

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

*IN RE: REVIEW OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY
INTEGRATED RESEOURCE PLAN*

CASE NUM: CEPR-AP-2018-
0001

SUBJECT: ARCTAS CAPITAL GROUP, LP INFORMATIVE
MOTION PRESENTING RECOMMENDATIONS FOR THE
PROPOSED APPROVAL OF THE
ECOELECTRICA AGREEMENTS

NEPR

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**ARCTAS CAPITAL GROUP, LP INFORMATIVE MOTION PRESENTING
RECOMMENDATIONS FOR THE PROPOSED APPROVAL OF THE ECOELECTRICA
AGREEMENTS**

TO THE HONORABLE PUERTO RICO ENERGY BUREUA:

NOW COMES ARCTAS CAPITAL GROUP, LP ("ARCTAS"), through its legal representative and authorized officer petitions this Honorable Puerto Rico Energy Bureau ("Energy Bureau") to take into consideration this Informative Motion in its analysis of the proposed approval of the EcoElectrica Agreements with PREPA.

INTRODUCTION

1. On August 9, 2019 the Energy Bureau issued a Resolution that granted Arctas Intervenor status in the Review of the Puerto Rico Electric Power Authority Integrated Resource Plan, Case No. CEPR-AP-2018-0001 ("IRP Proceeding").
2. This submission relates to the proposed approval of the revised EcoEléctrica agreements. The submission with its attachment is, like the changes to the existing EcoEléctrica contracts, voluminous and complex. We hoped these points or equivalent would have been covered by others prior to or at last week's Energy Bureau hearings.
3. Unfortunately, after monitoring the hearings, we are concerned that the submissions and testimony relating to the proposed power and LNG purchase agreements between EcoEléctrica, PREPA and Naturgy do not accurately present the true costs and risks of amending those agreements to PREPA, its creditors, or the ratepayers of Puerto Rico. The proposed payments to be made by PREPA may be significantly higher, by tens of

millions of dollars per year, than can be credibly justified.

4. The ECO PPOA fixed capacity payments cost structure combined with the Naturgy GSPA fuel price - both over many years - plus other terms and conditions in the Agreements, will affect the economics of other proposed energy projects. If viewed as excessive or above market they may diminish competition to build those projects that could otherwise help lower generation costs paid by PREPA customers and/or encourage other suppliers to expect above market power prices.
5. It is important to the recovery and future of the island's electrical system and competitiveness to minimize later surprises, re-evaluations and delays that may negatively impact all projects proposed by PREPA in this IRP proceeding. It is also important to anticipate questions that may come from the Federal Oversight & Management Board ("FOMB"), the P3A, bondholders, creditors, and the bankruptcy courts, and consumer and elected representatives (collectively we call these the "Constituencies").
6. We respectfully submit this Informative Motion with its attachment that states key determinations and recommendations for the Energy Bureau analysis on the proposed approval of the EcoElectrica Agreements.

WHEREFORE, we kindly and respectfully request the Energy Bureau to take into consideration this Informative Motion and the attached recommendations for the proposed approval of the referenced agreement.

WE CERTIFY that this day we have sent this Information Motion, regarding Case No. CEPR-AP-2018-0001 using the Energy Bureau's electronic filing tool at: <https://radicacion.energia.pr.gov>.

RESPECTFULLY SUBMITTED in San Juan, Puerto Rico, this February 13, 2020.

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CERTIFICATE OF SERVICE

We hereby certify that; a copy of the filing was sent via e-mail to:

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**ARCTAS CAPITAL GROUP, LP KEY DETERMINATIONS AND RECOMMENDATION FOR THE PREB
PROPOSED APPROVAL OF THE ECOELECTRICA AGREEMENTS**

This submission relates to the proposed approval of the revised EcoEléctrica agreements. The submission is, like the changes to the existing EcoEléctrica contracts, voluminous and complex. We hoped these points or equivalent would have been covered by others prior to or at last week's Energy Bureau hearings.

Unfortunately, after monitoring the hearings, we are concerned that the submissions and testimony relating to the proposed power and LNG purchase agreements between EcoEléctrica, PREPA and Naturgy do not accurately present the true costs and risks of amending those agreements to PREPA, its creditors, or the ratepayers of Puerto Rico. The proposed payments to be made by PREPA may be significantly higher, by tens of millions of dollars per year, than can be credibly justified.

PREPA, EcoEléctrica, Naturgy and the Energy Bureau are understandably eager to have the proposed agreements resolved. However, they cannot ultimately take effect until multiple approvals occur. Issues might as be identified and addressed sooner to avoid delays later.

Why the Agreements matter. The ECO PPOA fixed capacity payments cost structure combined with the Naturgy GSPA fuel price - both over many years – plus other terms and conditions in the Agreements, will affect the economics of other proposed energy projects. If viewed as excessive or above market they may diminish competition to build those projects that could otherwise help lower generation costs paid by PREPA customers and/or encourage other suppliers to expect above market power prices.

It is important to the recovery and future of the island's electrical system and competitiveness to minimize later surprises, re-evaluations and delays that may negatively impact EcoEléctrica and all future projects contemplated proposed by PREPA in this IRP proceeding. It is also important to anticipate questions that may come from the Federal Oversight & Management Board ("FOMB"), the P3A, bondholders, creditors, and the bankruptcy courts, and consumer and elected representatives (collectively we call these the "Constituencies").

We respectfully submit that the following are key determinations for the Energy Bureau or anyone reviewing the contracts on behalf of ratepayers:

1. Were the contract terms the result of competitive bidding or other arm's length negotiation subject to competitive pressure or market forces, to ensure the best terms reasonably possible for PREPA and its ratepayers?
2. If not, was that omission either legally required or otherwise justified?
3. Was the absence of competitive procurement for LNG based on a mistaken assumption that a "monopoly" existed; or that the "monopoly exception" to fuel procurement applied; or that a contrived monopoly somehow prohibited a voluntary agreement for EcoEléctrica or Naturgy to agree to conduct a transparent competitive LNG procurement to assure lowest LNG costs to PREPA?
4. Even if mistaken, did the honest view by PREPA that it had no choice but to negotiate a sole source no-bid LNG contract and PPOA amendment, cause the terms to be millions of dollars higher than necessary?
5. Did heavy turnover, departure of those with historic perspective on the EcoEléctrica contracts, a post-hurricane and bankruptcy crisis atmosphere, a desire to meet IRP and FOMB objectives, and/or lack of expert LNG commercial resources compared to Naturgy and EcoEléctrica, create pressure for PREPA to settle for suboptimal contract terms and structure?
6. Is the sole or primary criteria for approval for a renegotiated contract or contract, that it provides at least some savings compared to the prior ones or to not renewing the contract at all?
7. Have the terms and risks of the proposed agreements to PREPA and its ratepayers, been fully disclosed and evaluated by relevant experts?

8. Regarding features characterized as benefits but involving higher costs or risks, has an expert cost/benefit analysis of each of these been provided to the Energy Bureau and Siemens to enable a fair evaluation over their full term?
9. Will the proposed contracts benefit the economics, image, and future negotiated agreements for PREPA and Puerto Rico? Are they something Puerto Ricans can be proud of?
10. Could further review or possible revisions be beneficial and avoid later questions or challenges?
11. In light of the above, does the Energy Board have appropriate information or justification to approve or disapprove the proposed contracts?

Concluding that a negative answer to the final question shows the record is incomplete, we submit this document addressing these points and others raised by the proposed new contracts, and urge the Energy Bureau to schedule appropriate ROIs and future proceedings.

I INTRODUCTION

1. On August 9, 2019 the Energy Bureau issued a Resolution that granted Arctas Intervenor status in the Review of the Puerto Rico Electric Power Authority Integrated Resource Plan, Case No. CEPR-AP-2018-0001 (“IRP Proceeding”).
2. Proposed Contract Amendments.
 - a. On November 5, 2019 the Puerto Rico Electric Power Authority (“PREPA”) filed before the Energy Bureau a document titled *Request for Approval of Amended and Restated Power Purchase Agreement with EcoEléctrica and Natural Gas Sale and Purchase Agreement with Naturgy; Request for Confidential Treatment of its Letter and Accompanying Attachments* (“Petition”) under Case No. NEPR-AP-2019-0001. In its Petition, PREPA requested the Energy Bureau, pursuant to Section 7.1 of Regulation 8815, review and approve an Amended and Restated Power Purchase and Operating Agreement between EcoEléctrica, L.P. (“EcoEléctrica”) and PREPA (the “ECO PPOA”) and the Amended and Restated Natural Gas Sale and Purchase Agreement between Naturgy Aprovevisionamientos S.A. (“Naturgy”) and the PREPA (the “Naturgy GSPA”) – the ECO PPOA and the Naturgy GSPA together are the “Agreements.”
 - b. In a December 12, 2019 PREPA motion to submit redacted versions of the Petition and its attachments, PREPA submitted redacted versions of the documents that PREPA claims contain confidential information which included redacted versions of the ECO PPOA and the Naturgy GSPA.
 - c. In an IRP Proceeding December 13, 2019 Energy Bureau Resolution and Order (“December 13 Resolution and Order”), the Energy Bureau the revised procedural calendar for the IRP Proceeding which did not include an opportunity for Intervenor discovery on PREPA’s response to ROI #10.
3. In the December 13 Resolution and Order, the Energy Bureau stated among other things that the Energy Bureau “...deems necessary to perform additional analysis regarding the Agreement’s terms in the context of the proposed IRP.” The Energy Bureau stated it would issue its Requirement of Information No. 10 to PREPA (“ROI #10”) and ordered PREPA to provide its answers.
4. On December 13, 2019, the Energy Bureau issued its ROI #10 to PREPA, which required PREPA, among other things, explain and/or analyze various contract provisions, provide certain cost and pricing information, and complete additional IRP Aurora model runs and provide system NPVs and other metrics.
5. On January 22, 2020, PREPA submitted its initial response to ROI #10, and included in its response a Sargent & Lundy report titled *CS-0022 Eco and Naturgy Renegotiation Report_19 November 2019* (“S&L Report”), attached to the response as PREPA ROI_10_8 Attach 1.pfd. Regarding the January 22 submittal:
 - a. It provided certain information regarding the Agreements terms, financial modeling and analysis.

- b. It lists Terry Coyne, Senior Consultant and Katherine Hernandez, Consultant as a report preparers, and reviewed and approved by Dennis Zabala, Principal Advisor, and referenced then as being with Sargent & Lundy (“S&L”).
 - c. It did not include any evaluation of changing legal risks to PREPA from any counsel, nor any report from any recognized LNG industry commodity/commercial expert, on key aspects of the Agreements – the rationale for the level of capacity payments, or for conversion from a traditional PPOA to a tolling agreement, or price comparisons with other LNG contracts.
 - d. There was no discussion of whether a tolling agreement and gas sales contract – as contrasted with a power purchase agreement – is exempt from the normal competitive procurement process, or eligible for fast track Energy Bureau review applicable to power purchase agreements.
 - e. While the submissions alleged the Agreements supported the IRP, there was no explanation of how an amendment extending only to 2032, with no PREPA extension options or buyout rights, would ensure EcoEléctrica would be available, if needed, to provide backup power and grid support for 3000 MW of solar plants with lives well past 2032, if the Aurora model “selected” plant is never built.
6. Over February 3-7, 2020, the Energy Bureau held a hearing (“Evidentiary Hearing”) pursuant to the modified Procedural Calendar in a December 13, 2019 Resolution (“Hearing Resolution”).

The Hearing included 10 panels, including (relevant to the Agreements) Panel B – Existing PREPA and Contract Resources and Related Issues (which included Issue 2. EcoEléctrica new PPOA) and Panel C – Fuel Prices and Fuel Infrastructure and New Gas Resources (which included Issue 2. LNG prices – South/East/West, Issue 4. LNG Infrastructure land/ship, and Issue 5. Naturgy contract delivery locations).

Neither Terry Coyne or Dennis Zabala were listed as witnesses for Panels B or C, or any of the other Panels in the Hearing Resolution. Neither Terry Coyne or Dennis Zabala, or any other S&L representative, were witnesses at or provided testimony for the Evidentiary Hearing. Likewise, no LNG industry experts were witnesses or testified. No Naturgy or EcoEléctrica personnel were witnesses or testified. None of the matters identified above were addressed.

II ARCTAS INTEREST

Over the last several years Arctas has been actively pursuing proposed fuel infrastructure and power generation projects in Puerto Rico and has expressed interest in participating in PREPA and/or the Public Private Partnerships Authority (“P3A”) planned Request for Proposals (“RFP”) for projects that PREPA has proposed in this IRP proceeding. For example, Arctas provided extensive testimony and questions regarding the cost of the proposed Excelerate Aguirre Offshore GasPort LNG terminal. Arctas is concerned that PREPA proposed energy projects in the IRP, which are of interest to Arctas, may be adversely affected by the Agreements. The funds from ratepayers available to pay electricity suppliers are limited. Overpaying any one supplier reduces the funds to pay others, including to pay for the extensive new solar and peaking facilities contemplated by the IRP.

III AVAILABLE INFORMATION AND TIMING

The Agreements were made available to the Energy Bureau in the November 5, 2019 Petition. The Energy Bureau determined that the Agreements are confidential and as such only redacted versions of the Agreements were made public in the December 12, 2019 PREPA motion. As such, our understanding of the Agreements may be incomplete because key information is redacted in the Agreements and subject to confidentiality. However, the unredacted portions, together with the S&L Report show a dramatic shift in risks to PREPA, and what Constituencies may see as surprising power and natural gas costs in light of project history.

It is important to note that both the redacted Agreements made public on December 12, 2019 and the January 22, 2020 PREPA filing occurred long after discovery in the IRP proceeding concluded on October 31, 2019. Many of the January 22, 2020 PREPA answers to the Energy Bureau’s important questions were missing or incomplete, often attributed to PREPA not being provided access to key information by Naturgy or EcoEléctrica (see especially responses to PREB-PREPA 10-08 and 10-09). No formal discovery has been possible to date on the Agreements.

Arctas does not believe it would have been productive or practical to raise the issues discussed in this filing in the Evidentiary Hearing held from February 3-7, 2020. Without the unredacted Agreements, the prior benefit of conducting discovery regarding the Agreements, and the fact that PREPA in all likelihood would not have been able to respond to many of the issues because the information in responses would be confidential, attempting to discuss the issues herein at the Evidentiary Hearing (and within hearing guidelines which provided for questioning in 5 minutes blocks) would have been futile. In addition, no one who prepared, reviewed, or approved the S&L Report was a witness at the Evidentiary Hearing, a major deficiency if S&L is the only third party advisor whose evaluation of the contracts PREPA relied on for its view that the Energy Bureau should approve the Agreements. (Siemens recommendations that the contracts be approved did not evaluate the merits, only whether the system was better off with or without EcoEléctrica.)

Arctas understands that the Energy Bureau had to balance adding time to the IRP Calendar to assess the Agreements with extending the IPR proceeding and further delaying the implementation of an approved IRP, which is critically important to Puerto Rico. Arctas believes the IPR could be approved, based on the testimony received so far, but that the approval of the ECO PPOA and Naturgy GSPA deserves further scrutiny. Any improvement in price or contract terms would also fit within the IRP. Approving the IRP without first approving the ECO PPOA and Naturgy GSPA, is no different than the multiple other unapproved future PPOAs the IRP contemplates. Given the circumstances as they unfolded with respect to the Agreements, we are convinced that an appropriate review of the Agreements is best served by raising identified issues herein for the Energy Bureau to consider and determine if any follow-up with PREPA or EcoEléctrica is warranted.

IV ECOELÉCTRICA BACKGROUND

As stated in Arctas petition to intervene in this proceeding, members of the Arctas team, then employees of a unit of Enron that was the 50% lead partner in EcoEléctrica, were responsible for key aspects of EcoEléctrica development including power purchase and operating agreement (“PPOA”), LNG fuel supply agreement, financing arrangements, and engineering, procurement, and construction (“EPC”).

At the time Eco was developed, it was the first combined private LNG/power plant in the world and therefore the first to perform under a PPOA. As PREPA discloses, the PPOA was awarded under a competitive RFP where 5 projects submitted proposals and 2 (Eco and AES) were selected. Pricing and key economic terms were set by the RFP submissions, so the PPOA negotiations converted those key terms into a detailed PPOA, at a time when PREPA was doing the same thing with AES. The RFP process resulted in the two most economical (lowest dispatch price) plants on the PREPA system. According to PREPA’s responses, EcoEléctrica has received LNG primarily from Trinidad & Tobago and has one of the two lowest average power prices per MWh on the island when both energy payments and capacity payments are considered and averaged over the total MWh generated. Most experts agree EcoEléctrica has, since it went into operation 20 years ago, provided the cleanest and lowest cost power to the Island, other than PREPA’s hydro plants. The Energy Payment covered fuel costs, as PREPA maintained fuel costs and fuel conversion should not have any material profit markup; the resulting low marginal energy price ensured maximum dispatch in the PROMOD model PREPA used then to dispatch the lowest cost marginal unit. Higher dispatch resulted in lower average costs, when capacity payments were averaged over total MWh generated. The capacity payments for both plants were designed to fully repay all of the debt and equity invested in construction costs of those facilities, in addition to covering operating, maintenance, insurance, admin and overhead costs, and profit.

V ISSUES RAISED BY THE PROPOSED AGREEMENTS

The proposed Agreements significantly alter the existing arrangements. Lower costs would be expected for PPOA contracts re-negotiated 20 years later. LNG production in North America and Africa has increased dramatically since the original PPOA was signed. Costs for both LNG and gas are at historic lows and projected to stay that way for the foreseeable future. Also, EcoEléctrica no longer needs to repay the over \$700 million of investment costs. So, as is the case with PPOAs globally, an extension provides the opportunity for PREPA to realize the benefit of the foresight it had over 20 years ago and the payments it made during that 20 year period. Once the initial PPOA term is over, and the original investment has been repaid, the power purchaser typically expects a dramatic cost reduction, and when it is the sole buyer, has the leverage to obtain attractive renewal terms.

From the various summaries of the Agreements, there is a concern that the proposed amendments appear to reflect significant anomalies in the costs, contract structure, and risks to PREPA, compared to the existing agreements and to what might have been expected in extensions. As such, it seems appropriate to at least call attention to some items to ensure all potential impacts on the ratepayers of Puerto Rico, PREPA, and the other Constituencies are considered.

Some preliminary issues are as follows:

1. There is time to review the Agreements thoroughly. PREPA's lawyers have argued that the Agreements are subject to the provisions of Sec 6.32(b) of Act 57-2014 as amended by Act 17-2019. These provide in certain circumstances for a 30-day initial decision by the Energy Bureau. The section appears to cover power purchase agreements between "electric power service companies". There is no mention of tolling contracts or LNG purchase agreements, or contracts with LNG suppliers. We have seen no persuasive argument that there is any set time for the Energy Bureau's review of these. Careful consideration should be given to any suggestion that the Energy Bureau, or other Constituencies, are no longer entitled to comprehensively review the contracts. Full review is even more essential, if the submissions for approval are incomplete, or leave out material analysis to enable reviewers to fully compare the proposals to the current contracts and to market comparables where no competitive process is undertaken. In that case, submissions that failed, as here, to include reports or evaluations from industry experts comparing the proposed terms to others in the industry, would be particularly incomplete.
2. Absence of competitive procurement. The original AES and EcoEléctrica contracts were awarded through a competitive procurement process, where detailed pricing proposals were evaluated to choose the lowest cost submissions. There is no suggestion any such competitive process occurred here, nor (with one flawed exception) has any testimony or evidence been submitted to show that either the ECO PPOA terms or the Naturgy GSPA terms reflect either market or arm's length negotiations. (In the lone exception, discussed below, Siemens' estimate of the market ranges for LNG price "adders" shows the Naturgy contract Adder is at or above the high/ expensive end of that range).
 - a. *The rationale is weak for a monopoly that prevents competitive LNG procurement.* The submission for approval of the Agreements is based on the premise that no competitive procurement process for LNG (even for Costa Sur) could have occurred, due to Naturgy having exclusive rights to deliver LNG to PREPA. This is then said to constitute a monopoly that exempts the fuel contract from normal procurement procedures. The apparent rationale: (i) EcoEléctrica owns the only LNG terminal, (ii) EcoEléctrica has (voluntarily) given its majority owner Naturgy the sole right to "toll" gas volumes for PREPA through that terminal, (iii) Naturgy is therefore the only possible supplier of LNG to PREPA; (iv) because of that it is not possible to have a competitive LNG procurement, and (v) PREPA therefore needs to accept whatever price Naturgy proposes, never revisited over time, as long as it reduces system generation NPV costs (versus not running EcoEléctrica) and improves the terms versus the much smaller Costa Sur volumes.
 - b. *Why nothing prevents competitive procurement.* The superficially appealing monopoly argument misses several key points:(i) The original PPOA which simply had EcoEléctrica delivering power to PREPA, is now being replaced (not amended) by a completely new 76-page agreement briefly summarized to the Energy Bureau in a handful of pages and a simplistic risk table; (ii) that new agreement requires PREPA to pay very high annual costs (less than before, but over the last 20 years EcoEléctrica has been fully paid for) just to reserve the facility, before any fuel costs; (iii) where before EcoEléctrica was solely responsible for procuring fuel and converting it to power for PREPA at a pre-agreed price formula, now to get power, PREPA and EcoEléctrica have agreed that it is PREPA who must deliver LNG to the terminal; (iv) despite that requirement, the Energy Bureau has been told that PREPA is not actually allowed to do what the ECO PPOA requires it to do (go out and buy LNG and deliver LNG to EcoEléctrica to get power), because Naturgy allegedly holds exclusive tolling rights going forward under an undisclosed existing, amended, or new agreement with EcoEléctrica; (v) PREPA has been told that it therefore can only contract to buy LNG from Naturgy, who somehow delivers it to PREPA for a split second at the EcoEléctrica dock before it goes into EcoEléctrica's tanks like it always has; (vi) LNG cost data is therefore Naturgy's only and is not available to PREPA to provide to the Energy Bureau or the other

Constituencies showing how this price compares (or how much it exceeds) other LNG contracts signed globally in the last several years where the final customer had price transparency.

It is perhaps telling that PREPA's letter summarizing the contracts and urging approval, includes the argument that a monopoly prevents competitive procurement but does not provide a corresponding legal opinion reflecting the same firm conclusion.

c. *What is typical in tolling contracts worldwide?* In gas-to-power arrangements worldwide, the ultimate customer with the tolling rights either procures the LNG or gas it needs through competitive processes and has it delivered to the terminal/ power plant, or if the power customer contracts with the LNG terminal owner or power producer to procure LNG for them, it is done by a competitive transparent process where the ultimate customer (PREPA here) gets to approve the final price and other terms, and participate if it chooses in the RFP process. This allows competitive fuel and power procurements for LNG customers – as in the original EcoEléctrica PPOA – without needing to own the terminal, or the pipeline for plants connected that way. This is a typical requirement in place in many if not most jurisdictions where the power purchaser is requesting cost recovery or contract approval to pass the costs on to ratepayers.

d. *Benefits of using an LNG contracting expert.* PREPA has never negotiated a tolling contract, whereas its EcoEléctrica counterparties, Naturgy and Engie, are two of the most sophisticated LNG firms in the world. A reputable global LNG procurement consultancy firm could have advised PREPA of the arrangements and price structures typical in the LNG industry, and the LNG prices that process has produced for buyers. They could have conducted the contract negotiations or sat side by side with PREPA and its lawyers advising on commercial terms while the lawyers ensured the drafting reflected those terms. The consultants would likely have advised what range of Adder would be typical in a 115% Henry Hub-style contract. They would have expected an Adder closer to market; perhaps as much as \$2-\$3 lower than the one proposed in the GSPA, depending on which shipping/receiving costs were covered in the PPOA capacity charge being paid to the terminal owners. Such an LNG consultant might also opine, that the ECO PPOA, while characterized and being billed as a tolling agreement, must not actually give any tolling rights to use the terminal to PREPA, otherwise how could it be said that Naturgy has exclusive tolling rights (but apparently pays either nothing to EcoEléctrica for these or a share of the markup it gets from PREPA). They might say, "If Naturgy has the exclusive tolling rights, why isn't the Tolling Agreement with Naturgy?" Or, "If EcoEléctrica is willing to grant tolling rights to Naturgy for free, why can't they grant them to PREPA for the tens of millions of dollars a year PREPA is paying? Or, "If PREPA has already more than repaid the cost of the terminal during the first 20 years of the EcoEléctrica contract, why are the extension costs not simply the annual operation and maintenance costs plus a reasonable or even high markup? Why, for reasons that appear totally unnecessary, shift fuel supply risk to PREPA?" If none of these questions were answered satisfactorily, it might lead to a question, whether the unusual double tolling agreement structure was intended to create the monopoly argument to avoid competitive procurement.

e. *Impact on approval process if no monopoly exception exists.* If there is no monopoly, or if it is contrived to attempt to avoid the fuel procurement requirements, or if PREPA's belief was mistaken, the submission is incomplete and there would be no basis to approve the contracts.

3. Need for thorough review prior to approval. The proponents of the Agreements should not be surprised if the Energy Bureau or other Constituencies want a full and thorough review of the Agreements.

a. PREPA was dealing with a crisis situation throughout the negotiations and appears to have been shorthanded and under-resourced to try to get the Agreements completed promptly, despite the PPOA not expiring until 2022 and the gas contract not expiring until December 2020 and being easily extendable given the global LNG price slump starting in 2019. No LNG consultant has been retained to explain either the rationale for converting the power purchase structure to a tolling structure, or for the pricing. King and Spalding testimony (and apparently work scope) has only been limited to strictly legal interpretations rather than providing comparative industry and contract structure and rigorous value/ risk insights. The scope of S&L is narrow and compares the pricing provisions of the Amendments with the existing contract, not with other possible arrangements or market comparables. There is nothing in the record showing PREPA or the resulting Agreements had the benefit of the same

level of LNG and tolling contract industry knowledge and expertise Naturgy and EcoElectica have. S&L is a superb LNG technical consultant that does not hold its self out as an LNG supply contract specialist. It was left to try to justify the proposed higher-than-current-contract LNG price, by saying that having a higher LNG price (i.e. higher variable fuel costs) compared to a higher capacity price, would create savings if PREPA dispatched the plant less when solar is available--rather than saying that it means the ratepayers are overpaying all other times for both energy and capacity. Finally, Vasquez and Diaz apparently provided a carefully worded answer that if one assumes there is a monopoly, there should (not would) be an exception to competitive procurement requirements.

b. In reliance on the perception that it could not have a transparent and competitive pricing process, PREPA apparently was persuaded that these convoluted arrangements were the best possible arrangements given the alleged natural monopoly arising from Naturgy's self-negotiated "exclusive tolling" rights over the EcoEléctrica terminal.

c. As a result of the foregoing, the Energy Bureau is missing a number of analyses that a billion-dollar amendment borne by ratepayers would normally require for approval. No party, proponent or consultant involved in this proceeding has apparently been asked to do a historic and future cost/ benefit analysis of the value to ratepayers of the alleged improvements PREPA would actually use by the very expensive capacity increase from 507 MW to 530 MW or the availability of 93% to 95%, in a contract estimated to run 84 % of the time and rarely to dispatch at even 507 MW. None has been asked to assess when and whether the considerable changes in risks from the existing Agreements, might be worse for PREPA; why provision-by-provision the changes were made; and how much certain unmodelled contingencies might cost. No one has discussed how much Eco is suddenly worth based on the NPV windfall of the unexplained capacity payment margin over its costs from the ECO PPOA. None has calculated what is the NPV of the above-market price component of the Adder. None has estimated or testified as to how many renewable or peaking plants PREPA could pay for if it could avoid any unreasonable PPOA and GSPA costs.

VI SPECIFIC CONTRACT TERMS

Below we discuss what appear to be certain unusual or unexpected consequences from the proposed new arrangements, which may deserve or stimulate further, more in-depth explanation and analysis of the Agreements than has been developed and provided to the Energy Bureau thus far. Certainly, a discussion of the Agreements impact on PREPA's generation system cost NPV over the IRP period and the amount of annual savings that would be realized deserve scrutiny, but so do other considerations such as overall cost, risk allocation, contract term, and extensions.

1. Minimum requirements are not standards of review. A threshold question for the Energy Bureau, is whether \$80 million in savings good enough. PREPA and S&L point out that i) the Agreements achieve the \$80 million in FY20 cost reduction (for AES and EcoEléctrica) required in the FOMB certified fiscal plan, ii) EcoEléctrica will continue to provide power at a lower cost than PREPA's next most efficient plant, and iii) having a low-cost, 500 +MW clean burning power plants continuing in operation is (obviously) better than the next best IRP alternative. The question is whether, instead of viewing these as minimal, low bar preliminary hurdles, they were instead viewed as the only criteria needed to declare the Agreements acceptable. Regarding acceptability to and/or approval by the various Constituencies, additional criteria might be whether the Agreements terms are fair, reasonable, competitive and/or balanced; whether they support the IRP renewable goals; and whether the results demonstrate an arms-length negotiation between parties of equal resources and leverage, so that the terms are the best the ratepayers could expect. And if not, were advantages on one side or the other legitimate or not?
2. Issues in the Proposed PPOA.
 - A. Excess Capacity Payments – The S&L assessment of the payments in the proposed contracts is made by comparison to the payments in the current PPOA; however, those payments were designed to fully repay all of the debt and equity invested in the construction costs of the EcoEléctrica complex, which has now been fully repaid. Capacity payments appear significantly higher than what would be required to cover fixed operating costs and ongoing maintenance and replacements (S&L Report conclusions appear to confirm this). S&L

and PREPA describe the rationale for \$61 million of the \$148 million annual capacity payment; PREPA should account for the remaining \$87 million of annual capacity payments, estimating how much is for expenses or at risk subject to performance, how much is reasonable profit, and how much is a windfall due to the perceived monopoly.

- (i) Cost Transparency. PREPA and the Energy Bureau should require EcoEléctrica and Naturgy to account for the remainder, given the lack of a competitive process. Adding a 20% cushion to these estimated ongoing costs, one could assume any capacity payment revenues over those recurring costs are profits, meaning up to approximately \$70mm per year of profits and \$700 mm over the 10 year life of the contract. Applying a 9% discount rate in the IRP to these cash flows, indicates a valuation of \$450mm to EcoEléctrica from the new PPOA, before adding Naturgy's fuel profits. This is for a plant whose investment PREPA fully repaid over 20 years under the original PPOA and which has no other source of revenues. Arctas expects S&L would advise that EcoEléctrica could fully replace its gas and steam turbines and related control systems for \$600,000 per MW or less, indicating that the ECO PPOA margin more than covers such an investment but does not require it be made. It may also be sufficient to cover the IRP estimate for a new LNG terminal. Creditors and other Constituencies may wonder why they are having to accept a discount, if it appears the ECO PPOA is delivering windfalls.

B. No provision for PREPA extending the contracts. There is no provision or requirement for a PPOA extension at PREPA's option after the 2032 expiration, or alternatively (if the owners do not wish to continue) to turn over the plant to PREPA for a nominal value. If the parties are assuming EcoEléctrica will be retired in 12 years, that should be an easy provision to agree on in case, as is likely, the funds to replace a perfectly good (and repowerable) facility are not forthcoming or are used for renewables or other priorities. At minimum, the contract should be extendable year to year by PREPA with adequate forward notice. In a contract that appears to be above or far above market, an ability for PREPA to unilaterally extend at the same price or a lower price should not be controversial, in case it cannot negotiate agreement on an acceptable extension. While the Aurora model showed EcoEléctrica being replaced by a new 300 MW plant at Costa Sur, the new plant may only seem better to the model because the EcoEléctrica capacity and fuel payments are high. By 2032, EcoEléctrica will have returned significant multiples on everyone's investment. If PREPA is entitled to take it over for a nominal cost, or pay only operating costs plus a margin, the model will likely show it continuing. In any case, models 10 years out are often wrong, and capital for new plants may not be available to replace EcoEléctrica.

C. Condition of EcoEléctrica in 2032. Similarly, there appears to be no requirement that the appropriate part of the capacity payment be used to maintain the plant in peak operating condition so that after 2032 it can continue to operate if PREPA chooses. Renewables contemplated in the IRP to come online in 2024-25 will need 13-20 more years of backup and grid support after 2032.

D. More Capacity and Availability – and cost. The 23 MW increase, and resulting 5% higher capacity payment, as well as the ability to get availability from 93% to 95% by paying an apparently high "bonus", are touted as a big improvement for PREPA rather than an additional cost for providing services PREPA does not need.

- Availability is an average measured over time, not in any moment PREPA might need more power. No data or modelling is provided to show whether higher average availability would ever have made any difference to PREPA over the last 20 years, what its value would be, or when it might be used in the future.
- PREPA has always had the right to ask for capacity above 507 MW; it had to pay extra but only for those minutes the capacity was used. No analysis is provided as to how often historically this has been used, what it cost, and why the Island would need to pay for another 23 MW base load plant on the southern coast, even one "cheaper than AES."

Given the expected dispatch of 84%, the consultants should be asked to model how much PREPA will use the 23 MW and the extra availability, if ever, and the resulting cost per additional MWh when these services would actually be used.

E. Higher dispatch at base prices. The original contract reflects PREPA's commitment to purchase a number of kilowatts annually that equaled 76% of theoretical maximum output, so EcoEléctrica contracted to buy enough LNG to cover that level. If PREPA wanted more power than that, over a year, it could always dispatch more, but had to pay a higher price to the extent additional LNG was requested. Although the new fuel price has been raised, with an adder more than double the Henry Hub natural gas commodity and substantially higher than spot market LNG, the reports state that paying that price for dispatch over 76%, instead of spot, is somehow a benefit. Either S&L or the LNG consultant could model the likely impact to PREPA of that provision, which would almost certainly be negative compared to passing through arm's length spot price purchases.

F. PURPA. PREPA states that EcoEléctrica is a Qualifying Facility under PURPA. Therefore, in the absence of a new PPOA, EcoEléctrica could become a "merchant" plant without a contract and require PREPA to pay avoided costs for the energy EcoEléctrica produces, which may be higher than the price in the ECO PPOA. As such, the PREPA concern is that EcoEléctrica has negotiating leverage that will increase if the PPOA expires or is terminated (so, this deal is the best PREPA can do). A thorough legal and commercial analysis from both PREPA and EcoEléctrica's perspective would identify if this is a real threat or not, and how the economics would play out. It is likely that having a power plant with no PPOA after 2022, because the owners pursued above market costs for a plant the island had already paid for, will likely not resonate with the EcoEléctrica's stakeholders.

G. Buyout. The original PPOA allowed PREPA to purchase the EcoEléctrica facility if EcoEléctrica shut it down, for a nominal price that today is far less than a single year capacity payment under the proposed ECO PPOA. It should be explained how this might mitigate concerns about EcoEléctrica shutting down and should be included in any new agreement.

3. Issues in the GSPA.

A. Fuel costs in the GSPA. The various reports describe the fuel cost in the new arrangements as higher than the prior arrangements, but do not attempt to explain why in an oversupplied, buyer's market, that would be the case. Or why PREPA would get a higher price for committing to larger quantities. The excess fuel costs are dismissed as being more than offset by the reduction in capacity payments. No report by a recognized LNG consultant appears in the various materials submitted to the Energy Bureau or the other Constituencies, to evaluate how close or far the LNG price in the Naturgy GSPA is to other comparable LNG contracts.

(i) Absence of competitive procurement, even if allowed, requires higher scrutiny of the resulting contract terms. Perhaps if the fuel contract terms had been negotiated pursuant to an arm's length tender, as is typically required by Puerto Rico law and precedent, such a report would be less important. In absence of an LNG consultant, the contract summaries that reference the higher fuel prices are written by lawyers and engineers. We have addressed above why any so-called monopoly by Naturgy would not prohibit competitive LNG procurement.

(ii) PREB-PREPA-10-09 quotes the Siemens report for the market range of fixed-cost adders to the base gas costs in an LNG contract. 10-09 erroneously concludes the proposed Naturgy GSPA Adder is within the range. Siemens uses Trinidad LNG price ranges to make its evaluation of the adder. When the base fuel cost is subtracted from the Naturgy price and the Trinidad price, leaving only the Adder, the Naturgy GSPA 2020 \$5.80/mmBtu adder is apparently at or outside the \$5.70/mmBtu upper limit of the wide range suggested by Siemens, despite a down market and an LNG terminal and regas facility already paid for by PREPA in the PPOA capacity payment. The Adder is also a higher price than previously assumed in the IRP.

(iii) An experienced LNG consultant would, if asked, be able to quickly report where the GSPA falls in the context of other recently signed LNG contracts. They would

certainly observe that current LNG spot prices are not only below the 115% HH plus ADDER formula in the Naturgy GSPA, but below the ADDER alone. They would likely also observe that long term contracts to purchase LNG from LNG producers, which use the 115% HH plus adder formula, have adders \$2-3 below the GSPA adder. The potential excess cost to PREPA assuming the 55 TBTU per year as the minimum annual contract quantity, could be worth \$50-150 million per year or more. Using the same 9% discount rate assumptions as above, yields a value for the contract to Naturgy that the LNG consultant could evaluate as within or not within the range of recent market contracts.

B. Impact of switching to a tolling contract. The contract summaries provided to PREPA and the Energy Bureau do not address the fundamental shift of risk to PREPA to suddenly assume responsibility to deliver LNG to EcoEléctrica. This may cause suspicion that the arrangement helps avoid a competitive LNG procurement. There is no explanation of why switching to a tolling contract helps PREPA buy LNG for Costa Sur or other locations, or why it is appropriate to compare the cost of LNG for EcoEléctrica to the smaller existing contract for LNG to Costa Sur.

- (i) How tolling contracts work. In the PPOA and similar agreements throughout the US and globally, the utility pays for electricity delivered at the busbar and into the grid. The power plant is responsible for getting the fuel, converting it to power, and delivering it to the grid. A price is paid for that electricity and for having the plant available to produce it. If anything goes wrong and the electricity is not delivered to the grid interconnection, it is the liability of the power plant (unless they can prove force majeure). This includes problems with delivering fuel—that has also been EcoEléctrica's responsibility. Until now, there were two global LNG firms to do that, Engie and Naturgy. But the proposed Agreements provide it is PREPA's responsibility to provide the LNG. PREPA has no LNG, no ships, is not in the LNG business. So PREPA believes it is compelled to contract with the majority EcoEléctrica owner, Naturgy to provide the LNG under a separate contract.

The submitted reports do not evaluate the increased fuel risk exposure to EcoEléctrica between the prior PPOA and the proposed ones. It should be evaluated whether, if LNG is not delivered, the damages payable to PREPA by Naturgy are capped but PREPA has to continue to pay capacity payments whether it gets electricity or not, and may have to pay the higher cost of replacement fuel (oil, LPG) EcoEléctrica uses instead. There are unexpected provisions regarding what happens if PREPA delivers "off-spec" gas, even though in reality that would be something Naturgy did. A proper review of the contract would explain in detail what happens, who is liable, and who bears the cost, in all situations where a tolling contract creates different results than the PPOA, what the probability is, and how the risk to PREPA of not having power when it expects to, is mitigated. If there is no risk, or if PREPA is somehow better off being the phantom LNG supplier, that should also be clearly explained. Explicit language could be added that PREPA has no responsibility for fuel delivery, and Naturgy holds PREPA harmless for damages or capacity payments incurred when fuel is not available or any other scenario where PREPA would not have incurred the costs under the original PPOA.

- (ii) Tollers get to source their own fuel. If the agreement was really a tolling agreement, it would permit PREPA to go source the LNG it needs through competitive tender. Naturgy would not be the sole possible supplier. An oversight body might want to be told if there is any global precedent for this combination—a tolling arrangement where the entity paying for the tolling is not free to choose its own gas supply. There are statements in the reports stating without discussion that Naturgy has an effective monopoly on the islands' only LNG terminal and therefore is the only possible LNG supplier. Those statements fail to discuss several pertinent facts:

A) The reports do not indicate that PREPA has ever had a chance to review the Naturgy Tolling Services Agreement ("TSA") to see, for example, the term and conditions for Naturgy's rights. There is no discussion of a confirmation from EcoEléctrica's owners that Naturgy is free without restriction or approval to use the terminal they co-own, for the purposes in the GSPA. The entire rationale for approving the contract price and structure despite limited disclosures, rests on

the premise that Naturgy has certain exclusive rights to the terminal. But no one, except perhaps EcoEléctrica and Naturgy apparently know what terms, conditions, obligations might be in the TSA and whether all parties are in compliance. These are characterized as tolling rights, just like PREPA's. Why would the Energy Bureau, and PREPA, not insist on seeing this agreement, together with a legal opinion, that it is valid, binding, and equitable?

B) If the TSA has been renegotiated, and if a PPOA can be converted into a tolling agreement that requires PREPA both to pay a capacity payment for the LNG terminal AND to deliver LNG in order to get power, one might ask why the amendments could not be tweaked to include the right for PREPA to source LNG from whoever gives it the best price, in accordance with Puerto Rico fuel sourcing laws and consistent with tolling agreements worldwide. Or, since there are no other LNG customers for EcoEléctrica than PREPA, why couldn't the TSA simply be assigned to and assumed by PREPA, who would then be able to arrange with Naturgy, Engie, or anyone else, at arm's length, to have its LNG requirements delivered. Obviously third parties already deliver LNG to the Eco pier—Cabot originally, and also Engie. Likely others.

C) The new tolling agreement and gas sales agreement together appear to provide that when LNG is delivered by Naturgy to EcoEléctrica, title to the LNG flows for an instant to PREPA and then to EcoEléctrica to turn into power. If PREPA is allowed to have, and be responsible even for a moment, for LNG at the Eco pier or terminal, then PREPA should be able to source that LNG from wherever it chooses who complies with international LNG safety standards when unloading. Having that discussion would re-align the discussion of monopoly, to whether this is a true monopoly, or a contractually or artificially created one. The reports make it appear that EcoEléctrica and Naturgy renegotiated, or insisted on, a contract restructure of everything but the one feature that would actually allow PREPA to achieve the goal stated in the Term Sheet its Board approved—to be able to consolidate and manage LNG procurement across the island in the best interests of Puerto Rico consumers.

iv. If the ECO PPOA is truly a tolling agreement, it would be useful to know if PREPA can utilize truck racks (not yet completed) to deliver LNG to other locations, without paying additional fees.

C. GSPA terms other than price. In the award of a 10-year no-bid contract worth hundreds of millions of dollars of margins and with the opportunity for potential costs savings from a facility with no other customers but PREPA, it should be expected that the Constituencies will ask, did Puerto Rico get the best fuel deal possible given the amounts it is agreeing to pay to Naturgy and EcoEléctrica? To the extent these costs are above market or not competitive under the circumstances, should the excess nevertheless be treated as operating costs in preference to payments to creditors?

(i) Monopoly gas supplier vs true tolling. Perhaps there is a reason to on the one hand to convert the PPOA into a tolling contract requiring PREPA to deliver LNG, but then using the monopoly construct to deny PREPA that opportunity. If so, that rationale should be easy to explain and presented to the Energy Bureau. If it instead resource constraints (not being able to retain LNG advisors who could go head to head with Naturgy and Engie) prevented PREPA from pursuing this avenue, that might be relevant to the Constituencies. If there is some legal or regulatory reason for Naturgy being the formal LNG supplier, PREPA should explain that; if so, why isn't or wasn't PREPA or its advisors part of an LNG procurement process where Naturgy and PREPA find the best price and terms for LNG supply to EcoEléctrica and Costa Sur? Isn't the capacity payment sufficient for PREPA to source LNG on the best terms possible?

When discussions of monopolies ever come up, it is generally because the activities create the appearance that the monopoly was used improperly to benefit the monopoly. Here, if the LNG price was not so far above market comparables, and the tolling agreement terms so unusual, the arrangement might not raise questions.

- (ii) Length of Contract – The rationale for agreeing to a 10 year term in the GSPA should be provided, including an explanation of why a shorter term plus extension options were not adopted. The San Juan New Fortress Energy (“NFE”) supply agreement term is only 5 years with multiple extension options at PREPA’s discretion. Why the major change in approach away from flexibility? The rationale should include a discussion of LNG spot price contracting, given the current low prices and oversupply condition which is expected to continue in the near to mid-terms.
- (iii) Take or pay requirements – The original PPOA had an indirect take or pay provision to ensure EcoEléctrica would run enough to consume the natural gas for the power PREPA had indicated it would need. In the new Agreements, the take or pay could reduce dispatch of future lower cost plants or prevent competitive LNG purchase. It is important to understand the cost/benefits of the take or pay provisions in the GSPA considering that PREPA took the opposite approach with the NFE contract, which has no take or pay requirements. There should be an explanation of how this contract will affect efforts to promote competition in the future.
- (iv) Competitive procurement – Aside from the commercial and cost issues raised above, the record does not show any legal analysis of whether any of the following comply or don’t comply with Puerto Rico procurement/ competitive bidding requirements:
- Entering into a tolling agreement
 - Entering a gas supply agreement while having a contract to deliver gas to Eco via a tolling agreement. (Same question for Costa Sur, which could have a different answer).

It would be useful to have in the record, if it does not already exist, in case of a future challenge, an opinion from one the various sets of lawyers on these issues. If there is a monopoly exception for these circumstances, the legal analysis should explain why, if PREPA pays for a tolling agreement, Naturgy somehow still has a monopoly.

- (v) Additional future LNG deliveries. The GSPA contains a potentially useful provision allowing PREPA to ask Naturgy to evaluate other LNG delivery points besides EcoEléctrica, in anticipation of needing LNG at other power plants. But then it appears to give Naturgy the exclusive right (via a right of exclusive negotiation) to deliver LNG to those locations by diverting volumes from the Naturgy GSPA. The lawyers could be asked if that preferential arrangement is acceptable, especially whether if the Naturgy GSPA could then be modified to add more volumes to EcoEléctrica and Costa Sur to replace the diverted ones, without competitive procurement.
4. Credit support costs.
Even though it could require significant credit from PREPA or create significant financial consequences, the reports do not mention multiple provisions in the ECO PPOA and the Naturgy GSPA requiring bonds, letters of credit or guarantees from various parties at various times, both before and after a potential PREPA privatization where its rights are assigned. Also not covered, is whether the Naturgy subsidiary signing the Naturgy GSPA, is and must remain an entity of substance and assets, or whether it is an SPV which may have no ability to perform or respond with damages if it defaults. There does not appear to be a guarantee or bond from the Naturgy parent to cover this. If the legal evaluation above shows additional risks and exposure to PREPA from being required to provide gas to get its power from EcoEléctrica but having no source other than Naturgy to get the gas, then this risk should be described.
5. Monetization by Naturgy.
The tolling + PPOA structure creates risks not present in the original PPOA. The lawyers might evaluate the circumstances under which Naturgy would sell one but not both of its interest in EcoEléctrica or its rights to deliver fuel, both of which appear separately very lucrative. If Naturgy sells its interest in EcoEléctrica, or defaults, or vice versa, it would no longer have the clout to ensure the tolling arrangement operates as smoothly as the PPOA has until now. Worse, if Naturgy defaults in its obligations to deliver gas but is not a shareholder in EcoEléctrica, it does not appear this excuses PREPA from paying capacity payments nor gives PREPA any other way to get the power it expects. The lawyers should evaluate and consider if

this is correct, and if so, quantify the risks compared to the existing PPOA, and ideally propose solutions. PREPA's letter to the Energy Bureau has a redacted portion which may partially respond to this issue.

6. Estimated Annual Savings.

- A. The S&L Report states that *"We estimate that the terms of the proposed amendments would amount to savings for PREPA of approximately \$100 million per year, of which \$71 million are derived from EcoEléctrica and \$29 million are derived from Costa Sur."* The S&L Report further explains that the \$71 million/year savings is comprised of \$108 million/year in reduced capacity payments and \$36 million/year from increased EcoEléctrica dispatch, which are offset by higher fuel costs. The savings calculation logic makes sense for the two years remaining on the existing PPOA that does not expire until March 2022, because PREPA would otherwise pay the existing higher capacity payments. However, for the subsequent years it doesn't make sense to assume that the original higher capacity payments (which include costs for debt service and return on investment) would continue through 2032 when the current PPOA term ends in 2022. PREPA should reassess its estimate of ECO PPOA savings for the years after the existing PPOA expires two year from now in March 2022. A qualified LNG consultant could provide a clearer picture of market LNG contract prices and likely spot prices in absence of the GSPA.
- B. Savings that would be additive to the \$71 million for the first two years is uncertain. Regarding the \$29 million in savings attributed to the Costa Sur, S&L states in the S&L Report that *"These savings are based upon fuel commodity price forecasts. Note that savings are expected to be modest over the first five years, averaging approximately \$10 million per year, and increase in the future due to the forecasted widening of the spread between natural gas and oil prices."*

Those savings are now uncertain as a result of the earthquake damage to Costa Sur Units 5 & 6, and the pending PREPA assessment of when those units will be fixed and return to service.

- C. Depending on how one estimates the excess margins in the Agreements, these may be sufficient to cover the costs of a new LNG terminal and a buyout of the EcoEléctrica PPOA.
- D. A proper analysis of savings would discuss the impact of automatic annual cost escalators in the PPOA and GSPA, compared to inflation assumptions in modeled savings, including any contract provisions that appeared to state prices in 2020 dollars but which were escalated already escalated from those levels under the contract terms.

VII CONCLUSION

If the Energy Board sees a possibility that the Agreements were negotiated under incorrect assumptions about exemptions to fuel procurement rules, or that the Agreements divert large sums from PREPA to EcoEléctrica and to Naturgy, or shift risks unreasonably to PREPA, an evaluation should be made whether to approve the Agreements anyway, set a procedure to conduct a more thorough review, or send the parties back with the suggestion to take matters raised here and elsewhere into consideration and re-submit.

Arctas moves this submission both respectfully and reluctantly, having hoped that these issues might have been answered by now. Because of the limited financial resources required, compared to the IRP goals, the additional time to get the Agreements right seems a relatively small price to pay. We are available to assist if request.