

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

NEPR

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IN RE:

REVIEW OF LUMA'S INITIAL BUDGET

CASE NO.: NEPR-MI-2021-0004

SUBJECT: Memorandum of Law in Support of Confidential Treatment of Workpapers Submitted in Support of GenCo's FY2025 Budget Proposal

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF
WORKPAPERS SUBMITTED IN SUPPORT OF GENCO'S FY2025 BUDGET
PROPOSAL**

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. Brief Procedural Background

1. On March 14, 2024, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order titled *Amendments to the December 8 Resolution, FY2025 Annual Budget Filing, and FEMA Temporary Emergency Generation Cost Share* through which the Energy Bureau ordered LUMA² to file the Fiscal Year ("FY") 2025 consolidated annual budget proposals, on or before April 15, 2024. *See* March 14th

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 ("P3A"), 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 LUMA Energy, LLC and LUMA Energy Servco, LLC (jointly referred to as "LUMA")

Resolution, p. 3-4. The Energy Bureau also ordered Genera and PREPA to cooperate as necessary to enable LUMA to file the FY2025 consolidated annual budget proposal. *See id.*, p.4.

2. On May 25, 2024, after several procedural events, LUMA filed a document titled *Request for Approval of T&D Budgets and Submission of GenCo Budgets for FY 2025 and Budget Allocations for the Electric Power System*, through which LUMA submitted for approval the proposed budget for the Transmission & Distribution System, developed by LUMA; the budget proposal for the legacy thermal generation units (“GenCo’s FY2025 Budget Proposal”), developed by Genera; the budget allocation approved by the P3A for the hydroelectric generating units and the public irrigation facilities; and the allocation for PREPA and its subsidiaries (collectively, the “FY2025 Budget Submission”).

3. On June 12, 2024, the Energy Bureau issued a Resolution and Order titled *Establishment of FY 2025 Budgets, Requirement of Information (“ROI”), and Procedural Calendar* (“June 12th Resolution”). In the June 12th Resolution, the Energy Bureau established a Procedural Calendar for matters concerning the FY2025 Budget Submission and consequently scheduled a Virtual Technical Conference for June 20, 2024. *See*, June 12th Resolution, p. 3. Additionally, the Energy Bureau ordered Genera to respond, on or before June 17, 2024, to a Requirement of Information (“ROIs”) outlined in Attachment A to the June 12th Resolution and to file within three (3) business days of the publication of the June 12th Resolution, meaning June 17, 2024, all workpapers and supporting material used to develop GenCo’s FY2025 Budget Proposal in native form with all formulas and links intact and any Excel spreadsheets provided unlocked.

4. On June 17, 2024, Genera filed a document titled *Urgent Request for Extension to Submit Workpapers for GenCo’s FY2025 Budget and to file Genera’s Responses to Request for Information Issued on June 12, 2024* (“June 17th Request for Extension”), through which Genera

requested an extension of time to submit the workpapers and supporting materials for GenCo's FY2025 Budget Proposal, until June 19, 2024 and to respond to the ROI outlined in Attachment A of the June 12th Resolution, until June 19, 2024; and (iii) to file the presentation for the Virtual Technical conference, until June 20, 2024.

5. On June 18, 2024, Genera submitted a document titled "*Motion to Submit Partial Response to Requirement of Information in Compliance with Resolution and Order dated June 12, 2024, and Request for Extension of Time*" ("June 18th Motion"). Through the June 18th Motion, Genera submitted, as Exhibit A, its response to the ROI outlined in Attachment A of the June 12th Resolution, along with a revised version of GenCo's FY2025 Budget Proposal and all supporting papers and documents.

6. On June 20, 2024, Genera filed a document titled *Motion to Submit Complete Response to Requirement of Information in Compliance with Resolution and Order dated June 12, 2024 and Amended Workpapers* ("June 20th Motion"). In pertinent part to this Motion, Genera, in the June 20th Motion, filed as Exhibit B to this motion, a newly revised and amended version of the supporting workpaper for GenCo's FY2025 Budget Proposal. The revised workpaper amends certain information in the NME tab related to the updated costs and operational adjustments required for unforeseen maintenance and service enhancements.

7. Additionally, Genera requested that the "Labor" and "Temp Power" tabs of the GenCo's FY2025 Budget Proposal workpaper submitted as Exhibit B with the June 20th Motion be maintained as confidential, providing a redacted version for public disclosure and an unredacted non-public version under seal of confidentiality in accordance with 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. Consistent with this policy, Genera indicated that it

would submit a Memorandum of Law to support this confidentiality request within the next ten (10) days.

8. In accordance with the June 20th Motion, Genera respectfully submits this Memorandum of Law in support of its application to preserve the confidentiality of specific sections of Exhibit B attached to the June 20th Motion, which were submitted under a seal of confidentiality. Genera hereby requests that the Energy Bureau continue to protect these redacted sections of Exhibit B to the June 20th Motion pursuant to the Energy Bureau’s Policy on Management of Confidential Information.

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 B – GenCo’s FY2025 Budget Proposal workpaper– Filed on June 20, 2024	“Labor” & “Temp Power” Tabs	Sensitive commercial information and Trade Secrets under Act 80-2011, <i>infra</i> .	The redacted information contained in Exhibit B of the June 20 th Motion contains sensitive commercial information regarding Genera’s future procurement and human resources strategies. 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. Grounds for Confidentiality

The workpapers supporting Genera's submission of GenCo’s FY2025 Budget Proposal workpaper, included in the June 20th Motion as Exhibit B, contain sensitive commercial information about expenditures, as well as estimations and assumptions on costs that have not been shared with third parties and are maintained in confidence by Genera. Specifically, the information redacted in the "Temp Power" tab of GenCo’s FY2025 Budget Proposal workpaper includes

detailed budget projections for future materials, services, and projects that Genera anticipates requiring or conducting. This budgetary information provides critical insights into Genera's future needs for Requests for Proposals (RFPs) necessary to acquire such materials or undertake these projects. The detailed information contained therein serves as a roadmap for Genera's upcoming operational activities and financial planning. Premature disclosure of this sensitive information would place Genera at a significant competitive disadvantage when issuing the RFPs. Competitors with access to these projections could leverage this information to gain an upper hand in negotiations, potentially resulting in increased costs for Genera and undermining its strategic planning and financial stability. Ensuring the confidentiality of this information is therefore crucial for maintaining fair competition and protecting Genera's business interests.

Additionally, Genera submitted a redacted version of the "Labor" tab of its GenCo FY2025 Budget Proposal workpaper. The "Labor" tab of GenCo's Budget FY2025 Budget Proposal workpaper outlines the current status of various Genera positions, including budgetary details of the salaries, wages, and benefits. This information provides insights and operational details about Genera's ongoing recruitment efforts, strategic staffing alignments, and roles crucial for future operational success across various departments. It is important to emphasize that this recruitment and staffing data, pivotal for Genera's strategic human resources planning, has not been publicly disclosed and contains sensitive information that could provide third parties with undue advantages if made accessible. Public disclosure of such information could unjustly reveal Genera's strategic initiatives, providing unwarranted insights into the company's internal strategies and diminishing its market leverage.

Furthermore, the unauthorized release of these details could erode Genera's market position and compromise its future business operations. By protecting this information under the

provisions of Act No. 57-2014 and Act No. 80-2011, Genera seeks to ensure that its commercial strategies remain secure and that it can continue to operate effectively and competitively within the industry. Thus, the protection of Genera's proprietary budgetary and strategic information is essential for safeguarding its competitive advantage and preserving the integrity of its future procurement processes. Any breach in the confidentiality of this information could have far-reaching implications, adversely affecting Genera's operational efficiency and market competitiveness.

WHEREFORE, Genera respectfully requests that this Energy Bureau **take notice** of the above for all purposes and **grant** Genera's request for confidential treatment of the redacted tabs in Genco's FY2025 Propose Budget workpaper that was filed with the June 20th Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 1st day of July 2024

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CERTIFICATE OF SERVICE

I 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 I will send an electronic copy of this motion to PREPA through its counsels of record: Alexis G. Rivera-Medina, at arivera@gmlex.net, and Mirelis Valle-Cancel, at mvalle@gmlex.net; and to LUMA, through its counsels of record: Margarita Mercado Echegaray, at margarita.mercado@us.dlapiper.com; Jan M. Albino López, at jan.albinolopez@us.dlapiper.com; and Julian Anglada Pagan, at julian.angladapagan@us.dlapiper.com.

In San Juan, Puerto Rico, this 1st day of July 2024.

/s/ Alejandro López-Rodríguez
Alejandro López-Rodríguez

