BY ELECTRONIC MAIL

October 10, 2025

Mr. Josué A. Colón Ortiz
Energy Czar
Executive Director
Puerto Rico Public-Private Partnerships Authority

Mr. Ricardo Pallens Cruz
Vice President EEHS & Regulatory
Genera PR, LLC

Mr. Osvaldo Carlo Linares
President
Third-Party Procurement Office

Re: LNG Contract

Dear Messrs. Colón Ortiz, Pallens Cruz, and Carlo Linares:

We write as a follow up to our discussions regarding the Proposed Contract (the "Proposed Contract") between Genera PR, LLC ("Genera"), as agent to the Puerto Rico Electric Power Authority ("PREPA"), and NF Energía, LLC (the "Seller"). As you are aware, the Proposed Contract was submitted to the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board") for review and approval on September 12, 2025. On September 29, 2025, the Oversight Board participated in a meeting to discuss the Government's responses to the September 24, 2025 Request for Information ("RFI") from the Oversight Board regarding the Proposed Contract.

The Oversight Board writes today to further express certain concerns that have yet to be addressed.

The Oversight Board acknowledges that the Proposed Contract reflects improved terms and addresses some of the flaws raised by the Oversight Board in connection with the original proposed contract, which was submitted to the Oversight Board for review and approval on June 26, 2025 and subsequently withdrawn on July 8, 2025 after the Oversight Board questioned specific contractual clauses.[1] For example, the Proposed Contract:

- reduces the term from 15 to 7 years;
- reduces the minimum take or pay from 70 TBUs to 50 TBUs;[2] and
- eliminates the Seller's exclusivity rights to supply Liquefied Natural Gas ("LNG") to all delivery points and generation units, which impaired market competition by limiting the ability of other suppliers to enter the gas market in Puerto Rico.

Government officials have recently made public statements regarding the benefits of the Proposed Contract, as compared to the withdrawn contract, including material savings and access to the San Juan terminal. In particular, the Government indicated that the Proposed Contract would yield savings of approximately $16 billion. Indeed, our expert estimates suggest that the Proposed Contract could cost the people of Puerto Rico $4 to $8 billion less than if we had approved the previously submitted contract. [3]

Despite the notable areas of improvement, the Oversight Board has some concerns that require clarification and must be addressed to ensure transparency and improved terms and benefits for the people of Puerto Rico. Considering the importance of the Proposed Contract for Puerto Rico's energy security, we request that you address the concerns detailed below.

Access to the San Juan Terminal

The Oversight Board shares the Government's publicly stated concerns regarding limited access to the San Juan Terminal port facilities and its risks for the continuity of LNG supply. Therefore, we want to ensure that the contractual provisions related to port access are consistent with the stated goals. Sections 22.12 and 22.13 of the Proposed Contract purportedly allow third parties to access the Seller's facilities under certain conditions and at a specified price. Specifically, Sections 22.12 and 22.13 of the Proposed Contract provide the following:

> 22.12 Access to Seller's Facilities
> Seller will allow third-party LNG suppliers to utilize Seller's Facilities for a rate of $0.50 per MMBtu provided that (A) such access does not interfere with Seller's operations <u>and (B) a Governmental Authority, including, but not limited to, the United States Coast Guard, permits Seller to conduct ship-to-ship operations</u> in the San Juan bay.

[1] *See* the Oversight Board's communications dated July 9, 2025, July 22, 2025, and September 24, 2025.
[2] The original proposed contract contemplated an increase in the minimum take or pay quantities from 50 to 70 TBtu by 2028 (by year 2). The Proposed Contract starts at 40 TBtu and is triggered immediately by the Palo Seco Mobile Pacs expansion to 50 TBtu.
[3] The Oversight Board's savings estimate ranges between $4 and $8 billion, depending on the scenario.

> 22.13 Tolling Arrangements
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> 22.13.1 During a period of <u>willful default</u> by Seller of its obligation to make LNG available under this Agreement, Seller will <u>negotiate</u> and enter into tolling arrangements permitting Buyer to deliver third-party LNG to Seller's Facilities (the "Tolling Arrangements").
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> 22.13.2 Except as set forth in Section 22.13.1, during any period when Seller is unable to perform its obligation to make LNG available under this Agreement for reasons not attributable to (i) Buyer's action or inaction, negligence, or willful misconduct, (ii) the action or inaction of any Governmental Authority or Government Official, (iii) any event of Force Majeure affecting Buyer or (iv) <u>any other event outside of the reasonable control of Seller</u>, then Seller shall use <u>commercially reasonable efforts to cooperate with Buyer to mitigate the impact of the relevant circumstances, including using commercially reasonable efforts to enter into Tolling Arrangements.</u>

Pursuant to the Proposed Contract, during an event of willful default of the Seller's obligation to make LNG available, and if all other specific conditions are met, the Seller will negotiate and enter into tolling arrangements permitting a third party to deliver LNG. The Oversight Board is concerned that:

- "Willful default" is not defined in the Proposed Contract;
- The set of conditions in Sections 22.12 and 22.13 are either currently not viable (i.e., ship to ship transfers are currently prohibited in the San Juan Bay by the U.S. Coast Guard) or are subject to the Seller's discretion, making 22.12 effectively dormant; and
- Even if these conditions were present, the Seller retains full control and authority over if, why, and when any third party would be allowed to supply LNG at the terminal since, pursuant to the Proposed Contract, the Seller's obligations are to negotiate and use commercially reasonable efforts to enter into Tolling Arrangements.

As drafted, the Proposed Contract provides access to the terminal only under very limited circumstances. Moreover, since ship to ship transfers are currently not authorized, this clause has no immediate effect. Puerto Rico's access to LNG at the San Juan terminal is subject to the Seller's discretion to negotiate with a third party supplier when it is unable to fulfill its obligations.

The importance of allowing third-party access to the San Juan terminal is even more relevant today, as Puerto Rico's energy vulnerability has been exacerbated by the Seller's ongoing failure to supply LNG. The resulting LNG shortfall has caused San Juan Units 5 & 6 and the Palo Seco and San Juan Temporary Generation Facilities to run on diesel, which is more expensive than LNG. In addition, the LNG shortfall has reduced the amount of available generation capacity, since some of the temporary units cannot operate on diesel. Under the Proposed Contract, neither the Government nor Genera would be able to bring in a third party to supply LNG in situations like this one. Accordingly, **it is imperative that the Proposed Contract effectively allow Genera and the Government to bring in third parties to access the terminal and supply LNG, especially when Puerto Rico's energy security is at stake.**

Contract Enforcement and Oversight

The Oversight Board is also concerned with the limited enforcement and contractual safeguards available to mitigate conflicts of interest throughout the procurement, contracting and oversight processes involving the Proposed Contract. Pursuant to Section 5.7 of Genera's Operation and Maintenance Agreement, "[Genera] shall source, procure and manage the nomination, transportation, delivery, supply quality-testing, storage and handling of fuel, manage and maintain fuel tanks, perform any required environmental reporting, and maintain and administer the Fuel Contracts, in accordance with Contract Standards and the applicable Fuel Budget then in effect." Also, Genera's Organizational Conflict of Interest Policy states the following:

> NFEnergia LLC, an Affiliate of Genera, currently owns and operates a micro fuel handling facility in San Juan that provides natural gas to Owner pursuant to a Fuel Sale and Purchase Agreement. Moreover, there are other potential procurements for the sale and delivery of [LNG] that Affiliates of Genera may decide to pursue. Therefore, on and after the Service Commencement Date, a 3PPO, as designated by the P3 Authority, will be responsible for conducting procurement activities and contract administration activities as described in the Procurement Manual.

The LNG volumes included in the Proposed Contract were determined by Genera, an affiliate of the Seller. Neither the Third-Party Procurement Office ("3PPO") nor the Government independently validated the LNG consumption and forecast provided by Genera to ensure that the volumes included are adequate and do not expose ratepayers to payment for excess volumes purchased from the Seller, Genera's parent company. Given the take or pay structure of the Proposed Contract, any excess volumes will have to be paid for and therefore, reduce the benefit of any projected savings. **The Government must validate independently and objectively the proposed volume commitments provided by Genera since they will affect the projected savings.**

Moreover, the Oversight Board is concerned that the Proposed Contract makes Genera the sole responsible party for enforcing contractual provisions against the Seller, its own parent company. In its responses to the September 24, 2025 RFI from the Oversight Board, 3PPO indicated that the Seller owes PREPA approximately $17 million for the shortfall in meeting its LNG obligations under the liquidated damages provisions of the current contract. According to 3PPO, those liquidated damages have not been paid because the Seller has asserted force majeure as the basis for non-delivery. The Proposed Contract must ensure that the contractual provisions will be enforced and the Seller will be liable for the cost incurred when it fails to deliver the nominated volumes of LNG. Otherwise, ratepayers will bear the additional costs of replacement fuel. **It is therefore vital that P3A, PREPA, and/or 3PPO are party to the Proposed Contract so that its provisions are duly monitored and enforced.**

While the Oversight Board may raise additional concerns in connection with the Proposed Contract, the concerns raised here are important and must be urgently resolved. The Oversight Board expects, for the benefit of the people of Puerto Rico, that we, the Government, Genera and 3PPO will work diligently to address these concerns as quickly as possible.

Sincerely,

Robert F. Mujica, Jr.
Executive Director

CC: Mr. Francisco Domenech Fernández
Ms. Mary C. Zapata Acosta