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BY ELECTRONIC MAIL

September 14, 2023

Mr. Richard Cruz Franqui
General Counsel
Puerto Rico Electric Power Authority

Re: Tranche 1 RFP PPOAs

Dear Mr. Cruz Franqui,

In accordance with the Contract Review 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 amendments to the Tranche 1 Power Purchase and Operating Agreements (PPOAs) by and between the Puerto Rico Electric Power Authority (“PREPA”) and 1) Ciro Two Salinas, LLC, 2) Guayama Solar Energy LLC, 3) Convergent Coamo Energy Storage 1 LLC, 4) Clean Flexible LLC (party to two Tranche 1 PPOAs), 5) CS-UR Juncos PV LLC, 6) Go Green USA America Corp., 7) Solaner Puerto Rico One, LLC, 8) Tetris Power LLC, 9) Pattern Barceloneta Solar LLC, 10) YFN Yabucoa Solar LLC (together, the “Resource Providers”) (the “Amendments”) for renewable energy generation.

After reviewing the Amendments, the Oversight Board concludes “**Approved with Conditions.**” Observations and conditions related to the Amendments are set forth in Appendix A attached hereto.

The Oversight Board has several concerns regarding the Amendments and the Tranche 1 procurement process. The Amendments were reviewed and approved by the Puerto Rico Energy Bureau (“PREB”) at an energy cost that is **34% above** that of the PPOAs the Oversight Board approved on March 25, 2022. PREB allowed proponents to renegotiate contractual terms with PREPA post-award, due to inflation costs and surging interest rates. The Amendments impact confidence in the procurement process, creating a precedent that bids will be renegotiated, distorting market pricing, and creating litigation risk. However, the Oversight Board understands that these concerns are

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outweighed by the expectation that they will reduce the cost of generation in the future and are in furtherance of Puerto Rico's renewables public policy.

Our review is solely limited to compliance of the Amendments 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 Amendments or the original contracts 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 Amendments.

Sincerely,



Jaime A. El Koury
General Counsel

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PUERTO RICO ELECTRIC POWER AUTHORITY – PPOAs TRANCHE 1 AMENDMENTS

Fiscal Plan Alignment

This review covers the Amendments to the Tranche 1 PPOAs for renewable energy generation.

Conditional Approval

The Oversight Board acknowledges the implications of permitting changes to the terms of the PPOAs, as approved by the PREB, and its potential impact on market competition. Moreover, we recognize that the Amendments will lead to contract cost escalation that, in some cases, is above the average annual increase experienced in the United States mainland.¹ However, the Oversight Board also places a high value on the progression of these projects, while they simultaneously guarantee lower energy generation costs for ratepayers. It is vital to guarantee that they advance to their commercial operation stage, bringing about the benefits they promise for Puerto Rico customers and confidence to the renewable energy sector.

Balancing the existing concerns, the Oversight Board must safeguard the financial benefit of the Amendments and align them with securing Loan Program Office (“LPO”) financing. As such, Resource Providers must adhere to several conditions given the approval of the Amendments.

In light of all of the foregoing, the Oversight Board **conditionally approves** the Amendments subject to the following:

- 1) Each of the Resource Providers must apply for and make diligent efforts to secure LPO financing and provide the Oversight Board, as well as the PREB, detailed reports on its application process.² If a Resource Provider understands that seeking and obtaining LPO financing is an undue burden in relation to the resulting project cost reduction allowed by such financing, the Resource Provider must submit a petition for waiver containing a justification memorandum and financial analysis to the Oversight Board demonstrating that LPO financing would not result in significantly lower project costs and would not provide a material opportunity to pass savings on to ratepayers, or any other compelling reason. The Oversight Board will review any such petition and determine, at its discretion, whether it shall waive LPO financing as a condition for approval.
- 2) If further amendments to the Original PPOAs are necessary for the Resource Provider to qualify for LPO financing, PREPA and Resource Provider must negotiate and agree on these amendments. PREPA must resubmit any amendments for PREB’s review and approval prior to execution and, after PREB approves, to the Oversight Board for review and approval prior to execution.
- 3) In the case the LPO denies financing application to a Resource Provider, such Resource Provider must demonstrate to the Oversight Board that it made diligent efforts to secure

¹ The average increase in LCOE for the Amendments from the original Tranche 1 bids was 34%, while the U.S. average increase was only 23%. Furthermore, out of all the Amendments, only three resulted in an LCOE increase that was below the U.S. average of 23%.

² The Oversight Board reserves the right to develop and establish parameters to determine whether Resource Provider has made diligent efforts to secure LPO funding.

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such financing and explain the reasons why it could not comply with the LPO's requirements.

- 4) In the case the LPO approves a financing application to a Resource Provider, any savings that result from the LPO must be reflected in a directly proportional decrease in consumer rates. As such, PREPA and Resource Provider must agree on new terms that reflect the achieved savings. The resulting amendments must be submitted to PREB by PREPA for its review and approval prior to execution and, after PREB approves, to the Oversight Board for review and approval prior to execution.
- 5) Each of the Resource Providers must provide to the Oversight Board monthly updates on the LPO application process.

The decision to conditionally approve the post-award Amendments, as approved by PREB on May 25, 2023 and June 30, 2023, is not made lightly and is rooted in our commitment to advance the objectives of the Fiscal Plan and adhere to the mandates of Act 17-2019 and Act 82-2010. This approval marks a vital step towards nurturing a fledgling market for renewable energy and reinforces Puerto Rico's commitment to diversifying its energy portfolio with new renewable energy sources.

Tranche 0

In order to fulfill the legislative mandate of the Alternative Renewable Energy in Puerto Rico Act (Act 82-2010) and the Puerto Rico Energy Public Policy Act (Act 17-2019), PREPA engaged in direct negotiations with owners of various Non-Operating PPOAs for renewable energy generation projects across the island between 2018 and 2020. These became known as the "Tranche 0 Proposals" and were selected by PREPA based on their nearness to completion, contractor's readiness to negotiate, and ability to kickstart construction in the short term.

On August 17, 2020, the Oversight Board rejected all 16 non-operational PPOAs proposed by PREPA, after careful review. The reasons for this decision hinged on the fact that the agreed-upon prices exceeded projections from the Integrated Resource Plan (IRP) and the 2020 Certified Fiscal Plan, potentially causing a \$460M in incremental costs for PREPA's customers.

Despite these concerns, the Oversight Board agreed to allow the development of up to 150 MW of renewable resources at the agreed prices, due to the minimal increases to energy rates this would cause, and the benefit of developing these projects expeditiously. Known as 'Tranche 0', PREPA negotiated two non-operational PPOAs, Ciro One Salinas Inc. and Xerta Tech Solar LLC, capable of producing up to 150 MW of renewable generation resources, which were approved by the Oversight Board on March 1, 2021.

Tranche 1

On August 24, 2020, the PREB partially approved PREPA's IRP. The IRP called for competitive solicitations for renewable generation and battery energy storage resources, in alignment with

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renewables portfolio targets set by Act 17-2019 and Act 82-2010.³ It established a plan for six initial tranches of renewable energy generation and battery storage capacity procurement, aiming to secure a total of 3,750 MWs of generation and 1,500 MWs of battery storage by the end of 2023 (the “Procurement Plan”).

Consequently, as part of Tranche 1, on February 22, 2021, PREPA published an RFP to procure 1,000 MWs of renewable generation and 500 MW of battery storage, prompted by the PREB. The RFP was successful, with over 70 bids submitted. With some delay, Tranche 1 resulted in 18 renewable energy projects being awarded by PREPA and submitted for PREB approval (the “Original PPOAs”).

The PREB approved these 18 projects on February 2, 2022, establishing that the Original PPOAs were in alignment with the approved IRP. The PREB’s approval was based on an independent evaluation of the levelized cost of energy (LCOE) and related metrics, compared to IRP benchmarks.

On March 25, 2022, the Oversight Board conditionally approved the Original PPOAs with an estimated value of \$4.6 billion. Notably, at the time of our review, LUMA Energy, LLC was conducting ongoing interconnection and system upgrade impact studies (the “System Impact Studies”), the results of which could influence the LCOE, and thereby the compliance analysis of IRP cost benchmarks. Consequently, the Oversight Board conditioned the approval of the Original PPOAs on their re-submission to the PREB for approval and subsequent re-submission to the Oversight Board, should the System Impact Studies result in a material variance in the Cost Metrics used by the PREB.

In its review, the Oversight Board determined the Original PPOAs aligned with objectives outlined in PREPA’s Certified Fiscal Plan. Moreover, it found these agreements satisfied prerequisites previously set out by the Oversight Board for non-operational PPOAs. Moreover, by approving the Original PPOAs, the Oversight Board ensured the procurement of new renewable energy sources, a vital step for fulfilling the mandate of Act 17-2019.

Moreover, the Oversight Board found that the competitive procurement process yielded more favorable terms than the Tranche 0 proposals, which were not competitively procured, reducing the possibility of arbitrary provider selection and promising significant savings.

In its approval of the Original PPOAs, the Oversight Board underlined the importance of competitive and transparent procurement processes, which in this case would result in savings for energy consumers in Puerto Rico. Specifically, the Oversight Board’s review indicated that the rates in the Original PPOAs were below those of the lowest Tranche 0 Proposals, resulting in over 40% cost savings and approximately \$387M in savings over 15 years compared to the Tranche 0 Proposals. In essence, the Oversight Board’s assessment of the Original PPOAs concluded that

³ Act 17-2019 amended the renewable energy portfolio standard established by Act 82-2010 which requires the Government to increase renewable power capacity in Puerto Rico over the course of several years. Specifically, Act 17-2019 requires the renewable portfolio to reach a minimum of twenty percent (20%) by 2022, forty percent (40%) by 2025, sixty percent (60%) by 2040 and one hundred percent (100%) by 2050.

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they were a major step towards achieving the key objectives of PREPA's Certified Fiscal Plan and Act 17-2019.

On February 2, 2022, the PREB approved 18 Original PPOAs and these were executed between June and August 2022.⁴ However, none of the Original PPOAs reached financial close. This was due in part to questions about interconnection costs and because project proponents subsequently claimed projects were no longer feasible at the originally submitted rates. To address these concerns, on April 4, 2023, PREB ordered Tranche 1 awarded project developers to submit a new best and final offer accounting for cost changes in line with **“duly demonstrated and proven issues within the LCOE parameters established by the Energy Bureau and in the public interest.”**⁵ .⁶ This resulted in the Amendments to 11 Original PPOAs, which were approved by PREB on May 25, 2023 and June 30, 2023, representing 830 MW of capacity.⁷

Previous Amendments

Each of the 11 Original PPOAs suffered several amendments, which were never submitted for the Oversight Board's review and approval. Such amendments mainly contemplate the extension of closing dates, and for certain entities, an increase in the maximum cost (the “Previous Amendments”). For Tetris Power LLC, there are three Previous Amendments; Clean Flexible LLC (Salinas PPOA), Clean Flexible LLC (Jobos PPOA), and Convergent Coamo Energy Storage 1 LLC, each have four Previous Amendments; Go Green USA America Corp and Guayama Solar Energy LLC, each have three Previous Amendments; Pattern Barceloneta Solar LLC has four amendments; CS-UR Juncos PV LLC, has two Previous Amendments. Ciro Two Salinas, LLC, YFN Yabucoa Solar LLC, and Solaner Puerto Rico One, LLC, each have two Previous Amendments solely for extending the closing date.

The Previous Amendments and the Amendments were all executed between February 24, 2023 and July 10, 2023, in violation of the Policy, which as you know, (i) requires all proposed contracts with an aggregate expected value of \$10 million or more to be submitted to the Oversight Board for its review and approval prior to execution; and (ii) “applies to any contract that is proposed to be entered into by the Commonwealth (which includes the Executive, Legislative and Judicial branches of government) or any covered instrumentality.” We strongly urge immediate corrective action to address this serious violation and to ensure that all future amendments to the PPOAs are submitted for review and approval prior to execution by the Oversight Board, as required by the Policy. Moreover, any subsequent PPOAs resulting from future tranches must be submitted to the Oversight Board for review and approval prior to execution.

⁴ <https://energia.pr.gov/wp-content/uploads/sites/7/2022/08/Motion-to-Submit-Additional-PPOAS-in-Compliance-with-July-8-Resolution-and-Order-NEPR-MI-2020-0012.pdf>

⁵ The Oversight Board expects PREB evaluated the revised offers to ensure that they: (i) adequately address evidenced concerns that led to cost changes, (ii) comply with the established LCOE parameters, and (iii) align with the public interest, meaning that the Amendments meet broader goals, such as fair pricing, environmental considerations, and energy sustainability.

⁶ [20230404-MI20200012-Resolution-and-Order-Timeline.pdf](https://energia.pr.gov/wp-content/uploads/sites/7/2023/04/20230404-MI20200012-Resolution-and-Order-Timeline.pdf) (pr.gov)

⁷ PREB approved five of the Amendments on May 25, 2023, approved six on June 30, 2023 and denied, due to excessive cost increase, another amendments to the Original PPOAs on June 30, 2023. Ultimately, PREB reviewed only 13 amendments to the 18 Original PPOAs, out of which only 11 were approved and are now the subject of this review.

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Delays in Closing

The closing of the Tranche 1 projects was confronted with significant delay, due to a myriad of complexities. Such delay was the result of a combination of regulatory changes, an unclear definition of responsibilities for the construction of interconnection facilities, discussions around the responsibility of interconnection costs between PREPA, LUMA, and the Resource Providers, as well as renegotiations with Resource Providers. These hurdles led to a severe deceleration in the overall progress of the projects, requiring a reassessment of timelines, responsibilities of the stakeholders involved, and the execution of the Amendments.

PREPA, as the entity responsible for the Tranche 1 procurement process, demonstrated a lack of proactivity in managing issues that could jeopardize project progress and generally was reactive in its handling of the procurement process.

Below is a summary of the main circumstances that lead to the delay in the Tranche 1 procurement process:

- **Communication Delays with PREB:** PREPA did not communicate issues raised by Resource Providers until PREPA's motion on March 31, 2023. Amendments to the Original PPOAs were requested for price increases, deadline extensions, and capacity increases. This represented a lack of timely disclosure, delaying resolutions and keeping stakeholders uninformed.
- **Unclear Requests and Lack of Solutions:** When PREPA approached PREB for the Amendments, its requests were unclear and lacked actionable solutions.⁸ The PREB's resolution dated April 4, 2023, indicated that proposals were not concrete petitions to amend the PPOAs based on clear and convincing solutions to the alleged issues within the established LCOE parameters, further delaying decisions.
- **PREPA's Approach to Delays:** PREPA often responded to challenges by seeking time extensions, showing reluctance to engage with complex issues and suggesting a desire to push back deadlines, without offering concrete solutions.
- **Delay in System Impact Studies:** A significant contributor to delays was the slow process of conducting System Impact Studies by LUMA.
- **Shifting Responsibilities for Interconnection Facilities:** Changes in LUMA's policies regarding the responsibility for building interconnection facilities contributed to confusion and delays.
- **Setbacks in LUMA's RFP Process:** LUMA's RFP process for work related to interconnection to the electrical grid caused delays due to setbacks in selecting contractors, which stagnated the project development process.⁹

⁸ <https://energia.pr.gov/wp-content/uploads/sites/7/2023/04/20230404-MI202-Timeline.pdf>

⁹ The timeline for the construction of the interconnection facilities and the projects runs from the closing date. As required by the PREB, no more than 24 months are allowed to construct the project and achieve commercial operation. However, the delay in the RFP process may force the modification of this timeline.

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- **Renegotiations of PPOAs:** Resource Providers requested extensions, leading PREB to order PREPA to negotiate the Amendments. These renegotiations and subsequent required approvals resulted in further delays.¹⁰

Lastly, there have been additional hold-ups related to project permitting processes at the Puerto Rico and federal government levels.

The multitude of challenges that the Tranche 1 projects faced to reach financial closing reveals a clear need for improved collaboration, transparency, and effective communication among all stakeholders, particularly between PREPA and LUMA. Given the ambitious goals for renewable energy development in Puerto Rico, we encourage PREPA, LUMA and now Genera, to work closely to proactively identify potential issues, communicate them in a timely manner, and devise actionable solutions. It is crucial that the three entities demonstrate strong leadership and take swift, decisive actions to ensure smoother execution of future Procurement Plan tranches.

Market Competition and Risks of Renegotiation

The Original PPOAs stemmed from a competitive procurement process issued by PREPA on February 22, 2021, under RFP No. 112648. PREPA received the original Tranche 1 proposals in June 2021, evaluating over 70 bids from different proponents. As confirmed by PREB, PREPA appropriately selected the Resource Providers from these proposals, in compliance with Regulation 88154.

The PREB found it justifiable to allow post-award renegotiations for the Amendments to the Original PPOAs due to several factors and ordered best and final offers by April 19, 2023.¹¹ Among the compelling reasons for this were escalating inflation costs and surging interest rates experienced in 2022.¹² These economic conditions impacted the feasibility of projects undertaken under the Original PPOAs, thereby creating a case for reconsideration of the initial terms. Although practical, allowing the renegotiation of the Original PPOAs can hamper market competition and bring about certain risks.

Renegotiating bids after they have been awarded can erode confidence in the Puerto Rico renewables market. This may deter new entrants, leading to less competition and less diverse future procurements. Such renegotiations can cause potential bidders to offer initial bids that do not reflect market conditions, thinking they can change terms later, thus affecting the quality and pricing of future projects. This practice can also distort market pricing, which could lead to inflated long-term costs and slow the adoption of renewables in Puerto Rico. Moreover, post-award renegotiations can create an uneven playing field in the procurement process, leading to perceptions of preferential treatment and resulting in litigation risks. Such legal disputes can be expensive, time-consuming, and can delay the growth of renewable energy.

¹⁰ The closing date is crucial because it commenced the 24-month countdown to the Commercial Operational Date (COD).

¹¹ <https://energia.pr.gov/wp-content/uploads/sites/7/2023/04/20230417-MI20200012-Resolution.pdf>

¹² <https://energia.pr.gov/wp-content/uploads/sites/7/2023/04/20230404-MI20200012-Resolution-and-Order-Timeline.pdf>

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Considering the foregoing, while the renegotiation of the Original PPOAs was allowed by the PREB under exceptional circumstances, it is imperative future tranches do not adopt this as standard practice. Although there may be circumstances that could justify such renegotiations, the potential risks and implications should be considered carefully. As such, the goal should be to steer clear of post-award contract renegotiations, striving to attract a wide range of participants to foster competition and to mitigate the risk of price floor formation.

LPO Financing

The Loan Programs Office (“LPO”) is a division within the U.S. Department of Energy tasked with supporting the deployment of clean energy projects. It provides debt financing through direct loans and loan guarantees to help renewables projects in need of financial backing. One of the major programs run by the LPO is the Title 17 Innovative Energy Loan Guarantee Program, which includes the Energy Infrastructure Reinvestment (EIR) project category. This program supports projects that retool, repower, repurchase, or replace energy infrastructure to avoid, reduce, utilize, or sequester air pollutants or greenhouse gas emissions.

In the context of the PREPA Procurement Plan, the LPO could play a significant role in the financing of PPOAs. The LPO recently issued a determination on July 21, 2023, establishing that renewable energy projects, such as the Procurement Plan projects, meet the key eligibility requirements for financing. As such, the Resource Providers could be eligible for federally backed loans and loan guarantees provided by the LPO. These loans contemplate low interest rates and can extend for up to 30 years, typically making the financing of these projects less expensive. This financial backing can substantially accelerate the deployment of renewable energy and storage systems, as outlined in the Procurement Plan, by overcoming financial barriers and stimulating private investment in Puerto Rico’s energy sector.

Obtaining LPO financing would significantly reduce the financing cost of the PPOAs, and, by extension, could impact Resource Providers ability to sell energy at lower rates. The cost of financing capital is a significant component of each project’s total cost. Financing cost impacts the price at which energy generated from projects is sold, as it is contemplated in each Resource Provider’s expenses. If the cost of capital is high, this will generally result in higher energy prices to cover the cost of the investment. On the other hand, if Resource Providers can secure low-cost financing from the LPO, the cost of capital decreases, which could allow for lower energy prices.

Moreover, by offering loans and loan guarantees at low interest rates and for up to 30 years, the LPO also reduces the financial risk for Resource Providers. This lower risk can then be passed on to the consumers in the form of lower energy prices. In other words, the favorable terms provided by the LPO can help Resource Providers offer more lower energy prices.

The Oversight Board underscores the value of securing financing from the LPO and the opportunities this brings with it. It is evident that such financing can meaningfully reduce the overall project costs, thereby potentially enabling the offering of more competitive energy prices.

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In light of this, the Oversight Board expects all Resource Providers in all Tranches of the Procurement Plan to pursue and secure LPO financing, when available.

Fiscal Plan Compliance

The Amendments materially impact the pricing of the Original PPOAs, as a result of the renegotiation of the original Tranche 1 bids, without altering each Original PPOAs' 25-year term. In conducting its review of the Amendments, which PREB approved on May 25, 2023 and June 30, 2023, the Oversight Board finds it important to highlight three main analyses concerning the cost of the Amendments as compared to the approved Original PPOAs and PREPA's current energy generation.

First, a comparison of LCOE between the Original PPOAs and the Amendments reflects that the Amendments have an average LCOE of ~\$133/MWh, which is higher than the previously approved ~\$99/MWh. This 34% increase aligns with utility-scale solar PV market, which has seen short-term price increases due to supply chain constraints and higher interest rates, according to PREPA, although it should be noted that the increases observed on the island are notably steeper.

The second analysis contemplates the revenue required rate comparison between the Original PPOAs and the Amendments. The Amendments shall increase the overall revenue requirement rate by an estimated **0.27 cents/kWh** in FY2027 and **0.55 cents/kWh** by 2035.

Third, the Oversight Board highlights the fact that although the overall cost increase contemplated by the Amendments may seem steep, their approval is expected to reduce the cost of generation. **The cost of generation of the Amendments is 13% less expensive per MWh than the projected FY25 average cost of generation for the system as a whole, and 53% less expensive by 2035.**¹³

Lastly, the Oversight Board encourages PREPA and the Government of Puerto Rico to consider the management of permitting processes for the proposed contracts' projects and how these processes can be conducted effectively and swiftly to avoid unnecessary delays.

PREPA has represented that the funds required for payments under the Amendments, identified as pass-through expenses, will be allocated in the corresponding accounts and contemplated in future Certified Budgets. Insofar as the Amendments will be funded with future Certified Budgets, PREPA must ensure that such budgets incorporate all costs related to the Amendments.

PREPA is expected to inform the FOMB of any budgetary differences other than those specified in Appendix A (Contract Submissions Questionnaire) or the pass-through nature of related expenses, and of any material variance to the Cost Metrics and to request a re-review of the Amendments 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

¹³ This calculation takes into consideration legacy generation assets and excludes new solar projects budgeted and distributed energy resources in the 2024 PREPA Fiscal Plan.

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Board become aware of any inaccuracies or misrepresentations – whether intentional or not – it would re-evaluate its assessment.