoverable through base rates.<sup>25</sup>

The Bureau further recognizes that, to improve generation service, a reasonable target would be to increase availability to 65% and reduce forced outages to 15%; that Genera submitted a unit maintenance plan directed to those goals; and that achieving those goals depends in material part on adequate funding and proper execution of maintenance windows.<sup>26</sup>

The Final Order further summarizes that Genera itself warned that additional cuts below the Constrained Budget would increase Forced Outage Rates (“FOR”), prolong Mean Time to Repair (“MTTR”), reduce the Equivalent Availability Factor (“EAF”), and increase the frequency and duration of load shedding.<sup>27</sup> For that very reason, the Order expressly notes Genera’s position

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<sup>23</sup> Final Order, Chapter Four at 31-32, 45; *Genera Initial Brief on Revenue Requirement*, paras. 74-78; Act 57-2014, Secs. 6.21(a), 6.25(a).

<sup>24</sup> Final Order, Chapter Four at 1-3, 6-8.

<sup>25</sup> *Id.*, at 7-9, 13-15, 27-28.

<sup>26</sup> *Id.*, at 29.

<sup>27</sup> Final Order, Chapter Four at 32.

that the elimination or reduction of maintenance and reserve mechanisms can have negative operational consequences, including increased forced outages, longer outage durations, reduced unit availability, and increased risk of involuntary load shedding.<sup>28</sup> That finding is significant because it reflects the Bureau’s own recognition of the causal relationship between reductions to maintenance or contingency mechanisms, and deterioration in system reliability.

Accordingly, where the Final Order simultaneously recognizes those operational consequences yet disallows or materially reduces the very mechanisms presented to mitigate them, reconsideration is warranted to reconcile the result with the Bureau’s own findings.

**V. Executive Summary of Disallowed Costs**

<b>Item</b>	<b>General Final Request</b>	<b>Approved</b>	<b>Difference</b>	<b>Main Basis for Reconsideration</b>	<b>Record Citation</b>
Plant Maintenance Services / GMR	FY26 \$30,256,412 ; FY27 \$31,450,747 ; FY28 \$33,295,261	0 / 0 / 0	\$95,002,420	The Order itself recognizes that GMR funds boiler cleaning, hydrostatic testing, mechanical, electrical, and instrumentation services, fire protection, and other recurring work necessary to maintain unit availability, reliability, and response to forced outages and emergent events. Complete disallowance is therefore difficult to reconcile with the operational findings reflected in the Final Order.	Final Order, Ch. 4 at 67-72, 131

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<sup>28</sup> *Id.*, at 6.

Item	Genera Final Request	Approved	Difference	Main Basis for Reconsideration	Record Citation
LGA OMA Reserve Account	The Ch. 4 table summarizes \$30M in FY26; Ch. 6 describes a \$30M FY26 request under Section 7.6(d) LGA OMA	0	\$30,000,000	The denial mirrors reasoning applied to LUMA reserve accounts, but Genera requested a prospective reserve mechanism for future qualifying events under the LGA OMA, not retroactive replenishment of historical expenditures. After extensive discussion during the rate case regarding the importance of a rider or equivalent mechanism to recover this contractually mandated reserve, no such mechanism was included in the Final Order. Reconsideration is warranted to honor the contractual basis of this reserve.	Final Order, Ch. 4 at 4-6, 131; Ch. 6 at 2-3
NME / Corrective-Preventive Maintenance	Constrained NME over FY26-FY28: \$570M; final filing by category: FY26 \$144.7M, FY27 \$164.3M, FY28 \$161.1M	Approved within base-rate capital only \$53.5387M / \$40.8082M / \$54.6207M in total GenCo NFC, including items beyond pure NME	Material reduction	The Order recognizes Puerto Rico's generation emergency, the need for sufficient maintenance, and that deeper cuts increase FOR, MTTR, EAF deterioration, and load-shedding risk. Given those findings, the reductions warrant reconsideration or phased restoration consistent with reliability needs and the Bureau's own findings.	Final Order, Ch. 4 at 5, 29, 33-34, 45-55, 130-133

<b>Item</b>	<b>Genera Final Request</b>	<b>Approved</b>	<b>Difference</b>	<b>Main Basis for Reconsideration</b>	<b>Record Citation</b>
BESS O&M / Tesla LTSA	FY27 \$3,142,000; FY28 \$4,744,000; total \$7,886,000	FY27 \$100,000; FY28 \$150,000; total \$250,000	\$7,636,000	The Order accepts that BESS O&M is a customer responsibility, but reduced the request based on deployment timing and the view that full OEM-supported maintenance was not yet required. Genera requests conditional approval tied to COD and OEM/warranty requirements so that the cost recovery aligns with actual in-service timing.	Final Order, Ch. 4 at 7-8, 10-15, 27-28, 51
Communications Expenses	FY26 \$832,000; FY27 \$832,000; FY28 \$832,000; total \$2,496,000	0 / 0 / 0	\$2,496,000	The Order denied Communications Expenses in full because it viewed LUMA as the primary public-facing communications entity. Reconsideration is warranted because the communications expense is tied to Genera's LGA OMA obligations and was substantiated by the record evidence.	Final Order, Ch. 4 at 115-117

**VI. The Complete Elimination of the GMR Line Item Should Be Reconsidered as the Disallowance is not Supported by the Bureau's Own Findings**

**A. The record and the Final Order itself describe GMR as an actual operating expense**

The Final Order expressly defines the "Plant Maintenance Services" line item as the largest component of the Plant Operations Budget and clarifies that it "is sometimes referenced in the record as the Generation Maintenance Reserve (GMR)."<sup>29</sup> The Final Order also recounts Genera's

<sup>29</sup> Final Order, Chapter Four at 67.

position that the GMR was not intended to function as a separate reserve, but rather to fund contracted plant maintenance services and non-routine repairs necessary to sustain unit availability and reduce outage duration.<sup>30</sup>

More importantly, the Final Order details what GMR covers: boiler cleaning services, hydrostatic testing, mechanical maintenance and mobilizations, control system maintenance, protection relay and instrumentation servicing, condenser work, fire-protection system upgrades, and unit decommissioning activities.<sup>31</sup> This is not, therefore, an undirected liquidity account, but a set of concrete workstreams that sustain day-to-day operations and reduce forced outages.

It is important to keep in mind the separate nature of the NME, GMR, and Reserve Account. NME addresses identified, planned projects and scheduled outage work. GMR addresses recurring plant maintenance and facility support services, many of which are operational in nature rather than federally funded capital. The Reserve Account addresses unexpected forced outages and contingency events. The Order itself reflects that distinction when it states that contingency oriented mechanisms such as the LGA OMA Reserve Account and the Generation Maintenance Reserve are not intended to supplant or backfill planned maintenance budgets.<sup>32</sup> The Final Order likewise treats Plant Maintenance Services as a separate operational category funding recurring maintenance services distinct from NME.<sup>33</sup> A decision that compresses all three into NME—or assumes one partially approved substitute for the elimination of the others is not supported by the record.

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<sup>30</sup> *Id.*, at 67-69.

<sup>31</sup> *Id.*, at 67-70.

<sup>32</sup> *Id.*, at 5-6.

<sup>33</sup> *Id.*, at 67-72.

This distinction also matters for federal funding purposes. Planned NME projects may, in some instances, be evaluated for possible federal routing because they involve defined capital or outage scopes. GMR, by contrast, captures recurring plant maintenance and facility support services that are operational in nature--the kind of day-to-day work that keeps sites safe, functional, staffed, and inspection ready. Treating those recurring services as if they were interchangeable with federally funded reconstruction work obscures the purpose of the account, reduces transparency, and risks eliminating a necessary O&M bucket on the mistaken assumption that a partially approved NME or capital line can absorb it.

A federal pathway is also not cost neutral. Even apart from the risk of delay, the record shows that the federal process brings additional sequencing, documentation, approval, and procurement burdens. The Bureau's own federal funds expert witness, Mr. Guimel Cortés, explains that a project must move through scope development, FEMA approval, EHP clearance, and WCA/reimbursement mechanics before construction dollars fully flow, and Mr. Cortés further warned that delays itself produces near certain cost escalation from inflation and contractor remobilization.<sup>34</sup> As a practical matter, federal clauses and compliance requirements can make a project that appears economic on a locally executed basis materially more expensive once federal procurement, documentation, and administration burdens are layered in. Thus, replacing a timely rate-funded path with an eventual federal path is not always a cost saving measure; depending on timing and compliance burdens, it can increase total project cost while still postponing reliability gains.

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<sup>34</sup> *Expert Report of Guimel Cortés, PC Exhibit 65.0, On the Matter of Federal Funding, October 10, 2025* (“Cortés Report”) at 3-8, 11-20, Appendix B; Final Order, Chapter One at 18-24.

That same federal overlay narrows the executable vendor pool. The record reflects that federal procurement follows competitive solicitation rules and requires layered approvals before work can proceed.<sup>35</sup> In Puerto Rico’s already constrained contractor market, not every local vendor is positioned or willing to perform under federal clauses and documentation burdens. The result is a smaller pool of qualified bidders, additional strain on the supply chain of those vendors that can perform the work, and the exclusion of other firms—including smaller local businesses—that might otherwise execute the work more quickly under an ordinary plant-maintenance contracting structure. That practical contraction in the vendor market further weakens the assumption that all federally-pathway NME items are timely executable substitutes for rate-funded work.

The lack of sufficient funding for auxiliary equipment are equally problematic. When there is no funded line for routine plant support equipment and auxiliary-system interventions, Genera cannot simply pull needed warehouse parts and charge the work somewhere else without creating a recovery mismatch. That affects precisely the type of smaller but operationally necessary repairs that keep units available: valves, pressure transmitters, and other auxiliary components that must be repaired, inspected, or replaced before they cascade into larger outages. Those interventions are not speculative modernization projects; they are plant sustainment measures that must remain executable when the condition is discovered.

The timing problem becomes even clearer when the federal process is reduced to its operational sequence. Even on an optimistic track, the project sponsor must identify the need; identify a plausible funding program; confirm internal PREPA budget or liquidity availability; obtain any necessary PREB authorization; prepare detailed scopes of work and supporting FEMA

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<sup>35</sup> Cortés Report at 11; Final Order, Chapter Four at 11.

documentation; complete FEMA’s review, including EHP-related sequencing; wait for FEMA approval and obligation; secure WCA or reimbursement mechanics; run procurement and bid processes; negotiate and execute contracts; and only then begin field execution.<sup>36</sup> The Cortés Report Appendix B illustration shows that even a \$10 million project can lose roughly 225 days when progress is paced by WCA timing and reconciliation gaps.<sup>37</sup> On this record, an illustrative minimum lead time approaching ten months for federally dependent execution is not an exaggeration. It is directionally consistent with the documentary evidence. That means many FY2027 items, if pushed into an uncertain alleged “federal pathway” queue now, risk practical execution after FY2028, with downstream displacement of FY2028 work into FY2029 or later.

Nothing in the LGA OMA makes Genera the primary financier or institutional gatekeeper of PREPA’s federal funding process. Genera has pursued federal pathways to improve the system, but if the Bureau wishes to require federal pursuit as a precondition to recovery, the corresponding order should direct PREPA to provide the necessary approvals, access to liquidity tools, and budgetary support to make that requirement executable. Otherwise, the Bureau shifts to Genera a burden the contract does not clearly place on the operator and that the Final Order itself attributes to PREPA’s and the Commonwealth’s broader capital financing constraints.<sup>38</sup>

The Bureau also expressly recognizes that eliminating or materially reducing the NME budget without a substitute mechanism can impair Genera's ability to fund major maintenance services and respond promptly to unanticipated reliability events, and that doing so increases outage duration, outage frequency, and load shedding.<sup>39</sup> That finding is incompatible with the

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<sup>36</sup> Cortés Report at 1-9, 17-20, Appendix B; Final Order, Chapter One at 18-24.

<sup>37</sup> Cortés Report, Appendix B.

<sup>38</sup> Final Order, Chapter One at 9-24.

<sup>39</sup> *Id.*, Chapter Four at 67-69.

complete elimination of the line item, particularly where the system is operating under emergency conditions and the Bureau itself set targets of 65% availability and 15% forced outages.<sup>40</sup>

**B. The Final Order should reinstate the GMR or create an equivalent plant-maintenance services mechanism: the rationale used to deny GMR is not supported by the record evidence and the Order's own findings of fact**

The GMR / Plant Maintenance Services request is not a duplicate of NME and is not designed to backfill planned NME shortfalls. It was the Energy Bureau that established the Generation Maintenance and Technical Services Contractor for Preventive Maintenance and Repair Works Reserve (GMR) to ensure supplementary budget funds to sustainably cover unanticipated needs or shortfalls borne of reassigning initial maintenance allocations.<sup>41</sup>

In its *Initial Brief on Revenue Requirement*, Genera explained that NME consists of pre-scheduled, asset specific maintenance based on outage calendars, condition assessments, OEM intervals, and compliance mandates. By contrast, GMR funds flexible contracted plant maintenance services and non-routine repairs necessary to sustain unit availability and reduce outage duration.<sup>42</sup>

The record shows that GMR cost drivers include mechanical mobilizations, control system maintenance, condenser work, fire-protection upgrades required for insurance compliance, gas cylinders, water treatment chemicals, reverse osmosis membranes, and the resumption of deferred maintenance. These are not luxury items; they are the type of plant level services needed to keep aging units available while the system transitions to replacement resources.<sup>43</sup>

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<sup>40</sup> *Id.*, at 16, 29, 31.

<sup>41</sup> *Resolution and Order* (Dec. 8, 2023), Case No. NEPR-MI-2021-0004, at 14-15.

<sup>42</sup> *Genera Initial Brief on Revenue Requirement*, paras. 157-161; Final Order, Chapter Four at 67-69.

<sup>43</sup> *Genera Initial Brief on Revenue Requirement*, paras. 43-46; Final Order, Chapter Four at 68-70.

The Final Order eliminates the GMR, stating that the record establishes it had not been used for its stated purpose. But that assertion is not supported by the evidence and does not justify eliminating all funding for plant maintenance services during a rate period in which the Bureau itself recognizes emergency generation conditions. If the Bureau has concerns about labeling, accounting, or historical use, the remedy should be a conditioned plant maintenance services account with defined permissible uses, monthly reporting, procurement controls, and reconciliation, not categorical disallowance.<sup>44</sup>

Retroactively eliminating the GMR without an adequate substitute mechanism will potentially increase outage duration and frequency because Genera loses flexible funding for non-routine reliability events and major maintenance services. On reconsideration, the Final Order should approve the requested GMR amounts or adopt an equivalent mechanism with safeguards. A mechanism with reporting would be more consistent with the substantial evidence record than a zero allowance.<sup>45</sup>

Although the Energy Bureau concludes that the approved budget preserves “core maintenance functions” and that the GMR can be deferred because the evidence did not show commensurate reliability improvements during the rate period, the same Final Order recognizes that GMR funds precisely the recurring and corrective tasks—boiler cleaning, hydrostatic testing, relay/protection servicing, fire protection, and related services—that prevent failures and reduce outage duration.<sup>46</sup>

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<sup>44</sup> Final Order, Chapter Four at 130; Chapter Six at 1-3 (explaining that OMA accounts are accounting designations that reflect dollars budgeted for account-defined purposes).

<sup>45</sup> Final Order, Chapter Four at 67-69; *Genera Initial Brief on Revenue Requirement*, paras. 157-161.

<sup>46</sup> *Id.*, Chapter Four at 68-69, 71-72.

For example, on page 72 of Chapter Four, the Bureau expressly classifies boiler cleaning, hydrostatic testing, and fire protection upgrades as operations and maintenance expenses, rather than capital expenditures, because those activities neither create long-term assets nor materially extend useful life.<sup>47</sup> Yet the summary approvals table reduces Plant Maintenance Services (GMR) from \$30,256,412 / \$31,450,747 / \$33,295,261 to zero in each year.<sup>48</sup> Once the Bureau classified those tasks as recurring O&M, the correct approach would have been for the Energy Bureau to identify the budget line that would actually fund them if GMR were denied. The Final Order does not do so.

The approved Materials and Supplies, Transportation, and Utilities and Rent categories fund consumables, vehicle operations, and plant utilities; they do not replace the outsourced or mobilized plant-maintenance services that the GMR was designed to cover.<sup>49</sup> As the Bureau explains, “Materials and Supplies (\$18,763,717 to \$24,772,465 annually) funds spare parts, testing chemicals, laboratory supplies, and consumables necessary for daily unit operation. Transportation (\$950,000 annually) funds vehicle operations and per diem for plant personnel. Utilities and Rent (\$17,468,591 to \$17,502,800 annually) funds electricity for plant auxiliary systems, cooling water, waste management, and facility leases.”<sup>50</sup>

Put differently, the Bureau acknowledges the critical nature of the work yet eliminates in full the line item that funds it without identifying a replacement funding mechanism for the very services it finds operationally necessary. The Energy Bureau also reasons that operating costs attributable to capital projects funded with federal dollars should be charged to federal Direct

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<sup>47</sup> *Id.*, at 72.

<sup>48</sup> *Id.*, at 131.

<sup>49</sup> Final Order, Chapter Four at 72-73, 131.

<sup>50</sup> *Id.*, at 71-73.

Administrative Cost mechanisms.<sup>51</sup> But that rationale does not encompass all GMR. The Final Order's own description of the line item includes recurring services necessary for legacy plants, unplanned outages (such as boiler tubes ruptures), and tasks not limited to capital projects with a federal funding pathway.<sup>52</sup> At least a material portion of GMR therefore remains a base rate operating cost and should not disappear entirely.

Applied here, the Bureau's complete retroactive elimination of GMR is difficult to reconcile with its own factual findings. The Bureau acknowledges that GMR funds recurring and corrective services tied to units' availability and response time—boiler repairs, hydrostatic testing, relay and protection work, fire-protection interventions, and related mechanical, electrical, and instrumentation services—yet eliminates the account entirely. Where the adjudicator credits the operational importance of those services and simultaneously recognizes that deeper maintenance cuts increase outage frequency, duration, and load-shedding risk, Puerto Rico administrative law requires more than an arbitrary denial; it requires substantial evidence to the contrary and a rational explanation that bridges the record to the Bureau's determination.<sup>53</sup> This determination jeopardizes Puerto Rico's power generation capacity and directly threatens the energy security of our citizens. On reconsideration, the Energy Bureau should implement its findings and restore the identified reliability critical GMR subcomponents or explain, item by item, why those expressly recognized operating needs do not satisfy the necessary and prudent standard. Accordingly, Genera requests restoration of the GMR, at least at the constrained level.

## **VII. The LGA OMA Reserve Account is a legitimate contract obligation and should**

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<sup>51</sup> *Id.*, at 71-72.

<sup>52</sup> *Id.*, at 67, 69-70.

<sup>53</sup> *Capó Cruz v. Jta. Planificación et al.*, *supra*, at 591-592; *Rolón Martínez v. Supte. Policía*, *supra*, at 35-36; *Super Asphalt v. AFI y otro*, *supra*, at 819-820.

**not be disallowed without an equivalent mechanism: Disallowing Funding for this Account is a legal error on the Bureau's part**

Section 7.6(d) of the LGA OMA establishes a mandatory Reserve Account from which Genera may draw funds for costs connected with Forced Outages, Force Majeure Events, Owner Fault, approved Capital Spare Parts, and certain funding shortfalls. Genera requested contractually mandated replenishment funding of \$30 million to maintain the reserve at the level required by the LGA OMA and to ensure rapid liquidity when system-level eventualities arise.<sup>54</sup> The LGA OMA confirms the mandatory nature of this reserve elsewhere as well. Section 14.3(f) of the LGA OMA makes failure to fund or replenish Service Accounts—including failure “to replenish the Reserve Account in accordance with Section 7.6(d)(ii)” —an Owner Event of Default. Section 7.8 further provides that the Operator has no obligation to incur or pay costs to the extent Service Accounts lack sufficient funds and must maintain continuity only to the extent practicable with available funding.

The Final Order recognizes that, in fact, OMA account amounts are legitimate contract obligations that the annual revenue requirement must reflect. By approving the OMAs, the Energy Bureau implicitly found LUMA and Genera to have entered those contracts prudently; the just and reasonable standard therefore requires rates to include reasonable costs associated with OMA obligations.<sup>55</sup>

Furthermore, Section 8 of Act 120-2018 confirms that, although the Energy Bureau retains jurisdiction to review and approve rates and ensure that they are just and reasonable, its supervisory role must be exercised without altering, amending, or interfering with the substantive terms of

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<sup>54</sup> *Genera Initial Brief on Revenue Requirement*, paras. 162-163; *Genera Initial Legal and Policy Issues Brief* at 7-8.

<sup>55</sup> Final Order, Chapter Six at 1.

PREPA's partnership contracts, except as expressly authorized by law.<sup>56</sup> In particular, Section 8(d) of Act 120-2018 provides that the Energy Bureau "shall have no authority to alter or amend the Partnership or Sales Contract" and shall not interfere in operational or contractual matters, while Section 8(f) preserves the contractor's right to recover duties, rents, rates, and fees for services, repairs, improvements, and use of PREPA assets in accordance with the partnership contract, subject to the Bureau's just-and-reasonable ratemaking review. That statutory framework is directly relevant here because the LGA OMA is not merely a private commercial arrangement; it is the legislatively authorized mechanism through which Puerto Rico delegated operation and maintenance of the legacy generation assets. Accordingly, the Energy Bureau should interpret and apply its rate authority in a manner that respects the partnership contract funding structure, including the requirement in Section 7.6 of the General LGA OMA that PREPA fund the applicable Service Accounts, including the GenCo Reserve Account. A contrary ruling that denies or underfunds the Reserve Account would effectively impair the contractual risk allocation and liquidity mechanism embedded in the LGA OMA, undermining the very partnership structure Act 120-2018 was enacted to protect.

Despite this contractual requirement, the Final Order disallows the LGA OMA Reserve Account, reasoning that its cash flow function is addressed through existing mechanisms. The record does not establish that they do. Reconsideration is warranted because the record does not demonstrate that the alleged "existing mechanisms" provide an equally available, equally prompt, and legally enforceable source of liquidity for forced outages, force majeure events, owner fault, capital spare parts, and service account shortfalls. Nor does the Final Order identify a mechanism that would provide comparable certainty at the moment of operational need. An after-the-fact

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<sup>56</sup> *Puerto Rico Electric Power System Transformation Act*, 22 L.P.R.A. 1118.

emergency rate, later reconciliation, or case-by-case petition does not provide the immediate liquidity funding that a reserve account is designed to provide during a forced outage or cascading reliability event.<sup>57</sup> One more time, this determination jeopardizes Puerto Rico’s power generation capacity and directly threatens the energy security of our citizens. This position by the Energy Bureau is also contrary to the text of the LGA OMA and the unequivocal intent of the Puerto Rico legislature embedded in Act 120-2018. Genera therefore requests that the Bureau reconsider the denial and approve the funding for the LGA OMA Reserve Account requested in Genera’s final filing (\$30 million).

**VIII. The Reductions to NME Represent a Material Deviation from the Standard Necessary to Maintain an Adequate and Reliable Generation System and the Disallowance is not Supported by the Bureau’s Own Findings**

**A. The Final Order should be reconsidered for improperly relying on uncertain federal funding to deny rate recovery for necessary projects**

The Final Order removes 167 NME projects totaling approximately \$252,793,474 from base rates, stating that the record could not rule out the possibility that a “federal pathway” exists. That standard is not the same as a finding that federal funding is available or obligated in amounts necessary and executable on the project schedule. Nor is it uniformly the same as a finding that deferral will not harm reliability. A “cannot rule out” standard converts uncertainty into a denial of current funding.<sup>58</sup>

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<sup>57</sup> Final Order, Chapter Four at 130; *Id.*, Chapter Six at 1-2; *Genera Initial Legal and Policy Issues Brief* at 7-8.

<sup>58</sup> Final Order, Chapter Four at 56-57, 130-132.

Section 6.25 of Act 57-2014 places on the requesting electric power service company the burden to show that proposed rates are just and reasonable, consistent with sound fiscal and operational practices, and sufficient to provide safe and adequate service at the lowest reasonable cost. It does not expressly require the utility to prove the absence of every possible external funding path, nor does it expressly authorize the Bureau to assign a zero non-federal capital value to a necessary project solely because federal eligibility cannot be conclusively disproven.<sup>59</sup>

The Final Order further establishes the NME standard under a necessary and prudent framework and reflects that an expenditure is recoverable where it is necessary to maintain safe, adequate, and reliable service, where the amount is prudent, where the timing is reasonable, and where the allocation between ratepayers and federal funding is correct.<sup>60</sup> Through that same analysis, the Bureau recognizes that Puerto Rico's generation fleet operates under emergency conditions, that corrective maintenance has dominated the fleet's maintenance profile for decades, and that Genera's Constrained Budget prioritizes critical repairs and essential preventive work while deferring discretionary improvements.<sup>61</sup>

The Final Order highlights the testimony of Genera witness Vladimir Scutt<sup>62</sup> that continued reductions below the Constrained level would increase the risk of forced outages and reliability shortfalls, and that continued deferral may later require corrective actions that are more expensive

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<sup>59</sup> Act 57-2014, Sec. 6.25(b), 22 L.P.R.A. sec. 1054x(b); *Genera Initial Legal and Policy Issues Brief* at 16-20.

<sup>60</sup> Final Order, Chapter Four at 44-45.

<sup>61</sup> *Id.*, at 45-46.

<sup>62</sup> The Final Order cites the testimony of José Del Río; however, Mr. Del Río ceased his employment with Genera during the pendency of this proceeding. His testimony was thereafter expressly adopted by Vladimir Scutt, and Genera's references to such testimony are made as adopted and supported by Mr. Scutt. *Pre-filed Direct Testimony and Exhibit originally submitted by José M. Del Río Vélez Adopted by Reference by Vladimir Scutt* Accion Platform, Genera Exhibit 25.

or more urgent.<sup>63</sup> That testimony was an integral part of the Final Order's findings of fact recognizing that the system continues to operate under emergency conditions.

Yet, despite those findings, the Bureau approved base rate recovery materially below the Constrained level and excluded 167 projects based on speculative assumptions regarding possible federal funding pathways. The record further reflects that the overwhelming testimony of Genera witnesses was that the 115 Rank 1 projects deemed eligible for federal funding did not have federal funds that had been identified.<sup>64</sup> A project might be eligible for federal funding, but it cannot proceed if funding is not actually available, as the record reflects in Puerto Rico. There are not enough federal funds available to complete all necessary repairs to the so damaged electrical system. Denying funds for NME items whose deferral directly affects FOR, MTTR, EAF, and load shedding jeopardizes the reliability and stability of Puerto Rico's generation.

The Final Order's federal-funding framework should be refined to an obligation-and-executability standard: projects should be excluded from base rates only when the record establishes that federal funding is obligated or otherwise legally committed for the specific project scope, in an amount sufficient to cover the cost, and on a schedule that permits execution during the rate period. Genera has demonstrated substantial performance in the obligation and execution of projects with federal funds, but as the record shows, there is no certainty that funding will be available to complete all NME projects. For projects that may be eligible but are not yet obligated, the lawful regulatory solution is conditional recovery with reporting, milestones, reconciliation,

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<sup>63</sup> Final Order, Chapter Four at 31-32.

<sup>64</sup> *Id.*, at 54-56.

and refund or credit if federal funds later reimburse the cost. That approach prevents double recovery without shifting federal-funding uncertainty onto reliability.<sup>65</sup>

**B. The Energy Bureau should approve additional NME funding because the record shows the Constrained budget already defers critical work**

Genera requested NME funding based on technical assessments, asset condition, OEM recommendations, environmental compliance obligations, recurring outage causes, and reliability priorities. The NME budget supports asset rehabilitation, environmental compliance, reliability improvements, efficiency gains, and worker-safety enhancements. The record states that failure to fund these expenditures would compromise reliability, delay critical repairs, and jeopardize Genera's ability to meet its statutory and contractual obligations.<sup>66</sup>

The Final Order acknowledges that the constrained NME budget already requires Genera to postpone combustion turbine major overhauls, scale back hot gas path inspections, reduce corrosion-prevention measures, and limit the full preventive maintenance strategy. The Final Order further acknowledges that reductions below the constrained level would increase forced-outage risk and could require more expensive corrective action later.<sup>67</sup>

The record shows that a significant portion of the requested NME relates to corrective maintenance, preventive maintenance, spare parts, and corrective actions at Aguirre, San Juan, Costa Sur, Palo Seco, Cambalache, and other facilities.<sup>68</sup> Genera therefore requests that the Energy Bureau reconsider the automatic exclusion of those NME items that, although identified as having

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<sup>65</sup> *Genera Initial Legal and Policy Issues Brief* at 20-21, 26-31; Final Order, Chapter Eight at 39-40 (recognizing reconciliation and decoupling mechanisms under Act 57-2014, Sec. 6.25B, and the Bureau's authority to impose conditions and reporting requirements).

<sup>66</sup> *Genera Initial Brief on Revenue Requirement*, paras. 72-78.

<sup>67</sup> Final Order, Chapter Four at 31-33.

<sup>68</sup> Final Order, Chapter Four at 45-46.

a non-obligated federal pathway, also present operational criticality, time-sensitive maintenance windows, and immediate consequences for forced outages and load shedding. A generalized federal “pathway” cannot substitute for the record-specific inquiry required by Puerto Rico administrative law when the same Final Order recognizes that deeper maintenance cuts will worsen FOR, prolong MTTR, reduce EAF, and increase load shedding.<sup>69</sup> Nor may the Bureau place dispositive weight on assumptions that do not appear in the evidentiary record itself.<sup>70</sup>

Genera’s request for sufficient funding should also be viewed in light of its demonstrated record of seeking, securing, and incorporating federal funding for the benefit of ratepayers. Genera did not treat ratepayers as the first or only source of capital. To the contrary, the record reflects that Genera budgeted millions of dollars in capital expenditures to be covered with federal funds, sought to eliminate from its revenue requirement costs that had been obligated with federal funds, added 1,200 MW in generation with federal funds, and successfully reconciled 96% of expenditures from FEMA funds. That track record directly rebuts any suggestion that Genera is indifferent to federal funding opportunities or is seeking rate recovery in lieu of pursuing external funding.

More specifically, Genera revised its budget as federal and external funding became available. The record shows that Genera secured approximately \$258 million in new external funding, including approximately \$187 million from DOE and approximately \$71 million in HUD CDBG-DR funds for FEMA cost-sharing. Genera also reclassified twelve projects from ratepayer funding to federal funding, totaling \$83.8 million under the Constrained Budget and \$93.8 million under the Optimal Budget. These actions demonstrate good faith, prudence, and ratepayer

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<sup>69</sup> *Id.*, at 32-33, 45, 56-57; see also *Capó Cruz v. Jta. Planificación et al.*, *supra*, at 591 (agency factual determinations must be supported by substantial evidence in the record as a whole); *Rolón Martínez v. Supte. Policía*, *supra*, at 36.

<sup>70</sup> See *Mayagüez Sugar Co. v. Tribl. de Apelación*, *supra*, at 762, 767; *Magriz v. Empresas Nativas*, *supra*, at 70-71.

sensitivity. They also show that Genera's position is not that every project must be rate-funded, but that projects necessary for reliability cannot be denied merely because a potential federal pathway may exist but has not been identified, obligated, or made available on a timeline consistent with system needs.

Federal funding, while indispensable, is not a substitute for a lawful and sufficient revenue requirement. Genera's Initial Legal and Policy Issues Brief pointedly argues that federal funds are not automatic, not unlimited, and not available for all categories of work necessary to keep the legacy fleet reliable, including certain inspections, operating costs, maintenance, spare parts, and ongoing support services. It also explains that the operative trigger for removing costs from rates should be obligation—not speculative likelihood—because reliability-driven work cannot be paused indefinitely while awaiting uncertain federal action. The Energy Bureau therefore should reconsider any determination that treats speculative federal eligibility as a functional equivalent of available funding. Doing so shifts the operational risk to customers, who will bear the consequences through outages, curtailments, emergency procurement, and increased long-term repair costs.

Finally, the Energy Bureau should give substantial weight to the asymmetry of the risk. If a project is included in rates and later receives federal reimbursement, reconciliation mechanisms can protect customers from double recovery. But if necessary funding is denied and federal funding does not materialize in time, there is no equivalent remedy for the outages, accelerated asset degradation, lost generation availability, emergency repair premiums, or public harms that follow. The record reflects that Genera has reconciled federal expenditures, removed federally funded costs from rate recovery where appropriate, and adjusted its budget to reduce ratepayer burden. The prudent course, consistent with Act 57-2014 and the administrative record, is therefore to

provide sufficient funding now, subject to reporting and reconciliation, rather than to impose unfunded reliability risk on a system that the Energy Bureau has already found to be in a generation emergency.

### **C. Funding for Critical and Time-Sensitive NME Projects should be restored**

The Final Order recognizes that core critical maintenance activities are designed to prevent forced outages in key generating units, including San Juan Units 5 and 6, Aguirre, Palo Seco, Costa Sur, and Cambalache.<sup>71</sup> Consistent with this framework, Genera respectfully submits that, at a minimum, those NME subcomponents involving outage programming, procurement of spare parts, inspections, and corrective maintenance should be restored, particularly where delay would adversely affect short-term unit availability and where federal funding is neither obligated nor scheduled within a timeframe compatible with operational requirements.

The Final Order approved only limited NME plant-maintenance capital—specifically, \$13,122,600 in FY2026, \$12,197,112 in FY2027, and \$21,180,620 in FY2028—while excluding a substantially broader set of projects, in part based on Rank 1<sup>72</sup> classifications indicating potential federal eligibility despite the absence of identified funding.<sup>73</sup> However, a Rank 1 classification does not constitute a finding of present liquidity, a binding funding commitment, or alignment with outage execution windows for specific units.

For scheduled outages, spare parts procurement timelines, inspections, and corrective maintenance at Aguirre, San Juan, Costa Sur, Palo Seco, and Cambalache, the operative inquiry is whether funding will be available in time to prevent deterioration in key performance metrics,

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<sup>71</sup> *Id.*, Chapter Four at 47–52, 54–56.

<sup>72</sup> Genera Ex. 910 Genera Hopefulness Ranking

<sup>73</sup> Final Order, Chapter Four at 46–56, 131-132.

including Forced Outage Rate (FOR), Mean Time to Repair (MTTR), and Equivalent Availability Factor (EAF), during the applicable rate period.<sup>74</sup> Accordingly, reconsideration is warranted as the critical need for NME funding is evidenced by the substantial record.

**IX. The Energy Bureau’s Treatment of Federal Funding “Pathways” as a Funding Mechanism Deviated from the Findings of its own Expert Witness Resulting in a Conclusion Disconnected from the Substantial Evidentiary Record**

**A. Mr. Cortés identified a liquidity and timing constraint, not merely an eligibility issue**

The Energy Bureau’s own federal funding expert framed the issue related to the obligation and award of federal funds as a “critical liquidity gap,” not as a simple question of whether a project is federally eligible. The Energy Bureau’s federal funding expert opens his report by explaining that FEMA's reimbursement based structure requires operators to pay contractors and suppliers first, then wait through validation and reimbursement cycles; that this creates cash flow pressures capable of idling projects, delaying critical reliability improvements, and jeopardizing already invested federal funds; and that the 75 day Working Capital Advance reconciliation cycle creates recurring gaps that can stall execution.<sup>75</sup> The same report identified three distinct scenarios requiring regulatory attention: declined funding, uncertain funding during pre-obligation, and delayed funding after obligation but before cash arrival.<sup>76</sup> The Energy Bureau’s expert’s findings are substantially different from the determination made in the Final Order, which treated the

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<sup>74</sup> *Id.*, at 29-30, 32, 45, 47–52.

<sup>75</sup> Cortés Report at 1, 7-8, 12.

<sup>76</sup> *Id.*, at 8, 12.

existence of a federal pathway as largely dispositive of the reality surrounding federal funding while relegating any concern related to liquidity and timing problems to later proceedings.<sup>77</sup>

Contrary to the determination in the Final Order, the Energy Bureau’s own reasoning acknowledged the issues with federal funding. In Chapter One, the Bureau recognized that Category One and Category Two projects would still require working capital, that the WCA reconciliation gaps and cost-share timing mismatches described by Mr. Cortés are “real financial challenges,” and that Mr. Cortés emphasized the timing mismatch between when operators need cash and when federal reimbursement arrives.<sup>78</sup> But the Final Order then concluded that existing non-ratepayer sources plus Section 6.25(d) suffice, and rejected the structured solution proposed by its own expert.<sup>79</sup> That finding is precisely where the mismatch arises and why reconsideration is merited.

**B. The Cortés Report advocates a balanced framework: maximizing federal funds while incorporating prudent bridging measures and a structured liquidity mechanism**

Mr. Cortés did not recommend that every project with a potential federal pathway simply be denied from rates and left to await the federal process. His report proposed a four-part strategy: maximize use of federal funds; allow Non-Federal Capital (“NFC”) bridging cautiously for critical FAASSt projects; maximize force-account labor; and create a Restricted Federally Funded Capital Account (“RFFCA”).<sup>80</sup> To be sure, Mr. Cortés also identified certain General NFC items—such as the Aguirre Plant Turbine Driven Boiler Feed Pumps Two Bundle Acquisition—as appearing

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<sup>77</sup> Final Order, Chapter One at 12-24.

<sup>78</sup> *Id.*, at 22-24.

<sup>79</sup> *Id.*, at 23-24.

<sup>80</sup> Cortés Report at 12-16.

eligible for FAASSt equipment funding.<sup>81</sup> But even there his recommendation was to move eligible projects into the federal workflow while using cautious bridging and structured liquidity where timing and reliability required it; it was not to equate apparent eligibility with the disappearance of every associated operational, timing, or transitional cost.

Equally important, Mr. Cortés did not propose an unchecked customer funded slush fund. He proposed a targeted, annually reviewed mechanism keyed to three defined components—Liquidity Gap Provision, Funding Uncertainty Provision, and Cost Share Provision—with project-level screening, annual review, and automatic crediting once federal funds are received.<sup>82</sup> He expressly stated that the RFFCA would use regulatory guardrails, public transparency, and automatic credit mechanisms so that principal returns to customers once federal funds arrive.<sup>83</sup> Likewise, for DOE-related overlap, he recommended that any NFC amounts approved be treated as provisional bridge amounts and later credited back through reconciliation.<sup>84</sup>

**C. The Cortés Report recognizes that even where capital is federally funded, Genera requires rate funded O&M and execution support**

In the portion of the expert report summarizing Genera's position, Mr. Cortés recognized that federal funding supports major generation capital, but that the federal funding “covers capital investment but not ongoing operations and maintenance, which must come from rate-funded budgets,” and that Genera's FY2026 maintenance budgets support both legacy equipment and federally funded new assets until the transition is completed.<sup>85</sup> He further recognized that manufacturing lead times, interconnection studies, system integration work, and other federal

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<sup>81</sup> *Id.*, at 7, 12-13.

<sup>82</sup> *Id.*, at 16-20.

<sup>83</sup> *Id.*, at 14-15.

<sup>84</sup> *Id.*, at 13-14.

<sup>85</sup> *Id.*, at 11-12.

process constraints create execution delays.<sup>86</sup> That analysis aligns closely with Genera's positions on NME and BESS/Tesla LTSA/O&M: federal capital eligibility does not eliminate the need for contemporaneous rate-funded maintenance, startup support, warranty preserving OEM services, and other operational expenditures necessary to keep units available and new assets operable.

The same report also recommended that the Bureau ensure that operators maximize force account labor because FEMA may reimburse both straight time and overtime for permanent work.<sup>87</sup> That recommendation calls for targeted optimization of labor structure and execution strategy; it does not support denial of operational funding that remains necessary to execute federally supported and non-federally supported work alike.

**D. The Final Order selectively adopts the federal maximization aspect of the Energy Bureau's Expert Witness while disregarding the safeguards addressing reliability risks from timing gaps**

Mr. Cortés warned that “without a mechanism to bridge the liquidity gaps,” operators face “untenable choices,” because delay harms reliability and cost escalation, eliminating projects sacrifices necessary reliability improvements, and bypassing federal funds raises rates unnecessarily.<sup>88</sup> He then compared three alternatives—project delay, ad hoc emergency rate adjustments, and a restricted federally funded capital account—and concluded that delay and ad hoc emergency adjustments are inferior to a structured bridge because they create poor reliability outcomes, unpredictable rate spikes, and higher administrative burden.<sup>89</sup> Yet the Final Order

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*, at 14.

<sup>88</sup> *Id.*, at 11-12.

<sup>89</sup> *Id.*, at 15-18.

rejected the structured bridge and instead relied on the very mix of delay plus case-specific Section 6.25(d) relief that the expert report treated as the less effective alternative.<sup>90</sup>

The Final Order's own use of the Cortés Report elsewhere underscores the inconsistency. In the vegetation-management portion of Chapter Three, the Bureau invoked Mr. Cortés's identification of a substantial federal funding gap and, based on that record, determined that both funding streams must be pursued “simultaneously and without delay” because waiting on federal timing alone would conflict with urgent reliability needs.<sup>91</sup> But as to Genera, the Bureau adopted a materially less flexible approach: it privileged uncertain pathway based exclusion, rejected the structured bridge its own expert proposed, and left Genera to later temporary filings notwithstanding an acknowledged generation emergency.<sup>92</sup>

Accordingly, the Cortés Report provides an additional record-based ground for reconsideration. At a minimum, the Bureau should revisit the disputed Genera items using a framework that differentiates federal eligibility from actual liquidity, obligation timing, operational criticality, and rate-funded O&M needs; permits temporary or conditional bridge relief with automatic customer credits where appropriate; and avoids forcing Genera to choose among project delay, piecemeal emergency litigation, or nonperformance of its contractual and operational duties. That evidence based approach would better harmonize the final determination with the Bureau’s own expert, with the Final Order's own findings on the generation emergency, and with the just and reasonable standard.

**X. The Energy Bureau should reconsider the BESS LTSA/O&M disallowance, as maintenance and warranty support are essential to ensure BESS assets function**

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<sup>90</sup> Final Order, Chapter One at 22-24.

<sup>91</sup> *Id.*, Chapter Three at 173-175; Cortés Report Appendix A at A-1-A-5.

<sup>92</sup> Final Order, Chapter One at 22-24; Chapter Four at 1-6, 29, 33-34.

**as reliable resources and the substantial record demonstrated this need**

The Final Order approved only \$100,000 in FY2027 and \$150,000 in FY2028 for BESS O&M, while denying most of the requested BESS LTSA-related costs because the Bureau concluded that a manufacturer O&M contract was not needed during the rate period and that Genera had not shown battery-cell replacement or OEM level maintenance would be required before FY2028.<sup>93</sup>

That determination should be reconsidered because the record evidence was not focused on battery cell replacement, but rather on the intrinsic relationship between the applicable guarantees and the existence of the LTSAs. Genera's testimony established that LTSAs preserve OEM support, parts availability, troubleshooting, performance guarantees, emergency response time, and pricing certainty. Mr. Quiñoy-Ortiz testified that without an LTSA, costs could be 30 to 40 percent higher, and that OEMs can guarantee parts and support that Genera cannot replicate internally. The Energy Bureau's own consultant testified that LTSAs have demonstrated compliance with time based maintenance and recommended LTSAs because they improve equipment performance and maintenance.<sup>94</sup>

The record also shows that the Tesla equipment supply contract required either a long-term service agreement or an authorized Tesla-validated service provider for BESS maintenance, and that extended warranty terms go hand in hand with maintenance services. Disallowing the LTSA funding therefore threatens the warranty and reliability function of the very BESS resources the

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<sup>93</sup> Final Order, Chapter Four at 27-28.

<sup>94</sup> *Genera Initial Brief on Revenue Requirement*, paras. 188-194.

Priority Stabilization Plan counts on for frequency regulation, spinning reserve, and peak-load management.<sup>95</sup>

Chapter Four expressly states that FEMA and other federal programs fund the capital costs of BESS and peakers, but that the O&M of those new resources is the responsibility of customers and flows through base rates.<sup>96</sup> Indeed, the Final Order treats the O&M of temporary generation, BESS, and peakers as paradigmatic base rate cost categories.<sup>97</sup>

Against that backdrop and contrary to the record evidence, the Final Order reduced the requested BESS O&M from \$3.142 million in FY2027 and \$4.744 million in FY2028 to \$100,000 and \$150,000, respectively, based on the view that a manufacturer O&M contract was unnecessary during the rate period and that Genera had not shown a need for battery cell replacement or OEM level maintenance before FY2028.<sup>98</sup> That reduction leaves unaddressed the functional core of LTSA/OEM support that typically precede cell replacement. Accordingly, the Bureau should approve the requested BESS LTSA funding.

**A. The Final Order Approves Funding for the Peaker LTSAs while denying BESS LTSAs without reasoned basis**

Even though the Siemens Peaker LTSA remained in draft form and had not yet been finalized, the underlying maintenance need was genuine because manufacturer-supported maintenance preserves warranty coverage, ensures parts availability, and maintains performance guarantees underlying resource-adequacy projections.<sup>99</sup> On that basis, the Energy Bureau

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<sup>95</sup> *Id.*, paras. 191-192; Final Order, Chapter Four at 7-8.

<sup>96</sup> Final Order, Chapter Four at 7-8, 13-15.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*, at 27-28.

<sup>99</sup> *Id.*, at 28-29.

approved in full the requested Peaker O&M for FY2027 and FY2028.<sup>100</sup> That same logic should apply, *mutatis mutandis*, to the Tesla LTSA for BESS.

An OEM LTSA for utility-scale BESS is not limited to battery cell replacement. It typically covers or enables commissioning support, diagnostics, warranty compliance, software and firmware updates, monitoring protocols, parts availability, response commitments, training, and performance assurance. If the Bureau concluded that the draft status of the peaker LTSA did not preclude approval of the underlying need, there is no persuasive reason to deny, almost in full, the BESS OEM component based on a narrower premise—the absence of a need for cell replacement before FY2028—that does not exhaust the purpose of the LTSA.

Moreover, the Final Order itself approved a minimum amount of pre-commissioning inspection and site maintenance conditioned on demonstrated commercial operation.<sup>101</sup> That finding confirms that the need for support before or contemporaneous with COD does exist; the real issue concerns amount and timing, not absolute nonexistence. Once the Energy Bureau accepted as legal and factual premises that BESS O&M is a customer responsibility and that peaker LTSA/O&M was warranted because manufacturer backed maintenance protects warranties, parts availability, and performance guarantees, the near total denial of Tesla LTSA support required a reasoned distinction anchored in the record. This did not occur.

Puerto Rico administrative law does not permit unsupported divergence in the treatment of materially analogous categories. Agency distinctions must rest on a rational basis supported by substantial evidence in the record.<sup>102</sup> And because legal conclusions remain fully reviewable under

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<sup>100</sup> *Id.*, at 27-28.

<sup>101</sup> *Id.*

<sup>102</sup> *Capó Cruz v. Jta. Planificación et al.*, *supra*, at 591; *Rolón Martínez v. Supte. Policía*, *supra*, at 36.

Section 4.5 of the LPAU,<sup>103</sup> the Energy Bureau should address on reconsideration the LTSA functions that the cell replacement rationale leaves untouched—diagnostics, firmware and controls support, warranty compliance, OEM response commitments, and performance assurance—rather than treat the absence of near-term cell replacement as dispositive of the entire O&M/LTSA issue.

The near total reduction also lacks a clear limiting principle. The Bureau did not find that BESS O&M is federally funded, unlawful, or categorically outside rate recovery. To the contrary, it expressly recognized that BESS O&M is a customer responsibility and approved a modest amount for pre-commissioning inspection and site maintenance during the rate period.<sup>104</sup> Once that premise is accepted, the remaining task is to determine when OEM support becomes necessary to protect warranties, diagnostics, software support, response commitments, and performance obligations. Yet the Final Order draws no clear record-based line between LTSA elements it concluded could wait and LTSA elements it found necessary before or upon commercial operation.<sup>105</sup> At a minimum, reconsideration should replace the effective near denial with a milestone-based allowance keyed to commercial operation, LTSA execution, and demonstrated OEM or warranty prerequisites.

Accordingly, Genera requests that the Bureau reconsider and approve the LTSA/O&M for BESS because this result would be more consistent with the treatment that the Final Order afforded the Siemens LTSA and with the Final Order's express finding that BESS O&M is a customer responsibility.<sup>106</sup>

## **XI. The Denial of Corporate Affairs Communications Expenses Should Be**

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<sup>103</sup> See *Vázquez y otro v. Consejo de Titulares y Junta de Directores del Condominio Los Corales y otros*, 215 D.P.R. \_\_\_\_, 2025 TSPR 56 (quoting *Super Asphalt v. AFI*, 206 DPR 803 (2021) (our translation).

<sup>104</sup> Final Order, Chapter Four at 7-8, 27-28.

<sup>105</sup> *Id.*, at 27-29.

<sup>106</sup> Final Order, Chapter Four at 7-8, 27-29.

**Reconsidered as this is a LGA OMA Requirement and Disallowing Funding for  
this Account is a Legal Error on the Bureau’s part**

A sufficient communications budget is required because the LGA OMA makes communications a specific operational responsibility, not a discretionary corporate function. Annex V and Section 4.2(q) of the LGA OMA require Genera to prepare, maintain, and update a Communications Plan that ensures communications with governmental bodies, public officials, regulators, municipalities, employees, the media, the general public, and other stakeholders are “timely, effective, efficient and consistent,” using a communications team with expertise in media relations, crisis management, public affairs, government relations, digital platforms, and community relations. Annex IX, Section III, further provides that Genera is responsible for government, community, and media relations concerning the management, operation, and maintenance of the Legacy Generation Assets, and gives Genera direct responsibility for media and public communications on matters relating to those assets, including communications with public officials, regulators, municipalities, and counties regarding storm preparation, management, coordination, response, programs, and complaints. Annex V likewise requires a Communications Coordination Center to serve as the hub for incoming and outgoing communications, including message development, digital communications, rapid response, and crisis or weather-emergency communications. The LGA OMA, in Annex XII (16), also treats “costs incurred in connection with branding and customer and public communications” as pass-through expenditures.

The Final Order describes Genera’s Corporate Affairs Department as the unit through which Mr. Báez Santiago, Genera’s Vice President of Public and Government Affairs, manages interactions with government officials, regulatory agencies, and community stakeholders, including public affairs, regulatory and legislative matters, and effective communication between

the company and external audiences.<sup>107</sup> In the January 13, 2026 hybrid filing, Genera designated Corporate Affairs at the Constrained level.<sup>108</sup> The Communications Expenses line was requested at \$832,000 annually for each of FY2026, FY2027, and FY2028, and the Bureau approved \$0 for all fiscal years.<sup>109</sup>

The Bureau denied Communications Expenses in its entirety because, in its view, LUMA, as the Transmission and Distribution operator, holds primary responsibility for public-facing communications, stakeholder engagement, and community outreach to ratepayers.<sup>110</sup> Notwithstanding, the Bureau completely disregarded the contractual provisions in the LGA OMA that mandate communications responsibilities on Genera and specifically treats these endeavors as pass-through expenses. Additionally, the Bureau used the same Corporate Affairs rationale to preserve other Genera expenses related to basic industry memberships and Transportation for government relations, stakeholder engagement, and participation in key events, expressly crediting testimony that those travel amounts were already at a minimal and essential level.<sup>111</sup> If Genera still must maintain governmental relations and stakeholder engagement functions, it cannot rationally be the case that every communication related cost is duplicative of LUMA's mandate. Puerto Rico law requires a rational bridge between the record and the result and due consideration to contractual responsibilities.<sup>112</sup>

Here, the Final Order acknowledges a generation side Corporate Affairs function with regulatory, legislative, governmental, and community facing responsibilities, yet it denies the

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<sup>107</sup> Final Order, Chapter Four at 115.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*, at 115-117.

<sup>110</sup> *Id.*, at 116.

<sup>111</sup> *Id.*, at 116-117.

<sup>112</sup> *Capó Cruz v. Jta. Planificación et al.*, *supra*, at 591; *Rolón Martínez v. Supte. Policía*, *supra*, at 36; *Super Asphalt v. AFI y otro*, *supra*, at 819.

entire Communications line as though the only possible function were duplication of LUMA's customer facing role. The correct inquiry is not whether LUMA has primary ratepayer facing communications responsibility in general, but whether particular Genera communications activities are mandated by the contract, nonduplicative, generation specific, and necessary to Genera's delegated role under the LGA OMA. That more tailored inquiry would also harmonize the result with the Final Order's own conclusions of law, which recognize that costs are recoverable in base rates to the extent they fall within the requesting entity's delegated scope and are not duplicative of responsibilities assigned to another entity.<sup>113</sup>

A generation operator with island wide thermal facilities, ongoing governmental and regulatory interface, host community presence, environmental and legislative obligations, and coordination needs during generation events cannot reasonably be expected to perform those functions with travel funds and trade membership funds alone, but zero communications capacity. The petitioned line was presented as a Constrained budget request for "only core communication functions necessary to fulfill basic operational and regulatory needs," including stakeholder engagement, strategic communications, public transparency, and community outreach tied by testimony to Genera's obligations under the LGA OMA to communicate with the public, government entities, and other stakeholders.<sup>114</sup>

Accordingly, reducing or denying Genera's communications budget would impair Genera's ability to comply with express LGA OMA obligations that are directly tied to emergency response, regulatory coordination, public safety, stakeholder confidence, and the reliable operation of Puerto Rico's generation fleet. Reconsideration is therefore warranted.

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<sup>113</sup> Final Order, Chapter Eight, Conclusions of Law, par. 12 at 39.

<sup>114</sup> *Id.*, Chapter Four at 115-116.

## **XII. Conclusion and Requested Relief**

Genera recognizes that affordability is a central public policy objective. But affordability cannot be implemented by setting a revenue requirement below the level necessary to recover prudently incurred and necessary costs required to provide adequate, safe, reliable, efficient, and nondiscriminatory service. Section 6.25 of Act 57-2014 requires rates to be just and reasonable and consistent with sound fiscal and operational practices resulting in reliable service at the lowest reasonable cost. The phrase “lowest reasonable cost” does not mean the lowest nominal rate regardless of reliability consequences.<sup>115</sup>

The Final Order focuses on rate impacts, customer tolerance, and solar departure. But underfunding generation repairs can itself increase total customer costs through more outages, more temporary generation, higher corrective repair costs, fuel inefficiency, environmental penalties, and customer self-supply departures caused by poor reliability. A lawful affordability analysis must consider both sides of the equation: the cost of funding repairs and the cost of not funding them.<sup>116</sup>

Genera's requested relief does not ask the Bureau to abandon ratepayer protections. Genera proposes tools the Bureau already has authority to use: project specific reporting; obligation milestones; escrowed amounts; conditional approval; true up and reconciliation; refund or credit for later federal reimbursement; procurement and documentation requirements; and reporting in

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<sup>115</sup> Act 57-2014, Sec. 6.25(a), *supra*; Act 17-2019, Sec. 1.5, 22 L.P.R.A. sec. 1141d; *Genera Initial Legal and Policy Issues Brief* at 18, 29-30.

<sup>116</sup> Final Order, Chapter One at 4-6, 13-16; *Genera Initial Brief on Revenue Requirement*, paras. 74-78.

NEPR-MI-2021-0002 for federally funded projects. These tools protect ratepayers without leaving reliability critical work unfunded.<sup>117</sup>

The Bureau's discretion is broad, but it must be exercised in a manner supported by substantial evidence, consistent with the statutory standard, and reasonable considering the record. A disallowance that is grounded in uncertain federal eligibility but not in actual obligated funding, and that does not provide a substitute mechanism if the federal pathway fails, is not a reasonable means of addressing a recognized generation emergency and this conclusion is not supported by the record evidence including the Energy Bureau's own expert witness.

The consequences of insufficient generation funding are not abstract, speculative, or merely financial. They are direct consequences for system stability, generation adequacy, public safety, and the ability of the Puerto Rico electric system to serve load without recurring emergency conditions. The Energy Bureau's own Final Order recognizes that Puerto Rico lacks sufficient, reliable generation capacity; that customers risk service interruptions during peak season on 93 separate days due to generation alone; that the forced outage rate for Puerto Rico's average baseload unit is projected to reach 20%; and that the generation adequacy problem has already triggered rolling blackouts. Against that record, any reduction below the level necessary to execute planned maintenance, preserve operational reserves, and support long-term service agreements for new and existing generation resources does not merely reduce a budget line item; it increases the probability that already fragile generation assets will be unavailable when needed most and most of all is not substantiated by the record evidence and the Bureau's own findings.

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<sup>117</sup> *Id.*, Chapter Eight at 39-40 (recognizing Section 6.25B reconciliation and revenue-decoupling mechanisms); *Genera Initial Legal and Policy Issues Brief* at 19-20, 26-31.

The same principle applies to NME, GMR, the Reserve Account, and BESS related long-term service support. These mechanisms serve different functions and are not interchangeable. NME funds pre-scheduled, asset specific maintenance based on outage calendars, condition assessments, OEM recommended intervals, and environmental compliance mandates. GMR is not a generic reserve or duplicative fund; it is an operational safeguard for the legacy generation fleet, funding urgent component replacements, OEM technical support, third-party services, emergency corrective actions, and responses to high-risk asset failures that cannot be predicted or scheduled in advance. The Reserve Account in particular serves a distinct contractual liquidity function, allowing Genera to draw funds for costs connected with Forced Outages, Force Majeure Events, Owner Fault, and capital spare parts, and Genera requested replenishment to the \$30 million level contemplated by the LGA OMA. The Bureau has no discretion to disallow funding for this account as it is a contractually mandated disposition like Genera's fixed fee and must be adequately funded. Ignoring this mandate is a legal error on the Bureau's part.

If any one of these categories is materially reduced without a substitute mechanism, the practical effect is to remove liquidity from the precise points in the system where rapid execution matters most. The result would be inconsistent with the operating reality of an aging thermal fleet and with the record evidence that necessary maintenance expenditures support asset rehabilitation, environmental and regulatory compliance, reliability improvements, efficiency gains, and safety and worker protection enhancements. A rate order that does not fund these functions adequately risks forcing the system into a reactive maintenance posture: assets fail first, customers lose service, and only then are emergency or corrective expenditures incurred at higher cost and with greater system disruption. The record further demonstrates that Genera's budget request already incorporated ratepayer sensitive adjustments and risk based reductions. Genera explained that it

had modified its revenue petition after securing external funding, eliminating possible amounts from the revenue requirement and presenting a hybrid constrained/optimal request by department based on actual operating needs.

The Energy Bureau should therefore avoid treating further reductions as harmless accounting adjustments. Reductions below the levels necessary for planned and emergent maintenance would increase the risk of forced outages, longer repair times, loss of equivalent availability, and increased exposure to load-shedding events. Those consequences are precisely what the just and reasonable standard is designed to prevent: rates must be sufficient not only to reduce short-term customer impacts, but also to support adequate, safe, reliable, efficient, and nondiscriminatory electric service over the rate period.

### Requested Reconsideration

Final Order ruling	Record/legal problem	Requested correction
<p><b>Exclusion of 167 projects totaling approximately \$252.8 million because a federal pathway could not be ruled out. Approval of only approximately \$149.0 million in base rate funded generation capital over the rate period</b></p>	<p>Determination by the Bureau is not supported by its own findings or the substantial evidence on the record. Potential eligibility is not the same as obligated, available, or executable funding. The standard effectively requires Genera to prove a negative and shifts federal-funding risk onto reliability contrary to the position of the Bureau’s own expert witness. The Order recognizes a generation emergency, 20% forced outage rates and LOLE far above the</p>	<p>Reconsider and reinstate: Adopt obligation-and-executability standard; conditionally approve rate recovery subject to federal-funding milestones and reconciliation. Approve additional Constrained NME/capital funding or an automatic rider/escrow if federal obligation does not occur.</p>

	industry target, but denies funding for many repairs designed to reduce that risk.	
<b>Elimination of Plant Maintenance Services / GMR</b>	Determination by the Bureau is not supported by its own findings or the substantial evidence on the record. The record distinguishes GMR from NME and shows it funds non-routine plant maintenance services, emergency repairs, and availability support.	Reconsider and Reinstate GMR or establish a dedicated plant-maintenance services account with reporting and reconciliation.
<b>Disallowance of the LGA OMA Reserve Account</b>	Legal Error. The Reserve Account is a contractually defined liquidity mechanism for forced outages, force majeure, owner fault, capital spare parts, and shortfalls; existing mechanisms are not shown to be equivalent.	Reconsider and Fund the requested \$30 million replenishment or an equivalent immediately available, replenishable liquidity mechanism.
<b>BESS O&amp;M/LTSA reduction to \$250,000 total</b>	Determination by the Bureau is not supported by its own findings or the substantial evidence in the record. The record shows Tesla maintenance/LTSA or validated-service-provider support is tied to warranty, performance, parts, troubleshooting, and safe operation; the need is broader than mere battery-cell replacement.	Reconsider and Approve the requested BESS LTSA/O&M costs or conditionally escrow funds upon execution of the LTSA or a validated service-provider arrangement.
<b>Communications Budget</b>	Legal Error. The record shows Genera's communications budget is contractually required and	Reconsider and Approve the requested Constrained communications budget

	necessary for Genera to comply with its responsibilities under the LGA OMA.	pursuant to the requirements of the LGA OMA.
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**XIII. Request for Relief**

Genera respectfully requests reconsideration of the Resolution and Order notified on April 15, 2026. The Bureau’s determination should be reconsidered, vacated or amended because: (1) the disallowance of funds for Plant Maintenance Services / GMR, NME, BESS O&M / Tesla LTSA and the treatment of “federal funding pathways” are not supported by substantial evidence in the administrative record, failing to consider material evidence; (2) the Bureau’s disallowance of contractually mandated costs, Reserve Account and Communications Budget, exceeds the authority delegated to it by law; (3) the remedies imposed by the Bureau are unsupported by its own findings and the substantial evidence, making the conclusions arbitrary and contrary to law. Finally, Genera expressly preserves each of these arguments, and all subsidiary statutory, regulatory, constitutional, evidentiary, and remedial objections stated in the evidentiary record, for judicial review before the Puerto Rico Court of Appeals.

In light of all the foregoing, Genera respectfully requests that the Energy Bureau: (1) reconsider and restore the Plant Maintenance Services / GMR line item; (2) reconsider and approve the LGA OMA Reserve Account requested, including implementation of a rider for replenishment; (3) reconsider and restore the cuts to NME and restore critical items whose deferral affects FOR, MTTR, EAF, and load shedding risk; (4) reconsider and approve the treatment of BESS O&M / Tesla LTSA and approve the requested amount; and (5) reconsider and approve the denial of Corporate Affairs Communications Expenses and approve at the Constrained level.

**WHEREFORE**, Genera PR LLC respectfully requests that the Puerto Rico Energy Bureau GRANT this Motion for Partial Reconsideration, modify the April 15, 2026 *Final Resolution and Order on Electricity Rates* as identified herein; reconsider and approve the GMR, LGA OMA Reserve Account, critical NME costs, LTSA/BESS O&M, and core Corporate Affairs / Communications line items and grant such other relief as may be just and proper to harmonize the final decision with the evidentiary record, system reliability, and the just and reasonable ratemaking standard.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 29<sup>th</sup> day of April 2026.

**WE HEREBY CERTIFY** that this Motion was filed using the electronic filing system of this Energy Bureau and that electronic copies of this motion will be notified to the Hearing Examiner, Scott Hempling, [shempling@scotthemplinglaw.com](mailto:shempling@scotthemplinglaw.com); and to the attorneys of the parties of record.

A courtesy copy of the present Motion will also be notified to the following:

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