

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

NEPR Received: Apr 24, 2024 1:54 PM

IN RE:

REQUEST FOR APPROVAL OF THE
VEGA BAJA DECOMMISSIONING
PLAN

CASE NO.: NEPR-TEMP-4931

SUBJECT: Memorandum of Law in Support of
Confidential Treatment of Vega Baja
Decommissioning Plan

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF
VEGA BAJA DECOMMISSIONING PLAN**

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 submits and prays as follows:

1. On January 24, 2023, the Puerto Rico Electric Power Authority ("PREPA"), the Puerto Rico Public-Private Partnership Authority ("P3A"), and Genera PR LLC ("Genera PR") entered into the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement ("Genera OMA"). This agreement provides for the operation and maintenance services ("O&M Services") of certain baseload generation plants and combustion turbine peaking units, defined therein as Legacy Generation Assets.

2. Effective July 1, 2023 (the “Service Commencement Date” pursuant to the terms of the LGA OMA), the responsibility for managing, leading, and making decisions concerning

¹ 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, 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 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.

procurement processes to improve energy reliability and the mix of cleaner, more efficient fuels being used during peak hours of power demand transitioned from PREPA to Genera.

3. In accordance with the LGA OMA and following the Service Commencement Date, Genera has developed a draft Decommissioning Plan for the early decommissioning of specific Legacy Generation Assets at Vega Baja (“Draft Decommissioning Plan”). The Draft Decommissioning Plan outlines a comprehensive strategy for demolition, decontamination, waste management, and site preparation for the installation of a new battery energy storage systems (“BESS”), ensuring that all procedures are conducted safely and in compliance with regulatory requirements.

4. On April 17, 2024, Genera submitted a letter to the Chairman of the Public Service Regulatory Board of the Energy Bureau, Mr. Edison Avilés Deliz (“Letter to the Chairman”), in which it requested that the Energy Bureau initiate a formal proceeding to evaluate the Draft Decommissioning Plan, submitted as Annex A to the Letter to the Chairman. In this submission, Genera also sought feedback to refine and finalize the decommissioning procedures. The submission of Annex A to the Letter to the Chairman and the Draft Decommissioning Plan was made entirely under a seal of confidentiality. Genera formally requests that the Draft Decommissioning Plan be maintained as confidential and submits its Memorandum of Law, outlining the legal basis for the request to keep the Draft Decommissioning Plan sealed.

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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<p>Vega Baja Proposed Decommissioning Plan (Annex A)</p>	<p>Entire document.</p>	<p>Sensitive commercial information and trade secrets under Act 80-2011, present during an ongoing competitive procurement process, have not yet been finalized and are subject to revisions.</p>	<p>The Draft Decommissioning Plan contains information that is not yet finalized and remains subject to significant revisions. The need for further modification primarily justifies the confidential treatment of the plan. Moreover, it includes sensitive commercial information and trade secrets as defined under Act No. 80-2011, and it is part of an ongoing competitive procurement process. Protecting this information from premature disclosure is necessary, given its dependence on feedback from the Energy Bureau.</p>
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II. Memorandum of Law in Support of Confidential Treatment Designation

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 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 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.”² Importantly, Article 4.2 further provides that this [complete sentence] should remain confidential while the administrative competitive procurement process is ongoing.³

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.

² See Article 4.2 of Regulation 8815.

³ *Id.*

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 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

The Draft Decommissioning Plan submitted by Genera on April 17, 2024, as outlined in the Letter to the Chairman, contains sensitive information that is inherently dynamic and provisional. The information detailed within the Draft Decommissioning Plan is not yet final and remains subject to comprehensive review and possible alteration by the Energy Bureau. As a work in progress, the Draft Decommissioning Plan reflects current strategies and plans that are contingent upon further evaluation and modification by the Energy Bureau. Such changes could significantly alter its content and directives. Public disclosure at this stage could lead to misunderstandings and misrepresentations about the intent of the decommissioning strategy, underscoring the need for confidentiality.

Further compounding the need for confidentiality, the Draft Decommissioning Plan includes details that are critical to the development of an ongoing public procurement process still under consideration by the Energy Bureau. Such fluidity necessitates that the plan remains confidential in accordance with Article 4.2 of Regulation 8815. Disclosing the information contained in the Draft Decommissioning Plan at this juncture would not only contravene

Regulation 8815 but also threaten the transparency and integrity of the ongoing procurement process, thereby undermining Genera's position as the issuing authority.

Additionally, the Draft Decommissioning Plan is derived from an in-depth proprietary analysis that incorporates a comprehensive understanding of the market and leverages insights from past experiences. This analysis encompasses methodologies that are not commonly accessible to the public or competitors in the energy sector. Given the considerable financial value of this proprietary information, it is eligible for trade secret protection under Act No. 80-2011. As such, the information within Genera's Draft Decommissioning Plan justifies classification as a trade secret and warrants the fullest extent of legal protection afforded by both Act No. 80-2011 and the regulations of the Energy Bureau.

In light of these considerations, Genera respectfully reiterates its requests for the Energy Bureau to maintain the confidentiality of the Draft Decommissioning Plan. . This measure is essential not only as a legal necessity but also as a practical strategy to safeguard the security and effectiveness of Puerto Rico's energy infrastructure planning and operations. Ensuring the confidentiality of this document guarantees that all stakeholders, including the public and potential bidders in future projects, engage with accurate and finalized information once all considerations have been duly evaluated and confirmed.

WHEREFORE, Genera respectfully requests that this Energy Bureau **take notice** of the above for all purposes and **grant** Genera's request for confidentiality of the Draft Decommissioning Plan.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 24th day of April of 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 and that we will send an electronic copy of this motion to PREPA through its counsels of record: Juan M. Martínez-Nevárez, at jmartinez@gmlex.net, Alexis G. Rivera-Medina, at arivera@gmlex.net, and Mirelis Valle-Cancel, at mvalle@gmlex.net; and to LUMA, through its counsel of record: Margarita Mercado Echegaray, at margarita.mercado@us.dlapiper.com.

In San Juan, Puerto Rico, this 24th day of April 2024

/s/ Alejandro López-Rodríguez
Alejandro López-Rodríguez