

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

NEPR

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IN RE: IN RE: 10-YEAR PLAN
FEDERALLY FUNDED COMPETITIVE
PROCESS

Case No.: NEPR-MI-2022-0005

Subject: Memorandum of Law in Support
of Confidentiality of Monthly Report of
January 2025.

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIALITY OF
MONTHLY REPORT OF JANUARY 2025**

TO THE ENERGY BUREAU:

COMES NOW, GENERA PR LLC (“Genera”), through its undersigned counsel and, very respectfully, states and prays as follows:

I. INTRODUCTION

1. On January 15th, 2024, Genera filed a *Motion to Submit Monthly Report on the Status of Emergency Generation and Black-Start Generation Procurement in Compliance With Resolution and Order of July 30, 2024*. In it, Genera complied with the Puerto Rico Energy Bureau’s (“PREB”) *Resolution and Order of July 30th, 2024*, by notifying the status of Emergency Generation and Black-Start Generation Procurement for the month of January 2025. Genera filed said report as Exhibit A of the *Motion*.

2. Additionally, Genera pleaded to the PREB to keep Exhibit A as confidential pursuant to PREB’s Policy on Management of Confidential Information, CEPR-MI-2016-0009. Finally, Genera stated that it would file a *Memorandum in Support of Confidentiality* within ten days of the *Motion*’s filing.

3. Genera respectfully submits this Memorandum of Law in support of its request for maintaining the confidentiality of certain information contained in the Monthly Progress Report of January 2025, relating to protected and sensitive information pertaining to the Black-Start Generation Procurement. This request is made pursuant to various authorities, namely: (1) the Energy Bureau’s Policy on Management of Confidential Information, CEPR-MI-2019-0009, published on August 31, 2016, and amended on September 16, 2016; (2) *Industrial and Trade Secret Protection Act of Puerto Rico, PR ST T. 10 § 4131*; (3) *Rule 513 of the Puerto Rico Rules of Evidence, PR ST. T. 32a, Ap. V*; and (4) the terms of the Request for Proposal 205317 (“RFP”).

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 1 – Monthly Report January 2025 Filed on January 15 th , 2025	Whole document	<i>Industrial and Trade Secret Protection Act of Puerto Rico, PR ST T. 10 § 4131.</i> <i>Rule 513 of the Puerto Rico Rules of Evidence, PR ST. T. 32a, Ap. V.</i> <i>Request for Proposals No. 205317, sections 2.4 and 15.</i>	Contains information regarding pricing, scheduling and negotiation strategies with potential suppliers, contractors and vendors, in an ongoing procurement.

III. MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIALITY

A. Applicable Law

1. *Puerto Rico Energy Transformation and RELIEF Act, 22 LPRA § 1051 et seq.*

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 LPRA § 1051 et seq (“Act No. 57-2014”). This section provides 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 LPRA § 1054n. If, after conducting appropriate evaluations, 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 sec. 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 sec. 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).

2. *The Puerto Rico Energy Bureau’s Resolution on Policy on Management of Confidential Information, CEPR-MI-2016-0009*

The Energy Bureau’s *Policy on Management of Confidential Information* details the procedures a party should follow to request confidentiality 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 for confidential designation. *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.

3. *Industrial and Trade Secret Protection Act of Puerto Rico, PR ST T. 10 § 4131, and Rule 513 of the Puerto Rico Rules of Evidence, PR ST. T. 32a, Ap. V.*

The Legislature of Puerto Rico has openly recognized the importance of protection of trade and industrial information for the health of the free market on the island. Pursuant to such interest, the Legislature enacted the *Industrial and Trade Secret Protection Act of Puerto Rico*, PR ST. T. 10 § 4131. The Act's principal goal is to create a stable environment such that all businesses can thrive without the threat of losing one of their more important assets – Trade Secrets. As such, Article 2 of said Act defines “Information” as follows:

(a) Information. - Knowledge that broadens or clarifies knowledge already garnered. **It includes, but is not limited to, any formula, compilation, method, technique, process, recipe, design, treatment, model or pattern.**

PR ST. T. 10 § 4131. (Emphasis added).

Additionally, the Act defines the term “Trade Secret” as follows:

Industrial or trade secrets are deemed to be any information:

(a) That has a **present or a 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.

Any information generated by, used in or resulting from any failed attempts to develop a trade secret shall also be deemed to be a part thereof.

PR ST. T. 10 § 4132. (Emphasis ours).

Also, trade secrets are accompanied by reasonable security measures that point to the necessity of confidentiality. Under Puerto Rico Law, these measures must respond to any foreseeable circumstance that might compromise the trade secret. This is explicitly stated in Article 4 of the Act:

Reasonable security measures:

Reasonable security measures are any preventive measures that should be taken in order to limit access to information under specific circumstances. These shall be determined pursuant to any foreseeable conduct whereby the trade secret could be accessed and the nature of the risk ensuing from such conduct, as well as the cost-benefit ratio between the security measure and the trade secret.

Measures that can be deemed to be reasonable to maintain the confidentiality of the trade secret include, but are not limited to:

- (a) **The nondisclosure of information to individual or entities not authorized to access such information;**
- (b) limiting the number of persons authorized to access such information;
- (c) **requiring company employees authorized to access such information to sign confidentiality agreements;**
- (d) keeping such information in a place separate from any other information;
- (e) **labeling such information as confidential;**
- (f) **taking measures to impede the indiscriminate reproduction of such information;**
- (g) **establishing control measures for the use of or access to such information by company employees,** or
- (h) implementing any technologically available measures when publishing or transmitting such information over the Internet, including the use of email, web pages, message boards, and any other equivalent medium.

PR ST. T. 10 § 4133. (Emphasis added)

Equally important, the Puerto Rico Rules of Evidence expressly grant the privilege not to discover any trade secrets during litigation nor trial, furthering the Legislature's intention of providing a safe and stable environment for businesses to develop their craft and protect their valuable information. The text of Rule 503 states the following:

Rule 513. Trade Secret **The owner of a trade secret has a privilege, which may be claimed by such person or by his or her agent or employee, to refuse to disclose and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.** If disclosure is directed, the court shall take such protective measures as the interest of the owner of a trade secret and of the parties and the interests of justice require. (Emphasis added). PR ST. T 32a, Ap. V.

of why it is prevented from signing the NDA as-is. Genera reserves the right to accept or reject any proposed change to the form of NDA in its sole discretion.

Request for Proposal No. 205317, page 7.

15. CONFIDENTIALITY OF RESPONSES & PROPRIETARY INFORMATION

Upon completion of the RFP process, Genera may make public its report regarding the procurement and selection process, which report shall contain certain information related to this RFP process, except trade secrets and proprietary or privileged information of the Proponents. Information considered trade secrets or non-published financial data might be classified as proprietary by the Proponents. **In order to ensure that documents identified by Proponents as confidential or proprietary will not be subject to disclosure by Genera, in addition to submitting a Proposal for evaluation, Proponents are required to submit an additional redacted copy of the Proposal.** The redacted copy must include a written explanation of why such labeled documents are confidential or proprietary, including why the disclosure of the information would be commercially harmful, specifically refer to any legal protection currently enjoyed by such information and why the disclosure of such information would not be necessary for the protection of the public interest, and request that the documents so labeled be treated as confidential by Genera. Genera reserves the right to make public the redacted copies of the Proposals at the conclusion of the RFP process. If a redacted copy is not submitted by a Proponent, Genera will assume that the original copy of the Proposal can be made public. Proposals containing substantial content marked as confidential or proprietary may be rejected by Genera. Provision of any information marked as confidential or proprietary shall not prevent Genera from disclosing such information if required by law. The executed Contract(s), if any, and all prices set forth therein shall not be considered confidential or proprietary, and such information may be made publicly available.

Request for Proposal No. 205317, page 27.

The confidentiality of procurement documents is not a foreign concept in our jurisdiction.

The Federal Acquisition Regulations System, 48 C.F.R., (“FAR”) contains various provisions ordering the confidentiality of all documentation submitted for procurement processes of various Federal agencies. In its General section, the FAR contains the following text:

3.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with

applicable agency regulations or procedures, by the agency head or the contracting officer to receive such information.

(b) Contractor bid or proposal information and source selection information must be protected from unauthorized disclosure in accordance with 14.401, 15.207, applicable law, and agency regulations.

(c) [...]

(d) [...]

48 C.F.R. § 3.104-4

Furthermore, the CFR expands the coverage of the protection of contractors' bids and proposal information. Additionally, it specifies the concrete actions the agency must take to protect bids and proposals from disclosures:

4.401 Receipt and safeguarding of bids.

(a) All bids (including modifications) received before the time set for the opening of bids shall be kept secure. Except as provided in paragraph (b) of this section, the bids shall not be opened or viewed, and shall remain in a locked bid box, a safe, or in a secured, restricted-access electronic bid box. If an invitation for bids is cancelled, bids shall be returned to the bidders. Necessary precautions shall be taken to ensure the security of the bid box or safe. Before bid opening, information concerning the identity and number of bids received shall be made available only to Government employees. Such disclosure shall be only on a *need to know* basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

(b) Envelopes marked as bids but not identifying the bidder or the solicitation may be opened solely for the purpose of identification, and then only by an official designated for this purpose. If a sealed bid is opened by mistake (e.g., because it is not marked as being a bid), the envelope shall be signed by the opener, whose position shall also be written thereon, and delivered to the designated official. This official shall immediately write on the envelope (1) an explanation of the opening, (2) the date and time opened, and (3) the invitation for bids number, and shall sign the envelope. The official shall then immediately reseal the envelope.

48 C.F.R. § 14.401

Maintaining confidentiality in a procurement process provides several benefits to both the issuing organization and the bidders. These benefits are particularly critical in competitive and

sensitive industries, such as electric utilities, defense, or technology. The first benefit is the protection of sensitive information. Confidentiality safeguards proprietary or trade-secret information, such as pricing strategies, technical solutions, or unique methodologies, preventing unauthorized use or dissemination. Moreover, procurement confidentiality ensures that organizations can share detailed project requirements, including budgets, without risking exposure to competitors or third parties.

The second benefit of confidential procurement processes is the encouragement of competitive bidding. Bidders are more likely to submit innovative or aggressive proposals if they trust their proprietary strategies will remain confidential. As such, contractors and vendors feel secure disclosing their most competitive pricing, capabilities, and approaches without fear of leaks. As a ramification of the aforesaid, by keeping bid information confidential, the risk of collusion among bidders is minimized. If suppliers and contractors are unaware of competitors' bids or strategies, it's harder to engage in price-fixing or other anti-competitive behaviors. This results in a more clean and trustworthy procurement process for Genera.

Further, confidentiality ensures that external parties, such as competitors, lobbyists, or other stakeholders, cannot unfairly influence the procurement decision-making process. Thus, reducing favoritism or bias by ensuring that decision-makers are not pressured or swayed by outside parties. Moreover, protecting bidder information reduces the risk of legal disputes related to the mishandling of confidential data, and the potential financial losses stemming from lawsuits or reputational damage due to leaks of sensitive information. For Genera, confidentiality enables issuers to **negotiate strategically without undue scrutiny, allowing for better terms, pricing, or innovative solutions**. The aforesaid is particularly prescient in this case since the Monthly Progress Report for January 2025 contains information about Genera's budgeting and financial strategies for the Black-Start Generation project management. This falls well within the scope of

the definitions for “Information” and “Trade Secret” in the *Industrial and Trade Secret Protection Act of Puerto Rico*, PR ST T. 10 §§ 4131-4134, cited above.

In sum, Genera’s Monthly Progress Report for January 2025 presents a detailed view of Genera’s project management strategies that, if disclosed, could negatively impact its bargaining power, trade secrets, sensitive corporate information, or any combination of such matters. Additionally, the Monthly Progress Report for January 2025 sheds light on Genera’s trade secrets, pricing strategies and negotiation terms that Genera must protect to ensure a fair and convenient deal for PREPA and Genera. Accordingly, Genera’s request for confidentiality for Monthly Progress Report for January 2025, filed as Exhibit 1 of *Motion to Submit Monthly Report on the Status of Emergency Generation and Black-Start Generation Procurement in Compliance with Resolution and Order of July 30, 2024*, is proper and should be granted by the PREB at least until negotiations for the Black-Start Generation Procurement conclude, and according to the terms of the RFP.

WHEREFORE, Genera respectfully requests that the PREB take notice of the foregoing and grant this request for confidential treatment of the for Exhibit 1 of *Motion to Submit Monthly Report on the Status of Emergency Generation and Black-Start Generation Procurement in Compliance with Resolution and Order of July 30, 2024*, and Request for Proposal no. 205317.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this January 27, 2025.

It is hereby certified that this motion was filed using the electronic filing system of this Energy Bureau, and that electronic copies of this Motion will be notified to the following attorneys who have filed a notice of appearance in this case: **Lcdo. Alexis Rivera**, arivera@gmlex.net; **Lcda. Mirelis Valle Cancel**, mvalle@gmlex.net; **Lcda. María Teresa Bustelo-García**, mbustelo@gmlex.net.

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