

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

NEPR

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10 YEAR PLAN FEDERALLY FUNDED
COMPETITIVE PROCESS

CASE NO.: NEPR-MI-2022-0005

SUBJECT: Memorandum of Law in Support of Confidential Treatment for the Supplement to Genera’s September 8 Motion, Submitted in September 29, 2023, in Compliance with Resolution and Order Dated August 23, 2023

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT FOR
THE SUPPLEMENT TO GENERA’S SEPTEMBER 8 MOTION, SUBMITTED IN
SEPTEMBER 29, 2023, IN COMPLIANCE WITH RESOLUTION AND ORDER DATED
AUGUST 23, 2023**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW GENERA PR LLC (“Genera”), as agent of the Puerto Rico Electric Power Authority (“PREPA”),¹ through its counsels of record, and respectfully state and request the following:

I. Introduction

1. Effective as of July 1, 2023, responsibility for O&M Services for the Legacy Generation Assets transitioned from PREPA to Genera, in accordance with the provision of the LGA OMA. From that point forward, Genera has assumed exclusive responsibility for managing,

¹ Pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* (“LGA OMA”), 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 PREB with respect to any matter related to the performance of any of the O&M Services provided by Genera under the LGA OMA.

leading, and deciding on RFP 3784² and RFP 3800³ matters. The Energy Bureau recognized and affirmed this shift in responsibilities in their Resolutions and Orders dated July 13, 2023,⁴ and July 17, 2023.⁵

2. On August 16, 2023, Genera, acting as agent of PREPA, submitted a detailed report to the Energy Bureau covering the period from August 1 to August 15, 2023, regarding the status of emergency generation and black-start generation. The report also included recommendations for changes to the RFP processes, which Genera affirmed could lead to significant cost savings and a reduction in time.

3. On August 23, 2023, the Energy Bureau issued a Resolution and Order titled *Bi-Monthly Reports on the Status of Emergency Generation and Black-Start Generation Procurement for the Periods from July 15 to July 31, 2023, and August 1 to August 15, 2023, filed by Genera PR, LLC* (“August 23rd Order”). Pursuant to this motion, in the August 23rd Order, the Energy Bureau, among other things, **ordered** Genera to submit a draft RFP for their review and approval within ten days of the notification of the August 23rd order, which was September 4, 2023.

4. On September 1, 2023, Genera submitted a document titled *Motion to Submit Bi-Monthly Report on the Status of Emergency Generation and Black-Start Generation Procurement for the Period of August 16 to August 31, 2023, and to Request of Time*. In this motion, Genera requested an extension of time until September 8, 2023, for the submission of the draft RFP. This

² See, Resolution and Order, *In re: Request for Approval of RFP Process for the New Black-Start Systems at Costa Sur and Yabucoa*, Case No.: NEPR-MI-2022-0005, December 5, 2022, wherein the Energy Bureau approved PREPA's request of November 10, 2022, for an Request For Proposal (“RFP”) process to procure black-start systems at Costa Sur and Yabucoa (“RFP 3784”).

³ See, Resolution and Order, *In re: PREPA's 10 Year Plan Competitive Infrastructure Procurement Processes*, Case No.: NEPR-MI-2022-005, January 23, 2023, through which the Energy Bureau conditionally approved PREPA's RFP process for the procurement of emergency generation at Jobos, Daguao, and Palo Seco (“RFP 3800”).

⁴ See, Resolution and Order, *In re: 10-Year Plan Federally Funded Competitive Process*, Case No.: NEPR-MI-2022-0005, July 13, 2023 (July 13th Resolution).

⁵ See, Resolution and Order, *In re: 10-Year Plan Federally Funded Competitive Process*, Case No.: NEPR-MI-2022-0005, July 17, 2023 (July 17th Resolution).

request for an extension of time was made on the grounds of the scale and complexity associated with the equipment acquisition process, which constitutes the primary focus of the RFP.

5. On September 8, 2023, Genera filed a document titled *Motion to Submit Draft RFP in Compliance with Resolution and Order Dated August 23, 2023, and Request for Extension of Time to Supplement* (“September 8th Motion”), whereby Genera submitted under seal of confidentiality a copy of the document titled Technical Specification for Power Generation Equipment document (“Draft Scope”) detailing the requirements and scope of the RFP that Genera will issue to purchase the units. Additionally, Genera requested an extension of time to submit a Memorandum of Law supporting its request for confidential treatment of the Draft Scope and sought an extension until September 29, 2023, to submit a supplement to the Draft Scope included in the September 8th Motion.

6. On September 15, Genera filed a document titled *Memorandum of Law in Support of Confidential Treatment of RFP Draft Scope Submitted in Compliance with Resolution and Order Dated August 23, 2023* (“September 15th Memorandum of Law”). Through the September 15th Memorandum of Law, Genera requested confidential designation and treatment of the Draft Scope submitted on September 8, 2023, as Exhibit A.

7. On September 21, 2023, the Energy Bureau issued a Resolution titled *Memorandum of Law in Support of Confidential Treatment of RFP Draft Scope Submitted in Compliance with Resolution and Order Dated August 23, 2023* (“September 21st Resolution”). Through this Resolution, and after reviewing the September 15th Memorandum of Law, the Energy Bureau granted the confidential designation and treatment to Exhibit A of the September 8th Motion.

8. On September 29, 2023, Genera filed a document titled *Motion to Submit Supplement to September 8, 2023, Motion in Compliance with Resolution and Order Dated August*

23, 2023 (“September 29th Supplement”) through which Genera submitted, under seal of confidentiality, certain supplemental documents to the Draft Scope. Additionally, Genera requested an extension of time to submit a Memorandum of Law supporting its request for confidential treatment of the September 29th Supplement.

9. In line with the September 29th Supplement, Genera respectfully submits this Memorandum of Law to support its request for maintaining the confidentiality of the supplemental documents to the Draft Scope, submitted as Exhibits A to Exhibit Q of the September 29th Supplement. This request is made pursuant to 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 of Confidential Information”), as it contains sensitive commercial information of the RFP process that has not been approved by the Energy Bureau.

II. Identification of Confidential Information

| Document Name and File Date | Pages in which Confidential Information is Found, if applicable | Summary of Legal Basis for Confidential Designation, if applicable | Summary of why each claim or designation conforms to the applicable legal basis for confidentiality |
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| Exhibit A - Section A 1.0 - Scope of Work, filed on September 29, 2023. | Entire document. | Sensitive commercial information during ongoing competitive procurement process. | The Supplemental documents, submitted on September 29, 2023, contain sensitive commercial information that the Energy Bureau has not yet approved. As part of an ongoing procurement process, which includes Genera's evaluation of offers, these Supplemental documents must remain confidential to safeguard the transparency and integrity of the procurement process and to prevent potential prejudice against Genera. |

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| <p>Exhibit B - Section A 2.0 - Product Receiving, Storage and Handling, filed on September 29, 2023.</p> | <p>Entire document.</p> | <p>Sensitive commercial information during ongoing competitive procurement process.</p> | <p>The Supplemental documents, submitted on September 29, 2023, contain sensitive commercial information that the Energy Bureau has not yet approved. As part of an ongoing procurement process, which includes Genera's evaluation of offers, these Supplemental documents must remain confidential to safeguard the transparency and integrity of the procurement process and to prevent potential prejudice against Genera.</p> |
| <p>Exhibit C - Section A 3.0 - Document Submittals, filed on September 29, 2023.</p> | <p>Entire document.</p> | <p>Sensitive commercial information during ongoing competitive procurement process.</p> | <p>The Supplemental documents, submitted on September 29, 2023, contain sensitive commercial information that the Energy Bureau has not yet approved. As part of an ongoing procurement process, which includes Genera's evaluation of offers, these Supplemental documents must remain confidential to safeguard the transparency and integrity of the procurement process and to prevent potential prejudice against Genera.</p> |
| <p>Exhibit D - Section A 5.0 - Spare Parts, filed on September 29, 2023.</p> | <p>Entire document.</p> | <p>Sensitive commercial information during ongoing competitive procurement process.</p> | <p>The Supplemental documents, submitted on September 29, 2023, contain sensitive commercial information that the Energy Bureau has not yet approved. As part of an ongoing procurement process, which includes Genera's evaluation of offers, these Supplemental documents must remain confidential to safeguard the transparency and integrity of the procurement process and to prevent potential prejudice against Genera.</p> |
| <p>Exhibit E - Section A 6.0 - Site Design Data, filed on September 29, 2023.</p> | <p>Entire document.</p> | <p>Sensitive commercial information during ongoing competitive procurement process.</p> | <p>The Supplemental documents, submitted on September 29, 2023, contain sensitive commercial information that the Energy Bureau has not yet approved. As part of an ongoing procurement process, which includes Genera's evaluation of</p> |

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| | | | offers, these Supplemental documents must remain confidential to safeguard the transparency and integrity of the procurement process and to prevent potential prejudice against Genera. |
| Exhibit F - Section A 7.0 - General Design Criteria, filed on September 29, 2023. | Entire document. | Sensitive commercial information during ongoing competitive procurement process. | The Supplemental documents, submitted on September 29, 2023, contain sensitive commercial information that the Energy Bureau has not yet approved. As part of an ongoing procurement process, which includes Genera's evaluation of offers, these Supplemental documents must remain confidential to safeguard the transparency and integrity of the procurement process and to prevent potential prejudice against Genera. |
| Exhibit G - Section A 8.0 - Operation Requirements, filed on September 29, 2023. | Entire document. | Sensitive commercial information during ongoing competitive procurement process. | The Supplemental documents, submitted on September 29, 2023, contain sensitive commercial information that the Energy Bureau has not yet approved. As part of an ongoing procurement process, which includes Genera's evaluation of offers, these Supplemental documents must remain confidential to safeguard the transparency and integrity of the procurement process and to prevent potential prejudice against Genera. |
| Exhibit H - Section A 9.0 - CTG Specification, filed on September 29, 2023. | Entire document. | Sensitive commercial information during ongoing competitive procurement process. | The Supplemental documents, submitted on September 29, 2023, contain sensitive commercial information that the Energy Bureau has not yet approved. As part of an ongoing procurement process, which includes Genera's evaluation of offers, these Supplemental documents must remain confidential to safeguard the transparency and integrity of the procurement process and to prevent potential prejudice against Genera. |

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| <p>Exhibit I - Section A 13.0 - LTSA Specification, filed on September 29, 2023.</p> | <p>Entire document.</p> | <p>Sensitive commercial information during ongoing competitive procurement process.</p> | <p>The Supplemental documents, submitted on September 29, 2023, contain sensitive commercial information that the Energy Bureau has not yet approved. As part of an ongoing procurement process, which includes Genera's evaluation of offers, these Supplemental documents must remain confidential to safeguard the transparency and integrity of the procurement process and to prevent potential prejudice against Genera.</p> |
| <p>Exhibit J - Appendix A - Schedule & Monthly Reporting, filed on September 29, 2023.</p> | <p>Entire document.</p> | <p>Sensitive commercial information during ongoing competitive procurement process.</p> | <p>The Supplemental documents, submitted on September 29, 2023, contain sensitive commercial information that the Energy Bureau has not yet approved. As part of an ongoing procurement process, which includes Genera's evaluation of offers, these Supplemental documents must remain confidential to safeguard the transparency and integrity of the procurement process and to prevent potential prejudice against Genera.</p> |
| <p>Exhibit K - Appendix B - Approved Suppliers.xlsx, filed on September 29, 2023.</p> | <p>Entire document.</p> | <p>Sensitive commercial information during ongoing competitive procurement process.</p> | <p>The Supplemental documents, submitted on September 29, 2023, contain sensitive commercial information that the Energy Bureau has not yet approved. As part of an ongoing procurement process, which includes Genera's evaluation of offers, these Supplemental documents must remain confidential to safeguard the transparency and integrity of the procurement process and to prevent potential prejudice against Genera.</p> |
| <p>Exhibit L - Appendix C - Division of Responsibility Matrix.xlsx, filed on September 29, 2023.</p> | <p>Entire document.</p> | <p>Sensitive commercial information during ongoing competitive procurement process.</p> | <p>The Supplemental documents, submitted on September 29, 2023, contain sensitive commercial information that the Energy Bureau has not yet approved. As part of an ongoing procurement process, which includes Genera's evaluation of</p> |

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| | | | offers, these Supplemental documents must remain confidential to safeguard the transparency and integrity of the procurement process and to prevent potential prejudice against Genera. |
| Exhibit M - Appendix D - Shop Testing, filed on September 29, 2023. | Entire document. | Sensitive commercial information during ongoing competitive procurement process. | The Supplemental documents, submitted on September 29, 2023, contain sensitive commercial information that the Energy Bureau has not yet approved. As part of an ongoing procurement process, which includes Genera's evaluation of offers, these Supplemental documents must remain confidential to safeguard the transparency and integrity of the procurement process and to prevent potential prejudice against Genera. |
| Exhibit N - Appendix E - Coating Systems, filed on September 29, 2023. | Entire document. | Sensitive commercial information during ongoing competitive procurement process. | The Supplemental documents, submitted on September 29, 2023, contain sensitive commercial information that the Energy Bureau has not yet approved. As part of an ongoing procurement process, which includes Genera's evaluation of offers, these Supplemental documents must remain confidential to safeguard the transparency and integrity of the procurement process and to prevent potential prejudice against Genera. |
| Exhibit O - Appendix F - Database Lists.xlsx, filed on September 29, 2023. | Entire document. | Sensitive commercial information during ongoing competitive procurement process. | The Supplemental documents, submitted on September 29, 2023, contain sensitive commercial information that the Energy Bureau has not yet approved. As part of an ongoing procurement process, which includes Genera's evaluation of offers, these Supplemental documents must remain confidential to safeguard the transparency and integrity of the procurement process and to prevent potential prejudice against Genera. |

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| <p>Exhibit P - PD PAGE.xlsx, filed on September 29, 2023.</p> | <p>Entire document.</p> | <p>Sensitive commercial information during ongoing competitive procurement process.</p> | <p>The Supplemental documents, submitted on September 29, 2023, contain sensitive commercial information that the Energy Bureau has not yet approved. As part of an ongoing procurement process, which includes Genera's evaluation of offers, these Supplemental documents must remain confidential to safeguard the transparency and integrity of the procurement process and to prevent potential prejudice against Genera.</p> |
| <p>Exhibit Q - PP_CTG.xlsx, filed on September 29, 2023.</p> | <p>Entire document.</p> | <p>Sensitive commercial information during ongoing competitive procurement process.</p> | <p>The Supplemental documents, submitted on September 29, 2023, contain sensitive commercial information that the Energy Bureau has not yet approved. As part of an ongoing procurement process, which includes Genera's evaluation of offers, these Supplemental documents must remain confidential to safeguard the transparency and integrity of the procurement process and to prevent potential prejudice against Genera.</p> |

III. Memorandum of Law in Support of Confidential Treatment

A. Applicable Law

The governing statute for the management of classified information submitted to the 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 that "[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 appropriate 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 details the procedures a party should follow to request confidential treatment for a document or a portion of it. The Energy Bureau's Policy on Management of Confidential Information requires identifying confidential information and filing a memorandum of law explaining 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.* The party seeking confidential treatment of information filed with the Energy Bureau must also file both a "redacted" (or "public") version and an "unredacted" (or "confidential") version of the document that contains the confidential information. *Id.*

In conjunction with the aforementioned, Energy Bureau Regulation 8815, also known as the *Joint Regulation for the Procurement, Evaluation, Selection, Negotiation, and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation, and Award Process for the Modernization of the Generation Fleet and other Resources*

(“Regulation 8815”), provides clear and explicit safeguards for confidential information during competitive bidding procedures, as delineated in Articles 4.2.

In its pertinent part, Article 4.2 of Regulation 8815 mandates that “prior to launching any public procurement process, and after receiving the approval of the [Board of Directors] from PREPA to proceed with the proposed Project and procurement process, the Executive Director [of PREPA] will notify in writing to the Energy [Bureau] the recommendation of the Project Committee with respect to: (i) the proposed Project, including all associated documents that explain the Project; (ii) the proposed parameters to determine such profit margin and price escalators; (iii) consistence with the Integrated Resource Plan approved by the Energy [Bureau]; and (iv) compliance with Regulation 8815, the Acts, and other applicable regulations.”⁶

In addition to the aforementioned, it is worth noting that under Act. No. 80-2011, also known as *the Industrial and Trade Secret Protection Act of Puerto Rico* (“Act No. 80-2011”), certain information may be granted protection as a trade secret. Specifically, Act No. 80-2011 provides that industrial or trade secrets are deemed to be any information:

- a. That has a present or 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.

Furthermore, in the context of Act No. 80-2011, information refers to knowledge that amplifies or clarifies existing understanding, including but not limited to formulas, compilations, methods, techniques, processes, recipes, designs, treatments, models, or patterns. *See* Article 3 of Act No. 80-2011. In addition, Puerto Rico’s Supreme Court has delineated a trade secret as any

⁶ See Article 4.2 of Regulation 8815.

process of manufacturing, treating, or preserving materials, a 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).

B. Ground for Confidentiality

First and foremost, Genera respectfully informs the Energy Bureau that this request for confidentiality is made on the same grounds as outlined in the September 15th Memorandum of Law. Given that the documents submitted in the September 29th Supplement are intended to supplement the Draft Scope submitted with the September 8th Motion, Genera contents that the Energy Bureau's September 21st Resolution – based on the September 15th Memorandum of Law – should also extend to this current request for confidentiality.

The supplemental documents submitted in the September 29th Supplement, along with the Draft Scope RFP submitted by Genera in the September 8th Motion, contain further information related to the development of an ongoing public procurement process that is still under consideration for approval by the Energy Bureau, if deemed necessary. This information is subject to change based on the recommendations of the Energy Bureau, if deemed necessary. Consequently, such information must remain confidential in accordance with the provisions of Article 4.2 of Regulation 8815. Releasing the information in the September 29th Supplement would not only contravene the provisions of Regulation 8815 but also compromise the transparency and integrity of the ongoing procurement process, thereby undermining Genera's position as the issuing authority.

Furthermore, Genera's September 29th Supplement was developed through in-depth proprietary analysis built upon a comprehensive market understanding and informed by past

experiences This analysis includes methodologies that are not readily available to the public or to competitors in the energy sector. Given that this proprietary information has considerable financial value, it qualifies for trade secret protection under Act No. 80-2011. Therefore, the proprietary information contained in the September 29th Supplement merits classification as a trade secret and should be accorded the full extent of legal protection available under both Act No. 80-2011 and the Energy Bureau's regulations. As such, the September 29th Supplement is entitled to confidential treatment under both Regulation 8815 and Act No. 80-2011.

In light of the foregoing, disclosure of the September 29th Supplement would provide an unfair advantage to potential proponents. The premature disclosure of this information could disrupt future proceedings and subvert the equitable treatment of all participants. Therefore, in accord with both Regulation 8815 and Act No. 80-2011, as well as all other applicable laws and regulations, Genera respectfully requests that the Energy Bureau maintain the confidential treatment of the September 29th Supplement.

WHEREFORE, Genera respectfully requests that the Energy Bureau **take notice** of the above and **grant** this request for confidential treatment of the September 29th Supplement filed on September 29, 2023.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 6th day of October 2023.

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/s/ Jorge Fernández-Reboredo
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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 the attorney for Puerto Rico's Electric Power Authority, Joannely Marrero-Cruz, at jmarrero@diazvaz.law; and Maralíz Vázquez-Marrero, at mvazquez@diazvaz.law.

In San Juan, Puerto Rico, this 6th day of October 2023

/s/ Alejandro López-Rodríguez
Alejandro López-Rodríguez