

**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 of the Grid Support Units Update Evaluation Submitted on June 5, 2024.

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF
THE GRID SUPPORT UNITS UPDATE EVALUATION SUBMITTED ON JUNE 5,
2024**

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:

I. Introduction

1. On January 23, 2023, the Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) entered an order with the subject *Determination for the Project Application Package for the Seven (7) Additional Peakers to be used as Generation* (“January 23rd Order”). In this order, among other directives, the Energy Bureau provided PREPA the flexibility to consider the best mix of locations for emergency generation. However, the Energy Bureau reminded PREPA that the total MW quantity of emergency generation and black start capacity procurement is limited by the conditions included in the December 5, 2022, Resolution and Order (“December 5th Order”).

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 (“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 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. On November 8, 2023, the Energy Bureau entered an order with the subject *Motion to Submit Supplement to September 8, 2023 Motion in Compliance with Resolution and Order Dated August 23, 2023 - Genera Competitive Procurement of Black Start and Emergency Generation*. In this Order, the Energy Bureau stated that the upper limit of the range of capacity (MW) sizing included in section A.1.2 of exhibit J of the RFP far exceeds the maximum of 200 MW of emergency generation and 81 MW of net plant output for black start services approved by the Energy Bureau in the December 5th Order and the January 23rd Order.

3. On June 5, 2024, pursuant to the January 23rd Order approving the flexibility to consider the best mix of capacity and locations for the emergency generation, Genera submitted a document titled *Motion to Submit the Grid Support Unit Update Evaluation for the Emergency Generation and Black-Start Generation Procurement in Compliance with Resolution and Order Dated January 23, 2023* (“June 5th Motion”). In the June 5th Motion, Genera included as Exhibit A, under seal of confidentiality, a copy of the document titled *Grid Support Units Project Update* (“GSUPU”). The GSUPU detailed the evaluation of received bids for the competitive process conducted by Genera, which, among other things, considered the optimization of the purchasing process while taking into consideration the benefits of reconfiguration of locations and units of different sizes. Additionally, Genera requested an extension of time to submit a Memorandum of Law supporting its request for confidential treatment of the GSUPU.

4. In accordance with the June 5th Motion, Genera respectfully submits this Memorandum of Law to support its request for maintaining the confidentiality of the GSUPU submitted as Exhibit A to the June 5th Motion. 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 a proposed site configuration project that has not been yet 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
Exhibit A – Grid Support Units Update Evaluation GPR – PREB ORDER– 1.23.2023	Entire document.	Sensitive commercial information and Trade Secrets under Act 80-2011, <i>infra</i> .	The GSUPU submitted on June 5, 2024, contains sensitive commercial information regarding Genera’s technical analysis for a site configuration project that has not yet been approved by the Energy Bureau. This information is protected under the provisions of Act No. 80-2011 and, if disclosed, could disadvantage Genera’s competitiveness.

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).

Furthermore, 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 1) identifying confidential information and 2) 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 Grid Support Units Update Evaluation (GSUPU), which has been filed as Exhibit A to the June 5th Motion. The GSUPU contains crucial commercial information about Genera's energy production projects, possible sites to be refitted with new equipment, and generation and fuel management considerations per plant. It is important to note that the proposal outlined in the GSUPU has not been approved by the Energy Bureau, making it premature to disclose this information. The document details Genera's strategies for optimizing operation and maintenance programs, carefully selecting equipment and site configurations to maximize efficiency. The analysis within the GSUPU reveals significant market opportunities, thus underscoring the need for its confidentiality. As stipulated under Act No. 80-2011, the sensitive information within this document qualifies as a trade secret, holding considerable independent financial value. The confidentiality of this data is critical, as it is not readily accessible to competitors or related entities, thereby offering Genera a unique market advantage.

Additionally, a pivotal element in the confidentiality of the GSUPU is that it fundamentally relies on sensitive third-party information, primarily derived from confidential bid proposals submitted in response to Genera's RFPs. These proposals contain proprietary technical details provided under conditions of confidentiality, which must be protected to preserve the competitive nature of the bidding process. Disclosing the evaluation conducted in the GSUPU could potentially harm the competitive positions of the bidding companies and compromise the integrity of both current and future bidding processes. In conclusion, Genera respectfully requests that the Energy Bureau grant confidential status to the June 5th Motion 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.

In conclusion, the GSUPU presents a detailed and strategic analysis critical to Genera's future operations, which is highly sensitive due to its reliance on proprietary and third-party confidential information. As the proposal outlined in the GSUPU has not yet been approved by the Energy Bureau, it is crucial to maintain its confidentiality to avoid prejudicing the competitive and strategic interests at stake. Disclosure at this premature stage could have detrimental effects on Genera's competitive standing and on the integrity of the bidding process.

WHEREFORE, Genera respectfully requests that the Energy Bureau **take notice** of the above and **grant** this request for confidential treatment of the GSUPU filed as Exhibit A to the June 5th Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 17th day of June 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, Alexis G. River Medina, at arivera@gmlex.net, and Mirelis Valle Cancel at mvalle@gmlex.net.

In San Juan, Puerto Rico, this 17th day of June 2024.

/s/ Alejandro López-Rodríguez
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