

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

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**IN RE:**

PUERTO RICO ELECTRIC POWER  
AUTHORITY'S PERMANENT RATE

**CASE NO.:** NEPR-MI-2020-0001

**SUBJECT:** Memorandum of Law in Support of Confidential Treatment of the Fuel Optimization Plan Draft Submitted by Genera in Compliance with the June 30, 2023, Order

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF THE  
FUEL OPTIMIZATION PLAN DRAFT SUBMITTED BY GENERA IN COMPLIANCE  
WITH THE JUNE 30, 2023, ORDER**

**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 counsels of record, and respectfully submits and prays as follows:

**I. Introduction**

1. On June 30, 2023, the Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau”) issued a Resolution and Order (“June 30<sup>th</sup> Order”) through which, among other things, ordered Genera to submit its Fuel Optimization Plan, setting the initiatives to achieve fuel cost savings during the Term of the Agreement for the operations of the generation facilities, on or before 12:00 p.m., on Monday, July 10, 2023.

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<sup>1</sup> Pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* (“LGA OMA”), dated January 24, 2023, executed by and among PREPA, the Puerto Rico Public-Private Partnerships Authority (“P3 Authority”) and Genera PR LLC (“Genera”), Genera is the sole operator and administrator of the Legacy Generation Assets (defined in the LGA OMA) the sole entity authorized to represent PREPA before PREB with respect to any matter related to the performance of any of the O&M Services provided by Genera under the LGA OMA.

2. Prior to the Energy Bureau entering the June 30<sup>th</sup> Order, Genera had submitted its proposed Fuel Optimization Plan to the P3 Authority, in compliance with Section 4.2(t) of the LGA OMA, *infra*, on June 27, 2023. At the time of filing this memorandum, Genera has yet to receive comments and approval from the P3 Authority regarding the proposed Fuel Optimization Plan.

3. On July 9, 2023, Genera submitted to the Energy Bureau the proposed Fuel Optimization Plan under a document titled *Fuel Optimization Plan* (the “July 9<sup>th</sup> Draft”). As part of its submittal, Genera stated that the Fuel Optimization Plan contained privileged and confidential information in accordance with the Section 6.15 of Act No. 57-2014, also known as the “Puerto Rico Energy Transformation and RELIEF Act.” (“Act No. 57-2014”).

4. After a series of communications, Genera submitted the July 9<sup>th</sup> Draft to LUMA on July 10, 2023, to facilitate the analysis required by the Energy Bureau's June 30<sup>th</sup> Order and to ensure the continuity of the proceedings.

5. On July 11, 2023, the Energy Bureau entered an Order titled *Order pertaining Genera July 9 submission of draft for Fuel Optimization Plan* (“July 11<sup>th</sup> Order”), whereby it ordered Genera to submit, on or before Friday July 14, 2023, at 12:00 a.m., a memorandum of law explaining the legal basis and support for a request to file information confidentially, a table identifying the confidential information, a summary of the legal basis for the confidential designation, why each claim or designation conforms to the applicable legal basis for confidentiality, and to submit a revised redacted (*i.e.*, public) version of the Fuel Optimization Plan.

6. In compliance with the July 11<sup>th</sup> Order and in compliance with the Energy Bureau’s Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 2016, and partially amended on September 16, 2016 (“Energy Bureau’s Policy on Management on

Confidential Information”), Genera respectfully submits this memorandum of law that explains the legal basis for the confidential treatment of the Fuel Optimization Plan draft submitted on July 9, 2023, to the Energy Bureau.

Document Name and Filing Date	Confidential Information	Summary of Legal Basis for Confidential Designation	Summary of why each claim or designation conforms to the applicable legal basis for confidentiality
Fuel Optimization Plan filed on July 9, 2023.	Full document.	Trade Secrets and Information from which an economic value or a commercial advantage can be derived under Act 80-2011.	The Fuel Optimization Plan Draft, under review by the P3 Authority and the Energy Bureau, could be compromised by premature disclosure. As it includes proprietary strategies, contract negotiations, and logistics chain modifications, its early release could harm Genera's competitive advantage and disrupt the implementation of the plan in the future.

## II. Memorandum of Law in Support of Confidential Treatment

### A. Applicable Law and Regulations

The governing statute for the management of classified information submitted to this esteemed Energy Bureau is Section 6.15 of Act No. 57-2014, also known as the "Puerto Rico Energy Transformation and RELIEF Act.” This section stipulates, "[i]f any person who is required to submit information to the Energy [Bureau] believes that the information to be submitted carries a confidentiality privilege, such person may request the [Bureau] to treat such information as confidential..." 22 L.P.R.A. § 1054n. If, after conducting a meticulous evaluation, the Energy Bureau determines that the information warrants protection, it is required to "grant such protection in a manner that minimally affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted." *Id.* at Section 6.15(a). Consequently, such information must be withheld from the

public domain by the Energy Bureau and "must be duly safeguarded and provided exclusively to the personnel of the Energy [Bureau] who need to know such information under nondisclosure agreements." *Id.* at Section 6.15(c). Therefore, "[t]he Energy [Bureau] must swiftly act on any privilege and confidentiality claim made by a person under its jurisdiction through a resolution for such purposes before any potentially confidential information is disclosed." *Id.* at Section 6.15(d).

Additionally, the Energy Bureau's Policy on Management of Confidential Information detail the procedures a party should **follow to request confidential treatment for a document** or a portion of it. The Energy Bureau's Policy and Procedures on Confidential Information requires the identification of confidential information and the filing of a memorandum of law that explains the legal basis and support for a request to file information confidentially. *See* Section A of the Energy Bureau's Policy on Management of Confidential Information. The memorandum should also include a table that identifies the confidential information, a summary of the legal basis for the confidential designation, and an explanation of why each claim or designation conforms to the applicable legal basis for confidentiality. *Id.*

Furthermore, under the Industrial and Trade Secret Protection Act of Puerto Rico, Act. No. 80-2011, 10 LPRA §§ 4131-4144 ("Act No. 80-2011"), certain information may be granted protection as a trade secret. Specifically, Article 3 of Act. No. 80-2011 provides that industrial or trade secrets are deemed to be any information:

- a) That has a present or a potential independent financial value or that provides a business advantage, insofar as such information is not common knowledge or readily accessible through proper means by persons who could make a monetary profit from the use or disclosure of such information, and
- b) For which reasonable security measures have been taken, as circumstances dictate, to maintain its confidentiality.

10 LPRA § 4132

In its Statement of Motives, Act. No. 80-2011 states that industrial or business secrets may consist of a process to manufacture, treat or preserve materials, a formula or recipe, a project or pattern for the development of some machinery, or simply a list of specialized clients that may afford an advantage to a competitor. The Supreme Court of Puerto Rico has expressed that a trade secret can be any process for manufacturing, treating, or preserving materials, formula or recipe, a blueprint or pattern for the development of machinery, or even a list of specialized customers that constitute a distinct market, thereby bestowing a competitive advantage upon its owner. *See Ponce Adv. Med. v. Santiago González*, 197 DPR 891, 903-904 (2007). The Supreme Court further clarifies that a trade secret “is any information (1) from which a current value, a potential value or an economic advantage is derived; (2) that it is not common knowledge or accessible by appropriate means, and (3) that it has been kept confidential through reasonable security measures”. *Id.*, on page 906.

Regarding Trade Secret Information, the Energy Bureau's Policy on Management of Confidential Information stipulate that “[a]ny document designate by the [Energy Bureau] as Validated Confidential Information because it is a trade secret under Act 80-2011 may only be accessed by the Producing Parting and the [Bureau], unless otherwise set forth by the [Bureau] or any competent court”. *See* Section D(2) of the Energy Bureau's Policy on Management of Confidential Information.

#### **B. Request for Confidentiality**

Genera respectfully requests that the July 9<sup>th</sup> Draft be treated as confidential and kept under seal until it has been reviewed by the P3 Authority and subsequently approved by the Energy Bureau, in accordance with the provisions of the LG OMA. Specifically, Section 4.2(t) of the LG

OMA outlines the obligation of Genera and the P3 Authority, serving as the Operator and Administrator of the Legacy Generation Assets, respectively, to:

As soon as reasonably practicable, but not less than ninety (90) days following the Effective Date, **Operator shall develop and submit to Administrator a plan intended to take effect from the Service Commencement Date and describing the Fuel Cost Savings Initiatives and outlining the expected methods and estimated fuel savings to be achieved during the Term of the Agreement (the “Fuel Optimization Plan”). Administrator, acting reasonably, shall provide Operator comments on the appropriateness of the proposed Fuel Optimization Plan and recommend any changes or modifications it believes are necessary or appropriate.** Within thirty (30) days following receipt of Administrator’s comments, if any, or the end of forty-five (45) days following Administrator’s receipt of the proposed Fuel Optimization Plan, if Administrator has no comments, **Operator shall submit to PREB for its review and approval the revised Fuel Optimization Plan,** incorporating the feedback from Administrator. If Operator disagrees with any comment from Administrator, Operator will deliver with the revised Fuel Optimization Plan a written statement describing such disagreement, and the parties will meet within five (5) Business Days to seek to resolve any such disagreement and obtain Administrator’s approval of a Fuel Optimization Plan that is acceptable to Operator. Operator shall update the Fuel Optimization Plan (A) on an annual basis, (B) as necessary pursuant to Section 2.3(c) (*Term –Reduction*) and (C) upon any order from PREB or reasonable request from Administrator. **Notwithstanding anything to the contrary herein, Operator’s submission of the Fuel Optimization Plan to the Administrator shall be sufficient to satisfy this Operator Service Commencement Date Condition; provided that, for the avoidance of doubt, the Fuel Optimization Plan shall not be effective until approved by Administrator and PREB pursuant to this Section 4.2(t) (*Operator Responsibilities – Fuel Optimization Plan*).**

*Id.* (emphasis supplied).

While the Fuel Optimization Plan has been submitted to the P3 Authority for review, no recommendations or modifications have been received at the time of this filing. Thus, the Fuel Optimization Plan currently under consideration by the Energy Bureau may be further revised based on recommendations from both the P3 Authority and the Energy Bureau before final approval. As such, the July 9<sup>th</sup> Draft remains a working document, and its early disclosure may not serve stakeholders' best interests, especially if further amendments are pending.

Genera's July 9<sup>th</sup> Draft is based on a proprietary analysis developed from an extensive market understanding and past experiences. The July 9<sup>th</sup> Draft outlines Genera's proposed strategy for optimizing fuel purchases, which encompasses sensitive commercial matters such as contract negotiation strategies and overhauling the logistics chain, developed through Genera's extensive experience in trading and logistics management. Such information holds invaluable commercial insights into Genera's logistics management and negotiation strategies. If unwarrantedly disclosed, this could potentially impact Genera's competitive advantage, jeopardize contract negotiations, and compromise the future implementation of the Fuel Optimization Plan. This is particularly relevant as Genera is currently undertaking a Request for Proposal (“RFP”) process to award a contract for the supply of diesel and will soon open another RFP process for bunker acquisition. Revealing Genera’s proposed Fuel Optimization Plan at this stage will compromise the impartiality of all proposals offered by proponents in response to these RFPs.

Therefore, disclosing the July 9<sup>th</sup> Draft in its current form will unfairly expose Genera's proprietary processes and methods, which hold significant commercial and financial value, in addition to the potential violation of the confidentiality provisions under Act No. 80-2011. In light of these considerations, Genera respectfully seeks the July 9<sup>th</sup> Draft to be classified as confidential until the necessary reviews and approvals from the P3 Authority and the Energy Bureau are completed. This cautious approach will safeguard Genera's strategic interests and the integrity of the Fuel Optimization Plan, thereby serving the broader objective of achieving optimal fuel cost savings for the operation of the generation facilities.

**WHEREFORE**, Genera respectfully requests the Energy Bureau to **take notice** of the above and approves the request for confidential treatment of Genera’s *Fuel Optimization Plan* submitted on July 9, 2023, and **keep the same under seal of confidentiality**.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 14<sup>th</sup> day of July 2023.

**ECIJA SBGB**

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## CERTIFICATE OF SERVICE

We hereby certify that a true and accurate copy of this motion was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System and that we will send an electronic copy of this motion to Joannely Marrero-Cruz, at [jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law); Margarita Mercado Echegaray, at [margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com); Yahaira de la Rosa, at [yahaira.delarosa@us.dlapiper.com](mailto:yahaira.delarosa@us.dlapiper.com); and to Hannia Rivera, at [hrivera@oipc.pr.com](mailto:hrivera@oipc.pr.com).

In San Juan, Puerto Rico, this 14<sup>th</sup> day of July 2023

*/s/ Alejandro López-Rodríguez*  
Alejandro López-Rodríguez