

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

NEPR

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IN RE:

ANNUAL PERFORMANCE TEST
PROCEDURE – THERMAL GENERATION
EQUIPMENT

CASE NO.: NEPR-MI-2023-0003

SUBJECT: Memorandum of Law in Support of
Confidential Treatment of Exhibit 3 –
Supplemental Final Annual Performance Test
Reports Submitted on September 3, 2026

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF
EXHIBIT 3 – SUPPLEMENTAL FINAL ANNUAL PERFORMANCE TEST REPORTS
SUBMITTED ON SEPTEMBER 3, 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 submits and prays as follows:

I. Introduction

1. Sections 4.2(v) and 5.22 of the Thermal Generation Facilities Operation and Maintenance Agreement (“OMA”) require Genera to (i) develop, maintain, and implement the Annual Performance Test (“APT”) Procedure applicable to the Legacy Generation Assets (“LGAs”), and (ii) conduct the Annual Performance Tests in accordance with the approved procedure.

¹ Pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* (“LGA OMA”), dated January 24, 2023, executed by and among PREPA, the Puerto Rico Public-Private Partnerships Authority and Genera, 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 concerning any matter related to the performance of any of the O&M Services (as defined in the LGA OMA) provided by Genera under the LGA OMA.

2. On June 16, 2023, the Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) issued a Resolution and Order establishing the instant docket for the filing, review, and evaluation of thermal generation performance testing procedures.

3. On May 23, 2024, the Energy Bureau issued a Resolution and Order (“May 23, 2024 Order”) conditionally approving Genera’s Annual Performance Test Procedure, subject to Genera filing a revised version incorporating the modification requirements set forth in Attachment A thereto.

4. On July 10, 2024, Genera filed a *Motion to Submit Final Revised Annual Performance Test Procedure* (“July 10 Motion”), through which it submitted its Final Revised Annual Performance Test Procedure as Exhibit A thereto (the “2024 Procedure”). Thereafter, on July 19, 2024, Genera filed a *Memorandum of Law in Support of Confidential Treatment of the Final Revised Annual Performance Test Submitted on July 10, 2024* (“July 19 Motion”), requesting confidential treatment of the 2024 Procedure.

5. On March 13, 2026, Genera filed a *Motion to Establish Genera’s Equivalent Availability Factor Targets for FY25 and FY26, Including Capacity and Heat Rate, and Submit the Annual Performance Test Results* (“March 13 Motion”), through which Genera submitted its Equivalent Availability Factor (“EAF”) targets for FY25 and FY26, together with its APT results and supporting Exhibits A and B.

6. On July 22, 2026, Genera filed a *Motion to Submit Revised Annual Performance Test Procedure* (“July 22 Motion”), through which it submitted, as Confidential Exhibit A, a revised Annual Performance Test Procedure with a revision date of June 9, 2026 (the “Revised Procedure”). Thereafter, on July 31, 2026, Genera filed a *Memorandum of Law in*

Support of Confidential Treatment of the Revised Annual Performance Test Procedure Submitted on July 22, 2026 (“July 31 Motion”), requesting confidential treatment of the Revised Procedure.

7. On August 19, 2026, the Energy Bureau issued a Resolution and Order (“August 19 Order”) in which, after reviewing the Revised Procedure, it determined that additional information was required to evaluate the proposed revisions to the APT. Accordingly, the Energy Bureau ordered Genera to respond, within fifteen (15) days of notification of the August 19 Order, to the Requirements of Information (“ROIs”) included in Attachment A thereto.

8. On September 3, 2026, Genera filed its *Motion to Submit Responses to the August 19, 2026 Requirements of Information and Request for Confidential Treatment* (“September 3 Motion”). Through the September 3 Motion, Genera submitted its responses to the ROIs as Exhibit 1 and a corrected and updated version of the Exhibit A spreadsheet previously submitted with the March 13 Motion as Exhibit 2. The revised spreadsheet incorporates corrections and previously omitted test information and replaces only the earlier spreadsheet, not the test reports previously submitted.

9. Genera further submitted Exhibit 3 – Supplemental Final Annual Performance Test Reports (“Exhibit 3” or “Supplemental Final APT Reports”), consisting of final APT reports that were not included with the March 13 Motion. As explained in the September 3 Motion, these reports supplement the previously submitted reports and support Genera’s accompanying responses to the ROIs.

10. In the September 3 Motion, Genera requested confidential treatment of Exhibit 3 – Supplemental Final Annual Performance Test Reports pursuant to Section 6.15 of Act No. 57-2014, as amended, and the Energy Bureau’s Policy on Management of Confidential Information. Genera further requested that Exhibit 3 be maintained under seal pending the Energy

Bureau’s determination of the confidentiality request and informed the Energy Bureau that it would submit a supporting memorandum of law identifying the information for which protection is sought and the specific grounds supporting confidential treatment.

11. Accordingly, Genera respectfully submits this Memorandum of Law in support of its request for confidential treatment of **Exhibit 3 – Supplemental Final Annual Performance Test Reports, submitted on September 3, 2026**, pursuant to Section 6.15 of Act No. 57-2014, as amended, the Energy Bureau’s Policy on Management of Confidential Information, and the other applicable protections discussed herein.

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 3 – Supplemental Final Annual Performance Test Reports – Submitted on September 3, 2026	Entire document.	Sensitive operational and commercial information; Trade Secrets under Act No. 80-2011, <i>infra</i> ; and Critical Energy Infrastructure Information (“CEII”).	The Supplemental Final APT Reports contain sensitive operational and commercial information regarding Genera’s technical analysis and the performance testing of the Legacy Generation Assets, including unit-specific technical and operational information, performance data, testing parameters, calculations, equipment and instrumentation information, and test results. This information is protected under the provisions of Act No. 80-2011 and, if disclosed, could disadvantage Genera’s competitiveness.

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 the 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).

Moreover, 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 thereof. The Energy Bureau’s Policy on Management of Confidential Information requires: (1) identifying the confidential information; and (2) 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.*

In addition to the aforementioned, 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. 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).

In addition to the above, the Supplemental Final APT Reports encompass Critical Energy Infrastructure Information (“CEII”). Federal regulations define CEII as:

[S]pecific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) discloses details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be beneficial to a person planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552; and (iv) does not merely reveal the general location of the critical infrastructure.

18 C.F.R. § 388.113(c)(2).

Further, “critical electric infrastructure” is defined as “a system or asset of the bulk-power system, either physical or virtual, the incapacity or destruction of which would have a negative impact on national security, economic security, public health or safety, or any combination thereof.” *Id.* As indicated, CEII is exempt from FOIA disclosure and must not be “made available by any Federal, State, political subdivision, or tribal authority under any Federal, State, political subdivision, or tribal law mandating public disclosure of information or records.” *Id.* § 388.113(c)(1).

The Critical Infrastructure Information Act of 2002, 6 U.S.C. §§ 131-134 (“CII Act”), a component of the Homeland Security Act of 2002, provides additional protection to critical infrastructure information (“CII”), which is defined by statute as “information not customarily in the public domain and related to the security of critical infrastructure or protected systems.” *See* 6 U.S.C. § 133. With regard to the disclosure of such information, the Act specifies:

Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) voluntarily submitted to a covered federal agency for its use regarding the security of critical infrastructure and protected systems [...] (A) shall be exempt from disclosure under ... the

Freedom of Information Act[]” and “(E) shall not, if provided to a state or local government or government agency, ... [] ... be made available pursuant to any state or local law requiring disclosure of information or records[.]

Id. § 133(a)(1)(A), (E).

Regarding CEII, the Energy Bureau’s Policy on Management of Confidential Information provides that information designated by the Energy Bureau as validated Confidential Information on the grounds that it constitutes CEII may only be accessed by the parties’ authorized representatives after they have executed and delivered a Non-Disclosure Agreement. *See* Section D(2) of the Energy Bureau’s Policy on Management of Confidential Information.

B. Ground for Confidentiality

This Memorandum of Law seeks confidential treatment for Exhibit 3, submitted with the September 3 Motion. The Supplemental Final APT Reports contain sensitive operational and commercial information regarding the actual performance and operation of the LGAs. Specifically, the reports contain unit-specific performance results, testing conditions, calculations, instrumentation information, operating limitations, and supporting technical data. Disclosure of such information could provide third parties with detailed insight into the performance, operating characteristics, and limitations of the LGAs, potentially placing Genera at a competitive disadvantage.

Furthermore, the Supplemental Final APT Reports contain technical information, compilations, methods, and calculations of the type protected under Act No. 80-2011. The reports contain not only the results of the APTs, but also the underlying technical information and analyses used to determine and evaluate the performance of individual LGAs. Accordingly, disclosure of Exhibit 3 would reveal information concerning Genera’s performance testing and the actual

operation and performance of the LGAs beyond the general APT results otherwise reflected in the record.

The Supplemental Final APT Reports also contain information that implicates the protections afforded to CEII and CII. The reports include detailed technical and operational information concerning the production and generation of electricity at individual LGAs, including information regarding their generating capabilities, operating conditions, equipment and instrumentation, and operational limitations. Such information goes beyond merely identifying the existence or general location of the LGAs and provides detailed insight into the operation and capabilities of critical electric generation infrastructure. Disclosure of this information could therefore reveal sensitive information concerning the operation, capabilities, and limitations of such infrastructure.

Moreover, even where isolated performance results or general information concerning the APTs may appear elsewhere in the docket, Exhibit 3 contains the underlying information supporting those results. The Supplemental Final APT Reports compile the test results together with the corresponding testing conditions, calculations, instrumentation information, operating limitations, and supporting technical data. Disclosure of the reports as a whole would therefore provide substantially greater insight into the operation and performance of individual LGAs than the disclosure of isolated APT results.

The confidentiality concerns presented by Exhibit 3 are consistent with those previously raised by Genera in this proceeding with respect to the Revised Procedure. In the July 31 Motion, Genera sought confidential treatment for sensitive operational and commercial information concerning its technical analysis and performance testing procedures, including information regarding operational protocols, instrumentation, and procedures for conducting performance tests

on generation equipment. Exhibit 3 contains information resulting from the application of those procedures to individual LGAs, including the actual performance results and supporting technical information obtained through such testing.

Given these reasons, granting confidential treatment to Exhibit 3 is necessary to protect Genera's sensitive operational and commercial information and the detailed technical information concerning the operation and performance of the LGAs. Such treatment is also consistent with the protections afforded to trade secrets under Act No. 80-2011 and to CEII and CII, as discussed above. Maintaining Exhibit 3 under seal protects this information from public disclosure while allowing the Energy Bureau complete access to the Supplemental Final APT Reports for purposes of its review. Therefore, Genera respectfully requests that the Energy Bureau grant confidential treatment to Exhibit 3 in accordance with 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 confidential treatment of Exhibit 3 – Supplemental Final APT Reports**, submitted with the September 3 Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 14th day of September 2026.

[Signature page follows]

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CERTIFICATE OF SERVICE

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

In San Juan, Puerto Rico, this 14th day of September 2026.

/s/ Jorge Fernández-Reboredo
Jorge Fernández-Reboredo

/s/ José Javier Díaz Alonso
José Javier Díaz Alonso

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