

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

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IN RE:

GENERA PR LLC FUEL OPTIMIZATION
PLAN

CASE NO.: NEPR-MI-2023-0004

SUBJECT: Memorandum of Law in Support of
Confidential Treatment of the Updated Fuel
Optimization Plan Submitted on August 27,
2026

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF THE
UPDATED FUEL OPTIMIZATION PLAN SUBMITTED ON AUGUST 27, 2026**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW GENERA PR LLC (“Genera”), as agent of the Puerto Rico Electric Power Authority (“PREPA”),¹ through its counsels of record, and respectfully state and request the following:

I. Introduction

1. On July 18, 2023, the Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) initiated administrative proceedings to evaluate Genera PR LLC’s (“Genera”) Fuel Optimization Plan pursuant to Section 4.2(t) of the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement (“LGA OMA”) among Genera, the Puerto Rico Public-Private Partnerships Authority (“P3 Authority” or “Administrator”), and the Puerto Rico Electric Power Authority (“PREPA”). Between July 2023 and April 2024, the parties engaged in an extensive exchange of information, filings and regulatory directives, including multiple rounds of additional information requests, confidentiality rulings, P3 Authority coordination, stakeholder comment periods, and a

¹ Pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* (“LGA OMA”), dated January 24, 2023, executed by and among PREPA, Genera, and the Puerto Rico Public-Private Partnerships Authority, Genera is the sole operator and administrator of the Legacy Generation Assets (as defined in the LGA OMA) and the sole entity authorized to represent PREPA before PREB with respect to any matter related to the performance of any of the O&M Services provided by Genera under the LGA OMA.

Technical Conference held on May 23, 2024, through which the Energy Bureau and the parties developed a detailed record regarding the methodologies proposed for each initiative.

2. That process resulted in the Final 2024 Fuel Optimization Plan (“Final 2024 FOP”), filed by Genera on April 29, 2024, which served as the basis for the Energy Bureau’s dispositive resolution. On November 22, 2024, the Energy Bureau issued a Resolution and Order (“November 22 Resolution”) approving Initiatives #1, #2 and #4 of the Proposed FOP, and rejecting without prejudice Initiatives #3, #5, #6, #7 and #8. *See* November 22 Resolution, pp. 9–10.

3. The Energy Bureau found that the methodologies for the rejected initiatives required further development, that certain initiatives were subject to other open proceedings before the Energy Bureau, and that Initiative #8 raised unresolved issues regarding the calculation of avoided fuel costs and the effect of supplemental generation on system dispatch. *Id.*, pp. 6–7, 9. The Energy Bureau further stated that it expected Genera to resolve the issues identified for each rejected initiative before an updated FOP was submitted for evaluation and approval, and that it would consider any initiative similar to those approved for FY2024 on its merits when filed in a future updated FOP. *Id.*, pp. 8, 10.

4. On January 23, 2025, Genera filed a *Motion to Reconsider the November 22, 2024 Resolution* (“Motion to Reconsider”).

5. On May 23, 2025, the Energy Bureau issued a Resolution (“May 23 Resolution”) denying the Motion to Reconsider. The Energy Bureau concluded that the reconsideration request was untimely and that the FOP review process is non-adjudicative. *See* May 23 Resolution, p. 6.

6. On August 27, 2026, Genera filed a *Motion Requesting Approval of Updated Fuel Optimization Plan* (“August 27 Motion”), through which it submitted the Updated Fuel Optimization Plan (“Updated FOP”) pursuant to Section 4.2(t) of the LGA OMA and the Energy Bureau’s directives. The Updated FOP is intended to address the Energy Bureau’s determinations in the November 22 Resolution and

May 23 Resolution and presents revised methodologies directed at the concerns identified during the FY2024 review cycle. Genera submitted the Updated FOP solely for methodological approval.

7. As explained in the August 27 Motion, the Updated FOP proposes five (5) categories of Fuel Cost Savings Initiatives and methodologies, each intended to be clear and verifiable, consistent with the Principles for Performance Incentive Mechanisms reflected in Regulation 9137 and with the contracted incentive framework of Annex II of the LGA OMA. The Updated FOP addresses, among other matters, methodological clarity, the effect of initiatives on system dispatch, transparency, affiliate involvement, and the requirement that savings be verifiable and attributable to Genera’s own actions rather than to market movement.

8. The Updated FOP was submitted as Attachment 1 to the August 27 Motion under seal of confidentiality, as it contains sensitive commercial information, including fuel procurement terms, contract pricing structures, and savings-calculation methodologies whose disclosure would prejudice Genera’s commercial position and that of its counterparties. Genera therefore requested that the Energy Bureau maintain Attachment 1 under seal of confidentiality pursuant to the Energy Bureau’s *Policy on Management of Confidential Information*, CEPR-MI-2016-0009 (“Confidentiality Policy”), and informed that it would submit a Memorandum of Law supporting its request.

9. In accordance with the August 27 Motion, Genera submits this Memorandum of Law in support of its request for confidential treatment of the Updated FOP submitted as Attachment 1 to the August 27 Motion.

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
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Attachment 1 – Updated Fuel Optimization Plan, submitted with Genera’s Motion Requesting Approval of Updated Fuel Optimization Plan, filed August 27, 2026	Entire document.	Sensitive commercial information and Trade Secrets under Act 80-2011, <i>infra</i> .	The Updated FOP submitted as Attachment 1 contains sensitive commercial information regarding Genera’s Fuel Cost Savings Initiatives, including fuel procurement terms, contract pricing structures, and savings-calculation methodologies, which is protected under the provisions of Act No. 80-2011, <i>infra</i> .
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III. Memorandum of Law in Support of Confidential Treatment

A. Applicable Law

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 stipulates 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 evaluation, 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 Section 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 Section 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).

Additionally, the Energy Bureau's Policy on Management of Confidential Information details the procedures a party should follow to request confidential treatment for a document or a portion of it. The Energy Bureau's Policy on Management of Confidential Information requires identifying confidential information and filing a memorandum of law explaining the legal basis and support for a request to file information confidentially. *See* Section A of the Energy Bureau's Policy on Management of Confidential Information. The memorandum should also include a table that identifies the confidential information, a summary of the legal basis for the confidential designation, and an explanation of why each claim or designation conforms to the applicable legal basis for confidentiality. *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. *Id.*

Moreover, it is worth noting that under Act No. 80 of June 3, 2011, also known as *the Industrial and Trade Secret Protection Act of Puerto Rico*, 10 LPRA § 4131 *et seq.* ("Act No. 80-2011"), certain information may be granted protection as a trade secret. Specifically, Act No. 80-2011 provides that industrial or trade secrets are deemed to be any information:

- (a) That has a present or 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.

See Act No. 80-2011, 10 LPRA § 4132.

Furthermore, in the context of Act No. 80-2011, information refers to knowledge that amplifies or clarifies existing understanding, including but not limited to formulas, compilations, methods, techniques, processes, recipes, designs, treatments, models, or patterns. *See* Article 2(a) of Act No. 80-2011, 10 LPRA § 4131(a). In addition, Puerto Rico's Supreme Court has delineated a trade secret as

any process of manufacturing, treating, or preserving materials, a formula or recipe, a blueprint or pattern for the development of machinery, or even a list of specialized customers that constitute a distinct market, thereby bestowing a competitive advantage upon its owner. *See Ponce Adv. Med. v. Santiago González*, 197 DPR 891, 903-904 (2017).

B. Grounds for Confidentiality

The Updated FOP submitted as Attachment 1 contains sensitive commercial information regarding Genera's Fuel Cost Savings Initiatives, including fuel procurement terms, contract pricing structures, and savings-calculation methodologies. As discussed *supra*, Act No. 80-2011 protects information that has present or potential independent financial value or provides a business advantage because it is not common knowledge or readily accessible through proper means by persons who could derive a monetary benefit from its use or disclosure. *See* Act No. 80-2011, 10 LPRA § 4132.

The information contained in the Updated FOP falls within this protection. The development of the Fuel Cost Savings Initiatives involves Genera's proprietary analysis of methods and strategies for reducing fuel-related costs. In particular, the Updated FOP contains detailed information concerning the commercial terms and structures applicable to fuel procurement, as well as the methodologies, assumptions, formulas, metrics, and data used to calculate and measure savings associated with the Fuel Cost Savings Initiatives. The proprietary nature of this information, combined with its financial and commercial significance, aligns with the criteria for trade secret protection under Act No. 80-2011.

Maintaining the confidentiality of this information is particularly important because the Updated FOP addresses the manner in which Genera evaluates and pursues opportunities to reduce fuel-related costs, including through fuel procurement and contracting strategies and the measurement of resulting savings. Disclosure of this information would expose commercially sensitive aspects of Genera's fuel optimization strategies and, as stated in the August 27 Motion, would prejudice Genera's commercial position and that of its counterparties. Accordingly, confidential treatment of the Updated

FOP is warranted under Act No. 80-2011 and is consistent with the protections afforded by Section 6.15 of Act No. 57-2014.

Genera therefore respectfully requests that the Energy Bureau grant confidential treatment to the Updated FOP submitted as Attachment 1 and maintain Attachment 1 under seal of confidentiality pursuant to Act No. 80-2011, Act No. 57-2014, and the Energy Bureau's Policy on Management of Confidential Information.

WHEREFORE, Genera respectfully requests that the Energy Bureau **take notice** of the above for all purposes and **grant** this request for confidential treatment of the Updated FOP, submitted as Attachment 1 to the August 27 Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 8th day of September 2026.

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CERTIFICATE OF SERVICE

We hereby certify that a true and accurate copy of this motion was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System.

In San Juan, Puerto Rico, this 8th day of September 2026.

/s/ Jorge A. Fernández Reboredo
Jorge A. Fernández Reboredo

/s/ José Javier Díaz Alonso
José Javier Díaz Alonso

/s/ Ernesto Raúl Ramos Maldonado
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