

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

NEPR

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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 Responses to Request
for Information 1.3 and Request for
Information 1.4 contained in Exhibit A of
Motion in Compliance with Resolution and
Order of September 19, 2025, and
Submitting Responses to Request for
Information

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIALITY OF
RESPONSES TO REQUEST FOR INFORMATION 1.3 AND REQUEST FOR
INFORMATION 1.4 CONTAINED IN EXHIBIT A OF MOTION IN
COMPLIANCE WITH RESOLUTION AND ORDER OF SEPTEMBER 19, 2025
AND SUBMITTING RESPONSES TO REQUEST FOR INFORMATION**

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 24, 2025, Genera filed its *Motion in Compliance with Resolution and Order of September 19, 2025, and Submitting Responses to Request for Information*, submitting as Exhibit A the *Responses to RFI*. This exhibit includes detailed information about Vessel Swaps operations and reports, and information and reports regarding fuel delivery diversion operations.

2. Genera also requested that Responses to Request for Information numbers 1.3 and 1.4 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 Responses to RFIs 1.3 and 1.4. This request is made pursuant to various 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) *Federal Power Act*, 16 USC § 824o-1 and the *Federal Energy Regulatory Commission's Regulations* at 18 CFR §388.113; and (5) and *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
Exhibit A of Motion in Compliance with Resolution and Order of September 19, 2025, and Submitting Responses to Request for Information	RFIs 1.3 and 1.4	<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>Article 1, Section 1.1 of the Operation and Maintenance Agreement</i></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

		<i>Article 13 of the Operation and Maintenance Agreement. Federal Power Act, 16 USC § 824o-1 and the Federal Energy Regulatory Commission's Regulations at 18 CFR §388.113</i>	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 and the fuels used in each of the electric generation plants detailed in the report.
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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.” *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 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 Agreement 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 Operation and Management Agreement 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.

"Proprietary"/Confidential Information is 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 agreement 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 Section 13.3 help ensure the confidentiality promise is upheld in practice.

The contract 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. 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 § 824o-1 (d)(1)(B) (Emphasis added).

5. *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 Responses to RFIs 1.3 and 1.4 of Exhibit A of *Motion in Compliance with Resolution and Order of September 19, 2025, and Submitting Responses to Request for Information*.

The data and descriptions contained therein, generally, point towards Genera's trade, commercial and compliance secrets to achieve the metrics necessary to operate PR electric power generation plants as agreed on the OMA. In the case of RFI 1.3, Genera's detailed fuel vessel swap logs reveal the criteria for choosing other fuel options when a cheaper alternative was not available. The descriptions of the selection process provide sensitive information of market conditions that

led to choose certain fuel options to meet the energy demands. Further, the descriptions provided by Genera detail plant and delivery conditions that expose critical information in the fuel supply chain. 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, thus creating vulnerabilities in each plant.

RFI 1.4 describes fuel delivery diversions. The confidentiality of fuel delivery diversions, rerouting or rescheduling of shipments of petroleum, LNG, or other fuels, is central in federal energy regulations. The legal framework surrounding energy infrastructure information strongly supports their treatment as protected commercial and operational data. FERC regulations at 18 C.F.R. § 388.112 allow market participants to request privileged treatment of commercially sensitive information. The companion provision, 18 C.F.R. § 388.113, defines Critical Energy Infrastructure Information (CEII), covering engineering, vulnerability, and operational data about energy production or distribution that could aid malicious actors if disclosed. DOE's parallel rule, 10 C.F.R. § 1004.13, establishes administrative procedures for handling CEII submitted to the agency.

Additionally, the confidentiality of operational and logistical information is critical in the energy sector, where supply security and pricing integrity can be affected by disclosure. In Puerto Rico, the Puerto Rico Trade Secrets Act (PRTSA), Act No. 80 of June 3, 2011, codified at 10 L.P.R.A. §§ 4131–4141, provides a statutory framework for the protection of confidential business information. This law defines a trade secret as information that derives independent economic value from not being generally known, and that is subject to reasonable efforts to maintain its secrecy. Applying this framework, fuel delivery diversions qualify as protectable trade secrets.

Fuel delivery diversions inherently involve information with economic significance. Such diversions may disclose supply chain vulnerabilities, pricing mechanisms, supplier defaults, and contingency strategies. Knowledge of these diversions allows competitors, counterparties, or market actors to exploit weaknesses, gain leverage in negotiations, or anticipate shifts in supply.

Genera has undertaken reasonable efforts to safeguard its secrecy. This requirement is satisfied through confidentiality clauses in contracts, non-disclosure agreements (NDAs) of *Article 1, Section 1.1 of the Operation and Maintenance Agreement* and *Article 13 of the Operation and Maintenance Agreement*, sealed regulatory filings, and requests for confidentiality at the PREB.

WHEREFORE, Genera respectfully requests that the PREB take notice of the foregoing and grant this request for confidential treatment of the Confidentiality of Responses to RFIs 1.3 and 1.4 of Exhibit A of *Motion Submitting Monthly Status Report in Compliance with Resolution and Order of July 16, 2025*, filed on September 24, 2025.

In San Juan, Puerto Rico, this October 1, 2025.

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