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BY ELECTRONIC MAIL

May 8, 2026

Mr. Alexis G. Rivera Medina
General Counsel
Puerto Rico Electric Power Authority

Re: Gothams Energy, LLC and Americas Power Solutions Holdings, Ltd.
(RFP No. 3PPO-0314-20-TPG2 – Temporary Power Generation)

Dear Mr. Rivera Medina,

In accordance with the Contract Review Policy (the "Policy") of the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board"), established pursuant to Section 204(b)(2) of PROMESA, we have reviewed the proposed power generation contract between the Puerto Rico Electric Power Authority ("PREPA"), as buyer, and each of Gothams Energy, LLC and Americas Power Solutions Holdings, Ltd. (jointly, the "Seller") (the "Proposed Contract").

On July 15, 2025, the Third-Party Procurement Office ("3PPO") issued procurement process no. 3PPO-0314-20-TPG2 (the "RFP") pursuant to the directive of the Puerto Rico Energy Bureau ("PREB") to address the emergency related to an anticipated generation shortfall of approximately 700 to 850 megawatts ("MW") and stabilize system reliability.[1] Following the procurement process, the 3PPO awarded the Proposed Contract to the Seller and PREPA submitted it to the Oversight Board for review and approval on February 12, 2026.[2]

[1] *See* PREB's Resolution and Order dated March 19, 2025 in case no. NEPR-MI-2024-0005. In March 2025, the 3PPO issued procurement process no. 3PPO-0314-20-TPG1 for the services contemplated under the Proposed Contract (the "Original RFP"). During PREB's evaluation of the proposed contract resulting from the Original RFP, PREB directed the 3PPO to renegotiate pricing and incorporate a longer term and reduced fixed rates. Understanding that these directives constituted material commercial changes, the 3PPO cancelled the Original RFP and subsequently issued the RFP that led to the Proposed Contract.

[2] PREB approved the Proposed Contract, determining its terms and conditions are prudent and reasonable and align with the public interest. *See* PREB's Resolution and Order dated February 2, 2026.

The Proposed Contract reflects the Government's efforts to address Puerto Rico's energy emergency and near-term generation needs. However, as currently structured, the Proposed Contract raises certain concerns and involves certain risks that must be addressed **prior to execution** in order to ensure that the Proposed Contract promotes market competition and is not inconsistent with the approved Fiscal Plan. These risks primarily relate to: (i) project execution and deployment, (ii) site selection, (iii) performance guarantees, and (iv) fixed price assurances. The Oversight Board raised concerns in connection with these risks through multiple requests for information ("RFIs") issued during its review of the Proposed Contract, but such concerns remain to be addressed.[3]

After reviewing the Proposed Contract, the Oversight Board concludes "**Approved with Conditions." Approval of the Proposed Contract is conditioned upon the Government implementing the revisions set forth in Appendix A attached hereto. The requested revisions seek to address the risks identified during the Oversight Board's review of the Proposed Contract and increase generation capacity and energy reliability for the benefit of the people of Puerto Rico.**

PREPA must submit a revised version of the Proposed Contract to the Oversight Board incorporating the required revisions. The parties may not execute the Proposed Contract until the Oversight Board determines, in its sole discretion, that the conditions set forth herein have been satisfied. Once PREPA submits the revised version of the Proposed Contract to the Oversight Board, we will review it on an expedited manner.

Our review is solely limited to compliance of the Proposed Contract with Section 204(b)(2) of PROMESA, which seeks to ensure proposed contracts promote market competition and are not inconsistent with approved Fiscal Plans. For the avoidance of doubt, the review performed by the Oversight Board does not constitute a legal review of the contractual documentation or the contracting process, including without limitation: (i) compliance with contracting requirements under applicable laws, rules, and regulations, both federal and local; and (ii) compliance with applicable laws, rules, and regulations governing procurement activities, both federal and local.

In addition, the Oversight Board has not engaged in any due diligence or background check with respect to the contracting parties nor whether the contracting parties comply with the requirements under the applicable contract. Any material changes to the Proposed Contract must be submitted to the Oversight Board for review and approval **prior to execution**.

This letter is delivered as of the date hereof and we reserve the right to provide additional observations and modify this letter based on information the Oversight Board was not directed to when the review was conducted. In addition, during the course of our review, we may receive information that we may refer to the relevant authorities.

This letter is issued only to PREPA and solely with respect to the Proposed Contract.

[3] *See* the Oversight Board's letters dated March 11, 2026 and April 7, 2026.

Sincerely,



Jaime A. El Koury
General Counsel

PREPA – GOTHAMS ENERGY, LLC AND AMERICAS POWER SOLUTIONS HOLDINGS, LTD.

Background

This review covers the Proposed Contract between PREPA and the Seller for the deployment, installation, operation, and maintenance of temporary floating power generation units at the San Juan Power Plant with an aggregate capacity of **200 MW** (the "Project").

The Proposed Contract stems from the RFP issued by the 3PPO on July 15, 2025[4] pursuant to PREB's directive to address the emergency related to an anticipated generation shortfall of approximately 800 MW expected by Summer 2025.

The Proposed Contract has a **10-year term** and a deployment timeline of **90 days** to achieve full commercial operation. It places primary financial risk on the Seller, and direct fiscal exposure to PREPA and ratepayers is limited. Specifically, it establishes a pricing structure for liquefied natural gas ("LNG") generation with a base energy rate of $0.188/kWh, subject to a market protection mechanism tied to the Title Transfer Facility ("TTF") index, an international LNG benchmark. The Proposed Contract further has a performance-based structure in which PREPA is only obligated to pay for metered and accepted energy delivered, without minimum take-or-pay requirements or guaranteed payments obligations.[5] The estimated maximum contract value is **$2,470,320,000**.[6]

PREPA has certified that (i) the cost of the Proposed Contract is a pass-through rate expenditure with no budgetary impact, and (ii) the funds to pay for the Proposed Contract are unrestricted, unobligated and available without future encumbrances or restrictions, and will not be obligated except for the payment of the Proposed Contract.

Moreover, pursuant to the Proposed Contract, the Seller is responsible for the procurement, delivery, storage, and regasification of LNG, as well as for all infrastructure, permitting, and interconnection requirements necessary to integrate the generation units into the grid.

Key Observations and Risks Considerations

The PREPA Fiscal Plan establishes a framework for the transformation of Puerto Rico's energy sector into a modern, efficient, resilient, fiscally responsible system. It emphasizes the need to improve system reliability and resource adequacy through coordinated planning, investment in

[4] Three proponents participated in the RFP of which the Seller obtained the highest evaluation score. 3PPO awarded contracts to the Seller and Power Expectations, LLC. The Oversight Board's determination in connection with the Power Expectations, LLC proposed contract is the subject of a separate letter from the Oversight Board.

[5] The Proposed Contract includes a utilization-based termination provision under which the Seller has the right to terminate the agreement if PREPA does not request at least 70% of contracted capacity over a rolling 12-month period, subject to three months' prior notice and no termination charge.

[6] The estimated maximum contract value assumes a 75% capacity factor (6,570 yearly hours of operation). Such capacity factor was not certified by LUMA (the "System Operator").

new generation capacity, integration of additional energy resources, and implementation of demand-response measures to mitigate shortfalls, supported by appropriate technical analysis and procurement discipline. Achieving these objectives requires sustained investment and careful alignment among system needs, resource planning, and procurement decisions.

Below, we identify a series of concerns and risks that were raised by the Oversight Board through multiple RFIs and remain to be addressed in order to ensure market competition and achieve the Fiscal Plan's objectives of reliability, affordability, and overall sustainability of the electric system.

i. Project Execution and Deployment

The Proposed Contract lacks sufficient mechanisms to ensure timely and enforceable project execution. While it establishes a 90-day deployment period, it lacks sufficiently defined requirements for permitting, fuel logistics, and interconnection capacity at the San Juan site necessary to support such timeline. It also fails to establish milestones leading to commercial operation or clear progress monitoring and reporting requirements for the Seller against which PREPA can measure the Seller's performance or address any delays.

The absence of binding milestones is particularly concerning given the logistical and regulatory challenges at the San Juan site and considerations specific to the floating power plant, including port access, fuel transfer limitations, and infrastructure requirements. This also raises concerns regarding site suitability for the Project, as it is not supported by a feasibility assessment or any validated permitting pathways.

We note that Costa Sur was identified as a main site in both the RFP and the Seller's original proposal, purportedly because it is a more viable alternative to better support commencing operations under the urgent nature of this procurement. Costa Sur presents certain logistical advantages including faster and simpler execution and deployment, as well as the ability to accommodate a Floating Storage and Regasification Unit.

Furthermore, to date, there is no binding fuel supply agreement tied to the Proposed Contract, despite assigning the Seller full responsibility for LNG procurement and logistics. The absence of such arrangements adds uncertainty regarding the feasibility of the Project and timing for achieving commercial operation date ("COD") within the required deployment period.

The Proposed Contract also fails to properly define liquidated damages, allowable delays, or termination thresholds in the event the Seller does not achieve COD. In addition, it does not define the termination for convenience fee or adequately align Force Majeure provisions with COD obligations and Event of Default triggers, further limiting the Government's ability to enforce timely performance.

ii. Performance Guarantees

The Proposed Contract lacks a defined payment and performance bond framework. Without clearly defined payment and performance bond requirements, the Proposed Contract provides limited safeguards and assurance that the Seller will meet its contractual obligations.

The allocation of performance risk to the Seller limits direct exposure to PREPA. Nevertheless, the Proposed Contract's objective of increased energy reliability depends largely on the Seller's ability to finance, execute, and operate the Project throughout the proposed 10-year term. Incorporating a Payment and Performance Bond framework into the Proposed Contract is therefore essential to mitigate such execution and performance risk.

iii. Fixed Price Assurances

The Proposed Contract establishes a pricing structure solely for LNG-based generation, with a base energy rate of $0.188/kWh tied to the TTF index[7] and subject to adjustment if the Market Protection Mechanism is triggered.[8] However, such pricing structure introduces exposure to global LNG price volatility—recently impacted by geopolitical factors—and incorporates a market protection mechanism that allows for renegotiation or termination if LNG prices increase beyond a defined threshold. Pursuant to the Proposed Contract, PREPA is responsible for authorizing any incremental costs to ratepayers arising from the Market Protection Mechanism.

As noted in the Oversight Board's RFIs, the pricing mechanism allows for upward price adjustments and, under certain conditions, suspension or termination rights in favor of the Seller, but provides limited protection to PREPA in the event of price decreases. We also raised concerns regarding the use of the TTF index, rather than a regional benchmark more closely aligned with expected fuel sourcing.

The Oversight Board notes that TTF prices may already trigger price adjustments to the base contractual rate of $0.188/kWh.[9] Additionally, the technical proposal and supporting materials reference the generation units' dual-fuel capability (gas and diesel). However, the Proposed Contract does not define diesel-based operation as part of the contractual framework or establish the conditions under which such operation would occur or the corresponding pricing structure. This lack of definition generates contractual uncertainty regarding the alternative operational configuration of the Project and its potential cost implications in scenarios where LNG is not available.

iv. System Planning

During its review of the Proposed Contract, the Oversight Board raised questions about the lack of system planning efforts and interconnection studies underlying the Proposed Contract. Key

[7] The Oversight Board requested 3PPPO to provide the rationale for the use of the TTF index as the pricing benchmark under the Proposed Contract, including a comparison to Henry Hub, which is currently used in other local gas and supply contracts.

[8] Pursuant to Annex I of the Proposed Contract, if LNG prices rise more than 7% above the Global LNG Price set at execution (December 2025 monthly average equals to $10.46/MMBtu of the TTF Index), the payment rate may be adjusted. If the parties do not agree on an adjusted rate within one week, the Seller may suspend performance, and if no agreement is reached or prices do not revert within 30 days, the Seller may terminate. Any adjustment would remain in effect only until LNG prices return to the referenced Global LNG Price.

[9] As of May 1, 2026, the TTF index price was approximately €45/MWh, compared to approximately €25/MWh on December 1, 2025. PREPA must ensure that ongoing TTF index price volatility does not result in excessive costs compared to local benchmarks or create reliability risks for ratepayers.

elements, such as the contracted capacity, projected utilization levels, contract term, site selection and the Project's integration into the grid, were not supported by targeted technical analysis.[10]

Specifically, the Proposed Contract includes a utilization-based termination provision under which the Seller has the right to terminate the agreement if PREPA does not request at least 70% of contracted capacity over a rolling 12-month period. We note that this may not align with system demand or resource planning assumptions. It may also create operational pressure on PREPA to dispatch the units even when not necessary in order to avoid termination.[11]

Furthermore, the supporting information provided in response to the Oversight Board's RFIs throughout the review process did not support project feasibility at the San Juan site. Specifically, no analysis was provided to demonstrate how the integration of the Project aligns or interacts, from a technical or scheduling perspective, with other planned generation projects at the selected site, such as the upcoming integration of Energiza, LLC (i.e., approximately 530 MW expected in 2028) and the restoration of other legacy units. Deferring critical system planning and integration considerations to until after contract execution increases the risk of misalignment with system needs, interconnection feasibility, and planned resource additions.

v. Procurement Consistency with Best Practices

Finally, the Oversight Board reiterates its concerns regarding the procurement process leading to the Proposed Contract vis-a-vis the Oversight Board's mandate to ensure that proposed contracts promote market competition.

We note that during the procurement process, the 3PPO allowed deviations from certain RFP requirements. For instance, 3PPO waived certain bid bond requirements and introduced the Government's non-negotiable terms after submission of proposals.[12] In addition, the procurement file does not clearly demonstrate how the final award decision reconciles with the documented evaluation results or whether all evaluation criteria were applied consistently across all proponents throughout the procurement process.

Furthermore, we note that during its review of the Proposed Contract, the Oversight Board questioned how or why San Juan was selected as the site for the Project. The 3PPO did not provide a clear response, but instead indicated that the Seller's preferred site is Costa Sur.

The Oversight Board recognizes the emergency nature of the RFP and the urgent need to address near-term generation shortfalls and improve energy reliability. However, even in this scenario, the

[10] LUMA preliminarily evaluated interconnection capacity for only 124 MW of the proposed 200 MW.

[11] The Oversight Board requested a financial model reflecting the System Operator's projected utilization levels. The 3PPO did not provide such model, purportedly because the Proposed Contract does not rely on or require a comprehensive project finance model.

[12] The non-negotiable terms required by the 3PPO include: (i) no "take-or-pay" provisions; (ii) no requirement for a letter of credit, surety bond, or any other form of financial guarantee as condition precedent for contract execution; (iii) no capacity payments; (iv) no separate costs for mobilization or demobilizations; and (v) references to minimum hours as non-binding.

deviations from best procurement practices identified by the Oversight Board during its review of the Proposed Contract underscore the need for stronger adherence to such practices in future procurement processes in order to promote market competition and increase the public's faith in government contracting.

Conditions and Required Government Actions

In light of the above-mentioned concerns and risks, **the Oversight Board's approval of the Proposed Contract is conditioned upon the Government implementing the following revisions to the Proposed Contract. PREPA must submit the revised version of the Proposed Contract for the Oversight Board's review and approval prior to execution.**

1. **Project Schedule and Performance Enforcement**
   The Proposed Contract must define milestones for project schedule, including permitting, interconnection, infrastructure deployment, and achievement of COD; and require the Seller to submit weekly reports demonstrating compliance with such milestones.

   The Proposed Contract must also establish liquidated damages, allowable delays, and termination provisions tied to failure to achieve COD; and require default notifications from the Seller and reasonable cure periods in the event of any failure by the Seller to meet its obligations.

   In addition, the Proposed Contract must align Force Majeure provisions with these performance obligations and Event of Default triggers to ensure that relief from performance does not undermine enforceability of the COD and related obligations.

2. **Site Reconsideration**
   The parties must reassess and confirm the selected project site, considering reassigning it to Costa Sur in light of its identified logistical, regulatory, and interconnection advantages, in contrast to the limitations present at the San Juan site.[13]

3. **Payment and Performance Guarantees**
   The Proposed Contract must establish a payment and performance bond structure with a defined methodology for calculating annual coverage, with (i) surety coverage equal to 100% of project obligations through COD, and (ii) minimum coverage equal to 20% of the projected annual contract value during the operational phase, based on a fixed and clearly defined value.[14]

[13] During a meeting held on April 16, 2026 with the Oversight Board, the 3PPO, PREPA and PREB agreed that the Costa Sur site was better suited for the Project than San Juan. Accordingly, the parties agreed that the project site would be moved from San Juan to Costa Sur to mitigate logistical concerns at the San Juan site, subject to any formally required regulatory approvals.

[14] Pursuant to Exhibit C of the Proposed Contract, a Payment and Performance Bond will be incorporated upon contract execution. However, it does not clearly define the bonding requirements. The specific bonding structure was later introduced by the 3PPO in response to an RFI from the Oversight Board.

4. **Fuel Structure and Fixed Price Assurances**
   The Proposed Contract must define the fuel structure, establishing LNG as the primary fuel, as well as the conditions under which any alternative fuel operation may occur. The Proposed Contract must define the operational and cost implications of any alternative fuel scenarios to ensure that PREPA and ratepayers are not exposed to unquantified costs and to ensure alignment between operational requirements and pricing assumptions.

PREPA is expected to inform the Oversight Board of any budgetary differences other than those specified in Appendix A to the Policy (Contract Submission Questionnaire) and to request a re-review of the Proposed Contract should any changes occur.

This review was conducted on the basis of information submitted by PREPA. The Oversight Board has not independently verified the information included in the submission. Should the Oversight Board become aware of any inaccuracies or misrepresentations – whether intentional or not – it would re-evaluate its assessment.