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

IN RE: PUERTO RICO ELECTRIC POWER AUTHORITY'S PERMANENT RATE	Case No: NEPR-MI-2020-0001 Subject: Memorandum of Law in Support of Confidentiality of Exhibits A, B and C of Motion Submitting Monthly Status Report in Compliance with Resolution and Order of July 16, 2025

MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIALITY OF EXHIBITS A, B AND C OF MOTION SUBMITTING MONTHLY STATUS REPORT IN COMPLIANCE WITH RESOLUTION AND ORDER OF JULY 16, 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 September 2, 2025, Genera filed its *Motion Submitting Monthly Status Report in Compliance with Resolution and Order of July 16, 2025,* submitting as Exhibit A the Monthly Report, as Exhibit B the NG vs. ULSD Consumption Report from March 2024 to July 2025, and as Exhibit C the Letter to Puerto Rico Public-Private Partnerships Authority. These exhibits include Vessel Swaps report, Fuel consumption reports and details, and information and reports regarding fuel procurement disputes.

2. Genera also requested that Exhibits A, B and C 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 Exhibits A, B and C. This request is made pursuant to the following 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 OMA's definition of "Confidential Information" in its Article 1, Section 1.1, and Article 13 on Proprietary Information of the OMA; (3) the *Industrial and Trade Secret Protection Act of Puerto Rico*, *PR ST T. 10 § 4131*; (4) Rule 514 of the Puerto Rico Rules of Evidence: Privilege over official information and decisional information in deliberative processes on public policy and Rule 514 of the Rules of Evidence*;* (5) *Federal Power Act,* 16 USC § 824o-1 and the *Federal Energy Regulatory Commission's Regulations* at 18 CFR §388.113*;* and (6) *Industrial and Trade Secret Protection Act of Puerto Rico*, PR ST T. 10 § 4131, and Rule 513 of the Puerto Rico Rules of Evidence.

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 – Monthly Report	Whole document	*Industrial and Trade Secret Protection Act of Puerto Rico*, *PR ST T. 10 § 4131.* *Rule 513 of the Puerto Rico Rules of Evidence, PR ST. T. 32a, Ap. V.* *Article 1, Section 1.1 of the Operation and Maintenance Agreement*	In this Agreement, *proprietary information* 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

		Article 13 of the Operation and Maintenance Agreement.	confidentiality regime of Article 13. Contains information regarding operation of and maintenance of generation systems, including the specific routine schedules for the vessel fuel swaps.
Exhibit B – NG vs ULSD Consumption Report form March 2024 to July 2025	Whole document	*Industrial and Trade Secret Protection Act of Puerto Rico*, *PR ST T. 10 § 4131.* *Rule 513 of the Puerto Rico Rules of Evidence, PR ST. T. 32a, Ap. V.* *Article 1, Section 1.1 of the Operation and Maintenance Agreement* *Article 13 of the Operation and Maintenance Agreement.* *Federal Power Act*, 16 USC § 824 o-1, and subsequent Regulations by Federal Energy Regulatory Commission in 18 CFR § 388.113.	Contains information regarding operation of and maintenance of generation systems, including the specific fuels used in each Generation facility. *Federal Power Act* preempts disclosure by any Federal, State or Tribal authority of Critical Energy Infrastructure Information

Exhibit C – Letter to Puerto Rico Public-Partnerships Authority, dated August 11, 2025.	Whole document	*Article 1, Section 1.1 of the Operation and Maintenance Agreement* *Article 13 of the Operation and Maintenance Agreement.* *Official Information and Deliberative Privilege. Rule 514 of Evidence, 32 LPRA Ap. VI*	Genera, as agent of PREPA, sent this letter to the Puerto Rico Public-Private Partnerships Authority ("P3A"). The letter contains information about the ongoing internal deliberations regarding PREPA's contractual disputes with NFE. The letter is pre-decisional and deliberative, not final agency action. It contains recommendations, evaluations, and strategic assessments necessary for PREPA and P3A decision-making. Disclosure would compromise the government's position in ongoing disputes and chill candid agency deliberations.

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. *Article 1, Section 1.1 – Definition of Confidential Information, and Article 13 -- Proprietary Information*

The Operation and Management Agreement ("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 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, so long as it is not public.

Within the services framework, the OMA 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.

It can be gleaned from the foregoing that "Proprietary"/Confidential Information is also defined 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).

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. The OMA also deals with **Operator Personal Information** handled under the services as Operator's Confidential Information.

Confidentiality in the OMA 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 Section 13.3 help ensure the confidentiality provision is upheld in practice.

The OMA permits limited disclosures. First, a receiving Party may share Confidential Information with Representatives who have a need to know (including counterparties and prospective counterparties to Subcontracts, Fuel Contracts, and Facility Contracts; lenders; and insurers), but only to the extent required to perform obligations, after informing them of the confidentiality obligations, and ensuring they are bound to comply; the receiving Party remains

responsible for breaches by its Representatives. Second, disclosure is permitted where required by law: (i) to a duly authorized Governmental Body if required by Applicable Law (without liability for what that Governmental Body then does with it) and (ii) to comply with subpoenas, court orders, or discovery/data requests in proceedings before competent courts.

4. Rule of Evidence 514: Privilege over official information and decisional information in deliberative processes on public policy.

A claim of confidentiality by the government may succeed when it involves privileged official information, among other reasons. Colón Cabrera v. Caribbean Petroleum, 170 DPR 582 (2007); Santiago v. Bobb y El Mundo, Inc., 117 DPR 153 (1986). The Puerto Rico Supreme Court examined the extension of such privilege in its flagship case Bhatia Gautier v. Gobernador, 199 DPR 59 (2007). The PR Supreme Court argued that Rule 514 of Evidence, 32 LPRA Ap. VI, establishes in our jurisdiction the "privilege over official information." This provision defines "official information" as "that which is acquired in confidence by a person who is a public officer or employee in the performance of their duty and that has not been officially disclosed nor is accessible to the public until the moment the privilege is invoked." Rule 514(a) of Evidence, *supra*. This privilege is activated "if the court concludes that the matter is official information and its disclosure is prohibited by law, or that disclosure of the information in the action would be harmful to the interests of the government." Bhatia Gautier, 199 DPR 59, 84 (2017) citing Rule 514(b) of Evidence, *supra*.

In its discussion, the Supreme Court cites Professor Ernesto Chiesa-Aponte's analysis of the purpose of said rule:

> The privilege is based, on the one hand, on the government's need to keep certain information confidential for the proper functioning of government, particularly regarding the frank discussion of governmental alternatives or possible courses of action to address the State's multiple social, economic —and other— problems [...] E.L. Chiesa Aponte, *Tratado de derecho probatorio*, Dominican Republic, Corripio Ed., [n.d.], Vol. I, p. 292. (Translation ours).

Id.

This privilege is not absolute, but qualified, subject to a balance-of-interests analysis. Bhatia Gautier, citing Chiesa Aponte, *Tratado de derecho probatorio*, op. cit., p. 292. When evaluating the claim for privilege, one must weigh on the one hand, the government's need to maintain as confidential certain sensitive information and the harm the government may claim, and, on the other hand, the need of the party requesting the information and their right to obtain it. Bhatia Gautier, citing E.L. Chiesa Aponte, *Reglas de Evidencia comentadas*, San Juan, Situm Ed., 2016, p. 164. The privilege only applies when "it concerns 'official information' and if the balance of interests tilts in favor of confidentiality." Id., citing Chiesa Aponte, *Tratado de derecho probatorio*, op. cit., p. 307. When claiming confidentiality of official information, it is the government's burden to prove, clearly and unequivocally, the applicability of the privilege. Santiago v. Bobb y El Mundo, Inc., *supra*.

The Supreme Court also discussed the fundamental categories of privileged official information used by public officials during deliberative processes related to the development of public policy. Bhatia Gautier, citing Chiesa Aponte, *Tratado de derecho probatorio*, op. cit., at 292–293. Among those categories of official information, the Court discussed the protection of information that aims "to promote the frankest communication among government officials charged with deciding and enforcing the State's public policy." *Id.*, at 293. (translation ours). The Court identified this category as the qualified privilege over governmental deliberative processes (*deliberative process privilege*). Bhatia Gautier, citing to 6 *Moore's Federal Practice* § 26.52[5] (3rd ed. 2016); 26A Wright & Graham, *Federal Practice and Procedure: Evidence* § 5680 (1992).

The Court continues to explain that the deliberative process privilege prevents undermining the quality of governmental decisions and furthers the advisory functions of agencies. Bhatia Gautier, pag. 87, citing P.F. Rothstein & S.W. Crump, *Federal Testimonial Privileges: Evidentiary*

Privileges Relating to Witnesses and Documents in Federal Law Cases, 2nd ed., West Ed., 2012, § 5:3, pp. 431–432. The Court also points out that "a substantial public interest exists in maintaining and ensuring full, frank, open exchanges of ideas between members of the agency and other advisors and the decision makers." Id., p. 433. (Translation ours). Furthermore, restricting access to this type of communications protects "against premature disclosure of proposed policies and decisions before they have been finally formulated or adopted." Id., p. 436.

In its Opinion in Bhatia Gautier, the Court sets forth the following criteria for a claim of deliberative process privilege to succeed: (1) an agency officer that controls the information must formally claim it after weighing the matter; (2) an agency officer must provide the precise reasons why confidentiality of the information or documents is claimed; and (3) the government must identify and describe the information or documents it seeks to protect. Bhatia Gautier, page 87, citing *Moore's Federal Practice*, supra, p. 26-412.10(1). See also U.S. v. Reynolds, 345 US 1 (1953).

Furthermore, to activate the privilege, the government must demonstrate that the document in question is "deliberative" and "pre-decisional." Id., citing *Moore's Federal Practice*, *supra*, p. 26-412.8. Information is deliberative insofar as it relates to a process in which public policy is developed or formulated. Id., p. 26-412.9. A document is "pre-decisional" when it is prepared to assist in governmental decision-making, i.e., prior to making the decisions. Id., pp. 26-412.8 and 26-412.9.

5. *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 10th, 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 § 824*o*-1 (d)(1)(B) (Emphasis added).

6. *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 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.

IV. GROUNDS FOR CONFIDENTIALITY

This Memorandum of Law supports the claim for confidentiality of the information contained in Exhibits A, B and C of the *Motion Submitting Monthly Status Report in Compliance with Resolution and Order of July 16, 2025.*

A. Exhibits A & B contain Industrial and Trade Secrets, and Confidential and Proprietary Information under the OMA.

The data and descriptions contained in Exhibits A & B generally point towards Genera's trade, commercial and compliance secrets to achieve the metrics necessary to operate the Puerto Rico electric power generation plants as agreed on the OMA. Specifically, the information submitted to the PREB contains a Generation and Fuel Consumption Report describing (1) gross Megawatts per hour; (2) net Megawatts per hour; (3) HFO, Propane, USLD and NG usage and (4)

fuel used in each generation facility. Regarding the fuel vessel swaps, the *Monthly Report on Natural Gas Supply Contract and Fuel Switching Limitations* describes the scheduled vessel swaps per month, in terms of outbound and inbound vessels. It also describes incidents that have affected this swap process.

Fuel related information provided by Genera, including the types of fuel used at each facility, 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. This level of detail also sheds light on the intricacies of the operation of each generation facility. Moreover, potential fuel suppliers participating in RFPs, like the current HFO process, might use the information in a way disadvantageous to PREPA.

In sum, Genera's Exhibits A and B present a detailed view of Genera's trade and business strategies and operation of power plants that, if disclosed, would negatively impact Genera's competitiveness and its ability to achieve savings for the Puerto Rico ratepayer. Pursuant to the OMA, Genera has the responsibility to take all reasonable steps to protect the confidentiality of the information in said exhibits. Accordingly, Genera's request for confidentiality for the Exhibits A and B is proper and should be granted by the PREB.

B. Exhibit B also contains Information Protected by *Federal Power Act*, 16 USC § 824 o- and FERC Regulations on Sensitive Infrastructure.

Exhibit B contains data that describes in detail the different fuels used in all generation plant locations throughout Puerto Rico. Under Congress's and the FERC's definitions, the information on fuel types used in each plant provided by Genera includes a system or asset of the bulk-power system, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters. As such, this information is protected from disclosure pursuant to federal law and regulations. Accordingly,

Genera also requests confidentiality for Exhibit B under the *Federal Power Act* and FERC Regulations.

C. Exhibit C is a Pre-decisional and Deliberative Document Protected from Disclosure by the Deliberative Process Privilege of Rule 514 of the Puerto Rico Rules of Evidence. It also confidential under Section 13.2 of the OMA.

A review of the August 11, 2025, letter to the P3A shows that Genera, acting as PREPA's agent under the OMA, updates the P3A about ongoing disputes with NFEnergía LLC ("NFE") regarding compliance with the Fuel Sale and Purchase Agreement ("FSPA") and the Natural Gas Sale and Purchase Agreement ("NGSPA"). The letter addresses communications, claim handling, and the proper decision-making authority under the OMA, in connection with NFE's claim of *Force Majeure* relief under both contracts, citing changes in U.S. Coast Guard enforcement that disrupted ship-to-ship transfers of LNG.

Genera emphasizes in the letter that, to avoid allegations of conflicts of interest, the Third-Party Procurement Office ("3PPO") has been assigned with reviewing NFE's *Force Majeure* claims and with engaging directly with NFE's legal representatives. Accordingly, Genera stresses that the 3PPO must continue to lead strategy, negotiations, and enforcement actions, while Genera provides only operational and factual support.

In sum, Genera formally requests in the letter that 3PPO, as the conflict-free body under the OMA, direct the legal and strategic course regarding claims against NFE. Meanwhile, Genera will continue to support factually and administratively but will not make strategic or legal determinations. This communication meets all the requirements to be afforded protection under the Deliberative Process category of the Official Information Privilege of Rule 514 of the Puerto Rico Rules of Evidence. As the Puerto Rico Supreme Court held in Bhatia Gautier, supra, the deliberative process privilege protects documents that are both pre-decisional and deliberative; that is, those prepared to assist government decisionmakers in reaching policy or strategic

determinations. As the Court emphasized in Bhatia Gautier, the privilege exists to protect the decision-making processes of government agencies and encourage candid discussions of legal or policy matters.

Here, the letter is clearly pre-decisional, as it does not announce a final decision or impose binding obligations. Instead, it sets forth updates, options, and recommendations for how the P3A, through the 3PPO, should proceed in handling claims and disputes with NFE under the NGSPA and FSPA. It is therefore part of the deliberative chain leading to a final agency determination. The letter is also deliberative, as it contains analysis, evaluation of potential legal risks, and recommendations for next steps. These recommendations are policy-driven and are directed at the agency's internal deliberations.

Although the Puerto Rico Supreme Court case law limits the power to invoke the privilege of decisional information in deliberative processes to government entities, this is not an impediment for Genera to invoke it in the context at hand. This is because, under the OMA, Genera was expressly designated as agent for PREPA in managing PREPA's legacy generation assets and administering key supply agreements (e.g. NGSPA and FSPA). When Genera carries out duties on PREPA's behalf, it acts in the shoes of PREPA, a public corporation and instrumentality of the Government of Puerto Rico.[1]

Puerto Rico law,[2] and the terms of the OMA,[3] both recognize that an agent's communications in the course of performing delegated functions are attributable to the principal.

[1] At the federal level, some courts have held that a private party may benefit from the deliberative process privilege under certain circumstances. For instance, in Public Citizen v. Department of Justice, the Circuit Court for the District of Columbia stated that "[r]ecords of communications between an agency and outside consultants qualify as intra-agency for purposes of Exemption 5 if they have been created for the purpose of aiding the agency's deliberative process." 111 F.3d 168, 170 (D.C.Cir.1997). See also Ryan v. DOJ, 617 F.2d 781, 789–90 (D.C.Cir.1981) ("When an agency record is submitted by outside consultants as part of the deliberative process, and it was solicited by the agency, we find it entirely reasonable to deem the resulting document to be an 'intra-agency' memorandum").

[2] See e.g. Article 1427 of the Puerto Rico Civil Code of 2020 (setting forth the duties of an agent).

[3] Specifically, Sec. 5.2 (c) of the OMA provides that "[i]n such capacity as Owner's [AEE] designated agent [Genera] pursuant to Section 5.2(b) (Facility Contracts – Agent Designation), Operator shall have full power and authority to act on Owner's behalf and to legally bind Owner, subject, in each case, to…."

Moreover, it is important to underscore that Sec 13.2(a)(1) of the OMA provides the following with respect to the confidentiality of written or oral communications:

> (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**.

Accordingly, the letter should be deemed protected under the deliberative process privilege and the terms of the OMA and exempt from public disclosure.

WHEREFORE, Genera respectfully requests that the PREB take notice of the foregoing and grant this request for confidential treatment of the Confidentiality of Exhibits A, B and C *of Motion Submitting Monthly Status Report in Compliance with Resolution and Order of July 16, 2025,* filed on September 2, 2025.

In San Juan, Puerto Rico, this September 9, 2025.

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