PUBLIC-PRIVATE PARTNERSHIPS
AUTHORITY

GOVERNMENT OF PUERTO RICO

Eng. Josué A. Colón Ortiz I Executive Director

July 24, 2025

BY ELECTRONIC MAIL
Robert.mujica@promesa.gov

Mr. Robert F. Mujica Jr.
Executive Director
Financial Oversight and Management
Board for Puerto Rico
PO Box 192018
San Juan, Puerto Rico 00919-2018

Dear Mr. Mujica:

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Re.: P3A Response to July 9, 2025, Letter Regarding Draft Contract with NFEnergía LLC

The Puerto Rico Public-Private Partnerships Authority ("P3A") writes to dispel several misconceptions that have circulated since the Financial Oversight and Management Board's (the "Board") July 9 correspondence on the draft Natural Gas Sale-and-Purchase Agreement ("NGSPA") and, in that same collaborative spirit, to outline the steps needed to protect ratepayers and secure a stable fuel supply. The factual context set out below is therefore based on the information the Third-Party Procurement Office ("3PPO"), designated by P3A to conduct fuel procurements involving Genera's holding company, has provided to date.

As the Board is already aware, only two entities responded to the Request for Proposals ("RFP") for the NGSPA. Crowley submitted a conforming bid limited to the Mayagüez delivery point and posted the full performance bond required by the solicitation. New Fortress Energy ("NFE"), by contrast, offered to serve the entire Island but claiming liquidity constraints and recent credit-rating downgrades, declined to furnish the mandatory bond and instead proposed reduced security. As the NGSPA deadline of June 23, 2025, for fueling fourteen temporary generation units approached, NFE leveraged that looming milestone to press for additional concessions—principally a fifteen-year tenor and take-or-pay volumes—none of which were included in the original RFP.

Less than twenty-four hours before the existing agreement expired, NFE delivered its final draft NGSPA to 3PPO for it to be transmitted to the Board.

Confronted with an island-wide energy emergency, an expiring supply contract for the temporary generation units, and the early weeks of hurricane season, 3PPO had no other choice but to forward the draft to the Board. Based on the aforementioned, it is important to emphasize the following: the contract submitted by the 3PPO for review does not reflect the terms or structure originally contemplated, recommended, or supported by P3A during the competitive procurement process. The document in question is a version unilaterally imposed by NFE under conditions of extreme commercial pressure, limited options, and logistical coercion. It should not be mistaken for a government-sanctioned or collaboratively negotiated agreement. NFE has since reaffirmed its stance: in a July 21, 2025 communication to the 3PPO[1], the company expressed that the recent offer of July 18, 2025, was essentially "a restatement of the original RFP…issued several months ago…[but it] is not an RFP that we [NFE] can respond to constructively" - an unequivocal indication of its continued unwillingness to align with the competitive parameters established in the original RFP.

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NFE's berth monopoly, which in large part led to the submitted NGSPA, gave the company exclusive control of the only LNG-capable berth in northern Puerto Rico by means of a 20-year Lease Agreement with the Puerto Rico Ports Authority entered in 2018 (the "Lease Agreement"). The Lease Agreement, together with the 2019 San Juan 5 & 6 fuel-supply contract and the 2024 temporary generation units fuel-supply contract, shaped today's market structure and left NFE negotiating from a position of singular leverage. That exclusivity has effectively locked the people of Puerto Rico into a one-supplier arrangement and discouraged other qualified LNG providers from submitting island-wide proposals, stifling competition and magnifying both price and supply risk. However, the Island is not without legal recourse.

Because the Lease Agreement underpins LNG-supply contracts whose cumulative payments have exceeded $1 billion, the transaction falls squarely within the Board's November 2017 Contract-Review Policy. Specifically, the Policy mandates Board review and approval of "any contract or series of related contracts" that either (i) aggregates to $10 million or more or (ii) restricts market competition - both of which apply to the berth lease and the downstream NGSPA portfolio taken as an integrated series[2]. The lease

[1] See Annex 1 – July 21, 2025, Letter from NFE to 3PPO
[2] § 204(b)(5) states: If a contract…fails to comply with policies established by the Oversight Board under this subsection, the Oversight Board may take such actions as it considers

therefore required—and still requires - affirmative Board approval. As such, we welcome a § 204(b)(2) assessment of that question by the Board, which may clear the way for an open-access regime that will attract additional LNG suppliers. Both P3A and the Ports Authority are willing to analyze the 2018 Lease Agreement and evaluate open-access or common-carrier models for LNG imports. The people of Puerto Rico cannot afford to remain hostage to the monopolistic power of a single gas supplier.

Finally, on Friday, July 18th, 2025, the 3PPO delivered an amended version of the proposed contract under the commercial and operational terms of the original NGSPA[3] including, among other things, aligning annual quantities with PREB-verified demand forecasts, eliminating the forty-percent liability cap, and the take or pay provisions referenced in your July 9th letter. However, as previously stated, NFE categorically rejected this proposition. Considering the contract's magnitude and its implications for system reliability and ratepayer cost, no agreement will be notified to the Board until all legal and financial guarantees are fully satisfied.

Cordially,

Signed by:
Josué A. Colón Ortiz
ACAE19A8DEF549C...

Josué A. Colón Ortiz
Executive Director

Annexes

c. Francisco J. Domenech, Executive Director, AAFAF, fjdomenech@aaaf.pr.gov
Mary C. Zapata Acosta, Executive Director, PREPA, mary.zapata@prepa.pr.gov

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necessary…including by preventing the execution or <u>enforcement of the contract</u>… (Emphasis added)

[3] See Annex 2 – Proposed NGSPA

NewFortress energy

111 W 19th Street, 8th Floor
New York, NY 10011

July 21, 2025

VIA ELECTRONIC MAIL

Third Party Procurement Office (3PPO)

Re: Your July 18, 2025 Letter re: Notification of Terms Accepted by Puerto Rico Stakeholders for the Multisite Energy Generation Gas Supply Agreement

Dear 3PPO:

Thank you for your offer of July 18, 2025.

It is essentially a restatement of the original RFP you issued several months ago. For a host of reasons, we are unable to provide LNG to you on a spot basis and thus this is not an RFP we can respond to constructively.

We continue to believe that spot purchase of LNG is unequivocally the wrong structure for Puerto Rico as it will result in far higher costs and less energy security, which is why our contract is structured as it is but of course we respect your decision to seek a different path.

In simple terms, long-term commitments result in materially lower costs; short-term (or spot in this case) commitments result in materially higher costs. The savings of long-term commitments of LNG vs. diesel today is approximately $5/6 dollars/mmbtu, which given the volumes required translates into hundreds of millions in savings annually.

By contrast, short term (or spot) purchases that comply with the Jones Act and volume limitations in San Juan harbor will be much much more expensive (effectively close to the cost of diesel), thereby resulting in hundreds of millions annually of higher fuel costs.

We spent many weeks and had countless conversations with 3PPO and the Energy Tsar Josue Colón and fully negotiated an alternative to the original RFP that we believe is a compelling offer. That is the contract that was submitted nearly a month ago to the FOMB for approval.

If you wish to proceed with that contract, we are still prepared to do so.

As an alternative, if you wish to source your own spot volumes and toll through our LNG terminal, we are open to negotiating a market price for a tolling agreement to provide access. As you know, our terminal was constructed at a cost of hundreds of millions of dollars and has been in operation for over 5 years. By providing LNG/natural gas to San Juan 5/6 these last 5 years as well as the temporary power units we have saved Puerto Rico nearly a billion dollars in fuel costs to date. We believe future savings can be even greater if new and converted plants also use LNG.

The world market for short-term (spot) LNG and long-term contracts has changed dramatically since the original 5/6 contract was agreed and signed in 2019. As we have said repeatedly, we do not have short-term spot volumes available for sale at this time. But if you wish to procure spot cargos (which need to be non-USA origin or shipped in a Jones Act compliant vessel) yourselves and pay a tolling fee to access the terminal we are willing to consider this. Maximum cargo size currently is approximately 90k m3 due to draft restrictions. And of course, in addition to the tolling fee, the incremental costs of shipping, logistics, port fees, tugs, and boil off all must be taken into consideration.

A tolling operation would be logistically complex but may be a better fit given your desire to supply the temporary generation fleet through open/spot cargos. Spot prices are high today and have been generally volatile, but it is an alternative to consider.

Sincerely,

New Fortress Energy

cc: Josué Colón (josue.colon@p3.pr.gov; Administrator@p3.pr.gov)
Mary Zapata (mary.zapata@prepa.pr.gov)

July 18, 2025

NFEnergía LLC

Subject: Notification of Terms Accepted by Puerto Rico Stakeholders for the Multisite Energy Generation Gas Supply Agreement

Dear NFE Legal Team,

On behalf of the Third-Party Procurement Office (3PPO), and pursuant to our role as independent procurement facilitator designated by the Puerto Rico Public-Private Partnerships Authority (P3A), we hereby transmit the commercial terms that have been formally accepted by the relevant stakeholders of the Government of Puerto Rico in connection with the proposed Multisite Energy Generation Gas Supply Agreement with NFEnergía LLC (NFE). These terms reflect the consensus positions of the public-sector energy entities involved in this procurement and are the result of extensive internal review and coordination, including technical, legal, and fiscal oversight.

The Government of Puerto Rico has determined that the terms outlined below are aligned with the public interest and consistent with the emergency and transitional energy needs of the Commonwealth. These terms are intended to support fuel supply for currently operating generation assets and to ensure contractual fairness and financial integrity for both parties, while maintaining flexibility to respond to operational realities.

First, the stakeholders have expressly agreed that **no “take-or-pay”** commitments will be included in the final agreement. The gas volumes and acquisition profiles will be structured based exclusively on units that are currently operational, without imposing penalties or fixed payments for unused volumes.

We confirm that we are prepared to proceed under a Henry Hub–indexed pricing structure calculated as **(HH × 115%) + adder**, expressed in USD/MMBtu. Under this structure, the Henry Hub index price for the applicable period is multiplied by 1.15 (i.e., increased by 15%), and a fixed dollar adder is then applied. The final acceptable terms are an adder of **$6.50/MMBtu** for San Juan Units 5 & 6 and **$7.95/MMBtu** for the Temporary Generation units. In formula form: San Juan 5 & 6 = (HH × 1.15) + $6.50; Temporary Generation = (HH × 1.15) + $7.95. These pricing levels represent the finalized commercial terms to be incorporated into the definitive agreement.

The stakeholders have agreed to an initial contract term of **five (5) years, with a two 5-year extensions** option based on the operational continuity of the covered units and compliance with applicable regulatory approvals.

In order to secure performance across the multiple sites involved in this procurement, the agreement will require the posting of a **performance bond in amount of $200 million**. This instrument is intended to provide financial assurance for fulfillment of supply obligations and will form an integral part of the contractual security package.

While these terms represent the material commercial positions of the Government of Puerto Rico, it is acknowledged that certain minor provisions remain under negotiation. These include administrative, technical, and legal clauses that will be resolved as part of the final reconciliation process, once NFE provides its formal response to the framework outlined herein. To that end, we respectfully request that NFE review these terms and confirm its acceptance in writing, or submit any proposed modifications for consideration by the public stakeholders.

The 3PPO will continue to manage the procurement process in accordance with applicable requirements, including those under the Federal Acquisition Regulation (FAR), 2 C.F.R. § 200, and the compliance policies of the Office of Contractual Integrity and Monitoring Procedures (OCIMP). Once NFE's response is received, the 3PPO will coordinate the transmittal of final contract terms and, if necessary, support its submission for review by the Financial Oversight and Management Board (FOMB) consistent with the Contract Submission and Disclosure Policy.

Please note that the FOMB did not approve the contract as previously proposed. Any revised agreement must conform to the observations and requirements issued by the FOMB.

We appreciate your collaboration and engagement and look forward to your response in the next 24 hours as we work toward finalizing this critical fuel emergency.

Sincerely,

Third-Party Procurement Office (3PPO)

PUBLIC-PRIVATE PARTNERSHIPS
AUTHORITY
GOVERNMENT OF PUERTO RICO

Eng. Josué A. Colón Ortiz I Executive Director

July 24, 2025

BY ELECTRONIC MAIL
Robert.mujica@promesa.gov

Mr. Robert F. Mujica Jr.
Executive Director
Financial Oversight and Management
Board for Puerto Rico
PO Box 192018
San Juan, Puerto Rico 00919-2018

Dear Mr. Mujica:

Initial
JCO

Re.: Oversight and Legal Validity of the Lease Agreement with NFE

The Puerto Rico Public-Private Partnerships Authority ("P3A") acknowledges receipt of your July 22, 2025, letter regarding a lease agreement signed between the Puerto Rico Ports Authority (the "Ports Authority") and NFEnergía, LLC ("NFE") in May of 2018. Before addressing the specific request made in your letter, it is essential to situate this matter within the federal and fiscal oversight framework established by the Puerto Rico Oversight, Management and Economic Stability Act ("PROMESA"), codified at 48 U.S.C. §§ 2101–2241.

As you are well aware, Congress enacted PROMESA in 2016 in response to what it formally recognized as a fiscal emergency of unprecedented scale, marked by persistent deficits, mounting public debt, and the collapse of market confidence in Puerto Rico's institutions. In its legislative findings, Congress concluded that "a comprehensive approach to fiscal, management, and structural problems and adjustments that exempts no part of the Government of Puerto Rico is necessary" to achieve fiscal accountability and access to capital markets.

PROMESA therefore established the Financial Oversight and Management Board for Puerto Rico (the "FOMB") and vested it with broad statutory authority to oversee and ensure that all actions of the Island and its instrumentalities -

including fiscal planning, budgeting, and the execution of contracts - comply with the certified Fiscal Plan. The statute's design reflects Congress's clear intent to realign Puerto Rico's public sector with principles of fiscal responsibility, economic efficiency, market competition, and full transparency. In carrying out its mandate, the FOMB serves as a structural safeguard to prevent the recurrence of the fiscal mismanagement that precipitated the crisis, and to ensure that all material financial commitments, including contracts, advance the goals of fiscal reform and economic revitalization for the benefit of the people of Puerto Rico.

One of the critical oversight tools entrusted to the FOMB under Section 204(b)(2) of PROMESA is the power to adopt policies requiring the prior submission of certain contracts for review and approval. Pursuant to that authority, the FOMB adopted the Contract Review Policy (the "Policy") in 2017, which mandates that any contract <u>or series of related contracts</u> with an aggregate expected value of $10 million or more must be submitted to the FOMB for review prior to execution. The Policy also makes it clear that a failure to submit a covered contract may result in retroactive review and, potentially, remedial action by the FOMB.

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The May 3, 2018, Lease Agreement between the Puerto Rico Ports Authority and NFEnergía, LLC (the "Lease Agreement") was never submitted to the FOMB under this Policy. This Lease grants NFE exclusive rights to critical port infrastructure in Puerto Nuevo for the installation of a liquefied natural gas ("LNG") handling and storage facility. As stated in its recitals, the Lease's express purpose is to support LNG operations for the benefit of PREPA's San Juan generation complex. Specifically, the purpose of the Lease was the "<u>installation of a fuel handling facility for liquefied natural gas with temporary and permanent components, including, without limitation, loading racks and other equipment</u>…". When evaluated alongside the multi-billion-dollar LNG contract for the San Juan Units 5 and 6, signed in 2019, and the LNG contract for the temporary generating units at Palo Seco and San Juan, signed in 2024, both having occurred during prior administrations and reviewed/noted by FOMB, it becomes evident that the Lease Agreement forms part of a larger, integrated commercial framework with a combined economic value well in excess of $10 million. Under the plain language of the Contract Review Policy, such related agreements are subject to review and approval.

The Lease Agreement - which grants NFE exclusive use of port facilities in Puerto Nuevo for the construction and operation of an LNG terminal - should have been submitted to the FOMB under the Policy. The Lease Agreement identifies its purpose as enabling the development of infrastructure to support LNG operations, including the installation of fuel handling facilities. When viewed in conjunction with the multi-billion-dollar LNG contracts, the Lease Agreement forms part of a broader, interrelated commercial arrangement[1]. Taken together, these constitute a "series of related contracts" that easily surpass the $10 million threshold set forth in the Contract Review Policy.

Noncompliance with the Policy has serious legal implications. Section 204(b)(5) of PROMESA authorizes the FOMB to take "such actions as it considers necessary" to prevent a noncompliant contract from undermining the Fiscal Plan. These actions may include prohibiting the contract's execution or enforcement. In this context, the Lease Agreement's failure to comply with the applicable review process calls into question its legality and enforceability under both federal and Puerto Rico law. This authority is not merely procedural; it carries substantive consequences. A contract executed without required FOMB approval is legally noncompliant under federal law. As such, it may be declared void or unenforceable by operation of law.

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This federal legal consequence is compounded under Puerto Rico civil law. Pursuant to Article 1206 of the Puerto Rico Civil Code, a contract that lacks a lawful object or is executed without proper statutory authority is null *ab initio*. The Lease Agreement was executed without adherence to a mandatory federal approval regime. It thus lacks a legally valid object and was entered into *ultra vires*. Moreover, contracts contrary to law or public policy are unenforceable under Puerto Rico law. PROMESA is the governing federal law in this instance, and the public policy it enshrines—fiscal transparency, competition, and compliance with the fiscal plan—is unambiguous. Even if one were to assume the contract was otherwise valid at the time of execution, failure to undergo review fatally undermines its enforceability. The FOMB's Contract Review Policy must be understood to operate as a condition precedent to the effectiveness of covered contracts. Without satisfaction of that condition, the agreement is voidable at the very least, and arguably null from inception.

Further, Section 204(b)(2) of PROMESA requires that covered contracts "promote market competition." Here, the Lease Agreement has had the opposite effect. By granting exclusive rights to NFE over critical LNG import infrastructure in San Juan, it effectively created a monopoly over natural gas supply to the north of the Island. This clearly undermines PROMESA's competitive principles.

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[1] Without the Lease Agreement there would not be a fuel handling facility used by NFE for the sale of LNG. Likewise, without a fuel handling facility and a Fuel Sale and Purchase Agreement, NFE would not have the need for the Lease Agreement.

In light of these facts and the governing legal framework, we are actively evaluating the Lease Agreement's continued validity and enforceability. There is a credible basis for concluding that the agreement is void or voidable for failure to comply with PROMESA, the FOMB's duly adopted Contract Review Policy, and applicable provisions of Puerto Rico law. Accordingly, the Government of Puerto Rico reserves all rights to take action in accordance with law, including rescinding, suspending, or nullifying the agreement.

In compliance with your request, we are coordinating with the Ports Authority to ensure that a complete copy of the Lease Agreement, along with all amendments, procurement documentation, and valuation materials, is submitted to your office. We thank you for your oversight and look forward to working with your office to bring this matter into compliance with federal and fiscal policy requirements.

Cordially,

Signed by:

Josué A. Colón Ortiz

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Josué A. Colón Ortiz
Executive Director

c. Francisco J. Domenech, Executive Director, AAFAF, fjdomenech@aaaf.pr.gov
Mary C. Zapata Acosta, Executive Director, PREPA, mary.zapata@prepa.pr.gov