

**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:** Informative Motion Regarding the Revised Fuel Optimization Plan and Request for Confidential Treatment with Supporting Memorandum of Law

**INFORMATIVE MOTION REGARDING THE REVISED FUEL OPTIMIZATION  
PLAN AND REQUEST FOR CONFIDENTIAL TREATMENT WITH SUPPORTING  
MEMORANDUM OF LAW**

**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. Submittal of Revised Fuel Optimization Plan to the P3 Authority**

1. On September 15, 2023, Genera submitted a document titled *Motion to Submit Genera’s Revised Fuel Optimization Plan in Compliance with Resolution and Order Dated July 18, 2023*, which included a revised Fuel Optimization Plan (“September 15<sup>th</sup> Fuel Optimization Plan”). The September 15<sup>th</sup> Fuel Optimization Plan, already approved by the P3 Authority, was submitted for the approval of the Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) pursuant to Section 4.2(t) of the LGA OMA.<sup>2</sup> The September 15<sup>th</sup> Fuel

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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, Genera, and the Puerto Rico Public-Private Partnerships Authority (“P3 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 any matter related to the performance of any of the O&M Services provided by Genera under the LGA OMA.

<sup>2</sup> Section 4.2(t) of the LGA OMA states the following:

Optimization Plan outlined Genera’s Fuel Cost Savings Initiatives and expected methods for achieving estimated fuel savings during the LGA OMA term.

2. On October 19, 2023, the Energy Bureau issued a Resolution and Order titled *Requirement of Information to GENERA – Evaluation of Genera Fuel Optimization Plan* (“October 19<sup>th</sup> Order”). In the October 19<sup>th</sup> Order, the Energy Bureau discussed its analysis of Genera’s September 15<sup>th</sup> Fuel Optimization Plan, stating that “[t]o ascertain the prudence of the Fuel Optimization Plan as it related to the LGA OMA, the requirements listed in the July 18<sup>th</sup> 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 the Requirements of Information (“ROI”) outlined in Attachment A to the October 19<sup>th</sup> Order.

3. On December 20, 2023, the Energy Bureau issued a Resolution and Order titled *Requirement of Information, Technical Conference, and Solicitation of Stakeholder Comments,*

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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*).**

whereby, among other things, the Energy Bureau notified that it would take three steps to further its evaluation of Genera's Fuel Optimization Plan: (i) issue further ROIs to Genera; (ii) schedule a Technical Conference with Genera to discuss the September 15<sup>th</sup> Fuel Optimization Plan; and (iii) formally invite stakeholders to provide written feedback on the September 15<sup>th</sup> Fuel Optimization Plan and the supplemental information provided in response to the Energy Bureau's ROIs.

4. Genera respectfully informs the Energy Bureau that on January 4, 2024, Genera presented a revised Fuel Optimization Plan (the "Revised Fuel Optimization Plan") to the P3 Authority, which is currently under evaluation. The Revised Fuel Optimization Plan, submitted herein as *Exhibit A* in redline format to facilitate the Energy Bureau's review, includes two additional sections identified by Genera's Fuels Office: *Section VII – Fuel Change Initiatives*, which now includes in its Item 8 a *Fuel Swap and Fuel Conversion Initiatives*; and *Section VIII – Asset Enhancement Initiatives*, which includes in its *Item 9* an *Asset Supplement Initiative*. This latter initiative describes Genera's initiative to achieve savings through the addition of power generation equipment that is more fuel efficient and/or can operate on an alternative, more economical fuel.

5. Given that the above-mentioned initiatives included in the Revised Fuel Optimization Plan are **still currently under the consideration** of the P3 Authority and may be subject to further change, Genera respectfully informs the Energy Bureau that the Revised Fuel Optimization Plan will be submitted under seal of confidentiality, as it includes sensitive commercial information and details that have yet to be finalized and approved. Genera also respectfully requests the Energy Bureau to maintain the Revised Fuel Optimization Plan under seal of confidentiality 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, and informs that it will submit a Memorandum of Law supporting this request within the next ten (10) days.

## 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
<b>Exhibit A – Redline Revised Fuel Optimization Plan</b>	Entire document.	Sensitive commercial information and Trade Secrets under Act 80-2011, <i>infra</i> .	The Revised Fuel Optimization Plan submitted herein as Exhibit A contains sensitive commercial information regarding Genera’s fuel cost savings initiatives analysis.

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

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 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 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).

The development of the new initiatives within the Fuel Optimization Plan involves Genera's comprehensive proprietary analysis, which remains confidential and is subject to potential modifications by the P3 Authority or the Energy Bureau. This analysis underscores Genera's operational efficiency and market competitiveness and is rooted in an extensive understanding of the market and past experiences. The proprietary nature of this information, combined with its financial significance, aligns with the criteria for trade secret protection under Act No. 80-2011. Genera underscores that maintaining the confidentiality of this information is essential not only for its interests but also for preserving a fair competitive landscape in the energy sector.

In conclusion, Genera respectfully requests that the Energy Bureau grant confidential status to the Revised Fuel Optimization Plan until it has been fully reviewed and endorsed by both the P3 Authority and the Energy Bureau.

**WHEREFORE**, Genera respectfully requests that the Energy Bureau **take notice** of the above for all purposes and **grant** Genera's request for confidential treatment of the Revised Fuel Optimization Plan, submitted herein as *Exhibit A*.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 8<sup>th</sup> day of January 2024.

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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 8<sup>th</sup> day of January 2024

*/s/ Alejandro López Rodríguez*  
Alejandro López Rodríguez



Exhibit A  
*Redline Revised Fuel Optimization Plan*  
(submitted under seal of confidentiality)