

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

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IN RE:

GENERA PR LLC FUEL OPTIMIZATION
PLAN

CASE NO.: NEPR-MI-2023-0004

SUBJECT: Memorandum of Law in Support of Confidential Treatment of Information Submitted as Part of Genera’s Supplemental Response to Resolution and Order Dated October 19, 2023

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF
INFORMATION SUBMITTED AS PART OF GENERA’S SUPPLEMENTAL RESPONSE
TO RESOLUTION AND ORDER DATED OCTOBER 19, 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. On October 19, 2023, the Energy Bureau of the Puerto Rico Service Regulatory Board (“Energy Bureau”) issued a Resolution and Order titled *Requirement of Information to GENERA – Evaluation of Genera Fuel Optimization Plan* (“October 19th Order”). In the October 19th Order, the Energy Bureau discussed its analysis of Genera’s Fuel Optimization Plan, submitted on September 15, 2023,² stating that “[t]o ascertain the prudence of the Fuel Optimization Plan as

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.

it related to the LGA OMA, the requirements listed in the July 18th Order, and applicable laws and regulation of the Government of Puerto Rico, the Energy Bureau determines that supporting material is needed to allow the Energy Bureau to fully assess Genera’s Fuel Optimization Plan”. Consequently, the Energy Bureau ordered Genera to respond to a Requirements of Information (“ROI”) outlined in Attachment A to the October 19th Order.

2. On November 10, 2023, Genera filed a document *titled Motion Submitting Response to Resolution and Order Dated October 19, 2023*, through which it submitted its response to the ROI detailed in Attachment A of the October 19th Order, excluding the pending ROI response for *Initiative 8: Fuel Efficiency Projects*.

3. On November 14, 2023, Genera filed a document titled *Motion Submitting Final Response to Resolution and Order Dated October 19, 2023* (“November 14th Motion”), through which Genera submitted the outstanding ROI response for *Initiative 8: Fuel Efficiency Projects*, attached as Exhibit A to the motion. Additionally, Genera submitted under seal of confidentiality a spreadsheet titled *20231114-GPR---PREB-ORDER---10.19.2023* in response to Item No. 60 of the October 19th Order ROI, and requested that the Energy Bureau maintained the confidentiality of the document.

4. In accordance with the November 14th Motion, Genera respectfully submits this Memorandum of Law to support its request for maintaining the confidentiality of the spreadsheet submitted with the November 14th Motion, in response to Item No. 60 under *Initiative 8: Fuel Efficiency Projects* of the October 19th Order. 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 and trade secrets.

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
Exhibit A – Spreadsheet GPR – PREB ORDER– 10.19.2023	Entire document.	Sensitive commercial information and Trade Secrets under Act 80-2011, <i>infra</i> .	The spreadsheet submitted on October 19, 2023, contains sensitive commercial information regarding Genera’s Fuel Cost analysis, which is protected under the provisions of Act No. 80-2011.

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 of May 27, 2014, as amended, also known as the *Puerto Rico Energy Transformation and RELIEF Act, 22 L.P.R.A § 1051 et seq* (“Act No. 57-2014”). 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 detail 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 addition to the aforementioned, it is worth noting that under Act. No. 80 of June 3, 2011, also known as *the Industrial and Trade Secret Protection Act of Puerto Rico, 10 L.P.R.A. § 4131 et seq.* ("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.

See Act No. 80-2011, 10 L.P.R.A. § 4132

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 2(a) of Act No. 80-2011. In addition, Puerto Rico's Supreme Court has delineated a trade secret as any 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

This Memorandum of Law seeks confidential treatment for the Excel spreadsheet titled “20231114-GPR---PREB-ORDER---10.19.2023-60-1-1,” hereinafter referred to as the “November 14th Confidential Filing”. This filing, part of Exhibit A in the November 14th Motion responding to the October 19th Order's ROI, contains critical commercial details about Genera's Fuel Efficiency Projects, Generation and Fuel Budget Per Plant, and Efficiency Improvement Projects. As discussed, under Act No. 80-2011, the sensitive information within this spreadsheet qualifies as a trade secret, holding considerable independent financial value and granting Genera a significant competitive edge. The confidentiality of this data is paramount, as it is not readily accessible to competitors or related entities, thus offering Genera a unique market advantage.

Moreover, the development of the "November 14th Confidential Filing" involved Genera's in-depth proprietary analysis, incorporating advanced methodologies and strategic insights that are not publicly available. This sophisticated analysis, underpinning Genera's operational efficiency and market competitiveness, is informed by a comprehensive understanding of the market and past

experiences. The proprietary nature of this information, coupled with its financial significance, clearly meets the criteria for trade secret protection under Act No. 80-2011. Genera emphasizes that safeguarding this information is not only in its own interest but also serves to uphold a fair competitive environment within the energy sector. The disclosure of such information could potentially disrupt the sector's competitive balance and adversely impact market dynamics. Therefore, it is crucial to ensure that the disclosure does not harm public interest or transparency, as stipulated in Section 6.15(a) of Act No. 57-2014.

In conclusion, Genera respectfully requests that the Energy Bureau grant confidential status to the "November 14th Confidential Filing" under the relevant provisions of Act No. 80-2011 and Act No. 57-2014. This action is imperative for maintaining Genera's competitive standing, protecting its proprietary information, and preserving the integrity of the energy market.

WHEREFORE, Genera respectfully requests that the Energy Bureau **take notice** of the above and **grant** this request for confidential treatment of the spreadsheet titled *20231114-GPR--PREB-ORDER--10.19.2023-60-1-1*, submitted with the November 14th Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 22nd day of November 2023.

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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.

In San Juan, Puerto Rico, this 22nd day of November 2023

/s/ Alejandro López Rodríguez
Alejandro López Rodríguez