

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

NEPR

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IN RE: FY2024 INCENTIVES AND  
PENALTIES

Case No.: NEPR-MI-2025-0002

Subject: Memorandum of Law in Support  
of Confidentiality of FY2024 Incentives &  
Penalties Report

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIALITY OF FY2024  
INCENTIVES AND PENALTIES REPORT**

**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 May 30, 2025, Genera filed a *Motion in Compliance with Section 7.1(C)(ii) of the Operations and Maintenance Agreement*, submitting as Exhibit A the Report on Incentives & Penalties for FY2024, consistent with the obligations set forth in Section 7.1(C)(ii) of the Operation and Maintenance Agreement (“OMA”). This report includes the Fuel Optimization Report, supporting performance data, information and reports regarding performance, and a good faith calculation of the proposed Incentive Payment and/or Penalties for the Contract Year.

2. Genera also requested that the filing, and Exhibit A, be kept confidential pursuant to the PREB’s *Policy on Management of Confidential Information*, CEPR-MI-2016-0009, as amended on September 21, 2016.

3. Genera respectfully submits this *Memorandum of Law* in support of its request for maintaining the confidentiality of the filing and the Report on Incentives & Penalties for FY2024. This request is made pursuant to two authorities: (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) the *Federal Power Act's*, 16 USC § 791a et seq., which establishes a prohibition on the disclosure of Critical Electric Infrastructure Information; (3) the *Industrial and Trade Secret Protection Act of Puerto Rico*, PR ST T. 10 § 4131; (4) *Rule 513 of the Puerto Rico Rules of Evidence*, PR ST. T. 32a, Ap. V; and the *Federal Power Act*, 16 USC § 824 o-1, and subsequent Regulations by the Federal Energy Regulatory Commission at 18 CFR § 388.113.

## 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 – Report for Fiscal Year 2024	Whole document	<p><i>Federal Power Act</i>, 16 USC § 824 o-1, and subsequent Regulations by Federal Energy Regulatory Commission at 18 CFR § 388.113.</p> <p><i>Industrial and Trade Secret Protection Act of Puerto Rico</i>, PR ST T. 10 § 4131.</p> <p><i>Rule 513 of the Puerto Rico Rules of Evidence</i>, PR ST. T. 32a, Ap. V.</p>	<p><i>Federal Power Act</i> prevents disclosure by any Federal, State or Tribal authority of Critical Energy Infrastructure Information.</p> <p>Contains information regarding operation of procurement, trade secrets and commercial policy for the operation and maintenance of generation systems to achieve the metrics pursuant to incentives and penalties clauses in the <i>Operation and Maintenance Agreement</i>.</p>

### **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 the

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. *Federal Power Act, 16 USC § 824o-1 and the Federal Energy Regulatory Commission’s Regulations at 18 CFR §388.113.*

The United States Congress has recognized the transcendental importance of the electrical infrastructure for the progress of the Nation. Pursuant to said recognition, Congress enacted the *Federal Power Act*, 16 USC § 791a, on June 10<sup>th</sup>, 1920. Through various amendments, Congress also expanded the protections around the data pertaining to the functionality, design and organization of the electric power infrastructure. This information was classified as “Critical Electric Infrastructure Information”. Specifically, the *Federal Power Act* defines said term as follows:

SEC. 215A. CRITICAL ELECTRIC INFRASTRUCTURE SECURITY.

(a) DEFINITIONS. —For purposes of this section:

(1) ...

(2) CRITICAL ELECTRIC INFRASTRUCTURE. —The term “critical electric infrastructure” means a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of **which would negatively affect national security, economic security, public health or safety, or any combination of such matters.**

(3) CRITICAL ELECTRIC INFRASTRUCTURE INFORMATION. —The term “critical electric infrastructure information” means information related to critical electric infrastructure, or proposed critical electrical infrastructure, generated by or provided to the Commission or other Federal agency, other than classified national security information, that is designated as critical electric infrastructure information by the Commission or the Secretary pursuant to subsection (d). Such term includes information that qualifies as critical energy infrastructure information under the Commission’s regulations. 16 USC § 824o-1. (Emphasis added).

The Federal Energy Regulatory Commission (“FERC”) further specified the scope of the definition of “Critical Electric Infrastructure Information”:

(c) Definitions. For the purposes of this section:

- (1) ...
- (2) Critical energy infrastructure information means **specific engineering, vulnerability, or detailed design information** about proposed or existing critical infrastructure that:
- (i) **Relates details about the production, generation, transportation, transmission, or distribution of energy;**
  - (ii) Could be useful to a person in planning an attack on critical infrastructure;
  - (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 USC 552; and
  - (iv) **Does not simply give the general location of the critical infrastructure.**
- (3) Critical electric infrastructure means a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters.
- (4) Critical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters. 18 CFR § 388.113. (Emphasis added).

Congress then moved to preempt any disclosure of Critical Electric Infrastructure Information:

SEC. 215A. CRITICAL ELECTRIC INFRASTRUCTURE SECURITY.

(d) PROTECTION AND SHARING OF CRITICAL ELECTRIC INFRASTRUCTURE INFORMATION. —

(1) PROTECTION OF CRITICAL ELECTRIC INFRASTRUCTURE INFORMATION. —

Critical electric infrastructure information—

(A) shall be exempt from disclosure under section 552(b)(3) of title 5, United States Code; and

**(B) shall not be made available by any Federal, State, political subdivision or tribal authority pursuant to any Federal, State, political subdivision or tribal law requiring public disclosure of information or records.** 16 USC § 824o-1 (d)(1)(B) (Emphasis added).

4. *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 or trial, emphasizing the Legislature's intention of providing a safe and stable environment for businesses to develop its craft and protect its valuable information. The text of Rule 503 states as follows:

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.

#### **IV. GROUNDS FOR CONFIDENTIALITY**

This Memorandum of Law supports the claim for confidentiality of the information contained in the *FY2024 Incentives and Penalties Report* included as Exhibit A to the *Motion in Compliance With Section 7.1(C)(ii) of the Operations and Maintenance Agreement*.

The data and descriptions contained therein, generally, encompass Genera's trade, compliance and commercial secrets to achieve the metrics necessary to request the incentives established on the OMA. Specifically, the information submitted to the PREB contains a Fuel Optimization Report describing (1) supporting performance data, information and reports showing its performance with respect to one or more of the categories of Incentives and Penalties, and (2) the proprietary calculations used by Genera to determine the proposed incentive payment and/or Penalties.

Regarding the savings efforts, the *FY2024 Incentives and Penalties Report* also describes Genera's strategy for the restructuring of Human Resources management and recruitment. Additionally, the *Report* describes the changes made to procurement and warehouse management. In a more detailed manner, the *Report* specifies Genera's mission, vision and actions taken to secure savings in areas such as Operation Costs, and the resulting surplus from the implemented strategy. Further, the section on the savings on Operation Costs details the formula used by Genera to calculate the proposed Incentive Payment. For Fuel Optimization, the *Report* describes the different competitive approaches used by Genera to secure a lower price for fuel and achieve the goals for the Actual Fuel Savings metrics. This section of the *Report* expounds the formulas used by Genera to calculate the savings on fuel purchase and thus propose an Incentive payment. Finally, the Report also details Genera's descriptions for achieving the goals stated in the Safety Compliance, Environmental Compliance and Reporting Obligations set forth in the OMA. Specifically, this section details the penalties imposed for OSHA Lost Time Incidents. This



information is protected by the *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 Report also details how the changes in infrastructure and asset supplementation for fuel reliability pushed Genera to secure savings for the ratepayer. Aside from the previous issues described in this *Memorandum*, the *Report's* section on Fuel Optimization contains descriptions and photos of electric power generation plants and their exact locations. Further, this section provides detailed information about the changes in equipment made to secure these savings. As such, this information is protected by the *Federal Power Act, 16 USC § 824o-1* and the *Federal Energy Regulatory Commission's Regulations at 18 CFR §388.113*.

In sum, Genera's *FY2024 Incentives and Penalties Report* presents a detailed view of Critical Energy Infrastructure that, if disclosed, would negatively impact territorial security, economic security, public health or safety, or any combination of such matters. This Report also provides the specifics of Genera's trade secrets to maintain competitiveness and achieve savings for the Puerto Rico ratepayer. Accordingly, Genera's request for confidentiality for the *FY2024 Incentives and Penalties Report* is proper and should be granted by the PREB.

**WHEREFORE**, Genera respectfully requests that the PREB take notice of the foregoing and grant this request for confidential treatment of the *FY2024 Incentives and Penalties Report*, filed as Exhibit A of the *Motion in Compliance With Section 7.1(C)(ii) of the Operations and Maintenance Agreement* filed on May 30, 2025.

In San Juan, Puerto Rico, this June 6, 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: [legal@genera-pr.com](mailto:legal@genera-pr.com); [regulatory@genera-pr.com](mailto:regulatory@genera-pr.com).

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