

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

NEPR

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IN RE: FY2024-2025 INCENTIVES AND
PENALTIES

Case No.: NEPR-MI-2025-0002

Subject: Memorandum of Law in Support of
Confidentiality Report for FY2024-2025

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIALITY OF REPORT FOR
FISCAL YEAR 2024-2025**

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 July 30, 2025, Genera filed an *Informative Motion Regarding Incentives and Penalties Report under Section 7.1(c)(ii) of the Operations and Maintenance Agreement* submitting as Exhibit A the *Incentives and Penalties Report for FY2024-2025*. 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 Exhibit A be kept confidential pursuant to 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 to maintain the confidentiality of the Report for the FY2024-2025. This request is made pursuant to four main 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 Operation and Maintenance Agreement (“OMA”) definition of “Confidential Information” in its Article 1, Section 1.1, and Article 13 on Proprietary Information; (3) the *Industrial and Trade Secret Protection Act of Puerto Rico, PR ST T. 10 § 4131*; and (4) *Rule 513 of the Puerto Rico Rules of Evidence, PR ST. T. 32a, Ap. V.*

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
<p>Exhibit 1 – Report for Fiscal Year 2024-2025, and Fuel Optimization Report.</p> <p>Filed on July 30, 2025</p>	<p>Whole document</p>	<p><i>Industrial and Trade Secret Protection Act of Puerto Rico, PR ST T. 10 § 4131.</i></p> <p><i>Rule 513 of the Puerto Rico Rules of Evidence, PR ST. T. 32a, Ap. V.</i></p> <p><i>Article 1, Section 1.1 of the Operation and Maintenance Agreement</i></p> <p><i>Article 13 of the Operation and Maintenance Agreement.</i></p>	<p>In this Agreement, <i>proprietary information</i> is essentially synonymous with “Confidential Information.” If the data is non-public, supplied (or created) in connection with the contract, and not otherwise excluded, it is proprietary to the disclosing party and must be handled under the strict confidentiality regime of Article 13.</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</p>

			<p>in the <i>Operation and Maintenance Agreement</i>. As such, disclosure of the protected information contained in the <i>Incentives and Penalties Report</i> would potentially:</p> <ul style="list-style-type: none"> i) Undermine ongoing or future fuel negotiations; ii) Reveal sensitive pricing formulas; iii) Provide third parties with strategic insight into Genera’s cost-management framework; iv) Enable potential manipulation in future procurement processes by bidders.
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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.” 22 LPRA § 1054n (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.” 22 LPRA § 1054n (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.” 22 LPRA § 1054n (d).

2. *The Puerto Rico Energy Bureau’s Resolution and 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. *Article 1, Section 1.1 of the OMA– Definition of Confidential Information, and Article 13 of the OMA-- Proprietary Information*

Section 1.1 of the OMA defines “Confidential information” as follows:

“Confidential Information” means data or information in any form disclosed by one Party to the other Party by any means, if and for so long as the data and information are protectable as trade secrets by the disclosing Party or are otherwise confidential. **As a non -exhaustive list of examples, “Confidential Information” includes non-public information regarding a Party’s Intellectual Property, financial condition and financial projections, business and marketing plans, product plans, product and device prototypes, the results of product testing, research data, market intelligence, technical designs and specifications, secret methods, manufacturing processes, source code of proprietary software, the content of unpublished patent applications, customer lists, vendor lists, internal cost data, the terms of contracts with employees and third parties, and information tending to embarrass the disclosing Party or tending to tarnish its reputation or brand.** For the avoidance of doubt, information in this list of examples is only considered “Confidential Information” for so long as it has not been made known to the general public by the disclosing Party or through the rightful actions of a third party. (Emphasis ours).

The foregoing shows that the OMA defines “Confidential Information” broadly. It covers any data or information, in any form and by any means, that one Party discloses to the other and that is protectable as a trade secret or otherwise confidential. The non-exhaustive examples include non-public intellectual property, financials and projections, business and marketing plans, product plans and prototypes, test results, research data, market intelligence, technical designs/specs, secret methods, manufacturing processes, proprietary software source code, unpublished patent application content, customer and vendor lists, internal cost data, and contract terms.

Within the services framework, the contract deems all Facility Information furnished in connection with the Agreement, and any Work Product, to be Owner’s Confidential Information (with Operator as the receiving Party). Operator’s own Confidential Information includes that pertaining to its, and its Subcontractors’, intellectual property, policies, and strategies.

Further, Article 13 of the OMA points towards robust protections for “Proprietary Information”.

Article 13 – Intellectual Property; Proprietary Information

Section 13.1 Intellectual Property

[...]

Section 13.2 Proprietary Information.

(a) Confidentiality Obligation.

(i) Subject to the remainder of this Section 13.2 (Proprietary Information), any and all written, recorded or oral Facility Information furnished or made available in connection with this Agreement, or that constitutes Work Product, shall be deemed Owner's Confidential Information, with respect to which Operator shall be deemed to be the receiving Party and Owner shall be deemed to be the disclosing Party. **Operator's Confidential Information includes Confidential Information pertaining to Operator Intellectual Property or Subcontractor Intellectual Property, or to Operator's policies and strategies.** Confidential Information shall not include any of the foregoing that: (A) is when furnished, or thereafter becomes, available to the public other than as a result of a disclosure by the receiving Party or its Representatives; (B) is already in the possession of or become available to the receiving Party or its Representatives on a non -confidential basis from a source other than the disclosing Party or its Representatives; provided, that to the knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives; or (C) the receiving Party or its Representatives can demonstrate has been independently developed without a violation of this Agreement.

(ii) Subject to the remainder of this Section 13.2 (Proprietary Information), each receiving Party shall, and shall cause its Representatives to, **(A) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information of the disclosing Party, and (B) use all Confidential Information of the disclosing Party solely for the purposes of performing its obligations under the Transaction Documents and not for any other purpose; provided,** that: (A) a receiving Party may disclose Confidential Information of the disclosing Party to those of its Representatives who need to know such information for the purposes of performing the receiving Party's obligations under this Agreement if, to (i) counterparties and prospective counterparties to Subcontracts, Fuel Contracts and Facility Contracts and their respective Representatives who need to know such information in connection with an existing or proposed Subcontract, Fuel Contract or Facility Contract, (ii) any lender or prospective lenders and its Representatives, and (iii) any insurer in connection with a policy of insurance required pursuant to this Agreement, in each case of the foregoing (i) through (iii) solely to the extent required and for the purposes of the receiving Party's obligations under this Agreement, and only if, prior to being given access to such Confidential Information, such Representatives are informed of the confidentiality thereof and the requirements of this Agreement and are obligated to comply with the requirements of this Agreement; (B) the foregoing shall not limit any rights or licenses granted under Article 13 (Intellectual Property; Proprietary Information); provided that the licensee shall treat any Confidential Information included in such license in a manner consistent with this

Section 13.2 (Proprietary Information) and in any event with the same care as it would treat its own comparable information, acting reasonably; and (C) each Party shall be responsible for any breach of this Agreement by its Representatives.

The quoted Section 13.2 defines Proprietary/Confidential Information broadly to cover any non-public technical, commercial, financial, and operational information that one party (or its Representatives) discloses to the other in connection with the agreement, as well as information the receiving party generates from, or that incorporates, such disclosures. It includes material marked confidential and information that a reasonable person would understand to be confidential given its nature and the circumstances of disclosure (e.g., trade secrets, sensitive business data, and non-public operational details). *See e.g. Industrial and Trade Secret Protection Act of Puerto Rico*, PR ST. T. 10 § 4133, discussed *infra*.

Covered information typically includes designs, drawings, specifications, manuals, software and data; pricing, cost and financial models; business plans, strategies, procurement and supply-chain information; contractor, vendor, and customer information; site and security information; and non-public operational “Facility Information” the operator produces in performing the O&M services. *See e.g. Ponce Adv. Med. v. Santiago González*, 197 D.P.R. 891, 903 (2017); *Caribe Crown Cap v. Secretario de Hacienda*, 108 D.P.R. 796, 804-805 (1979); *Siemens Westinghouse v. Autoridad de Energía Eléctrica*, KLRA20050692, 2005 WL 3284305, at *9 (T.A. 2005). The OMA also deals with Operator Personal Information handled under the services as Operator’s Confidential Information.

Confidentiality in this agreement is anchored in Article 13, which pairs strict non-disclosure duties with detailed carve-outs and public-records procedures. Operational data and personal information handled under Article 5 are expressly folded into those same protections, and separate cybersecurity obligations in § 13.3 help ensure the confidentiality promise is upheld in practice.

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 nor trial, reinforcing 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 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 *FY2024-2025 Incentives and Penalties Report*, included as Exhibit A to the

Informative Motion Regarding Incentives and Penalties Report under Section 7.1(c)(ii) of the Operations and Maintenance Agreement.

The data and descriptions contained in the Report and its Exhibit, generally point towards Genera's trade, commercial and compliance secrets to achieve the metrics necessary to request the incentives agreed 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 *FY2024-2025 Incentives and Penalties Report* also describes changes made to workforce planning, reallocation of internal resources across sites, and other targeted reductions. The section on the savings on Operation Costs Efficiency details the precise strategies to reach these goals. Similarly, this section describes in detail how Genera has changed and fine-tuned its procurement and insurance coverage practices to achieve substantial savings on non-labor costs.

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. The ability to reduce fuel costs, whether through procurement, logistics, or other optimization initiatives, translates directly into financial relief for rate payers. As such, the Fuel Optimization Report contains information that falls squarely within the definition of not only trade secrets, but of Proprietary Information under Section 13.2 of the OMA.

Moreover, the *Report* expounds the strategies used by Genera to successfully reduce the fixed premium for ULSD in FY 2025 versus FY 2024, particularly those issues related to the transport of ULSD. On the other hand, the *Report* details another procurement initiative undertaken

by Genera in FY2024–25 for Fixed Premium Oil. This effort, referred to internally as the “FO6 Fixed Premium Reduction Initiative,” reflects Genera’s commitment to applying disciplined market engagement and contract optimization to reduce systemic fuel costs while maintaining secure and reliable fuel delivery across the generation fleet. More broadly, fuel related RFPs initiated by Genera, including both standard and exigent procurement processes, are also described as part of Fuel Cost Savings Initiatives under the OMA. These efforts are central to Genera’s contractual responsibility to reduce fuel expenditure through strategic sourcing, fuel substitution, and optimization of fuel portfolio delivery and delivery infrastructure.

Thus, all 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*, and *Article 1, Section 1.1 – Definition of Confidential Information, and Article 13 -- Proprietary Information* of the Operation and Management Agreement. This is because, as shown above, the strategies, formulas, designs and procedures described in the Report have 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.” PR ST. T. 10 § 4132. Furthermore, this information is not in the public domain and Genera protects it from disclosure and assertively claims its confidential nature.

In sum, Genera’s *FY2024-2025 Incentives and Penalties Report* presents a detailed view of Genera’s trade and business strategies that, if disclosed, would negatively impact Genera’s competitiveness and its ability to achieve savings for the Puerto Rico ratepayer. *See Colón Rivera v. Triple-S Salud, Inc.*, KLCE202000922, 2020 WL 8458051¹ (the trade secret privilege “encourages the discovery and exploitation of inventions, prevents surpassing lawful methods of

¹ Citing to 26 Wright and Graham, *Federal Practice and Procedure: Evidence* Sec. 5642 (2016).

acquiring information and engaging in industrial espionage, protects good faith, and avoids the improper appropriation of another's efforts") (Translation ours). Accordingly, Genera's request for confidentiality for the *FY2024-2025 Incentives and Penalties Report* is proper and should be granted by the PREB. As a result, pursuant to the OMA, Genera has the responsibility to take all reasonable steps to protect the confidentiality of the information in the *FY2024-2025 Incentives and Penalties Report*.

WHEREFORE, Genera respectfully requests that the PREB take notice of the foregoing and grant this request for confidential treatment of the *FY2024-2025 Incentives and Penalties Report*, and the Fuel Optimization Report filed as Exhibit A to the *Informative Motion Regarding Incentives and Penalties Report under Section 7.1(c)(ii) of the Operations and Maintenance Agreement*, filed on July 30, 2025.

In San Juan, Puerto Rico, this August 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; regulatory@genera-pr.com.

ROMAN NEGRÓN LAW, PSC
Attorneys for Genera PR, LLC.
Citi Towers, Suite 1401
252 Ponce de León Ave.
San Juan, PR 00918
P.O. Box 360758
San Juan, PR 00936
Tel. (787) 979-2007

s/Luis R. Román Negrón
Luis R. Román Negrón
RUA 14,265
lrn@roman-negron.com