BY ELECTRONIC MAIL

July 9, 2025

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

Third-Party Procurement Office

Re: NF Energía, LLC – Fuel Supply of Liquified Natural Gas

Dear Mr. Josué A. Colón Ortiz and Third-Party Procurement Office:

We are writing regarding our profound concerns about the proposed contract between Genera PR, LLC ("Genera"), as agent to the Puerto Rico Electric Power Authority ("PREPA"), and NF Energía, LLC ("NFE" or the "Seller") (the "Proposed Contract") for the provision of liquefied natural gas ("LNG") submitted to the Oversight board for review and approval by the Third-Party Procurement Office ("3PPO").

The Proposed Contract, a Natural Gas Sale and Purchase Agreement for LNG supply (the "NGSPA"), was submitted to the Oversight Board on June 26, 2025, 24 hours before the expiration of the current NGSPA, along with a proposed amendment to extend the term of the current NGSPA until July 9, 2025. It has a 15-year term and an estimated value of approximately $20 billion. It is the largest contract ever submitted to the Oversight Board for review and approval in accordance with the Contract Review Policy, established in accordance with PROMESA 204(b)(2), in terms of its value, its direct impact on the lives of the people of Puerto Rico, and the scope of supply, which is broader than the current NGSPA.

Given the magnitude of the Proposed Contract and the critical nature of the services at stake, it would be irresponsible for the Oversight Board to review the Proposed Contract thoroughly in this short time. After an initial review of the Proposed Contract, along with the documentation and information provided by the 3PPO on behalf of Genera, the Oversight Board already identified inconsistencies in the Request for Proposal ("RFP"), a lack of market competition, and noncompliance with the PREPA Fiscal Plan.

The execution of the Proposed Contract would lock the Island into a long-term commitment with a single supplier, potentially undermining market competition and limiting flexibility. It includes a provision that concentrates LNG supply for current and future demand, except for Mayagüez, solely in one private entity, exposing the Island to a monopolistic arrangement that would ultimately jeopardize energy security by committing the people of Puerto Rico to purchase quantities of LNG that significantly exceed the energy system's current and future capacity.

The consequences of agreeing to such terms are contrary to the Island's broader efforts to transition toward a more sustainable and resilient energy system and could do more harm than good. At a minimum, the Proposed Contract requires a transparent and thoughtful review and analysis.

The Proposed Contract stems from a competitive procurement process. On April 11, 2025, the 3PPO, on behalf of Genera, issued the RFP to secure LNG supply for multiple generation sites, including facilities that still do not have the necessary infrastructure to operate on LNG. Although 13 entities initially requested the RFP documentation, only two submitted proposals: NFE, which submitted a bid for all relevant generation plants; and Crowley LNG Puerto Rico, LLC, which submitted a proposal limited to the generation plant at Mayagüez.[1]

The Proposed Contract confers exclusive rights to supply LNG to all delivery points and generation units (except Mayagüez), impairing the ability of other suppliers to enter the gas market in Puerto Rico and, therefore, limiting the opportunity for fair pricing and supply chain diversification. In addition, the Puerto Rico Ports Authority and NFE executed a lease agreement on May 3, 2018,[2] which grants exclusive rights to NFE over specific spaces at the Puerto Nuevo Port in San Juan, where it has built gas importing and handling facilities that only NFE can use and operate, subject to PREPA's first preference right.

We understand from PREPA that although a ship may dock in the leased area, the facilities required to supply gas to the generation units in San Juan cannot be used without entering into an agreement with NFE. As a result, market competition is currently already limited because this exclusivity prevents alternative suppliers from accessing critical delivery infrastructure in San Juan, even if they wished to participate. The 2018 contract between the Puerto Rico Ports Authority and NFE was not reviewed by the Oversight Board.

The Proposed Contract's exclusivity provision for the supply of LNG aggravates an already problematic situation as it expands the scope of NFE's exclusive rights, increasing the barriers to entry in this sector. Moreover, even in the absence of the formal exclusivity provision, the proposed volume commitments under the take-or-pay structure may effectively grant NFE an implicit exclusive right to supply unless the minimum volumes are met. We are reviewing the volumes

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[1] Notably, NFE was the sole bidder for the supply covered under the soon-to-expire NGSPA.
[2] Such lease agreement was not submitted to the Oversight Board for review and approval.

considering Puerto Rico's ability to execute on planned conversions and construction of new LNG generation facilities.

The procurement process for the Proposed Contract excluded the RFP requirement that the supplier be responsible for installing the regasification infrastructure needed to use gas at the generation units within the scope of the Proposed Contract. This creates uncertainty with regards to the capacity of existing infrastructure to absorb the volume of supply to which PREPA would be committed under the terms of the Proposed Contract. Additionally, it appears this is inconsistent with the latest PREB Resolutions and Orders,[3] which require the execution of a competitive process that ensures that the supply arrangements promote market competition and do not create undue entry barriers for alternative suppliers.

The procurement process for the Proposed Contract was marked by multiple amendments that shifted requirements, deadlines, and financial safeguards. These changes were only shared with the two bidders, raising concerns regarding key aspects of promoting open competition such as clear requirements, transparency and fairness. For instance, despite initially disqualifying NFE for failing to submit a bid bond, the 3PPO reversed this decision days later, citing the urgent need to secure LNG supply considering an energy emergency declaration[4] issued by the Governor. Per the 3PPO, the decision to reconsider NFE's proposal was made strictly within the context of the ongoing emergency and does not set a precedent for waiving requirements in other procurements.

The 3PPO directed NFE to confirm its ability to supply LNG under an amended RFP, which, per Addenda #5 issued on June 24, 2025, reduced the required performance bond to $10 million from $100 million, eliminated the payment bond requirement, and granted proponents the option to propose contract terms of up to 15 years, compared to the 5 or 10 year term that was initially procured.[5] While the process should have upheld principles of competition, transparency, and equal opportunity, the Evaluation Committee ultimately found significant operational and financial risks in NFE's proposal, recommending conditional negotiations with strict safeguards. The final Notice of Award remains contingent on further legal and financial capacity guarantees to be provided prospectively by NFE, reflecting the process's departure from industry standards and its potential long-term risks to Puerto Rico's energy security.

Issuing a new RFP, and/or extending the NGSPA that expires today, would have likely been the more appropriate course. Limiting the notification of amendments, tailored to accommodate the only two bidders which submitted proposals, undermined the intended results of the procurement in question.

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[3] PREB Docket NEPR-MI-2024-0004 Resolution and Order dated July 4, 2025 (energia.pr.gov/wp-content/uploads/sites/7/2025/07/20250704-MI20240004-Resolution-and-Order.pdf).

[4] Government of Puerto Rico Energy Emergency Declaration Executive Order 016-2025 (https://docs.pr.gov/files/Estado/OrdenesEjecutivas/2025/OE-2025-016%20ENG.pdf).

[5] The original RFP included a performance bond requirement to demonstrate Financial Capacity as follows: Submit evidence (e.g., a letter on official letterhead of a proposed surety executed by an officer of that entity) to demonstrate that a surety authorized to do business and issue surety bonds in Puerto Rico, will issue a payment bond with a face value to be the lesser of One Hundred Million U.S. Dollars (US $100,000,000) or the estimated value of six (6) months of payment under the contract.

From the information that the Oversight Board has been able to review so far, the Proposed Contract was inherently the result of direct negotiations with NFE rather than a true competitive procurement. Therefore, based on the information received to date, it cannot be determined if the proposed price and contract terms should be approved.

Further, the Proposed Contract establishes an Annual Contracted Quantity of natural gas under a "take or pay" structure,[6] in which PREPA would have to pay for incremental volumes of LNG regardless of the actual consumption. Per the Certified 2025 PREPA Fiscal Plan, the amount of LNG required is expected to be lower due to projected generation trends and until additional demand is created, both in the short and long term. Consequently, these binding take-or-pay obligations could result in PREPA (unnecessarily) incurring incremental fuel costs that will ultimately be passed on to ratepayers.

Moreover, the pricing terms stipulated in the Proposed Contract must be reviewed for consistency with the fiscal plan and current market trends. Additionally, the Proposed Contract would grant the supplier exclusive rights to deliver LNG not only to the existing generation facilities but also to future generation units yet to be procured. Such long-term commitment could limit PREPA's ability to make future decisions based on evolving technology, changes in the available sources of generation, updated public policy, or improved market conditions.

The Proposed Contract should more closely reflect PREPA's actual fuel requirements, stay within the Fiscal Plan's LNG cost expectations, and allow for future adjustments as energy demand and public policy continue to evolve. Without these safeguards, PREPA risks committing incremental expenses that could further weaken its financial position and limit its ability to provide affordable and reliable electricity to the people of Puerto Rico.

The uneven allocation of risk between PREPA, acting on behalf of the people of Puerto Rico, and the seller, is also concerning. The Proposed Contract limits the NFE's responsibility in key situations, which could leave PREPA and ultimately ratepayers exposed to significant financial and operational burdens. Issues that merit PREPA's attention and possible revisions include:

1. Seller's responsibility its capped at 40% of the resulting Replacement Fuel costs, leaving PREPA to cover any excess costs when Seller fails to deliver the agreed amount of gas in any given month
2. Unlike the Seller's capped responsibility, if PREPA is unable to receive the scheduled gas (such as during a forced plant shutdown) it would still be required to pay for the full value of the gas unless the failure was caused by extraordinary circumstances or the Seller itself.
3. Seller has exclusive rights to supply gas to nearly all PREPA's existing and potential future generation units.
4. Sets a high annual gas purchase volume, with a +/-5% operational tolerance at the Seller's discretion. However, no equivalent flexibility is granted to the Buyer.

The Proposed Contract establishes a framework that disproportionally favors the seller at the expense of PREPA and, by extension, the people of Puerto Rico. It imposes financial obligations

[6] In a "take or pay" agreement structure, PREPA pays for a fixed amount of natural gas every year, whether it is used or not.

on PREPA even in scenarios where the seller underperforms, while offering limited flexibility in return. The imbalance is further amplified by the proposed exclusivity clauses that lead to inflexible purchase commitments and risk allocation mechanism that depart from the protections included in previous agreements such as the 2019 Fuel Sale and Purchase Agreement, which provided stronger buyer protection by requiring the seller to either supply fuel or reimburse PREPA based on actual costs or market price differences, placing greater responsibility on the Seller than the current proposal. Altogether, these provisions create a contract structure that favors the seller and exposes PREPA to disproportionate levels of risk and costs to be passed on to ratepayers.

It is evident from discussions with various stakeholders, including representatives of the Government, that there is substantial uncertainty and a lack of clarity regarding the specific terms of the Proposed Contract and their implications. This further sustains the need for greater diligence and alignment before proceeding and finalizing our review.

The Oversight Board is willing to meet with all relevant parties to review and discuss the terms of the Proposed Contract in detail to ensure that any final agreement is both fiscally responsible and compliant with PROMESA and the Policy. Given the urgency of maintaining reliable generation, the Oversight Board would agree to extend the term of the current NGSPA as a temporary measure to ensure continuity of services.

Sincerely,

Robert F. Mujica, Jr.
Executive Director

CC: Hon. Jenniffer A. González Colón
Mr. Francisco J. Domenech Fernández
Mr. Josué A. Colón Ortiz
Mr. Edison Avilés
Mr. Winnie Irizarry