

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

NEPR

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IN RE:

REVIEW OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY'S 10-
YEAR INFRASTRUCTURE PLAN –
DECEMBER 2020

CASE NO.: NEPR-MI-2021-0002

SUBJECT: Memorandum of Law in Support of
Confidential Treatment of Attachment
Submitted as part of Response filed on
December 24, 2024

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF
ATTACHMENT SUBMITTED AS PART OF RESPONSE FILED ON DECEMBER 24,
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 October 2, 2024, Genera filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau”) a document titled *Motion to Submit Detailed Scope of Work for Generation Fleet Project, No. 164988* (“October 2nd Motion”), through which Genera outlined the Scope of Work (“SOW”) for Generation Fleet Project 164988. The proposed SOW included installing eight (8) RICE units at the Yabucoa, Costa Sur, Dagua and Jobos sites, as well as constructing new remote control rooms at the Costa Sur and San Juan Power Plants.

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.

2. On December 18, 2024, the Energy Bureau issued a Resolution and Order titled *Resolution and Order for Motion to Submit Detailed Scope of Work for the Generation Fleet Project, No.164988* (“December 18th Resolution”). Through the December 18th Resolution, the Energy Bureau revised the SOW submitted as Exhibit A to the October 2nd Motion and determined that Genera did not provide any cost estimate nor scheduling information in either the October 2nd Motion or its Exhibit A, which the Energy Bureau required to evaluate the SOW for Generation Fleet Project No. 164988. Consequently, the Energy Bureau denied the October 2nd Motion due to the absence of material information required for an approval request (i.e., a detailed cost estimate of the SOW) and ordered Genera to submit, within ten (10) days of the notification of the December 18th Resolution, a detailed cost distribution, scheduling, and comparison to previously approved SOW's under the SOW titled *Generation Fleet - Demolition, Control Rooms and Peakers*, outlined in the October 2nd Motion. This information was requested for the Energy Bureau to complete its review.

1. On December 24, 2025, Genera filed a document titled *Motion to Submit Response in Compliance with Resolution and Order dated December 18, 2024* (“December 24th Motion”). Through the December 24th Motion, Genera submitted to the Energy Bureau a high-level cost estimated related to the *Generation Fleet – Demolition, Control Rooms, and Peakers* SOW submittal, as Exhibit A and under seal of confidentiality, on the grounds that it contains critical commercial information related to cost estimates for potential Request for Proposal (“RFP”) processes. Genera also provided a brief explanation stating that, in preparing the data for Exhibit A to the December 24th Motion, Genera included not only the engineering and design costs but also the expenses associated with procuring and integrating Peaker/RICE units into the overall generation fleet. Additionally, Genera informed the Energy Bureau that a supporting Memorandum

of Law would be submitted within the following ten (10) days in support of maintaining the confidentiality of Exhibit A.

3. In accordance with the December 24th Motion, Genera respectfully submits this Memorandum of Law to support its request for maintaining the confidentiality of Exhibit A to the December 24th Motion, 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 relating to cost estimates for potential RFP processes.

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 to the December 24 th Motion.	Entire document	Sensitive commercial information related to an active or upcoming competitive procurement process.	The information in Exhibit A to the December 24 th Motion constitutes commercially sensitive data—including cost estimates, engineering expenses, and procurement figures—that is not publicly available and has current or potential independent economic value. Its disclosure would undermine the fairness of an active or upcoming competitive procurement process.

III. Memorandum of Law in Support of Confidential Treatment

A. Applicable Law

4. 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 a meticulous evaluation, the Energy Bureau determines that the information warrants protection, it must “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).

5. Additionally, the Energy Bureau’s Policy on Management of Confidential Information details the procedures a party must 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 identifying 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 requesting 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.*

6. In conjunction with the above, the Energy Bureau’s 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 set forth in its Article 4.2.

7. 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”. *See* Article 4.2 of Regulation 8815. Notably, Article 4.2 of Regulation 8815 further provides that this information should remain confidential while the administrative competitive procurement process is ongoing. *Id.*

8. Moreover, 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 include 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.

9. 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. Additionally, Puerto Rico's Supreme Court has described 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 providing a competitive advantage upon its owner. *See Ponce Adv. Med. v. Santiago González*, 197 DPR 891, 903-904 (2007).

B. Ground for Confidentiality

10. Genera respectfully submits that Exhibit A to the December 24th Motion should be afforded confidential treatment because it contains sensitive commercial and financial information associated with ongoing or forthcoming RFP processes. Public disclosure of these details would confer an unwarranted competitive advantage upon third parties or potential bidders, thereby undermining the integrity of the procurement process.

11. Exhibit A to the December 24th Motion includes, among other things, detailed cost estimates, engineering expenses, and procurement figures for the *Generation Fleet – Demolition, Control Rooms, and Peakers* SOW. As noted above, the Energy Bureau's Regulation 8815 expressly protects confidential information arising in connection with competitive bidding

procedures. *See* Article 4.2 of Regulation 8815. Premature release of cost details or strategic approaches—whether prior to or during an RFP process—would compromise the transparency and fairness of the bidding environment, enabling other participants to tailor their proposals in a manner detrimental to Genera’s competitive position.

12. Moreover, these cost data and commercial strategies are imbued with substantial economic value precisely because they remain outside the public domain. Any unauthorized disclosure would permit competitors or prospective bidders to recalibrate their offers, thereby diminishing Genera’s bargaining power and thwarting the principle of fair competition. Such harm is precisely what Puerto Rico’s Industrial and Trade Secret Protection Act seeks to avert, by categorizing information with present or potential independent economic value—and which is not generally known or readily ascertainable—as a trade secret.

13. Accordingly, it is essential to preserve the confidentiality of Exhibit A to the December 24th Motion to protect the impartiality of these ongoing or prospective RFP processes. Upholding fair competition bolsters the transparency and integrity of the procurement process and ensures that all prospective bidders stand on equal footing, free from any undue advantage.

WHEREFORE, Genera respectfully requests that this Energy Bureau **take notice** of the above for all purposes and **maintain** the confidentiality of Exhibit A to the December 24th Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 3rd day of January of 2025.

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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 the PREPA's counsel, Mirelis Valle Cancel, at mvalle@gmlex.net, and Alexis Rivera, at arivera@gmlex.net; and to LUMA's counsel, Margarita Mercado, at margarita.mercado@us.dlapiper.com, and Yahaira De La Rosa, at yahaira.delarosa@us.dlapiper.com.

In San Juan, Puerto Rico, this 3rd day of January 2025.

/s/ Alejandro López-Rodríguez
Alejandro López-Rodríguez