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THE TRANSFORMATION OF THE PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA)

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

Tuesday, July 23, 2020

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OVERSIGHT HEARING ON THE TRANSFORMATION OF THE PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA)

Tuesday, July 23, 2020

U.S. House of Representatives

Committee on Natural Resources

Washington, DC

The Committee met, pursuant to notice, at 3:36 p.m., in 1324 Longworth House Office Building, Hon. Chair Raúl M. Grijalva [Chairman of the Committee] presiding.

Present: Representatives Grijalva, Napolitano, Sablan, Lowenthal, Gallego, Cox, Haaland, Cunningham, Velázquez, DeGette, Soto, Case, Tonko, García; Gosar, Westerman, Graves, Radewagen, and González-Colón.

The CHAIRMAN. Thank you. The Committee on Natural Resources will come to order.

The Committee is meeting today to hear testimony on the transformation of the Puerto Rico Electric Power Authority, PREPA.

Under Committee Rule 4(f), any oral opening statements at the hearing are limited to the Chair and the Ranking Minority Member or designee. This will allow us to hear from the witnesses sooner and help Members keep to their schedules.

Therefore, I ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted to the Clerk by 5 p.m. today or the close of this hearing, whichever would come first.

Hearing no objection, so ordered.

Without objection, the Chair may also declare a recess subject to the call of the Chair. As described in the notice, statements, documents, or motions will be submitted to the electronic repository at HNRCDocs@mail.house.gov.

Additionally, please note that as with our solely in-person meetings, Members are responsible for their own microphones. As with our fully in-person meetings, Members can be muted by the staff only to avoid inadvertent background noise.

Anyone present in the hearing today must wear a mask covering their mouth and nose. The Speaker of the House and the Sergeant at Arms acting upon the recommendations of the Attending Physician require face coverings for all indoor gatherings over 15 minutes of length; such as, committee meetings.

Accordingly, to maintain decorum and protect the safety of Members and the staff, the Chair will not recognize any Member in this hearing to speak who is not wearing a mask.

According to House Rule 17 and Committee Rule 3(d), the Chair retains the right to a recognition of any Member who wishes to

speak or offer a motion. This right includes the responsibility to maintain decorum.

Please note that as is permitted by the Sergeant at Arms guidance, the Chair will make limited exceptions for Members briefly removing their mask to facilitate lip reading by viewers who are deaf or hard of hearing.

Finally, Members or witnesses who experience technical problems should inform the Committee staff immediately.

With that, I will now recognize myself for the opening statement.

STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

The CHAIRMAN. In May 2019, when this Committee held a hearing on the status of the rebuilding and privatization of PREPA, I stated that my primary concerns were determining the best way to guarantee that PREPA would be rebuilt so that it can withstand future extreme weather conditions; provide the residents of Puerto Rico with reliable, inexpensive, and clean power; and prevent the displacement of PREPA's workers.

Nearly 3 years after the onset of Hurricanes Irma and Maria and billions spent by FEMA and the Army Corps to turn the lights back on, Puerto Rico's electric grid, unfortunately, remains fragile and vulnerable, in part due to recent earthquakes that have further impacted PREPA's infrastructure.

We will hear today from a diverse group of witnesses who will speak to the issues currently concerning PREPA, as well as if and when PREPA will be able to deliver reliable, inexpensive, and clean power to the people of the island.

We can all agree that reform of PREPA is necessary to provide clean, low-cost electricity, but is the course that PREPA has embarked on the correct one to accomplish these goals remains a question.

Last year, the government of Puerto Rico adopted a mandate of achieving 100 percent renewable energy by 2050. Currently, less than 3 percent of Puerto Rico's energy production comes from renewables.

The fact is, however, that PREPA's current contracts with companies who are tied to the U.S. natural gas industry and designed only to retool existing infrastructure can only lead one to the conclusion that adding sufficient renewables to the grid will be difficult to achieve, to say the least.

Last, in the weeks leading up to today's hearing, headlines about PREPA, such as: "The Privatization of Puerto Rico's Power Grid, is Mired in Controversy," and "Puerto Rico's Troubled Utility is a Goldmine for U.S. Contractors," suggests much still needs to be done to accomplish the goals that were outlined.

Today's hearing will also discuss PREPA's recently announced privatization and long-term concession of its power generation and distribution assets.

Questions have been raised about the lack of transparency in finalizing the concession contract with LUMA Energy and PREPA's employee union, UTIER. UTIER recently sued the utility and the government of Puerto Rico alleging that the LUMA contract violated local laws.

In closing, let me welcome our witnesses and thank them for joining us for this important hearing. The residents of Puerto Rico deserve an electric company that is reliable and efficiently run, does not charge excessive rates, and is operated with a mind toward a future that generates electricity using clean and sustainable renewable energy.

It is our intention to do all we can to assist PREPA in achieving these goals. The efficiency, public openness, and reliability are essential to the economic recovery and growth of the island as well.

[The prepared statement of Mr. Grijalva follows:]

PREPARED STATEMENT OF THE HON. RAÚL M. GRIJALVA, CHAIR, COMMITTEE ON NATURAL RESOURCES

In May 2019, when this Committee held a hearing on "The Status of the Rebuilding and Privatization of PREPA," I stated that my primary concerns were determining the best way to guarantee that PREPA will be rebuilt so that it can withstand future extreme weather; provide the residents of Puerto Rico with reliable, inexpensive, and clean power; and prevent the displacement of PREPA's workers.

Today, nearly 3 years after the onset of hurricanes Irma and Maria, and billions spent by FEMA and the Army Corps to turn the lights back on, Puerto Rico's electric grid unfortunately remains fragile and vulnerable, in part due to recent earthquakes that have further impacted PREPA's infrastructure.

We will hear today from a diverse group of witnesses who will speak to the issues currently confronting PREPA as well as, if and when, PREPA will be able to deliver reliable, inexpensive, and clean power for the people of island.

We can all agree that reform of PREPA is necessary to provide clean low-cost electricity, but is the course that PREPA has embarked on the correct one to accomplish these goals?

Last year, the Government of Puerto adopted a mandate of achieving 100 percent renewable energy by 2050. Currently, less than 3 percent of Puerto Rico's energy production comes from renewables.

The fact is, however, that PREPA's current contracts with companies who are tied to the U.S. natural gas industry and designed only to retool existing infrastructure can only lead to the conclusion that adding sufficient renewables to the grid will be difficult to achieve.

Last, in the weeks leading up to today's hearing, headlines about PREPA, such as: "The Privatization of Puerto Rico's Power Grid is Mired in Controversy" and "Puerto Rico's Troubled Utility is a Goldmine for U.S. Contractors" suggests much still needs to be done to accomplish the goals I outlined.

Today's hearing will also discuss PREPA's recently announced privatization and long-term concession of its power generation and distribution assets.

Questions have been raised about a lack of transparency in finalizing the concession contract with LUMA energy, and PREPA's employee union, UTIER, recently sued the utility and the Government of Puerto Rico alleging that the LUMA contract violated local laws.

In closing, let me welcome our witnesses and thank them for joining us for this important hearing.

The residents of Puerto Rico deserve an electric company that is reliably and efficiently run, does not charge excessive rates, and is operated with a mind toward a future that generates electricity using clean and sustainable renewable energy. It is our intention to do all we can to assist PREPA in achieving these goals.

The CHAIRMAN. With that, I now yield to the Ranking Member designee for her opening statement, Ms. Colón.

STATEMENT OF THE HON. JENNIFFER GONZÁLEZ-COLÓN, A DELEGATE IN CONGRESS FROM THE TERRITORY OF PUERTO RICO

Miss GONZÁLEZ-COLÓN. Thank you, Mr. Chairman. In 2017, Hurricane Maria completely destroyed the power grid, and it took almost a year to restore its service to every citizen.

Earlier this year, a series of earthquakes in the southwestern region of the island severely damaged and took out the Costa Sur power plant which used to generate approximately 25 percent of the island's electricity and is still off line.

The transformation of Puerto Rico Electric Power Authority, or PREPA as we know it, is long overdue. We need a modern, resilient energy system that can recover quickly from natural disasters.

We need to pursue policies to at-risk high electricity costs that hinder economic growth including efforts to reduce our dependence on foreign oil imports and to lower environmental impact. And we need to improve management practices to increase reliability and provide better services to our customers.

I look forward to hearing from today's witnesses about the steps PREPA and the government of Puerto Rico have pursued to achieve these and other necessary changes.

I know that recently a contract was awarded to LUMA Energy to manage and operate utilities transmission and distribution systems for the next 15 years. I have long argued that private partnership investment is crucial to transform Puerto Rico's energy system if properly executed. So, I expect to hear more about this agreement and their implications.

Moreover, Federal support has and will continue to be crucial for PREPA's transformation. As Members of Congress, we must conduct oversight on how Federal funds to rebuild and modernize the island electrical system have been spent to date.

However, we must also ensure funding allocated in the aftermath of Hurricane Maria is no longer delayed by bureaucratic processes and finally reaches the island. This includes the $1.9 billion in CDBG funds provided under the bipartisan Budget Act of 2018 to improve the electrical power system that are not yet there after 2 years.

I want to hear from witnesses about the status of these and other Federal funds, including recent efforts and conversations with HUD, FEMA, the Department of Energy, and other important stakeholders. I will also ask what recommendations will the panel make as how Congress can help facilitate the modernization of Puerto Rico's energy system.

Last, I must state that we are moving in the direction of a sustainable energy—right now, we need to be able to provide reliable electricity to enable the recovery of Puerto Rico's economy, but we need to ensure reliable electricity until we get there. There is a long way to go, and we must be able to use all resources available.

According to the U.S. Energy Information Administration for Fiscal Year 2019, the sources of electricity in Puerto Rico were petroleum, 40 percent; LNG, 39 percent; coal, 18 percent; and renewables, 2.3 percent.

Industry in Puerto Rico has the potential to contribute to our national supply chain for medical products and devices. We also

need to ensure providing our people's residential needs for having a reliable system. And that requires a reliable supply. We must not deny ourselves fixed line alternatives. I look forward to testimony and questioning of witnesses.

With that, I yield back my time.

The CHAIRMAN. Thank you very much. Let me now turn to our panel and the witnesses that have come, and like I said earlier, I want to thank you very much for taking the time. It is an important subject.

Given everything else that is going on and the difficulties of being able to get together to have these kinds of oversight hearings, I appreciate your presence and the presence of all my colleagues that are joining us today.

Let me begin now with 5 minutes each for your oral presentation. Anything that was submitted as your written testimony is all made part of the record. Let me begin with Mr. José Ortiz, the Executive Director of the Puerto Rico Electric Power Authority.

Mr. Ortiz, the floor is yours.

STATEMENT OF JOSÉ ORTIZ, EXECUTIVE DIRECTOR, PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA)

Mr. ORTIZ. Thank you, Chairman Grijalva. PREPA has made a good deal of progress on several fronts despite the devastation of Hurricanes Irma and Maria, the massive damage by multiple earthquakes, and the near shutdown of the Puerto Rico economy due to COVID-19.

The utility is better positioned and in compliance with the requirements of PROMESA, as evidenced by the recent certification of PREPA's 2020 Fiscal Plan by the Financial Oversight and Management Board of Puerto Rico. Some highlights of this potential progress toward achieving the operational initiatives and projects are included in the certified fund.

And those are as follows: (1) the selection of an independent T&D operator to assume responsibility for operating, maintaining, and improving PREPA's transmission and distribution system. That operator, LUMA Energy, is a Puerto Rico company owned by two experienced utility sector companies, ATCO and Quanta Services, working with the Innovative Emergency Management for its Federal funding expertise.

Under a public-private partnership, LUMA will work to implement the energy sector transformation required by the bipartisan supported laws. LUMA also brings an experienced leadership team and a comprehensive plan for the operation, maintenance, and renewal of PREPA's modern grid system.

The completion of the work of converting the San Juan power station to a dual field capability and commissioning of the liquified natural gas handling facility allows PREPA to achieve significant reductions in greenhouse gas and particulate emissions, both providing important public health benefits.

In addition, their increased availability enhances the security and reliability of electricity supply in a metropolitan region. The conversion project should save PREPA and its customers around $280 million during the 5-year term of the contract.

Another point is the renegotiation of a power purchase and operating agreement with EcoEléctrica and of a long-term gas supply agreement with Naturgy, approved by the FOMB, the Energy Bureau, and granted by the Federal District Court presiding over PREPA's PROMESA 523 proceeding. Combined both contracts are estimated to reduce PREPA's net cost by approximately $100 million annually through September 2032.

Another point is the renegotiation of 23 purchase and operating agreements with 7 operational and 16 new renewable generating project developers, totaling 600 megawatts, achieving 30 to 40 percent lower contract pricing then under the original contract and 10 percent contract pricing discount with the operational projects as well.

Substantial progress in the repair of PREPA's Costa Sur generating facility after significant damages from January's earthquake have been achieved. The 820 megawatt generating facility unit, Unit 5, should be completed by early August 2020. The more heavily damaged Unit 6 is expected to be operational before year end.

Development and submission of a new integrated resource plan, which has undergone extensive technical, evidentiary, and community hearings, is currently before the Energy Bureau for approval. This will enable PREPA to pursue the rapid uptake of renewable and energy storage systems while preserving options that would permit it to procure natural gas-fired, generating resources as well.

Still, Federal support is needed. PREPA expects to reach an agreement with FEMA on a fixed cost estimate on all permanent repair and reconstruction work very soon.

We have already prepared a 2-year plan which starts addressing various individual projects, including distribution energy resources, microgrids, and a robust system to critical assets such as hospitals, shelters, and water services. The target is to make Federal funding available to reconstruct a more modern and resilient energy grid.

In conclusion, PREPA has made significant progress in rebuilding Puerto Rico's electric system and restructuring PREPA itself. We have undertaken these efforts with real financial constraints during the transformation of Puerto Rico's energy sector, a truly complex challenge.

The Federal Government support remains critical to our success, and we continue to look forward for ways to expediate the flow of Federal funds. Efforts to achieve the resolution of PREPA Title III restructuring under PROMESA were temporarily suspended earlier this year at FOMB's request given the uncertainties COVID-19 has created for PREPA and its customers.

Thank you for the opportunity to appear before this honorable Committee and to provide this testimony.

[The prepared statement of Mr. Ortiz follows:]

PREPARED STATEMENT OF JOSÉ F. ORTIZ VÁZQUEZ, EXECUTIVE DIRECTOR AND CHIEF EXECUTIVE OFFICER, PUERTO RICO ELECTRIC POWER AUTHORITY

Chairman Grijalva, Ranking Member Bishop, and members of the Committee, thank you for the opportunity to appear before you today to discuss the current status and ongoing transformation of the Puerto Rico Electric Power Authority ("PREPA").

As the Committee knows, following Hurricane María, Puerto Rico embarked on an historic effort to transform its energy system and to reform itself. At the same

time, PREPA tackled the enormous task of restoring a severely damaged transmission and distribution system, improving system reliability and addressing generating resource adequacy issues. That work has continued, even as Puerto Rico and PREPA have had to recover from massive damage caused by multiple earthquakes and, more recently, have had to contend with the near shutdown of Puerto Rico's economy to address the threats posed by the COVID-19 virus.

PREPA has made a good deal of progress on several fronts despite the devastation of Hurricanes Irma and María, massive damage caused by multiple earthquakes and the near shutdown of the economy due to the COVID-19 emergency. The utility is better positioned than it has been for many years to confront the many challenges it faces. And we have done this in compliance with the requirements of the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA"), as evidenced by the recent certification of PREPA's 2020 Fiscal Plan by the Financial Oversight and Management Board for Puerto Rico ("FOMB").

During FY2020, PREPA has made substantial progress toward achievement of the 12 operational initiatives and 27 projects included in PREPA's certified FY2020 Fiscal Plan. Among the major milestones PREPA has achieved over the past several months are:

- renegotiation of existing power purchase and operating agreements ("PPOAs") with the owners of the large EcoEléctrica gas-fired generating facility and with the developers of numerous operating and planned renewable generation projects, reducing the cost of energy PREPA will purchase from these suppliers;
- renegotiation of a natural gas purchase and sale agreement with Naturgy under which the EcoEléctrica facility and PREPA's Costa Sur generating plant acquire their gas supply, achieving better pricing, more quantity flexibility and the ability to accommodate renewable generation additions as they occur;
- the conversion of San Juan Power Plant Units 5 & 6 to natural gas (preserving the ability to use diesel fuel), which will yield significant emissions reductions, cost savings and grid reliability improvements;
- advancement of several customer service initiatives (including private outsourcing and increased customer access to e-billing platforms) that have achieved significant reductions in customer call wait times and improvements in PREPA's revenue collections;
- the completion and filing of a revised Integrated Resource Plan ("IRP") that establishes an Action Plan for the acquisition of new generation resources that will enable PREPA to accelerate the transformation of Puerto Rico's grid to one that is more reliable, cleaner, efficient and sustainable; and
- completion of an historic transmission and distribution ("T&D") operation and maintenance outsourcing process, with the selection of a world-class consortium to assume responsibility for operating, maintaining and renewing the PREPA grid.

With some pride, I note that PREPA achieved these and other significant milestones within the context of Puerto Rico's and PREPA's bankruptcy in 2017, ongoing economic uncertainty, very limited liquidity, a shrinking employee pool, two devastating hurricanes in 2017, earthquakes in 2019–2020, continued uncertainty regarding the availability and timing of Federal funding commitments for grid reconstruction and, most recently, a worldwide pandemic that has severely affected our island's economy.

Recent PREPA Accomplishments

PREPA has achieved a great deal over the past year and even in the past few months. I want to emphasize that much of what PREPA has done has been intended to improve customer service, reduce costs, improve efficiency, enhance reliability, support the legally mandated move toward renewables, and reduce generating facility air emissions. At the same time, PREPA has had to respond to the unexpected, including substantial earthquake-induced damage to its largest generating facility early this year and a major decline in demand following the shutdown of economic activity to address the COVID-19 pandemic. It has worked in all of this to satisfy the requirements of PROMESA Section 201(b) relating to the identification of operational improvements, and to implement guidance provided by the FOMB as ultimately reflected in PREPA's certified Fiscal Plan.

Among PREPA's key accomplishments for FY2020 have been:

- *The selection of an independent T&D operator to assume responsibility for operating, maintaining and improving PREPA's transmission and distribution system.* That operator, LUMA Energy LLC ("LUMA"), is a Puerto Rico company owned by to experienced utility sector companies, ATCO Ltd. and Quanta Services, Inc., working with Innovative Emergency Management, Inc. for its Federal funding expertise. LUMA has entered into a public-private partnership with PREPA and Puerto Rico's Public Private Partnership Authority (the "P3 Authority") under which it will work to implement the energy sector transformation required by Act 120–2018 and Act 17–2019. LUMA brings to the task of operating, maintaining and improving the T&D system an experienced leadership team and a comprehensive plan for the operation and renewal of PREPA's grid system going forward. I will defer for additional details on this historic transaction to my fellow witness, Fermín Fontanés, the Executive Director of the P3 Authority, who was deeply involved in the LUMA negotiations.
- *The completion of the work of converting PREPA's San Juan Power Station Units 5 and 6 to dual fuel capability and the commissioning of the NFEnergía LLC ("NFE") liquified natural gas ("LNG") handling facility.* PREPA's agreement with NFE required NFE to convert the Unit 5 and 6 combustion turbines to run on natural gas as well as diesel and to supply natural gas through a new LNG receiving and regasification facility adjacent to the San Juan Power Plant in San Juan Harbor. NFE is now supplying natural gas to Units 5 and 6, PREPA's most efficient generating facilities. NFE can also transfer LNG through the facility to trucks that can deliver LNG to other energy users throughout Puerto Rico. NFE obtained all local and Federal environmental and U.S. Coast Guard approvals required for the construction and operation of its LNG handling facility and the transit of LNG carriers through San Juan Harbor. PREPA secured a modification to its air emissions permit for San Juan Units 5 and 6 that reflects their capability to consume natural gas.

  Now that it is consuming natural gas in San Juan Units 5 and 6, PREPA is achieving significant reductions in greenhouse gas and particulate emissions. PREPA's ability to run these units more economically and more of the time while reducing air emissions offers important public health benefits. The increased availability of the Units will enhance the security and reliability of electricity supply in the San Juan metropolitan region. As of the time the FOMB and the Puerto Rico Energy Bureau approved the NFE-PREPA Fuel Sale and Purchase Agreement, FOMB projected on the basis of then-current market prices for natural gas and diesel that the conversion project could save PREPA and its customers between $180 and $280 million during the 5-year term of the contract.

  A question has arisen as to whether NFE was required to obtain Federal Energy Regulatory Commission ("FERC") authorization to site, construct and operate its LNG handling facility; that question is currently before the FERC for resolution in response to an Order to Show Cause FERC issued in June 2020. NFE concluded on the basis of its analysis of prior FERC decisions and informal discussions it held in 2017 and 2018 with FERC Staff representatives that FERC authorization would not be required. PREPA's independent discussions with FERC Staff on this subject in 2018 led PREPA to conclude that NFE's position was correct. I have summarized the controversy and PREPA's position concerning it in a letter PREPA filed with FERC on July 17, 2020, which I attach to this testimony for the Committee's information.
- *Renegotiation of a Power Purchase and Operating Agreement with EcoEléctrica and of a long-term gas supply agreement with Naturgy.* Earlier this year, PREPA completed the renegotiation of the EcoEléctrica PPOA and a long-term natural gas supply agreement with Naturgy for the supply of natural gas both to EcoEléctrica and PREPA's adjacent Costa Sur generating facility. This was the culmination of extensive discussions with the counterparties that started in 2018. The FOMB and the Energy Bureau both approved PREPA's execution of these agreements, and in June of this year the Federal District Court presiding over PREPA's PROMESA Title III proceeding granted PREPA's motion to assume them. The renegotiation of the EcoEléctrica PPOA and Naturgy gas supply agreement is critical in providing a reliable platform for efficient and more economic electricity in Puerto Rico for the next 12 years as PREPA launches its mandated transformation plans.

PREPA estimates that the revised EcoEléctrica PPOA will generate average customer savings of $71 million annually. PREPA estimates that changes in the Naturgy agreement will result in average savings in the cost of gas consumed in the Costa Sur Facility of approximately $29 million. Combined, the renegotiated EcoEléctrica and Naturgy contracts are expected to reduce PREPA's net costs of power and fuel by approximately $100 million annually through September 2032.

- *Renegotiation of PPOAs with operational and non-operational renewable generating project developers.* Beginning in 2010, in order to comply with Puerto Rico Act 82–2010, PREPA undertook a large-scale renewable procurement process to increase renewable power capacity in Puerto Rico. Over the course of several years, PREPA entered into 64 PPOAs for over 1,000 MW of renewable generation with average year-1 contract prices of 15–16 cents per kWh and 1–2 percent annual price escalation. As of the beginning of FY2020, 11 of these projects were operational and currently provide energy at an average cost of 18 cents per kWh, after factoring in several years of price escalation. Against the backdrop of the ongoing bankruptcy proceedings under PROMESA, PREPA has been working to renegotiate or cancel agreements with the remaining non-operational renewable contract holders. Following concerted efforts and negotiations on financial and technical engineering matters, PREPA was able to revise these PPOAs for the benefit of its customers.

  To date, PREPA has advanced discussions and commercially agreed to terms with developers of 16 projects, totaling approximately 500 MW, achieving 30–40 percent lower contract pricing than was provided under the original contract. PREPA has also renegotiated PPOAs with most of the operational projects to achieve a 10 percent contract pricing discount. It has recently initiated proceedings before the Energy Bureau for approval of the renegotiated PPOAs and will seek Title III Court approval to reject PPOAs covering projects that are not operational and as to which contract renegotiation has not been successful. The process of obtaining new and amended renewable PPOAs will continue into FY2021.

- *Substantial progress in the repair of PREPA's Costa Sur generating facility.* Seismic activity that occurred between December 28, 2019 and January 15, 2020 inflicted significant damage on the Costa Sur power plant, an 820 MW generating facility that has been converted to consume natural gas. Repairs of Costa Sur Unit 5 are ongoing and expected to be completed by early August 2020, at an estimated cost of $25.2 million. The more heavily damaged Costa Sur Unit 6 is in the early stages of being repaired, and the current expectation is that these repairs could be completed before year end 2020.

- *Development and submission for Puerto Rico Energy Bureau review and approval of a new Integrated Resource Plan.* Under the PREPA enabling act, Act 57–2014 and Act 17–2019, PREPA is required to adopt an IRP for a 20-year planning period. The IRP is to be revised every 3 years. The proposed IRP which PREPA submitted to the Energy Bureau on June 7, 2019 has undergone extensive technical, evidentiary and community hearings and is currently before the Energy Bureau for approval.

  The Proposed IRP offers a comprehensive and robust analysis of the challenges and opportunities PREPA faces in planning and executing on a fundamental transformation of Puerto Rico's electric power system. The preferred resource plan that emerged from this analysis—the Action Plan—will guide Puerto Rico as it moves toward a future of increased reliance on renewable sources of energy and improved energy efficiency. The Action Plan also provides leeway to manage variable future costs of generation and storage resources. If approved and implemented, the Action Plan will enable PREPA to pursue the rapid uptake of renewable and energy storage systems while preserving options that will permit it to procure natural gas-fired generating resources as necessary given the pace of other resource development efforts. The result of the implementation of the Action Plan will be an energy system that will be able to meet electrical demand at all times in an efficient, environmentally responsible way.

The Proposed IRP recommends the adoption of three fundamental changes to the Puerto Rico electric system:

—*Increasing the share of renewable generation*, including the additions of new solar PV generation, energy storage, natural-gas-fueled generation and supply infrastructure, and retiring or converting all existing coal-fired and heavy fuel oil-fired generation;

—*Enhancing grid resilience*, including capital investment in the transmission and distribution system to support establishment of minigrids and microgrids that can be separated and independently restored and operated following grid disturbances; and

—*Enabling customer choice*, including changes to the system that will support the incorporation of rooftop solar photovoltaic installations and new energy efficiency and demand response programs, allowing the customer to play a meaningful role in Puerto Rico's electricity grid.

Critical Initiatives PREPA Is Currently Pursuing

I would also like to highlight several actions PREPA is taking to build on its recent successes and to advance the goal of rebuilding Puerto Rico's electric grid and achieving a sustainable energy future. These include:

- *The impending launch, in conjunction with the P3 Authority, of a solicitation for proposals for needed new generation resources*, much of which we anticipate will be renewable in compliance with Puerto Rico energy policy and law.
- *Commencement of multiple grid reconstruction projects.* This year PREPA has completed a "T&D roadmap" that defines transmission and distribution system reconstruction projects that are necessary to improve the grid's reliability and resiliency following catastrophic events. The T&D roadmap will enable PREPA to optimize and streamline the process for designing, developing, and constructing T&D projects. It is intended to ensure that the most important projects are constructed in the most efficient way possible so that PREPA can make optimal use of scarce resources, including anticipated FEMA funds, and ensure accountability for the use of public funds.

  In addition to its pursuit of Federal funding, PREPA is currently engaged with its insurers to adjust its Hurricane Maria claim and a claim arising out of the 2020 earthquake. To date, PREPA has received $100 million in advance funding, not including the $25 million deductible with respect to the Hurricane Maria claim, and has requested $25 million in advances related to the earthquake claim.
- *Continued efforts to achieve enhanced operational efficiencies, through procurement of new generation capacity, implementation of generating resource economic dispatch, enhanced vegetation management programs and T&D infrastructure improvements.* Success in these efforts will enable PREPA to realize overall generation cost reductions. While we are making progress on a number of these fronts, that progress has been slowed by the need to respond to the recent earthquakes and measures required to respond to the COVID-19 pandemic.
- *A renewed effort to achieve resolution of PREPA's Title III restructuring under PROMESA.* PREPA, the FOMB, a group of PREPA creditors and the Puerto Rico government reached agreement last year on elements of a consensual debt restructuring agreement and early this year developed proposed legislation that would implement this agreement. Efforts to obtain passage for this legislation and to complete the process of Title III restructuring were suspended earlier this year at the FOMB's request given the uncertainties which the COVID-19 pandemic and response measures have created for PREPA and its customers. PREPA is hopeful that a renewed effort to achieve a resolution of the Title III proceeding can be mounted early in 2021.

Federal Support Is Still Needed

As a result of the 2017 hurricanes, PREPA qualified for Federal funding support. PREPA, the Federal Emergency Management Agency ("FEMA") and the Central Office of Recovery, Reconstruction, and Resiliency ("COR3") have been working to define the universe of necessary T&D reconstruction projects, estimate costs, and determine the path toward making Federal funding available to reconstruct the energy grid.

PREPA's main sources of Federal funding are: (1) FEMA's Public Assistance Program; and (2) the Federal Department of Housing and Urban Development's ("HUD") Community Development Block Grant-Disaster Recovery ("CDBG-DR") Program. Funds may also be available through HUD's Community Development Block Grant Mitigation ("CBDG-MIT") program.

PREPA remains eligible for FEMA disaster relief funding and for funding of permanent works. To date, a total of $20.2 billion in CDBG-DR and CDBG-MIT funding has been apportioned for Puerto Rico, including approximately $1.9 billion specifically designated for energy-related projects. PREPA is required to meet a 10 percent cost share requirement for its FEMA-funded permanent work projects, to which it plans to apply CDBG-DR and CDBG-MIT program funds, as they become available. Access to CDBG funds, however, is subject to various HUD actions. The current Fiscal Plan assumes CDBG funds will cover the cost share required for Federal funding. If these funds are not available, PREPA will need to find savings elsewhere or will have to seek to adjust rates to cover the cost share obligation.

Through April 2020, PREPA had received $1.42 billion in FEMA public assistance funds. Additionally, PREPA expects to receive a portion of the $20.2 billion in post-hurricane assistance appropriated to Puerto Rico through HUD-approved CDBG-DR and CDBG-MIT grants to be used for matching or cost share purposes.

PREPA has been actively working with FEMA on a cost estimate since 2018 in a collaborative effort to reach estimates for each asset classification. PREPA expects to reach an agreement with FEMA on a fixed cost estimate for all permanent repair and reconstruction work very soon. A FEMA team has worked directly with PREPA's Disaster Funding Management Office ("DFMO") project formulation team to finalize all cost estimates. At FEMA's request, PREPA's DFMO prepared a 2-year plan which presents an initial estimate addressing various individual projects, rolled up by asset classification, that may be prioritized by PREPA. The 2-year cumulative cost included in the estimate totals $1.4 billion across five asset categories (T&D, distribution, Distributed Energy Resources and microgrids, technology, and other).

The successful transformation of Puerto Rico's energy system will require significant capital investment over the next 10 years. Federal funding will play a critical role in mitigating the burden of the cost of these investments on ratepayers. With adequate Federal funding, the overall impact on energy rates would be minimal. If adequate Federal funds were not to be made available, Puerto Rico would have to choose between increasing energy rates to meet unfunded capital investment needs, or forgoing the implementation of the grid repairs and system modernization called for in the IRP, PREPA's T&D roadmap, and PREPA and Commonwealth Fiscal Plans. Moreover, a lack of Federal funding would have serious consequences for the reliability and resiliency of Puerto Rico's electric system and would impede the achievement of PREPA's long-term energy vision. Federal funding support is also critical for delivering on system improvements necessary for resiliency and environmental compliance, including deployment of microgrids, distributed generation, and renewable resources.

Conclusion

PREPA has made significant progress in rebuilding Puerto Rico's electric system and restructuring PREPA itself, with the support and cooperation of AAFAF, the P3 Authority, COR3, the FOMB and the Energy Bureau. PREPA has undertaken these efforts within real financial constraints during the transformation of Puerto Rico's energy sector—a truly complex challenge. The Federal Government's support remains critical to our success, and we continue to look for ways to expedite the flow of Federal funds.

Thank you for the opportunity to appear before this Honorable Committee and to provide this testimony.

SUMMARY STATEMENT OF JOSÉ F. ORTIZ VÁZQUEZ

Chairman Grijalva, Ranking Member Bishop, and members of the Committee, thank you for the opportunity to appear before you today to discuss the current status and ongoing transformation of the Puerto Rico Electric Power Authority ("PREPA").

PREPA has made a good deal of progress on several fronts despite the devastation of Hurricanes Irma and María, massive damage by multiple earthquakes and the near shutdown of the Puerto Rico economy due to the COVID-19 pandemic. The utility is better positioned than it has been for many years to confront the many

challenges it faces. And we have done this in compliance with the requirements of the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA"), as evidenced by the recent certification of PREPA's 2020 Fiscal Plan by the Financial Oversight and Management Board for Puerto Rico ("FOMB").

RECENT PREPA ACCOMPLISHMENTS

During FY2020, PREPA has made substantial progress toward achievement of the 12 operational initiatives and 27 projects included in the certified FY2020 PREPA Fiscal Plan. Among PREPA's key accomplishments are:

- *The selection of an independent T&D operator to assume responsibility for operating, maintaining and improving PREPA's transmission and distribution system*. That operator, LUMA Energy LLC ("LUMA"), is a Puerto Rico company owned by two experienced utility sector companies, ATCO Ltd. and Quanta Services, Inc., working with Innovative Emergency Management, Inc. for its Federal funding expertise. LUMA has entered into a public-private partnership with PREPA and Puerto Rico's Public Private Partnership Authority (the "P3 Authority") under which it will work to implement the energy sector transformation required by Act 120–2018 and Act 17–2019. LUMA brings an experienced leadership team and a comprehensive plan for the operation, maintenance and renewal of PREPA's grid system. I expect that you will hear more on this from my fellow witness, Fermín Fontanés, the Executive Director of the P3 Authority, who was deeply involved in the LUMA negotiations.
- *The completion of the work of converting PREPA's San Juan Power Station Units 5 and 6 to dual fuel capability and the commissioning of the NFEnergía LLC ("NFE") liquified natural gas ("LNG") handling facility*. PREPA's agreement with NFE required NFE to convert the Unit 5 and 6 combustion turbines to run on natural gas as well as diesel and supply natural gas through a new LNG receiving and regasification facility adjacent to the San Juan Power Plant in San Juan Harbor. NFE is now supplying natural gas to Units 5 and 6, PREPA's most efficient generating facilities. NFE can also transfer LNG through its facility to trucks that can deliver LNG to other energy users throughout Puerto Rico.

  Now that it is consuming natural gas in San Juan Units 5 and 6, PREPA is achieving significant reductions in greenhouse gas and particulate emissions. The ability to run these units more economically and more of the time while reducing air emissions provides important public health benefits. In addition, their increased availability enhances the security and reliability of electricity supply in the San Juan metropolitan region. The conversion project should save PREPA and its customers between $180 and $280 million during the 5-year term of the contract.
- *Renegotiation of a power purchase and operating agreement with EcoEléctrica and of a long-term gas supply agreement with Naturgy*. Earlier this year, PREPA completed the renegotiation of its power purchase agreement with EcoEléctrica. At the same time it renegotiated a long-term agreement with Naturgy for the supply of natural gas both to EcoEléctrica and PREPA's adjacent Costa Sur generating facility. The FOMB and the Energy Bureau both approved PREPA's execution of these agreements, and last month the Federal District Court presiding over PREPA's PROMESA Title III proceeding granted PREPA's motion to assume them. PREPA estimates that the revised EcoEléctrica agreement will generate average customer savings of $71 million annually. PREPA expects that savings in the cost of gas consumed in the Costa Sur Facility will amount to approximately $29 million per year. Combined, the renegotiated EcoEléctrica and Naturgy contracts are estimated to reduce PREPA's net costs of power and fuel by approximately $100 million annually through September 2032.
- *Renegotiation of 23 power purchase and operating agreements with operational and non-operational renewable generating project developers*. To date, PREPA has advanced discussions and commercially agreed to terms with developers of 16 renewable generation projects, totaling approximately 600 MW, achieving 30–40 percent lower contract pricing than was provided under the original contract. PREPA has also renegotiated power purchase agreements with most of the operational renewable projects to achieve a 10 percent contract pricing discount. PREPA has recently initiated proceedings before the Energy Bureau for approval of the renegotiated agreements.

- *Substantial progress in the repair of PREPA's Costa Sur generating facility*. Seismic activity between December 28, 2019 and January 15, 2020 inflicted significant damage on the Costa Sur power plant, an 820 MW generating facility that has been converted to consume natural gas. Repairs of Costa Sur Unit 5 are ongoing and should be completed by early August 2020, at an estimated cost of $25.2 million. The more heavily damaged Costa Sur Unit 6 is in the early stages of being repaired, and the current expectation is that these repairs could be completed before year end 2020.
- *Development and submission of a new Integrated Resource Plan ("IRP")*. PREPA is required by law to adopt an IRP for a 20-year planning period. PREPA's proposed IRP, which it submitted on June 7, 2019, has undergone extensive technical, evidentiary and community hearings and is currently before the Energy Bureau for approval. If approved and implemented, the IRP Action Plan will enable PREPA to pursue the rapid uptake of renewable and energy storage systems while preserving options that will permit it to procure natural gas-fired generating resources as necessary given the pace of other resource development efforts. The result will be an energy system that will be able to meet electrical demand in an efficient, environmentally responsible way.

CRITICAL INITIATIVES PREPA IS PURSUING

PREPA is taking several steps now to build on its recent successes. These include:

- *The impending launch of a solicitation for proposals for new generation resources*, which PREPA and the P3 Authority will handle jointly. We expect that this solicitation will yield proposals for the addition of substantial amounts of renewable generation in compliance with Puerto Rico energy policy.
- *Commencement of multiple grid reconstruction projects*. This year PREPA has completed a "T&D roadmap" that defines transmission and distribution system reconstruction projects that are necessary to improve the grid's reliability and resiliency following catastrophic events. PREPA is currently engaged with its insurers to adjust its Hurricane María claim and a claim arising out of the 2020 earthquakes. To date, PREPA has received $100 million in advance funding for system reconstruction.
- *Continued efforts to achieve enhanced operational efficiencies*. These efforts include procurement of new generation capacity, implementation of generating resource economic dispatch, enhanced vegetation management programs and T&D infrastructure improvements.
- *A renewed effort to achieve resolution of PREPA's Title III restructuring under PROMESA*. Efforts to obtain passage of legislation and to complete the process of Title III restructuring were suspended earlier this year at the FOMB's request given the uncertainties COVID-19 has created for PREPA and its customers. PREPA is hopeful that a renewed effort to achieve resolution of the Title III proceeding can be mounted early in 2021.

FEDERAL SUPPORT IS STILL NEEDED

As a result of the 2017 hurricanes, PREPA qualified for Federal funding support. PREPA, the Federal Emergency Management Agency ("FEMA") and the Central Office of Recovery, Reconstruction, and Resiliency ("COR3") have been working to define the universe of necessary T&D reconstruction projects, estimate costs, and determine the path toward making Federal funding available to reconstruct the energy grid.

PREPA expects to reach an agreement with FEMA on a fixed cost estimate for all permanent repair and reconstruction work very soon. PREPA has been actively working with FEMA on a cost estimate since 2018. A FEMA team has recently been working directly with PREPA's Disaster Funding Management Office project formulation team to finalize all cost estimates. At FEMA's request, this Office prepared a 2-year plan which presents an initial estimate addressing various individual projects, rolled up by asset classification, that may be prioritized by PREPA. The estimated 2-year cumulative cost totals $1.4 billion across five asset categories (T&D, distribution, Distributed Energy Resources and microgrids, technology, and other.) Federal funding support is also critical for delivering on system improvements necessary for resiliency and environmental compliance.

CONCLUSION

PREPA has made significant progress in rebuilding Puerto Rico's electric system and restructuring PREPA itself, with the support and cooperation of AAFAF, the P3 Authority, COR3, the FOMB and the Energy Bureau. PREPA has undertaken these efforts within real financial constraints during the transformation of Puerto Rico's energy sector—a truly complex challenge. The Federal Government's support remains critical to our success, and we continue to look for ways to expedite the flow of Federal funds.

Thank you for the opportunity to appear before this Honorable Committee and to provide this testimony.

QUESTIONS SUBMITTED FOR THE RECORD TO MR. JOSÉ ORTIZ

GOVERNMENT OF PUERTO RICO
PUERTO RICO ELECTRIC POWER AUTHORITY

September 1, 2020

Hon. RAÚL GRIJALVA, *Chairman*,
House Committee on Natural Resources,
1324 Longworth House Office Building,
Washington, DC 20515.

Re: Committee on Natural Resources Hearing on The Transformation of the Puerto Rico Electric Power Authority held July 23, 2020—PREPA's Responses to Committee Member Questions

Dear Chairman Grijalva:

On behalf of the Puerto Rico Electric Power Authority ("PREPA"), I write in my capacity as Interim Executive Director to respond to questions directed to my predecessor, José Ortiz, following up on his testimony before the House Committee on Natural Resources on The Transformation of the Puerto Rico Electric Power Authority on July 23, 2020. Those questions included several asked of Mr. Ortiz during the hearing as well as questions which you and members of the Committee included in your letter to Mr. Ortiz of August 6, 2020.

In the following pages I summarize or reproduce each of the questions directed to Mr. Ortiz. I then offer PREPA's response. Please note that several of the questions directed to Mr. Ortiz inquire about matters that are principally the responsibility of the Puerto Rico Public-Private Partnerships Authority (the "P3 Authority"); as to these questions I defer to Fermín Fontanés Gómez, the P3 Authority's Executive Director, whose separate responses are provided as an Addendum to this letter.

Questions Asked to Mr. Ortiz During the July 23, 2020 Hearing

Question 1. ***Resident Commissioner González*** *asked PREPA to submit a list detailing all Federal funds appropriated and utilized by PREPA to date and a list of future or pending Federal funds still to be utilized/implemented and those funds' uses. She asked for similar information concerning the $1.9 billion in CDBG-DR funds.*

Answer. We provide below the requested list and follow it with additional explanation.

Federal Funding Source	Appropriated/Obligated	Funded	Expenses Incurred
FEMA Public Assistance ('PA') Emergency Work	$2,078.6M	$1,422.8M	$2,372.0M
FEMA Public Assistance ('PA') 428 Permanent Work	$0	$0	$0
CDBG-DR	$1.9M	$0	$0
404 HMGP	$0	$0	$0

Federal Emergency Management Agency ("FEMA") Public Assistance ('PA') Emergency Work—To date, FEMA has obligated $2,078.6M in Federal funding, of which PREPA has received $1,422.8M. There are various administrative adjustments FEMA has proposed to certain emergency Project Worksheets ("PWs"). Once the adjustments are processed, PREPA will be able to request the additional funding.

FEMA Public Assistance ('PA') 428 Permanent Work—PREPA and FEMA have tentatively agreed to a fixed cost estimate for permanent work repairs which is continuing to move through the FEMA required approval processes. PREPA is working to identify projects to commence in the first 2 years, scheduling collaboration meetings with FEMA, the Central Recovery and Reconstruction Office of Puerto Rico ("COR3") and LUMA Energy, LLC ("LUMA") to initiate design work required to develop Requests for Proposals ("RFPs") and to draw down Federal funding.

CDBG-DR—As of the date of this communication the Puerto Rico Housing Department is still waiting for the U.S. Department of Housing and Urban Development to publish the program guidance and thus determine PREPA's project eligibility. PREPA expects to use Community Development Block Grant Disaster Recovery ("CDBG-DR") funds, as and to the extent they become available, to satisfy its obligation to fund 10% of the cost of permanent work projects funded by FEMA. PREPA's current Fiscal Plan assumes that CBDG-DR funds will cover all of this cost share requirement. PREPA does not anticipate redirecting CBDG-DR funds from grid reconstruction support to the financing of individual consumer-owned rooftop solar installations, which would not qualify as grid reconstruction activities for which FEMA or HUD CDBG-DR funds could be committed consistent with applicable law and regulations.

404 HMGP—PREPA is actively working with COR3 on the project formulation for various hazard mitigation projects. FEMA Hazard Mitigation Grant Program ("HMGP") projects totaling $1.5 billion in the aggregate have been submitted and are currently awaiting FEMA's final determination. A summary of these projects submitted appears below.

El Yunque Line Undergrounding	$35,000,000
Early Warning System	100,000,000
Palo Seco Generation Plant	571,432,000
Gas Turbines	280,822,500
Patillas Dam	558,530,000
Total	**$1,545,784,500**

Question 2. ***Rep. Cox*** *asked PREPA to submit a worksheet outlining all PREPA contractors that have not been paid to date and a schedule of when they can expect their payments.*

Answer. The Excel files accompanying this letter provide the requested information first at a summary level and then at a detailed level.

Question 3. ***Rep. Velázquez*** *questioned Mr. Ortiz over the contract PREPA awarded to New Fortress Energy to build a natural gas project in San Juan. She criticized PREPA for failing to identify potential conflicts of interest held by specific consultants to the PREPA board who, she stated, are also consultants to the SoftBank Group, which acquired ownership of New Fortress Energy affiliate company, Fortress Investment Group, in 2017. Rep. Velázquez asked Mr. Ortiz if the relationship among New Fortress, McKinsey, and SoftBank is appropriate, and then submitted documents said to describe the alleged conflicts of interest for the record. She requested that Mr. Ortiz be provided the documents and be directed to respond to the Committee in writing, which the presiding Chairman, Rep. Tonka, ordered.*

Answer. PREPA recently obtained from this Committee's Staff the documents which Rep. Velázquez introduced into the record, and which she apparently had in mind when questioning Mr. Ortiz during the July 23, 2020 hearing on The Transformation of the Puerto Rico Electric Power Authority. These documents include:

- a pleading entitled "Sixth Interim Fee Application of McKinsey & Company, Inc. Washington D.C. as Consulting Services Provider to the Financial Oversight and Management Board for Puerto Rico, as Representative of

Debtor, Puerto Rico Electric Power Authority ('PREPA') for the Period from February 1, 2019 through May 31, 2019," filed on July 15, 2019 in the United States District Court for the District of Puerto Rico in the PROMESA Title III proceeding styled *In re: The Financial Oversight and Management Board for Puerto Rico, as Representative of Puerto Rico Electric Power Authority ("PREPA"), Debtor*, Case No. 17–04780 (LTS), including a Summary Sheet and supporting documentation (the "McKinsey Fee Application");

- a pleading entitled "Declaration of Dmitry Krivin in Support of WLB Debtors' Application for Entry of an Order (I) Authorizing the Retention and Employment of McKinsey Recovery & Transformation Services U.S., LLC and Certain of its Affiliates as Performance Improvement Advisors for the WLB Debtors Effective Nunc pro Tunc to the Petition Date and (II) Granting Related Relief," filed on July 3, 2019 in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, in the matter styled *In re: Westmoreland Coal Company, et al., Reorganized Debtors*, Case No. 18–35672 (DRJ), including Exhibits and Schedules;
- a pleading entitled "Declaration of Dmitry Krivin in Support of the Debtors' Application Pursuant to 11 U.S.C. §§ 363(b) and 105(a) for Authority to Enter Into, Perform Under and Make Payments Under Certain Consulting Contracts with McKinsey & Company Inc. United States," filed on February 26, 2020 in the United States Bankruptcy Court for the Northern District of California, San Francisco Division, in the matter styled *In re: PG&E Corporation and Pacific Gas and Electric Company, Debtors*, Bankruptcy Case No. 19–30088 (DM), including disclosure schedule;
- a link to a Fortress Investment Group LLC Web page which presents a description of New Fortress Energy; and
- a link to a Fortress Investment Group LLC Web page which contains a press release entitled "SoftBank Group Completes Acquisition of Fortress Investment Group" dated December 27, 2017.

The McKinsey Fee Application sought an order of the PROMESA Title III Court allowing for payment for professional services performed by McKinsey & Company, Inc. Washington D.C. ("McKinsey"), as consulting services provider to the Financial Oversight and Management Board for Puerto Rico ("FOMB"), for the period from February 1, 2019 through May 31, 2019. Those services were provided to the FOMB pursuant to the "Title III Support for PREPA" Scope of Work set forth in the July 2017 Consulting Agreement between McKinsey Washington and the FOMB, as amended. During the February–May 2019 period, according to the McKinsey Fee Application, McKinsey's work included development of PREPA's Fiscal Plan for eventual FOMB approval, development of submissions related to the Title III proceedings for FOMB approval, oversight of the implementation of measures for PREPA's transformation and analysis on behalf of the FOMB of financial and operational reports. McKinsey Fee Application at pp. 8–9. It also included, in February 2019, an analysis on behalf of the FOMB of New Fortress Energy's contract with PREPA to supply natural gas to San Juan Units 5 & 6 and to convert the facility to dual fuel capability, for the purpose of "ensuring that this contract was aligned with the Fiscal Plan and did not pose a material risk in achieving its goals." *Id.* at p. 9.

The two other pleadings include disclosure schedules showing that various affiliates of the SoftBank Group have been clients of various McKinsey & Company entities. The two links to Fortress Investment Group Web pages show that New Fortress Energy is owned in part by Fortress Investment Group and that in December 2017 SoftBank Group Corp. completed the previously announced acquisition of Fortress Investment Group LLC.

During the July 23 hearing, Rep. Velázquez criticized PREPA for failing to identify what she characterized as potential conflicts of interest involving entities she described as consultants to PREPA which, she asserted, are also consultants to the SoftBank Group, owner of New Fortress Energy affiliate company, Fortress Investment Group. I respectfully submit that this criticism of PREPA is unfounded, for the following reasons:

First, McKinsey's professional services relationship is not with PREPA, but rather with the FOMB. The FOMB engaged McKinsey in July 2017 to advise it on various Title III matters involving PREPA. PREPA had no participation in and was not consulted in the process through which McKinsey was selected as advisor to FOMB, PREPA did not engage McKinsey, and PREPA therefore had no role to play in identifying and evaluating any conflicts of interest McKinsey may have had. The Consulting Agreement between McKinsey and the FOMB (attached to the McKinsey

Fee Application) identifies the FOMB as the "Client;" the Second Amended Scope of Work for Commonwealth Title III Support states that McKinsey's role would be to "advise the FOMB," "work alongside the FOMB," "coordinat[e] with other FOMB advisors," "[p]erform scenario analyses as requested by FOMB" and "support FOMB counsel." McKinsey Fee Application, Exhibit B, Consulting Agreement Second Amended, Attachment 1. McKinsey may provide advice and analysis relating to matters involving PREPA, but its client is the FOMB, and it is therefore the FOMB, not PREPA, that bears responsibility for identifying and evaluating conflicts of interest involving McKinsey.

Second, McKinsey personnel were not involved in the processes by which PREPA solicited the proposals that resulted in its selection of New Fortress' proposal to supply natural gas to San Juan Units 5 & 6, nor were any McKinsey personnel involved in the negotiations between PREPA and New Fortress representatives that resulted in the Fuel Sale and Purchase Agreement which was ultimately executed. As indicated above, McKinsey personnel analyzed the completed PREPA-New Fortress agreement on behalf of the FOMB when PREPA sought the FOMB's approval, but that analysis and the eventual recommendation that the FOMB approve the agreement did not lead to any changes to any of the agreement's terms. That is, McKinsey's involvement as an advisor to the FOMB did not influence either PREPA's selection of New Fortress Energy or the commercial terms to which PREPA and New Fortress Energy agreed. Therefore, any relationships McKinsey may have had or may today have with entities affiliated indirectly with New Fortress Energy had no bearing on the PREPA-New Fortress Energy agreement.

Finally, I want to state for the record that neither PREPA's selection of New Fortress Energy for the role of natural gas supplier to San Juan Units 5 & 6 nor PREPA's negotiation of the terms of the New Fortress Energy Fuel Sale and Purchase Agreement were improperly influenced. PREPA followed a transparent process in selecting New Fortress Energy, as was confirmed on administrative review of that process and its results. The New Fortress Energy agreement was approved as being consistent with the Fiscal Plan by the FOMB and as being in the public interest by the Puerto Rico Energy Bureau. No conflicts of interest affected the process or its outcome. PREPA maintains its position that the New Fortress Energy agreement, the conversion of San Juan Units 5 & 6 to dual fuel capability and the ability to run San Juan Units 5 & 6 on natural gas will bring substantial benefits to the PREPA system and Puerto Rico electric consumers.

Questions Submitted to Mr. Ortiz after the Hearing

Questions Submitted by Chair Grijalva

Question 1. The U.S. Energy Information Administration estimates that—as of November 2019—renewables supplied only 2.3% of Puerto Rico's energy.

1a. Why does the number continue to be so low?

Answer. PREPA has sought for many years to increase the amount of renewable generating capacity available to serve Puerto Rico's electricity requirements. From 2009 to 2012, PREPA made significant efforts to support renewable energy project development, primarily through solicitations for third party development of renewable resources. These efforts achieved modest success, in the sense that PREPA executed over sixty (60) long-term power purchase and operating agreements ("PPOAs") with renewable energy project developers (primarily developers of solar photovoltaic ("solar PV") generating facilities, but including some wind and landfill generation projects). Many of these projects did not proceed past the contract execution phase into active development and, of these, only a handful were ultimately developed, financed, constructed and placed into commercial operation. Only eleven (11) renewable generation projects are currently operational and sell energy and/or Renewable Energy Certificates to PREPA.[1]

That so few developers were successful in advancing renewable generation projects for which PREPA executed contracts is the reason why renewable resources currently supply only a small percentage of the electric energy produced and consumed in Puerto Rico. A number of factors contributed to the stalling of many renewables projects, including (i) the difficulties projects encountered in their efforts to obtain financing due to PREPA's lack of credit and bankruptcy, (ii) multiple rounds of renegotiations necessitated by declining solar project costs and the need

[1] Hurricane María destroyed one renewable generation project, the Punta Lima Wind Farm. PREPA has ongoing negotiations relating to the reconstruction of this 26 MW project.

to reduce costs that would put upward pressure on PREPA's rates, and (iii) the general challenges of developing major projects in Puerto Rico, including the disruptive impacts of natural disasters, permitting issues, and high costs. It should also be noted that most renewables developers had not developed projects in Puerto Rico before and needed to surmount a steep learning curve regarding local challenges.

In 2019, PREPA management reinvigorated efforts to integrate renewable energy into the grid, while aiming to align PREPA's finances with the objectives of PREPA's Fiscal Plan and reduce costs borne by Puerto Rico electricity consumers. As part of these efforts, PREPA determined that it would be necessary to renegotiate nine (9) of the eleven (11) PPOAs with operating renewables projects.[2] PREPA recently reached commercial agreement with six (6) of these counterparties to amend PPOAs covering operating renewable generation facilities amounting to more than 260 MW of renewable capacity. The renegotiated PPOAs, if executed and performed, would deliver (i) price reductions in excess of 10%, which would produce approximately $200 million in savings (non-discounted) over the remaining lives of the amended agreements, and (ii) approximately 30 MW of new renewable generation capacity to the Puerto Rico grid.

Of the remaining renewable projects covered by executed PPOAs, PREPA entered into negotiations in early 2019 relating to sixteen (16) (representing over 590 MW of new renewable generation), which PREPA or other government agencies had generally determined to be in more advanced stages of development than others. The results of these negotiations were revised PPOAs reflecting lower pricing, changes in the allocation of responsibility for interconnection costs and enhanced clarity regarding technical requirements. These revised PPOAs require approval from both the Energy Bureau and the FOMB. Anticipating the need for these approvals, PREPA took steps periodically to keep the Energy Bureau and the FOMB abreast of its renegotiation efforts, project pricing and the quantity of renewable capacity involved. In late 2019, as negotiations progressed, PREPA's Board of Directors independently engaged New Energy Partners ("NEP"), global experts in the development of renewable power purchase agreements, to study the pricing levels on which the negotiation efforts were settling. NEP found that the final pricing, which was one half cent below a guideline price the FOMB had at one point identified, provided both reasonable returns to the developers and savings to the ratepayers of Puerto Rico.

By letter dated August 17, 2020, the FOMB informed PREPA that it would not accept the price and other terms to which PREPA and its counterparties had agreed as to 75% of the capacity that would be furnished by the renegotiated renewables projects. As of today, the FOMB has authorized PREPA to enter into renegotiated PPOAs amounting in the aggregate to no more than 150 MW of capacity.

The Energy Bureau, for its part, has proceeded with its own analysis of the renegotiated PPOAs (approaching each agreement individually rather than as a group). As of August 30, 2020, the Energy Bureau has come to a consistent resolution on each of the seven (7) PPOAs it has considered, approving in substance all of the PPOAs it has reviewed to date. As of this writing, PPOAs covering in the aggregate 268.5 MW of renewable generating capacity have received Energy Bureau sign-off.

PREPA continues to seek clarity from the FOMB and the Energy Bureau regarding the path it should take going forward in renegotiating and ultimately executing renewable project PPOAs. The balance of the projects having executed PPOAs have not made material progress in their development and/or have not been able to reach agreement with PREPA on price reductions on terms comparable to those agreed with the group of projects mentioned above. Importantly, all of these projects have contracts that include pricing terms that would impose an unnecessary financial burden on the ratepayers of Puerto Rico. PREPA has recently terminated some of these projects' PPOAs and has filed to reject these agreements in its ongoing restructuring proceeding being conducted under Title III of the PROMESA law. With these projects having been addressed as I have described, PREPA is now in a better position to conduct, and has commenced preparation of, a new request for proposals ("RFP") for the development of new renewable generation resources that would essentially replace the projects that have not proceeded with new, competitively priced projects.[3]

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[2] PREPA management determined that the two (2) landfill gas projects satisfied its pricing requirements and accordingly those projects' PPOAs did not need to be renegotiated.

[3] Please note that PREPA does not intend to preclude any of the developers of rejected/terminated projects from bidding into future RFPs.

1b. Can you provide an update about PREPA's current numbers?

Answer. The amount of existing operational solar PV capacity under contract to PREPA at the time PREPA commenced its PPOA renegotiation efforts was approximately 150 MW. PREPA has negotiated amendments to PPOAs covering these projects that, if implemented, would result in the expansion of the capacity they can supply by approximately 30 MW. An additional 95 MW is available from an operating wind generation project, but its actual output is limited by the need to comply with applicable Minimum Technical Requirements to 75 MW. A total of 4.8 MW of capacity is available from landfill gas generation facilities.

Currently, operational renewable generation projects under contract to PREPA amount to total of slightly more than 250 MW of available capacity.

1c. Please provide an explanation of how PREPA plans to meet the renewable energy goals required by Act 17–2019.

Answer. PREPA faces a number of challenges as it strives to meet the renewable energy portfolio requirements of the Puerto Rico Energy Public Policy Act (Act 17–2019) ("Act 17"). That law requires that 40% of the generation required to satisfy PREPA's requirements will come from renewable sources by 2025.

In the draft Integrated Resource Plan ("IRP") which PREPA submitted to the Puerto Rico Energy Bureau ("PREB"), PREPA proposed the addition of at least 2,000 MW of solar PV to meet the Act 17–2019 RPS mandate in all scenarios. Of that amount, PREPA planned to procure up to 1800 MW of solar PV in the first 5 years of the plan (2019 to 2023). Puerto Rico Integrated Resource Plan 2018–2019, PREB Case No. CEPR-AP-2018-0001 (submitted June 7, 2019), Main Report at Section 10.1.1. Under the proposed IRP, 300 MW of new solar projects would be added in 2020, and an additional 780 MW would be added in 2021. The proposed IRP envisioned that PREPA would maximize the amount of solar PV installed in the first 4 years of the plan (2019 to 2022) (IRP Main Report at Section 1.2.1).

PREPA's proposed IRP envisioned the addition of as much solar PV as practical as quickly as PREPA considered possible. In its August 24, 2020 Final Resolution and Order on PREPA's Integrated Resource Plan issued in Case No. CEPR-AP-2018-0001, the Energy Bureau has rejected PREPA's Preferred Resource Plan and directed PREPA to pursue a Modified Action Plan that would result in the installation of significantly *greater* amounts of solar photovoltaic generation and battery energy storage resources. Final Resolution and Order on PREPA's Integrated Resource Plan, *In re Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001 (Aug. 24, 2020) at §§ 18, 94–98, 836–837, 847–855. The Energy Bureau has found that "maximizing the rate of adoption of solar PV and battery storage technology is clearly indicated from the modeling results of the Proposed IRP," and has ordered PREPA to pursue a Modified Action Plan that is intended to maximize the rate at which solar PV and battery storage will be installed in Puerto Rico. *Id.* at § 855.

Assuming it can come to some form of accommodation with the FOMB on the quantity of renewables it should seek to procure, PREPA anticipates moving forward in collaboration with the P3 Authority with multiple RFPs seeking an initial tranche of solar PV capacity promptly following PREPA's receipt of Energy Bureau approval to proceed.

Question 2. Why is PREPA binding public funds in long-term natural gas projects, when the Integrated Resources Plan has not been approved by the Puerto Rico Energy Bureau (PREB), and Act 17–2019 requires reaching a minimum of 40% renewable energy integration by 2025; 60% by 2040; and 100% by 2050?

Answer. PREPA assumes that the "long-term natural gas projects" referenced in the question include the recently completed conversion of San Juan Power Plant Units 5 & 6 to dual fuel (natural gas and diesel) capability, the Amended and Restated Natural Gas Sale and Purchase Agreement, dated as of March 23, 2020, with Gas Natural Aprovisionamientos SDG, S.A. ("Naturgy"), under which PREPA will continue to procure natural gas supplies to fuel its Costa Sur generating facility and the adjacent EcoEléctrica L.P. cogeneration facility, and the Amended and Restated Power Purchase and Operating Agreement, dated as of March 27, 2020, with EcoEléctrica, under which PREPA will continue to procure generating capacity from EcoEléctrica. Each of these generating facilities currently supplies capacity and energy to PREPA, and PREPA relies on them (since they are among the most efficient and lowest cost generating resources available to PREPA) to satisfy Puerto Rico's electric demand day in and day out.

In converting San Juan Units 5 & 6 so that they may consume natural gas, PREPA has been able to achieve significant air emissions reductions relative to operation of those units on diesel and, with these emissions reductions, has positioned

itself to make greater use of the two newest and most efficient baseload generating facilities in PREPA's fleet. As Mr. Ortiz noted in his testimony before this Committee, PREPA's ability to run these units more economically and more of the time while reducing air emissions offers important public health benefits. In addition, the increased availability of San Juan Units 5 & 6 will materially enhance the security and reliability of electricity supply in the San Juan metropolitan region. PREPA anticipates achieving significant savings from the use of natural gas in place of diesel, as Mr. Ortiz has stated. On the basis of then-current market prices for natural gas and diesel, the Financial Oversight and Management Board for Puerto Rico has estimated that the San Juan 5 & 6 conversion project could save PREPA and its customers between $180 and $280 million during the 5-year term of the conversion and natural gas supply contract.

By entering into the amended and restated Naturgy and EcoEléctrica agreements, PREPA addressed the impending expiration of an existing fuel sale and purchase agreement supporting operation of Costa Sur Units 5 and 6 and of a PPOA with EcoEléctrica, the second-largest independent supplier of power to PREPA. As Mr. Ortiz testified, the renegotiation of the EcoEléctrica PPOA and Naturgy gas supply agreement is critical in providing reliable and efficient sources of electricity in Puerto Rico for the next 12 years. The renegotiated EcoEléctrica and Naturgy agreements will generate significant customer savings—on the order of $100 million annually through 2032.

I should emphasize that given the mix of generating resources currently available to it, PREPA must continue to call upon San Juan Units 5 & 6, the EcoEléctrica facility and the Costa Sur generating facility to meet Puerto Rico's electricity requirements. It will need to do this for several years while renewable resources are being developed, financed, constructed and commissioned. PREPA's proposed IRP and the Modified Action Plan which the Energy Bureau has recently adopted assume that the San Juan, EcoEléctrica and Costa Sur generating facilities will continue to be available to supply capacity and energy even as the renewable generation build-out proceeds. As PREPA has documented, even with its continued reliance on San Juan Units 5 & 6 and the EcoEléctrica facility, it should be possible to add quantities of renewable generation that will satisfy Act 17's Renewable Portfolio Standard in 2025 and thereafter. IRP Main Report at Section 10.1.1. So PREPA's commitment to the San Juan 5 & 6 conversion and to the amended and restated Naturgy and EcoEléctrica agreements is entirely consistent with PREPA's compliance with the Act 17 renewable energy integration goals cited in the question.

The Energy Bureau has approved the San Juan 5 & 6 conversion project and the amended and restated Naturgy and EcoEléctrica agreements. In each case it found that the proposed agreements were consistent with the public interest and with PREPA's proposed IRP. This is noted in the August 12, 2020 response of Edison Avilés-Deliz, Chair of the Energy Bureau, to the same question I address in this response. The Energy Bureau reiterates its approval of these projects in its Final Resolution and Order on PREPA's Integrated Resource Plan issued on August 24, 2020 at §§ 876 and 877.

Question 3. The Federal coordinator for the reconstruction of Puerto Rico, Peter Brown, recently expressed that nuclear energy is an option to diversify Puerto Rico's energy sources. PREPA's Integrated Resources Plan does not integrate nuclear energy as an option. Will PREPA maintain this position in compliance with Act 17–2019, which requires reaching 100% renewable energy by 2050?

Answer. PREPA did not include nuclear resources as potential sources of generation in its IRP. Nuclear energy is not listed among the sources of energy that qualify as "renewable" under Act 82–2010 (*Ley de Política de Diversificación por Medio de la Energía Renovable Sostenible y Alterna en Puerto Rico*), and therefore the addition of nuclear generation resources would not assist PREPA in achieving compliance with the renewable portfolio standard imposed by Act 17. Moreover, PREPA is not aware of any commercially proven nuclear generation technology that has been licensed by the Nuclear Regulatory Commission that could be developed, licensed, constructed and commissioned in Puerto Rico within the time frames envisioned in the IRP's Action Plan and the Modified Action Plan with the Energy Bureau has recently directed PREPA to pursue.

Question 4. Puerto Rico is expecting around $1.9 billion of CDBG-DR funds for the electric grid reconstruction. Those funds represent a great opportunity to help low- and moderate-income families to finance rooftop solar projects in their residences. Also, it is an opportunity to promote community energy resiliency projects. Is PREPA committed to use these funds for these purposes?

Answer. PREPA is expecting that it will receive funds through the Department of Housing and Urban Development's CDBG-DR Program that will support reconstruction of Puerto Rico's electric grid. PREPA expects to use CDBG-DR funds, as and to the extent they become available, to satisfy its obligation to fund 10% of the cost of permanent work projects funded by FEMA. PREPA's current Fiscal Plan assumes that CDBG-DR funds will cover all of this cost share requirement. PREPA does not anticipate redirecting CDBG-DR funds from grid reconstruction support to the financing of individual consumer-owned rooftop solar installations, which would not qualify as grid reconstruction activities for which FEMA or HUD CDBG-DR funds could be committed consistent with applicable law and regulations.

Question 5. PREPA's retirees and the Electrical Industry and Irrigation Workers Union (UTIER) have expressed concerns with the possibility of PREPA's pension system being affected by the LUMA contract. Can you explain if the pension system will be affected? If so, how?

Answer. As Mr. Ortiz testified in response to a similar question during the July 23, 2020 hearing, PREPA employees transferring to employment with LUMA will have the choice as to whether to stay with their existing pension plan or transfer to a new plan to be sponsored by LUMA. Mr. Fermín Fontanés offers additional detail on this subject in a supplemental response included in the attached Addendum.

Question 6. Have Federal agencies played a role in PREPA's long-term concession of its transmission and distribution system? For example, has FEMA or DOE conditioned the disbursement of Federal disaster aid to this contract?

Answer. Please note that the process that has resulted in the execution of an agreement with LUMA for the operation, maintenance and modernization of PREPA's transmission and distribution ("T&D") system was led by the P3 Authority; PREPA played a supporting role in the process. The result of the process was not a long-term concession, but rather a 15-year operation and maintenance agreement.

Federal agencies were not involved in the formulation of the Request for Proposals ("RFP") for assumption of responsibility for the T&D system. Nor were they involved in the process by which the P3 Authority evaluated responses to this RFP, selected LUMA as the preferred proponent and ultimately entered into LUMA agreement. Neither the Federal Emergency Management Agency nor the Department of Energy has conditioned the disbursement of Federal disaster relief funds in any way on the award of or performance under this contract. Mr. Fermín Fontanés offers additional detail on this subject in a supplemental response included in the attached Addendum.

Question 7. Why did PREPA recently award former New Jersey Governor Chris Christie a contract, through his company Christie 55 Solutions, for $28,750 a month? Given the limited amount of Federal disaster funds that have been disbursed to PREPA, why is this contract appropriate? How were you put in contact with Mr. Christie?

Answer. PREPA executed a professional services agreement with Governor Christie in early 2020. That agreement, which has a term concluding December 31, 2020, provides that Gov. Christie and his team will provide support for PREPA in connection with its interactions with Federal agencies including FEMA, HUD, the Office of Management and Budget, the Department of Energy, the Department of the Treasury, the Environmental Protection Agency and The White House. The principal focus of Gov. Christie and his team has been in assisting PREPA in seeking the timely disbursement of both FEMA settlement funds and CDBG-DR funds and support PREPA's efforts to secure other Federal assistance for its efforts to rebuild the Puerto Rico grid and meet renewable energy goals. They will also assist the Puerto Rico Federal Affairs Administration in providing high-level briefings to Trump Administration officials regarding many PREPA-related Federal issues. Both the executive team at PREPA and the PREPA Board of Directors feel that this relationship has been beneficial to PREPA and has advanced its efforts to secure Federal attention to its funding needs.

Governor Christie and Governor Rosselló initially met at a National Governors Association meeting at which they discussed Puerto Rico's needs for post-Maria Federal support and the processes that govern the disbursement of Federal disaster relief funds. Given his experience with both the Trump Administration and the Federal response to New Jersey's need for disaster recovery assistance following Super Storm Sandy, Governor Christie was able to provide substantial advice to Governor Rosselló. After Gov. Christie left office, he was asked by Gov. Rosselló to

consider providing support to PREPA as a consultant to assist primarily with Federal funding issues. PREPA subsequently entered into discussions with Gov. Christie to this end, and ultimately entered into the professional services agreement I have described.

Question 8. In April, I joined my colleges in a letter to the Federal Energy Regulatory Commission (FERC) urging them to examine New Fortress Energy's natural gas project in San Juan, since the company failed to ask FERC for approval. How does PREPA justify expediting a project and making excuses to not have to comply with Federal regulations, which have health, safety and environmental risks for surrounding communities? Aren't these factors as important as achieving lower energy costs?

Answer. Mr. Ortiz acknowledged in his July 23, 2020 testimony that a question has arisen as to whether NFE was required to obtain FERC authorization to site, construct and operate the LNG handling facility through which it is supplying natural gas to PREPA's San Juan Units 5 & 6. As Mr. Ortiz testified before this Committee, both New Fortress Energy and PREPA conducted informal discussions with the FERC Staff concerning the regulatory status of the planned LNG handling facility before PREPA selected New Fortress Energy's proposal to convert and supply San Juan Units 5 & 6. Through those discussions, PREPA concluded, as had New Fortress, that in FERC Staff's view FERC siting approval for the LNG handling facility would not be required. Mr. Ortiz described these discussions in the letter PREPA submitted to FERC in the New Fortress show cause proceeding; a copy of this letter was attached to the written statement Mr. Ortiz submitted to this Committee on July 23, 2020.

PREPA sought to expedite the San Juan 5 & 6 conversion project because it offered, and has delivered, significant reductions in greenhouse gas emissions that will yield public health benefits for communities surrounding the San Juan Power Plant, for the San Juan region and for Puerto Rico generally. The availability of natural gas should enable PREPA to run San Juan Units 5 & 6 at higher capacity factors without exceeding air permit limitations, and therefore will enhance grid reliability. This, too, will benefit the public. Moreover, given the historic spread between natural gas and diesel prices, the San Juan 5 & 6 conversion project promises substantial fuel cost savings, which will flow directly to electricity consumers in the form of lower rates.

PREPA has complied with the applicable Federal and Commonwealth environmental regulations governing the amendment of permits limiting air emissions from the San Juan Power Plant. New Fortress has responsibility under its Fuel Sale and Purchase Agreement with PREPA for ensuring compliance with Federal and Commonwealth regulations applicable to the New Fortress LNG handling facility. PREPA notes that New Fortress has sought and obtained required U.S. Coast Guard authorizations relating to the transit of LNG carriers through San Juan Harbor and the maintenance of safety zones and security around the New Fortress floating LNG storage vessel and the New Fortress LNG handling facility. PREPA understands that the New Fortress LNG handling facility has been designed and constructed in accordance with applicable National Fire Protection Association safety standards, which are the basis on which the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration evaluates safety-related aspects of LNG handling facilities. PREPA therefore believes that the New Fortress facility does not expose surrounding communities to significant health, safety or environmental risks.

PREPA will cooperate in any further project review or permitting proceedings involving the New Fortress LNG handling facility that may be required.

Questions Submitted by Rep. Napolitano

Question 1. What government agencies in Puerto Rico are receiving disaster aid from Federal agencies, such as DHS or the Army Corps of Engineers? How much is supposed to come in to rebuild the grid and how much has been received?

Answer. Amounts that have been received to date to support grid reconstruction are summarized in our response to the question Resident Commissioner González asked during the July 23, 2020 Hearing (response #1 above). PREPA is not confident that it can provide a complete listing of the Puerto Rico government agencies receiving disaster aid from Federal agencies, and would refer the Representative to COR3 for this information.

Question 2. What process did the Government of Puerto Rico follow for the long-term concession of PREPA's transmission and distribution system to LUMA? How was the company vetted?

Answer. The P3 Authority is the Puerto Rico government entity charged with executing the transformation of PREPA. In testimony presented to this Committee on July 23, 2020, Mr. Fermín Fontanés, the P3 Authority's Executive Director, addressed in some detail the procurement process through which the P3 Authority sought to advance the transformation of PREPA's T&D system. That process involved the solicitation of proposals from experienced utility sector participants to assume responsibility for the operation, maintenance and modernization of the T&D system. I refer the Committee to Mr. Fontanés' statement and testimony for additional detail on the process.

Mr. Fontanés offers additional detail on the process through which LUMA was vetted in a supplemental response included in the attached addendum.

Question 3. What process did PREPA follow to award a contract to former New Jersey Governor Chris Christie? Was there a vetting process? Please explain.

Answer. Governor Christie was hired by PREPA, with the knowledge and assent of PREPA's Governing Board, after consultation with and approval by the Governor of Puerto Rico, the Puerto Rico Federal Affairs Administration, the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF") and the executive team at PREPA. The Financial Oversight and Management Board for Puerto Rico ("FOMB") was also informed of the Christie professional services agreement. That agreement was written and its execution overseen by PREPA's legal department. Governor Christie's firm was hired to provide support for the FEMA Section 428 process for public assistance and for support of other PREPA efforts to secure Federal disaster recovery funds. See my response to Chair Grijalva's Question #7 above.

Question 4. Why is renewable energy in PREPA's power generation portfolio so low?

Answer. Please see my response to Chair Grijalva's Question #1, above.

Questions Submitted by Rep. Costa

Question 1. There have been concerns over private energy contractors not receiving reimbursement for emergency restoration work. In the event of another disaster, it is critical to have all hands on deck ready to respond. For those who haven't been reimbursed by FEMA, what is the status of receiving the reimbursement? Additionally, for those who haven't received reimbursed, is there progress toward reaching a determination in a timely manner?

Answer. The Excel files accompanying this letter provide information regarding contractor reimbursement status both at a summary level and at a detailed level.

Please note that there are various administrative adjustments to certain emergency PWs pending before FEMA. Priority is being given to those projects with payment amounts outstanding. Once the adjustments are processed by FEMA, PREPA will be able to request the additional funding.

Questions Submitted by Rep. Cox

Question 1. I heard some concerns from early in the disaster about how the contract to Whitefish Energy was awarded by PREPA, but the subsequent reports we have heard suggest that Whitefish Energy performed good work on the island. Can you confirm whether Whitefish Energy performed good work for PREPA?

Answer. The process by which the Whitefish Energy contract was awarded and subsequent actions relating to that contract are described in detail in a Report of the Department of Homeland Security's Office of Inspector General ("OIG") entitled "FEMA's Public Assistance Grant to PREPA and PREPA's Contracts with Whitefish and Cobra Did Not Fully Comply with Federal Laws and Program Guidelines" (OIG-20-57), issued July 27, 2020 (available at https://www.oig.dhs.gov/sites/default/files/assets/2020-07/OIG-20-57-Jul20.pdf). Because some issues identified in that report remain open and unresolved, PREPA cannot comment on matters relating to Whitefish Energy's performance.

Question 2. From PREPA's financial status reports, it appears that FEMA has not yet obligated funds for some work performed immediately following the disaster, including for the work performed by private contractors such as Whitefish Energy and some of the mutual aid entities, which has resulted in those contractors and

utilities not being paid for emergency restoration work performed. What is the status of FEMA's review of the Project Worksheets for the work of those private contractors and mutual aid entities, and when does PREPA expect to receive FEMA funding for that work?

Answer. PREPA is actively engaged with FEMA and has responded to requests for additional information relating to work performed by contractors and Mutual Aid entities.

It is PREPA's understanding that FEMA has advised the OIG that it expects to complete its final determination regarding eligibility of the actual Cobra contract costs for Federal reimbursement by May 2021. With respect to Mutual Aid contractors, FEMA is processing administrative adjustments, and PREPA has no estimate of the timing of FEMA's administrative process. While PREPA has been actively working with FEMA to adjust the PWs, a definitive timeline for funding has not been shared with PREPA.

Priority is being given to those projects with payment amounts that remain outstanding. Currently, projects are in the final stages of project formulation and should be versioned within the next few months. But because PREPA is not the process owner of the project formulation task, a definitive timeline for funding is unknown.

Questions Submitted by Rep. Velázquez

Question 1. Mr. Ortiz, during the hearing on July 23, I asked you whether PREPA did any due diligence to ensure that consultants with access to the procurement documents did not have conflicts of interest to which you responded: "Yes, that's a normal procedure."

What were the steps that were taken as part of the normal due diligence process that PREPA carried out to ensure that consultants with access to the procurement documents did not have conflicts of interests during the award process of the New Fortress Energia agreement?

Answer. Various Puerto Rico laws codify mandatory requirements for contracting with private consultants including issues of conflicts of interest. Act 237–2004, as amended, codifies government contracting processes and requirements between private parties or consultants and governmental entities including public corporations like PREPA. Specifically, Article 5(G) mandates that:

> No public official or employee may grant or authorize a contract with a private person or knowing that this person, in turn, is representing particular interests in cases or matters that involve conflicts of interest or public policy conflicts of interest between the contracting government agency and the private interests that said private person represents. Accordingly, every government agency shall require from every private person with whom it contracts the inclusion of a contractual clause in which said private person certifies that they are not involved in a conflict of interest or public policy conflicts of interest as described in this subsection.

Further, the Anticorruption Code for a New Puerto Rico, Act 2–2018, Article 3.2(n), states that:

> No person may contract with the executive agencies [including public corporations] if there is any conflict of interests. Every person must certify that they do not represent particular interests in cases or matters that imply a conflict of interest, or of public policy, between the executive agency and the particular interests that they may represent.

Additionally, the professional services contracts between PREPA and private consultants includes dispositions which require that PREPA consultants who have access to confidential information must take all steps necessary to keep such information confidential and ensure that such information is not disclosed or distributed by the consultant's employees or agents in violation of the terms of the agreement with PREPA.

PREPA's Guide for Requests for Proposals (RFPs) (attached in the original Spanish), at Section 3.5, requires PREPA advisors or consultants who assist PREPA during the evaluation of proposals as well as during selection and negotiation of RFP processes to comply with ethics guidelines and conflicts of interest required by PREPA as specified in the professional services contract.

All PREPA consultants must comply with these dispositions for handling matters for PREPA and all PREPA consultants associated with the process by which the NFEnergía agreement was awarded.

Follow-up: Is there a PREPA regulation in place that codifies how the due diligence process should be carried out? If yes, could you share the regulation with the Committee?

Answer. Attached please find copies of Act 237–2004 and Act 2–2018. Please note as well that PREPA's standard contract with consultants includes dispositions which require the consultant to maintain the confidentiality of PREPA documents in accordance with the agreement.

Questions Submitted by Rep. García

Question 1. Since the execution of PREPA's Restructuring Support Agreement with the FOMB and Financial Advisory Authority, in your view, it that agreement still alive? If so, is it workable given the current economic pressures that are projected for the island?

Answer. The Definitive Restructuring Support Agreement, dated May 3, 2019 (as amended, the "RSA") remains in effect; however, (i) certain provisions are not required to be implemented until an order is entered on a motion to approve settlements in the RSA (the "9019 Motion") and (ii) parties to the RSA currently have certain termination rights. On July 31, 2020, FOMB, AAFAF and PREPA (the "Government Parties") filed a status report before Judge Swain in PREPA's Title III case, informing the Court of the following:

- RSA discussions have been postponed due to uncertainty resulting from the COVID-19 pandemic. Therefore, the Government Parties have focused on other key initiatives that, alongside a debt restructuring, will enable PREPA to exit Title III and provide reliable and affordable power to its customers. These initiatives include bringing in private operators as part of a transformation of PREPA's transmission and distribution system and generation assets; and
- It is currently not possible to propose a schedule for the continuation of PREPA's 9019 Motion hearing on the settlements embodied in the RSA, as the Government Parties continue to monitor the island's fiscal and economic conditions amid the impact of the continuing COVID-19 pandemic and other recent events.

In light of the above, the Government Parties asked the court to allow for the submission of an updated status report on or before September 25 to provide them additional time to assess PREPA's performance against the PREPA 2020 Fiscal Plan and to analyze the Oversight Board's Commonwealth status report that is due September 11. On August 5, 2020, Judge Swain granted the request to extend the date to September 25 for filing a status report on PREPA's financial condition, proposed next steps regarding the 9019 Motion and related adversary proceedings.

The Government Parties remain committed to working with the RSA creditors, as well as other stakeholders, to execute a plan of adjustment that allows for PREPA's exit from Title III.

Question 2. As the Oversight Board has certified, the contract with LUMA Energy will put PREPA in a deficit of at least $125 million. Also, the Front-End Transition Plan contemplates acquiring a PREB rate order. Will PREPA be requesting a rate increase to cover that deficit? If so, when and how will the increase take place?

Answer. PREPA currently expects to fund the initial Front-End Transition costs out of funds that are currently available, and does not believe that a rate increase will be required. Mr. Fermín Fontanés offers additional detail on this subject in a supplemental response included in the attached Addendum.

Questions Submitted by Rep. Bishop

Question 1. How has PREPA been able to respond to the concerns of those who claim this latest deal signed with LUMA will lead to massive layoff of workers at PREPA?

Answer. The Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement among PREPA, the P3 Authority, LUMA Energy, LLC and LUMA Energy ServCo, LLC dated as of June 22, 2020 (the "O&M Agreement") provides that LUMA Energy and LUMA ServCo (a LUMA subsidiary service company formed to provide substantially all of the services required under the O&M Agreement) are to offer both employment and advancement opportunities to current PREPA employees. As Mr. Fermín Fontanés testified before this Committee on July

23, 2020, the jobs of PREPA employees "are protected under existing law." Statement by Fermín Fontanés Gómez, Executive Director of the Puerto Rico Public Private Partnerships Authority before the House Committee on Natural Resources dated July 23, 2020 at 4. Mr. Fermín Fontanés offers additional detail on this subject in a supplemental response included in the attached Addendum.

Question 2. The Committee has heard from witnesses today that claim under the terms of the newly signed LUMA contract, LUMA would actually have veto power of PREPA's Title III proceedings. How do you respond to such a claim? Is that indeed the case, that LUMA somehow under the terms of the new contract, are going to be awarded final say over PREPA's plan of adjustment?

Answer. The O&M Agreement does not grant LUMA Energy any control over PREPA's Title III proceedings. The Puerto Rico Transmission and Distribution System Supplemental Terms Agreement among PREPA, the P3 Authority, LUMA Energy, LLC and LUMA Energy ServCo, LLC dated as of June 22, 2020 (the "Supplemental Agreement"), which comes into effect only if LUMA Energy takes over prior to PREPA's exit from Title III, provides only that PREPA's future plan of adjustment must be "reasonably acceptable to" LUMA Energy. Under PROMESA, only the Oversight Board can propose a plan of adjustment for PREPA and this provision does nothing to give control over that task to LUMA Energy. Mr. Fermín Fontanés offers additional detail on this subject in a supplemental response included in the attached Addendum.

Question 3. Will the new T&D Operator (LUMA) be allowed to act freely without the political interference that has plagued PREPA for years? What assurances can you give us?

Answer. LUMA, unlike PREPA, is a private entity that will not be subject to political interference but instead will be subject to the requirements of the O&M Agreement. That Agreement and related Annexes and Supplemental Agreement set forth detailed criteria that will govern LUMA Energy's and LUMA ServCo's performance of the roles of T&D Operator. LUMA Energy and LUMA ServCo have, in the O&M Agreement, a clearly articulated basis on which to resist political efforts to secure treatment not consistent with the terms of that Agreement. Mr. Fermín Fontanés offers additional detail on this subject in a supplemental response included in the attached Addendum.

Question 4. Does LUMA have free reign in deciding how to staff its new operations?

Answer. Decisions as to staffing of its operations are for LUMA Energy and LUMA ServCo to make, but those decisions must comply with specific criteria set forth in the O&M Agreement. Among these is the requirement that LUMA give preference in hiring to existing PREPA employees currently engaged in T&D-related operations. Mr. Fermín Fontanés offers additional detail on this subject in a supplemental response included in the attached Addendum.

I hope these responses adequately address the Committee members' questions. Please let me know if you or members of the Committee have additional questions for PREPA.

Cordially,

EFRAN PAREDES MAISONET,
Interim Executive Director

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The following documents were submitted as attachments to the above responses to questions. These documents are part of the hearing record and are being retained in the Committee's official files:

—Addendum providing P3 Authority Supplemental Responses

—Excel spreadsheets with Contractor Payment Summary and Contractor Payment Detail

—GUÍA PARA PROCESOS DE ADQUISICIONES DE BIENES Y SERVICIOS A TRAVES DE SOLICITUD DE PROPUESTAS (Request For Proposals) 2016

—Act 237–2004

—Act 2–2018

Submission for the Record by Mr. Ortiz

GOVERNMENT OF PUERTO RICO
PUERTO RICO ELECTRIC POWER AUTHORITY
SAN JUAN, PUERTO RICO

July 17, 2020

BY ELECTRONIC FILING

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Order to Show Cause Directed to New Fortress Energy LLC, Docket No. CP20-466-000—Comments and Statement of Support of the Puerto Rico Electric Power Authority

Dear Secretary Bose:

On behalf of the Puerto Rico Electric Power Authority ("PREPA"), I write in response to the Order to Show Cause which the Commission issued to New Fortress Energy LLC ("New Fortress") on June 18, 2020 in Docket No. CP20–466–000. For the several reasons I set forth below, I urge the Commission to conclude that New Fortress had a legitimate basis for concluding that the liquified natural gas ("LNG") handling facility which its affiliate NFEnergia, LLC ("NFE") has constructed on an existing wharf in San Juan Harbor did not require this Commission's authorization under Section 3 of the Natural Gas Act. I also urge this Commission, if it chooses to assert jurisdiction over any portion of the NFE LNG handling facility, to do nothing to disrupt its ongoing operation, given the very substantial emissions reductions and cost savings the facility is enabling PREPA to achieve.

PREPA is the offtaker of natural gas delivered via the liquified natural gas handling facility which NFE has constructed in San Juan, adjacent to PREPA's San Juan Units 5 and 6, two combined cycle generating facilities which have been converted to consume natural gas as well as diesel fuel. Units 5 and 6 are now running on natural gas in place of diesel. Their ability to use this significantly cleaner fuel enables PREPA to reduce its reliance on other generating units that consume heavy fuel oil and produce significant emissions. PREPA therefore has a direct and substantial interest in the outcome of this proceeding.

In early 2019 PREPA entered into a Fuel Sale and Purchase Agreement with NFE under which NFE undertook to convert PREPA's San Juan Units 5 and 6 to dual-fuel capability, and to supply natural gas to fuel the facilities. The agreement obligates NFE to transport LNG to San Juan Harbor, where the LNG is transferred to a floating storage vessel docked opposite the San Juan Power Station. From that vessel, LNG is processed through vaporizers that deliver natural gas to Units 5 and 6. LNG will also be transferred via the NFE facility to onshore truck loading facilities for transportation of LNG to industrial and commercial consumers throughout Puerto Rico.

The conversion of Units 5 and 6 and their use of natural gas in place of diesel will significantly reduce greenhouse gas, particulate and other air emissions from the San Juan Power Station. Units 5 and 6 are the newest and most efficient generating facilities in the PREPA fleet and, with natural gas now available, PREPA can take advantage of these efficiencies by running the units at higher capacity factors without exceeding air permit emissions limits. This is important, because the San Juan Power Station is located in the heart of the San Juan metropolitan area, the largest load center in Puerto Rico. PREPA's enhanced ability to run San Juan Units 5 and 6 will enhance the reliability of PREPA's system in the San Juan area and throughout the island. Consumption of natural gas in Units 5 and 6 should also yield significant fuel cost savings for Puerto Rico electricity consumers, since natural gas has historically been available at lower cost than diesel. PREPA has projected that its delivered fuel costs will decrease substantially with the ability to consume natural gas, even considering the costs NFE must incur to procure LNG from non-U.S. sources given the prohibition on bulk shipments of LNG from the U.S. mainland imposed by the Jones Act.

The Puerto Rico Energy Bureau has approved the PREPA-NFE contract as being in the public interest. The Financial Oversight and Management Board for Puerto Rico has approved the contract as being consistent with PREPA's certified Fiscal Plan. The United States Coast Guard has found that the waterways approaching

San Juan Harbor and leading to the wharves where the NFE LNG storage vessel is docked are suitable for the transit of LNG, has established safety zones within the Harbor to accommodate LNG vessels, and has accepted NFE's security plans for its LNG receiving and transfer operations. The U.S. Environmental Protection Agency has recommended, and the Puerto Rico Environmental Quality Board has made, amendments to the permits governing air emissions from San Juan Units 5 and 6 that recognize the ability of those units to burn either natural gas or diesel. Now that natural gas is available to San Juan Units 5 and 6, PREPA will make the most significant reductions in air emissions it has ever been able to achieve. With the increased availability of San Juan Units 5 and 6, PREPA will be able to rely less on generating facilities consuming more polluting heavy fuel oil, and as a result will be well on the way to achieving compliance with the Clean Air Act's Mercury and Air Toxics Standard ("MATS").

On June 18, 2020, this Commission issued an "Order to Show Cause" directing New Fortress "to show cause why the liquified natural gas (LNG) handling facility it has constructed adjacent to the San Juan Combined Cycle Power Plant at the Port of San Juan in Puerto Rico is not subject to the Commission's jurisdiction under section 3 of the Natural Gas Act (NGA)." The order suggests that NFE's facilities may meet criteria that would make it subject to the Commission's Natural Gas Act jurisdiction. I note that the Order to Show Cause does not reach any final conclusions regarding the jurisdictional status of the NFE LNG handling facility and does not require the suspension of the NFE facility's operations.

PREPA is aware that NFE is responding to the Order to Show Cause with arguments why, given previous FERC decisions, the Commission should conclude that the San Juan LNG handling facility does not require NGA section 3 authorization. PREPA is familiar with these arguments, having discussed similar points with representatives of the Commission's Staff nearly 2 years ago. PREPA urges the Commission to consider these arguments carefully before reaching any final determination in this proceeding.

PREPA conducted a competitive procurement in early 2018 through which it sought proposals for the conversion of San Juan Units 5 and 6 to dual-fuel capability. In response to a PREPA Request for Proposals, several project proponents submitted proposals, some of which contemplated the supply of natural gas derived from LNG. NFE submitted a proposal that relied on development of an LNG handling facility in and adjacent to San Juan Harbor. While consideration of the various conversion proposals was underway, PREPA representatives independently analyzed the question whether FERC authorization of an LNG handling facility that would supply natural gas to San Juan Units 5 and 6 was likely to be required. As part of this effort, I, the then-Chairman and a member of PREPA's Governing Board, PREPA's Chief Financial Advisor and PREPA counsel met on September 5, 2018 with ten representatives of this Commission's Staff to discuss alternative LNG receiving facility configurations that might be developed to serve PREPA generating facilities. We specifically discussed a facility configuration that would involve deliveries of LNG from a docked storage vessel via cryogenic hoses to a shoreside vaporizer located on an existing wharf in San Juan Harbor, with natural gas to be delivered from the vaporizer to San Juan Units 5 and 6 through power plant piping located entirely within San Juan Power Station property. We compared this configuration with the configurations of other LNG and compressed natural gas facilities over which the Commission had previously declined to assert jurisdiction under NGA section 3.[1]

FERC Staff representatives observed that the fewer dedicated natural gas facilities there are, the less likely it was that FERC would assert jurisdiction over an LNG project. Staff representatives focused on the absence of a natural gas pipeline extending a substantial distance from the LNG vaporizers to a natural gas transmission or distribution system or to multiple end user facilities, suggesting that the absence of such facilities would make it less likely that the Commission would assert jurisdiction. They also deemed it significant that the proposed configuration involving a docked LNG storage vessel did not include a large onshore LNG storage tank. Staff representatives noted that the Commission does not assert jurisdiction over LNG vessels, although it has asserted jurisdiction over purpose-built pier or mooring facilities and related pipelines. They offered the view that the Commission would probably consider the San Juan Harbor "facilities light" configuration we

[1] Among the Commission decisions we discussed were *Shell US Gas & Power, LLC*, 148 FERC § 61,163 (2014), *Emera CNG, LLC*, 148 FERC § 61,219 (2014), *Pivotal LNG, Inc.*, 148 FERC § 61,164 (2014), *Pivotal LNG, Inc.*, 151 FERC § 61,006 (2015), and *The Gas Company, LLC*, 142 FERC § 61,036 (2013).

described to be one over which FERC be unlikely to claim jurisdiction under NGA section 3.

Our meeting left us confident that, in FERC Staff's view, the configuration which NFE ultimately proposed made it like other LNG facilities which the Commission had concluded did not require its authorization under the Natural Gas Act. PREPA took comfort in the indications it received from FERC Staff, and we later concluded that NFE had a legitimate basis for concluding that the facilities configuration it proposed would not require NGA section 3 authorization. PREPA subsequently negotiated the terms of the NFE Fuel Sale and Purchase Agreement and obtained the approvals required to execute it. The Agreement was executed on March 5, 2019.

PREPA entered into the NFE Fuel Sale and Purchase Agreement on the assumption that FERC approval for the NFE LNG handling facility would not be required. It did so on the basis of communications PREPA and NFE separately had at different times with senior members of the Commission's Staff that involved assessments of FERC precedents addressing what PREPA, NFE and the Commission's Staff all considered analogous LNG facilities configurations. I believe that it was reasonable for PREPA to move ahead with the San Juan Units 5 and 6 conversion project and for NFE to proceed with construction of the related LNG handling facility given the informal guidance PREPA and NFE separately received from FERC Staff and the analyses we independently conducted. I ask that you take this history into account in evaluating NFE's response to the Order to Show Cause and in considering what further action may be appropriate in this proceeding.

PREPA believes that the Commission should conclude that NFE did not require authorization under the Natural Gas Act to site, construct and operate any portion of its San Juan Harbor LNG handling facility. But the Order to Show Cause suggests that the Commission could come to a contrary conclusion, and as a result could require that NFE seek section 3 authorization. I have been advised that in other cases in which a natural gas project developer has been found to lack a required FERC authorization, FERC has not required the developer to cease or suspend operations while the required authorization is sought. Nevertheless, I wish to address the possibility that the Commission may consider directing NFE to cease operation of its San Juan LNG handling facility pending its receipt of authorization under the Natural Gas Act.

As I have stated, San Juan Units 5 and 6 are now running on natural gas. As a direct result, the Units' greenhouse gas emissions have been substantially reduced, as have their emissions of particulates. These emissions reductions are particularly significant given PREPA's longstanding inability to achieve MATS compliance. Given these emissions reductions and the expectation that natural gas will be available to the Units at lower cost than diesel, the NFE fuel supply arrangement will enable PREPA to run Units 5 and 6 at a higher capacity factor than they have historically. This is significant, because Units 5 and 6 are critically important as sources of local generation in the San Juan metropolitan area. By enabling San Juan Units 5 and 6 to be dispatched more of the time, the availability of natural gas supplied by NFE has enhanced the reliability and resiliency of PREPA's still-vulnerable transmission system.

Air emissions permits governing San Juan Units 5 and 6 have recently been amended to recognize the ability of those units to burn either natural gas or diesel. These permits establish annual emissions limits for each air pollutant regulated under the U.S. Environmental Protection Agency's New Source Review program. There are no restrictions in the hours of operation for Units 5 and 6 as long as the Units comply with the annual emissions limits established for each pollutant. That is, PREPA is obligated to manage actual emissions from Units 5 and 6 so that their combined emissions remain below the annual limits on a 365-day rolling basis, on a per regulated pollutant basis, and at any time during the initial 364 days. PREPA can make maximum use of San Juan Units 5 and 6, given the controlling annual emissions limits and the greater emissions that result from the combustion of diesel fuel, only if natural gas continues to be available.

If NFE were to be directed to cease operation of its LNG handling facility, PREPA would no longer have ability to consume natural gas in Units 5 and 6. As a consequence, PREPA would need to reduce its dispatch of these units on diesel to ensure that their emissions remain below the applicable annual limits. We are now entering hurricane season, and PREPA must be able to rely on San Juan Units 5 and 6 to maintain service to the San Juan region and beyond if PREPA's transmission system again were to sustain hurricane-related damage. Moreover, given the impacts of this winter's earthquake activity on PREPA's Costa Sur generating facility, two of PREPA's largest generating units remain unavailable, and will not be fully available until the end of this year. This makes the continued availability

of San Juan Units 5 and 6 even more critical. It is, therefore, absolutely essential that NFE be permitted to continue to supply PREPA with natural gas for use in San Juan Units 5 and 6 during the period in which this Commission considers NFE's response to the Order to Show Cause, and during any subsequent proceeding on an NFE application for Commission authorization under the Natural Gas Act, should the Commission require it.

Thank you for your consideration. PREPA stands ready to provide any additional information the Commission may require.

Sincerely,

JOSÉ F. ORTIZ VÁZQUEZ
CHIEF EXECUTIVE OFFICER
Puerto Rico Electric Power Authority

The CHAIRMAN. Thank you, Mr. Ortiz.

Let me now turn to Fermín Fontanés, Executive Director of the Puerto Rico Public-Private Partnerships Authority.

The time is yours, sir.

STATEMENT OF FERMÍN FONTANÉS, EXECUTIVE DIRECTOR, PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY

Mr. FONTANÉS. Chairman Grijalva, Ranking Member Bishop, and Committee members, thank you for the opportunity to appear before you today to discuss the transformation of the Puerto Rico Electric Power Authority.

My name is Fermín Fontanés. I am the Executive Director of the Puerto Rico Public-Private Partnerships Authority. My testimony today addresses the transformation of PREPA's transmission and distribution system.

As Executive Director, I am leading the efforts related to PREPA's transformation and over several procurement processes that resulted in the agreement between LUMA Energy and PREPA pursuant to which LUMA will operate, maintain, and modernize Puerto Rico's transmission and distribution system.

This agreement marks the culmination of a more than 18-month procurement process and represents a historic milestone in the government of Puerto Rico's objective of providing modern, affordable, resilient, and reliable power to the island.

LUMA is a Puerto Rico company formed by ATCO and Quanta Services which will work with Innovative Emergency Management to assist with the administration of Federal funding.

In recent years, PREPA has faced a number of significant challenges, including: a lack of managerial continuity and long-term planning; a dated electrical system that is in poor condition; significant leverage, that led to the inability to access credit markets; and a geographic mismatch between supply and demand.

PREPA's challenges were aggravated by Hurricanes Irma and Maria. After the hurricanes, the government sought not only to rebuild the electric grid but to transform it into a reliable, resilient, modern, and eco-friendly system.

The most effective way to achieve these goals was to partner with a world-class private operator with the expertise, experience, and know-how to complete the much-needed transformation. A

procurement process was designed to address a number of key considerations.

The government was keenly focused on implementing a robust, competitive, and transparent procurement process to identify the private partner best positioned to accomplish the transaction's objectives. The process was also carried out in coordination with the Financial Oversight and Management Board for Puerto Rico.

During the RFP proposal process, the P3 Authority provided proponents with extensive access to information related to PREPA and the T&D system.

LUMA's proposal presents concrete and detailed plans and timelines for achieving substantial gains in safety, customer service, reliability, and resiliency. The contract also establishes clear obligations and performance metrics which LUMA must comply with. LUMA projects that it will be able to generate significant cost savings throughout the life of the contract.

Between the reduction in O&M costs and the improvement in lost energy, LUMA estimates a savings of $293 million per year in 2027. This results in significant annual and cumulative net savings for Puerto Rico and demonstrates that the contract will pay for itself, an estimate of $323 million in cumulative savings by 2027.

Notwithstanding these savings, critics of the transaction have argued that the customer's rates will go up. That premise is incorrect. LUMA is subject to regulatory oversight of the Puerto Rico Energy Bureau, and the contract specifically provides that all budgets prepared by LUMA must comply with rate orders established by PREB. The contract does not require a rate increase or establish a minimum rate for LUMA to operate.

In addition, I wanted to make clear that no employee will lose their job as a result of this transaction. Their jobs are protected under existing law.

Moreover, for those employees who end up working for LUMA, they will have access to world-class safety training and professional development opportunities, all of which have not been available to date for PREPA employees. PREPA's employees are essential for this transformation.

Finally, with LUMA we are bringing accountability to meet our goals of a renewable energy future. LUMA's commitment to complying with and achieving the renewable energy target set forth in these plans is evidenced in its proposal. This is a first step toward achieving the government's renewable energy goals.

The T&D transformation process took place against the background of unique and unprecedented challenges. Notwithstanding these significant challenges, the P3 Authority was undeterred and forged ahead with its vision to transform PREPA.

In partnership with LUMA, PREPA will finally deliver to the people of Puerto Rico what they deserve, a modern, affordable, resilient, and reliable electric energy system that will serve as a driver of economic recovery and growth. This partnership represents the most efficient and effective way to make this transformation a reality for Puerto Rico and its people.

Thank you.

[The prepared statement of Mr. Fontanés follows:]

PREPARED STATEMENT OF FERMÍN E. FONTANÉS GÓMEZ, EXECUTIVE DIRECTOR OF THE PUERTO RICO PUBLIC PRIVATE PARTNERSHIPS AUTHORITY

Chairman Grijalva, Ranking Member Bishop and Committee Members, thank you for the opportunity to appear before you today to discuss the transformation of the Puerto Rico Electric Power Authority ("PREPA"). My name is Fermín Fontanés Gómez and I am the Executive Director of the Puerto Rico Public Private Partnership Authority (the "P3 Authority").

Created pursuant to Act 29 as a public corporation of the Government of Puerto Rico affiliated with the Puerto Rico Fiscal Agency and Financial Advisory Authority, the P3 Authority is the government entity charged with executing the transformation of PREPA. As Executive Director of the P3 Authority, I am leading the efforts related to the transformation and recently oversaw the successful procurement process that resulted in the signing of an agreement between LUMA Energy, LLC and PREPA pursuant to which LUMA will operate, maintain, and modernize Puerto Rico's transmission and distribution ("T&D") system for a 15-year term.

The agreement with LUMA marks the culmination of a more than 18-month procurement process and represents a historic milestone in the Government of Puerto Rico's objective of providing modern, affordable, resilient, and reliable power to the island, which will help serve as a driver of economic recovery and growth. The agreement with LUMA is also the first transaction of its kind since the Government enacted Act 120, a new legal framework for infrastructure PPPs, in June 2018. LUMA is a Puerto Rico company formed by Canadian Utilities Limited, ATCO Ltd.'s energy company, and Quanta Services Inc., which will work in conjunction with Innovative Emergency Management Inc. to assist with the administration of Federal funding.

My testimony today will address the transformation of the T&D system and will address the following six topics: (i) the background and goals of the transformation that the contract with LUMA seeks to achieve, (ii) the procurement process for selecting LUMA, (iii) the benefits that LUMA will bring to the people of Puerto Rico, (iv) the impact of the transaction on rates, (v) the impact of the transaction on employees, and (vi) the first step that this transaction represents in terms of transitioning PREPA to renewable energy sources.

Background and Goals of the Transformation

PREPA serves approximately 1.5 million customers and employs approximately 6,000 people in Puerto Rico. As the sole utility for the island of Puerto Rico, PREPA's purpose is to provide the people of Puerto Rico with reliable electric power, assist the sustainable development of Puerto Rico, and contribute to the general welfare as a service provider and employer on the island.

In recent years, PREPA has faced a number of significant challenges, including: (i) a lack of managerial continuity and long-term planning; (ii) a dated electrical system that is in poor condition due, in part, to substandard practices and chronic infrastructure underinvestment; (iii) significant leverage, which has led to the inability to access credit markets for long term capital investment; and (iv) a geographic mismatch between supply and demand since much of the generation is located in the South of the island while a majority of the demand is in the North, thereby exacerbating the fragility and instability of the whole system.

Puerto Rico's dated and fragile electric system has suffered operational and reliability challenges and has struggled to provide residents with reliable and affordable power, as evidenced by reliability, customer satisfaction, and safety metrics that stand well below U.S. mainland and other island utility industry standards. PREPA's challenges were highlighted and significantly exacerbated by hurricanes Irma and Maria, which struck Puerto Rico within 2 weeks of each other and led to mass destruction of PREPA's infrastructure and a complete failure of the electrical grid.

In the aftermaths of hurricanes Irma and Maria, the Government sought not only to rebuild the electric grid but to transform it into a reliable, resilient, modern and eco-friendly system and bring to bear U.S. mainland and other international best industry practices to PREPA. The Government determined that the most effective way to achieve these goals was to partner with a world-class private operator with the requisite expertise, experience, and know-how to effect the much-needed transformation of the electric system.

Procurement Process

The procurement process to select a partner for the T&D system was carefully designed to address a number of key considerations. First, the Government was keenly focused on implementing a robust, competitive and transparent procurement

process to identify the private partner best positioned to accomplish the transaction's objectives. Second, from its inception, the procurement process was carried out in coordination with the Financial Oversight and Management Board for Puerto Rico (the "FOMB") given the need to align the process with the efforts to address PREPA's financial challenges and the Certified Fiscal Plan. Finally, given the importance of Federal funding to support the transformation, the procurement process was designed to provide potential private partners with various opportunities to better understand the state of the recovery effort and the status of the various applications for Federal funding.

The more than 18-month procurement process officially commenced with a market sounding in the summer of 2018 followed by the issuance of a request for qualification ("RFQ") on October 31, 2018. Based on the RFQ process, four proponents were qualified for the request for proposal ("RFP") phase. The RFP phase was launched on February 1, 2019 and culminated with the submission of proposals on November 25, 2019. From the end of November 2019 through the end of January 2020, the P3 Authority worked with the partnership committed established to oversee the process to extensively review and analyze the proposals and then to negotiate and agree on a form of contract with LUMA as the preferred bidder. From February through June 2020 the P3 Authority worked with LUMA to obtain the requisite consents and approvals to sign the contract.

During the RFP process, the P3 Authority provided proponents with extensive access to information related to PREPA and the T&D system—a data room with approximately 18,000 documents (totaling 149,181 megabytes of data), responses to over 700 diligence questions, and more 20 diligence calls and in-person meetings with bidders. Proponents were given the opportunity to review and comment on seven successive drafts of transaction documents and to discuss their comments in person at eight meetings. The robustness of the process is evidenced by the fact that LUMA expended over $15 million of its own funds throughout the process to both diligence PREPA's assets and prepare its proposal.

Benefits of Transaction to the People of Puerto Rico

LUMA's proposal, which was largely translated into the contract, presents concrete and detailed plans and timelines for achieving substantial gains in safety, customer service, reliability, and resiliency, all of which result in immeasurable benefit to the Puerto Rican economy, a demonstrable leap in economic competitiveness, tangible and meaningful improvements in the every-day quality of life of Puerto Ricans, and better work conditions for employees.

In addition, LUMA projects that it will be able to generate significant cost savings throughout the life of the contract based on its approach to the O&M services and the expertise and know-how that it will bring to bear in performing the services. LUMA estimate that it will be able to reduce operational costs by fiscal year 2026 by approximately 30 percent, as compared to PREPA's 2019 fiscal plan. This represents a net reduction in costs of approximately $100 million per year. LUMA also intends to implement a plan to reduce technical and non-technical energy losses, which will result in a reduction of approximately $150 million in annual energy system costs. Between the reduction in O&M costs and the improvements in lost energy, LUMA estimates a savings of $293 million per year in 2027, as compared to an annual service fee under the contract of $141 million. This results in significant annual and cumulative net savings for Puerto Rico—$323 million in cumulative savings by 2027—and demonstrates that the contract will pay for itself.

LUMA's approach to the O&M services is also expected to result in Federal disaster funding dollars being obligated for PREPA more effectively and rapidly. Indeed, the responsible management and administration of Federal dollars by an experienced and qualified private operator is key to facilitating the disbursement of the funds, one of the most critical component to the ability to rebuild and upgrade the electric grid.

Finally, the contract establishes clear obligations and performance metrics with which LUMA must comply, and parent company guarantees backstop these obligations. Unlike a government entity, LUMA must perform in accordance with metric designed specifically to improve safety, reliability and resiliency of the system or else is held accountable for its failure to do so. Thus, LUMA is contractually incentivized to deliver results for the people of Puerto Rico.

Impact of the Transaction on Rates

Various critics of the transaction have argued that, notwithstanding the operational and technical savings that LUMA is able to generate, consumer rates will go up as a result of this contract. In response to this, it is important to underscore that LUMA is required to comply with all laws and regulations applicable to

its operation of the T&D system, including those related to tariffs. In addition, LUMA is subject to regulatory oversight by the Puerto Rico Energy Bureau ("PREB"), and the contract specifically provides that all budgets prepared by LUMA must comply with rate orders established by PREB. The contract does not in any way eliminate, limit or restrict PREB's authority with respect to establishing rate orders or exercising its regulatory oversight to protect consumers. Furthermore, the contract does not require a rate increase or establish a minimum rate for LUMA to operate.

It is also worth noting that the transaction was structured as a long-term O&M contract rather than a concession, a common structure for PPPs, for a variety of reasons but the most critical of which was a desire to minimize any impact on rates. In addition to potentially jeopardizing the tax-exempt status of PREPA's legacy and restructured debt, which would have increased the amount of PREPA debt to be repaid, a concession posed greater risk to PREPA's current and future eligibility for Federal disaster relief funding. The Government was keenly focused on the fact that if a concession structure were to preclude Federal disaster relief funding, it would likely lead to increased rates. This is because a key feature of the concession structure is capital investment by the private sector participant and, absent Federal funding, the private investor would need to raise consumer rates in order to recoup its investment in the T&D system. With the specific view of avoiding these potential rate increases, the Government elected to pursue an O&M contract that would not have these effects.

Impact of the Transaction on Employees

Much has also been said about the impact of the transaction on employees. I want to make clear that no employee will lose their job as a result of this transaction—their jobs are specifically protected under existing law. Moreover, for those employees who end up working for LUMA, they will have access to world-class safety training, professional development opportunities, and exciting career paths, all of which has not been available to date for PREPA employees.

LUMA will need to hire thousands of employees, and all current PREPA employees will be given priority in hiring. The contract specifically requires LUMA to use reasonable efforts to interview all PREPA employees and evaluate them for positions at LUMA. It is important to note that, as recently as 8 years ago, PREPA employed about 9,000 employees and today the number is closer to 6,000. There is no doubt that PREPA is currently understaffed, and this is without taking into account the work that will result from the expected influx of Federal aid to rebuild the system.

All employees hired by LUMA will benefit from LUMA's culture of *People First, Safety Always*, which ensures that every employee has the proper training, skills, and tools for the job. In accordance with Act 120, all of the LUMA employees will receive a compensation and benefits package that is equal to or better than the one provided by PREPA. As part of the transition to LUMA, employees will have the choice to stay with their existing pension plan or transfer to a new LUMA plan. Finally, once LUMA hires its workforce, it expects to recognize the unions with majority status in the various bargaining units, in compliance with all applicable labor laws.

In addition, LUMA is in the process of establishing the LUMA College for Technical Training in Puerto Rico. This facility, which is being developed and built at LUMA's expense, will be used to train new craft skilled labor and will be open to anyone on the island. The curriculum and operations will be provided by the Northwest Lineman College, an accredited technical school recognized by the U.S. Department of Education with multiple campuses around the United States. This job training will expose employees of PREPA to training that will make them competitive not only in Puerto Rico but across the United States.

Any employee who elects not to join LUMA will have the right to maintain their employment with PREPA or transfer to another government agency within Puerto Rico. These rights are clearly established in Act 120 and cannot be taken away—not through the contract with LUMA or otherwise. Employees continuing with PREPA or another governmental agency will also retain their acquired rights under applicable law and the relevant collective bargaining agreement. Nothing in the LUMA agreement contravenes those acquired rights, and LUMA is required to comply with all Federal and local laws.

First Step Toward Renewable Energy

Finally, with LUMA comes accountability—the accountability to meet Puerto Rico's goal of a renewable energy future. LUMA has demonstrated a deep understanding of the IRP and the Electric Grid Modernization Plan for Puerto Rico, which

contemplate transforming the energy system through the incorporation of more renewables, micro-grids, and distributed energy resources. LUMA's commitment to complying with and achieving the renewable energy targets set forth in these plans is evidenced by LUMA's proposal to create (i) a detailed program to maximize the pace and magnitude of increased solar generation, with the stated goal of identifying opportunities that can be built in 18 to 24 months, and (ii) a transmission expansion plan that will play a key role in prioritizing which mini-grids are developed first. In addition, LUMA organizational structure includes the Utility Transformation Department, a department that will be dedicated to the transformation of the T&D System and responsible for the technical implementation of new initiatives, including distributed and renewable generation, interconnection standards, micro-grid and mini-grid design, and renewable energy.

LUMA's commitment to and focus on renewable energy is a first step toward the Government's renewable energy goals. LUMA efforts will be supplemented by Government initiatives aimed at PREPA's generation assets with a view toward reducing Puerto Rico's reliance on fuel oil and increasing the availability of renewable energy and natural gas. However, this first step with LUMA is a critical one. Puerto Rico will have an world-class operator that will be accountable for complying with the renewable portfolio standards and the goals of reaching 100 percent renewable generation by 2050—something for which PREPA, as a Government-owned monopoly, has not been accountable.

Conclusion

The T&D transformation process took place against a background of unique and unprecedented challenges: two devastating hurricanes followed by a series of major in late 2019 and 2020; a prolonged and, at times, contested PREPA bankruptcy process; the delay of billions of dollars in Federal aid; an unexpected change in government during the process; and strict shelter-in-place measures and other restrictions in mid-March to prevent the spread of COVID-19.

Notwithstanding these significant challenges, the Government was undeterred and forged ahead with its vision to transform PRPEA. It launched the T&D procurement process with the objectives of modernizing the utility, increasing T&D resiliency and reliability, deploying new technologies, delivering low-cost electricity, and implementing industry best practices and operational excellence through managerial continuity and long-term planning. The Government designed a robust, competitive, and transparent procurement process that attracted world-class participants and resulted in the selection of LUMA.

In partnership with LUMA, PREPA will finally deliver to the people of Puerto Rico what they deserve—a modern, affordable, resilient, and reliable electric energy system that will serve as a driver of economic recovery and growth. This partnership represents the most efficient and effective way to "build back better" as the Government has promised the citizen of Puerto Rico.

Thank you.

QUESTIONS SUBMITTED FOR THE RECORD TO FERMÍN E. FONTANÉS GÓMEZ, EXECUTIVE DIRECTOR, PUERTO RICO PUBLIC PRIVATE PARTNERSHIPS AUTHORITY

Questions Submitted by Rep. Grijalva

Question 1. Can you describe the proposal evaluations and selection process for the long-term concession contract and what mechanisms were in place to protect its integrity?

Answer. Pursuant to the Public-Private Partnership Authority Act, Act No. 29–2009, as amended ("Act 29") and the Puerto Rico Electric System Transformation Act, Act No. 120–2008, as amended ("Act 120"), the details for the procedures for evaluating and selecting the bidder awarded the contract for the management, operation, maintenance, repair, restoration and replacement of the Puerto Rico electric power transmission and distribution system (the "Project") were established through the Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Partnership Contracts and Sale Contracts for the Transformation of the Electric System under Act No. 120–2018, as amended (the "Regulation"). The purpose of the Regulation is to establish a procurement, evaluation, selection, negotiation and award process for public-private partnerships ("PPPs") with respect to any function, service or facility of PREPA that is fair, consistent, transparent and encourages and supports a climate of private sector innovation and investment in Puerto Rico. The Regulation provides guidelines for selecting the entities or individuals that will

enter into partnership agreements, in this case the O&M Agreement, with PREPA and negotiating the awarding of such agreements.

Further, Act 29 and Act 120 require the Partnership Committee ("Partnership Committee") established by the Puerto Rico Public-Private Partnerships Authority (the "P3 Authority") to take into account certain specific factors in evaluating responses to the Request for Proposals ("RFP"). The P3 Authority and the Partnership Committee developed evaluation criteria, which were set forth in the RFP, to meet the objectives of the Project, including those objectives and requirements set forth in Act 120, Act 29 and the Regulation, for the Partnership Committee's use in evaluating the proposals. Addendum No. 7 to the RFP, which was distributed to the proponents prior to the submission of final proposals, set out the evaluation criteria and weighting to be applied to the proposals by the Partnership Committee during the evaluation and selection process. Proponent's proposals were evaluated on the basis of three elements.

A technical proposal comprised forty-five percent (45%) of the proponents' final scores. As part of the technical proposals the RFP required proponents to provide detailed plans and proposals with respect to:

- performing the operation and maintenance services;
- transitioning and handing over services and other rights and responsibilities with respect to the T&D System;
- staffing and training of employees and subcontracting of services; and
- development of the performance metrics, which the Operator must meet or exceed to earn an incentive fee.

An operational and financial proposal comprised fifty percent (50%) of the proponents' total score. As part of the operational and technical proposals the RFP required proponents to propose certain operational and financial terms and conditions with respect to:

- the net present value of the fixed fee and incentive fee over the term of the O&M Agreement;
- the proposed amounts of certain operational elements;
- certain caps on liability included in the O&M Agreement; and
- the proposed target service commencement date.

A Legal proposal was graded on a pass/fail basis and required the proponents to submit a letter confirming their acceptance of the draft O&M Agreement, save for certain terms and conditions. Five percent (5%) of proponents' total scores were based on proponents' oral presentations of their final proposals to the Partnership Committee.

For more detailed information regarding the evaluation criteria and weighting applied to each criteria, please see Amendment No. 7 to the RFP attached as Exhibit A hereto and Section 5 (Process for Recommended Award) of the Partnership Committee Report prepared pursuant to Act 29 (the "Partnership Committee Report") and attached as Exhibit B hereto.

Prior to submission of their final proposals, the proponents were provided access to the same information and had similar access to the P3 Authority and PREPA management. All proponents were given access to the data room, and proponents were able to submit any request for clarification with respect to the contents of the RFP, the information available in the data room and other matters related to the Project. The P3 Authority received and answered over 730 requests for clarification throughout the RFP process and answers were made available to all proponents, unless a proponent requested confidentiality and the P3 Authority agreed to such treatment. Furthermore, the proponents participated in management presentations, site visits and were given numerous opportunities to comment on the transaction documents. Proponents were given the same opportunity to respond to questions and clarify their final proposals as well as amend and supplement their final proposals after the submission deadline.

On January 11, 2020, the Partnership Committee voted by referendum, pursuant to Act 29, Act 120 and the Regulation, to designate LUMA as the proponent chosen to engage in exclusive discussions and negotiations with the P3 Authority in connection with the Project, pursuant to Section 5.1 of the Regulation. Each Partnership Committee member submitted its score of the proposals, and such scores were averaged to determine a final score for each proposal. The Partnership Committee granted LUMA a higher average score. Based on its evaluation of the proposals pursuant to the evaluation criteria, the Partnership Committee determined that LUMA had clearly demonstrated its ability and commitment to transform the Puerto Rico

electric transmission and distribution system (the "T&D System") into a modern, sustainable, reliable, efficient, cost-effective and resilient electric system for the people of Puerto Rico. In order to protect the integrity of the evaluation and selection process, the Partnership Committee and P3 Authority established an evaluation and selection process that was in line with the applicable regulatory framework, including the limits imposed by Act 29, Act 120 and the Regulation. On May 15, 2020, after a robust and competitive procurement process that lasted more than 18 months, the Partnership Committee determined to recommend to the board of directors of the P3 Authority that LUMA be selected to execute the O&M Agreement.

Question 2. Did political appointees participate in the decision-making process? If so, why?

Answer. Political appointees participated in the decision-making process as members of the Partnership Committee for the Project. The members of the Partnership Committee served in their positions by virtue of the requirements set forth under applicable law.

Article 8 of Act 29 requires that the Partnership Committee be composed of: (i) the executive director of the Puerto Rico Fiscal Agency and Financial Advisory Authority (known by its Spanish acronym "AAFAF") or his/her delegate; (ii) the officer of PREPA directly concerned with the project or his/her delegate; (iii) one member of the board of directors of PREPA, his/her delegate, or an official thereof selected by the board of directors of the P3 Authority based on him/her having specialized knowledge pertinent to the project under consideration by the relevant partnership committee; and (iv) two officials from any government entity chosen by the board of directors of the P3 Authority for their knowledge and experience in the type of project under consideration by the relevant partnership committee.

Pursuant to Article 5(c) of Act 120, the P3 Authority must designate a Partnership Committee, as required by Act 29, to evaluate and select qualified proponents and to establish and negotiate the terms of the O&M Agreement. Furthermore, pursuant to Article 8(b) of Act 29, the Partnership Committee was tasked with the duty of evaluating the proposals submitted and selecting that which is best for the Project and the people of Puerto Rico. The members of the Partnership Committee made all decisions based on the criteria provided for in the RFP, which were based on the requirements of Act 29, Act 120, the Regulation and the PREPA Fiscal Plan, as certified on June 27, 2019, by the Financial Oversight and Management Board of Puerto Rico ("FOMB"). As such, the Partnership Committee's discretion throughout the evaluation and selection process was restricted within the confines of applicable law.

As of May 15, 2020, the date the Partnership Committee recommended to the board of directors of the P3 Authority that the O&M Agreement be awarded to LUMA, and pursuant to the requirements summarized above, the Partnership Committee was comprised of the following individuals: (i) Omar Marrero, Esq., Executive Director & Chairman of AAFAF, CFO of the Government of Puerto Rico; (ii) Jose Ortiz, PE, Executive Director of PREPA; (iii) Ralph Kreil, PE, President of the board of directors of PREPA; (iv) Edison Avilés, PE, Esq., Chairman of the Puerto Rico Energy Bureau ("PREB"); and (v) Ottmar Chavez, Executive Director of the Central Office for Recovery and Reconstruction.

As a result of his appointment as executive director of AAFAF, Omar Marrero became a member of the Partnership Committee on July 30, 2019. On July 18, 2018, Governor Rosselló recommended Jose Ortiz be appointed as Executive Director of PREPA, and the Governing Board of PREPA voted unanimously in favor of the appointment on July 19, 2018. As a member of the board of directors of PREPA, Ralph Kreil was appointed to his position by Governor Rosselló. Edison Aviles and Ottmar Chavez were appointed to the Partnership Committee for their knowledge and experience in the energy sector. As Chairman of PREB, Edison Avilés was appointed to PREB by the Governor of Puerto Rico with the advice and consent of the Senate of Puerto Rico. Edison Avilés is a professional engineer, and member of the Engineers and Land Surveyors of the Commonwealth of Puerto Rico Bar Association, the Institute of Electronic and Electrical Engineers, and previously served as President of the Electrical Engineers Institute of the Professional College of Engineers and Land Surveyors of Puerto Rico. Governor Rosselló recommended that Ottmar Chavez serve as the Executive Director of Central Office for Recovery and Reconstruction. Ottmar Chavez currently serves as the Governor's Authorized Representative before FEMA and serves as the Administrator of the General Services Administration of Puerto Rico.

Question 3. Can LUMA terminate the contract with PREPA during an extended force major event? If so, wouldn't an extended force major event—such as a hurricane—be a time when grid work would be needed?

Answer. LUMA is able to terminate the O&M Agreement for a Force Majeure Event only if the Force Majeure Event continues for more than **eighteen (18) consecutive months** and materially interferes with, delays or increases the costs of the Front-End Transition Services or the O&M Services (see Section 14.5(c) (*Additional Termination Rights—Extended Force Majeure Event*)). Under the O&M Agreement, hurricanes are not enumerated as Force Majeure Events. Thus, the disruption to the T&D System would need to continue beyond **eighteen (18) consecutive months**—i.e., longer than the period of time that the electric system was affected after Hurricanes Irma and Maria—before the Operator would be able to terminate the O&M Agreement. For the reasons noted above, we do not think this is a likely event and, if it did occur, the O&M Agreement provides protections for consumers and rate payers.

Chair Grijalva is correct in stating that an extended force majeure event—such as a hurricane—would be a time when grid work would be needed. In fact, that is precisely one of the key reasons the P3A sought to bring in a private operator with the expertise and know-how to ensure that what took place after Hurricane Maria or Hurricane Irma does not happen again. The P3A took steps when negotiating the O&M Agreement to ensure that if a hurricane as devastating as Hurricane Maria or Hurricane Irma were to occur the consequences of such event would not continue for such an extended period of time. The O&M Agreement, as executed, accounts for this necessity by requiring the Operator to provide the Administrator and PREB with a plan of action that takes effect from when the Operator takes over the T&D System for responding to any emergency affecting the T&D System (the "Emergency Response Plan").

The Emergency Response Plan will provide for storm monitoring and mobilization of the Operator and Subcontractor workforce in connection with anticipated storms and other electrical system emergencies, the repair and replacement of damaged components of the T&D System, including due to Outage Events or Declared Emergencies or Major Disasters, and the restoration of the T&D System to pre-emergency conditions. Further, if at any time the Operator determines that immediate action must be taken to mitigate the immediate consequences of an Emergency Event, the Operator must take such action (see Section 5.14(b) (*Emergency Action—Emergencies*). As such, upon the occurrence of a hurricane the Operator is obligated to begin work to not only mitigate the consequences of a hurricane, but to work to restore the T&D System to pre-emergency conditions.

LUMA has committed to leveraging consortium members' expertise with respect to Federal funding and emergency and disaster response to work to harden and modernize the grid. Further, in their proposal, LUMA stated an intent to develop an interim Emergency Response Plan to address storm/hurricane season during the Front-End Transition so LUMA and its employees can be thoroughly prepared for any emergency or disaster that may occur even before LUMA takes over the operation and maintenance of the T&D System.

Questions Submitted by Rep. Velázquez

Question 1. Page 14 of the Executed Agreement between PREPA and LUMA LLC defines force majeure as: to the extent not covered by (A) or (B) above, any event that causes any Federal or Commonwealth Governmental Body to declare any portion of the geographic area of the T&D System part of a "disaster zone," "disaster area," "state of emergency" or any similar pronouncement;

1a. This definition does not specifically exclude when the island is declared as disaster area after a hurricane makes landfall. Mr. Fontanés, are there any other safeguards in the agreement that would prevent the agreement to be terminated by LUMA when a hurricane as devastating as Maria strikes the island?

Answer. In order to prevent LUMA from terminating the O&M Agreement if a hurricane as devastating as Hurricane Maria were to strike the island, the O&M Agreement was drafted to prevent a hurricane, such as Hurricane Maria, from qualifying as an extended Force Majeure Event. In the event that a hurricane as devastating as Hurricane Maria were to strike the island, LUMA is not permitted to terminate the Agreement unless the consequences of the hurricane last for more than **eighteen (18) months** (see Section 14.5(c) (*Additional Termination Rights—Extended Force Majeure Event*)). In addition, during the continuance of a Force Majeure Event, such as a hurricane, the Operator is required, as promptly as reasonably possible, to use commercially reasonable efforts to mitigate or eliminate the

cause of the Force Majeure Event, reduce the cost resulting therefrom, mitigate and limit damage to Administrator and resume full performance under the Agreement (see Section 17.1(b) (*Force Majeure Events—Notice; Mitigation—Mitigation*)). As such, the Operator must work to repair the damages caused by the hurricane in order to remedy the T&D System and eliminate the Force Majeure Event as promptly as possible, and before an extended Force Majeure Event is able to occur.

1b. Why were hurricanes not excluded from the force majeure definition if they are historically common on the island?

Answer. Although under the O&M Agreement, hurricanes are not enumerated as Force Majeure Events, the P3 Authority took steps to ensure that the Operator would work to upgrade and prepare the T&D System for future hurricanes and other natural disasters. Puerto Rico's dated and fragile electric system has faced significant operational and reliability challenges and has struggled to provide residents with reliable and affordable power. PREPA's challenges were both highlighted and significantly aggravated by Hurricanes Irma and Maria. Against the backdrop of these two devastating back-to-back hurricanes that intensified an economic and fiscal crisis, the Government sought to move forward in its economic and disaster recovery by investing in infrastructure, people and the environment. In particular, Hurricanes Irma and Maria forced the Government to rethink how PREPA's power supply and delivery infrastructure should be managed and upgraded to ensure that it is better prepared for inevitable future weather events. The Project will harness LUMA's resources and expertise to revitalize and strengthen the T&D System in order to be more resilient against future natural disasters.

In order to assure that the consequences of a hurricane do not exist for a consecutive **eighteen (18) month** period the Operator must create an Emergency Response Plan before the Operator takes over the operation of the T&D System. The Emergency Response Plan is meant to serve as the vehicle for the improvement and strengthening of the T&D System to withstand future hurricanes and other natural disasters. The Operator is required to implement an Emergency Response Plan that not only addresses disaster recovery and emergency response and restoration of the T&D System, but that also coordinates plans for disaster recovery and response. The Emergency Response Plan calls for storm monitoring and mobilization, system condition monitoring, repair and replacement of damaged components of the T&D System, as well as the restoration of the T&D System to pre-emergency conditions, among other things. The Emergency Response further requires the Operator to conduct periodic drills including, at a minimum, a system wide test of the Emergency Response Plan three (3) months prior to the commencement of the Atlantic Hurricane Season, which shall replicate a Category 5 hurricane. Following such drills, Operator will conduct post-event analysis and incorporate lessons learned from drills and actual events to improve the readiness of the T&D System to withstand the forces of nature.

Questions Submitted by Rep. García

Question 1. LUMA has estimated that they can generate a cumulative net savings of $323 million. Where and how can it produce these savings? Will this data become public?

Answer. On December 20, 2019, LUMA provided a clarification letter to the P3 Authority specifically addressing several requests for clarification from the P3 Authority. LUMA provided estimates of savings from their Loss Reduction Program and O&M Cost Improvement Program. Assuming a Service Commencement Date in 2021, as the Operator, LUMA estimates, per Appendix 2, a total cumulative Loss Reduction savings of $648 million over the first 7 years and $536 million of O&M cost savings over the same period for a total of $1,184 million.

Over the same period the total fees paid to LUMA are $861 million for a net cumulative savings over the period of $323 million. These cumulative net savings only cover the first 7 years of the term of the O&M Agreement. These savings will continue to increase over the remaining 8 years of LUMA's operation of the T&D System. As actual savings are generated, the data will become public as LUMA's budgets and performance metrics are subject to the jurisdiction of the PREB.

In terms of technical and non-technical loss reductions, LUMA has a program to reduce the resultant system energy losses. LUMA plans to reduce PREPA's current system total losses' percent from approximately 12.2 percent to 5.5 percent over the 7-year period. LUMA's energy loss reduction program is based on experience from LUMA's management team and similar sized utilities in Latin America where successful programs have been implemented.

LUMA's operation and maintenance cost reductions/savings come from their extensive due diligence work, benchmarking to other utilities (i.e.: cost per kWh, cost per customer, and cost per mile) and their operating utility experience. For example, LUMA expects to achieve significant cost savings in vegetation management. After an initial 3-year reclamation period of $50 million per year, LUMA projects vegetation management costs will drop to $11 million and then reach a steady state of $9 million per year. Note that the current 2020 Fiscal Plan for PREPA shows vegetation management costs of over $70 million.

Additionally, although difficult to quantify now, the Partnership Committee believes there could be substantial additional value at (and beyond) the end of the term of the O&M Agreement, if, as is contemplated in the O&M Agreement, there is no need (or limited need) to retain a new or replacement Operator because of the knowledge transfer and development of local expertise that is intended to take place, which was one of the objectives that the Operator committed to as part of its proposal.

Question 2. Given that LUMA has the right to terminate its contract with the government in case of either "prolonged force majeure events" or changes in regulatory law, does the government have a plan in place if the Legislature or Administration in Puerto Rico act to protect Puerto Rico's residents from energy rate hikes or penalties due to nonpayment?

Answer. Let me take each of these questions in turn.

First, the Operator may only terminate the O&M Agreement in the event that a Force Majeure Event continues in excess of **eighteen (18) consecutive months** and materially interferes with, delays or increases the costs of the Front-End Transition Services or the O&M Services (see Section 14.5(c) (*Additional Termination Rights—Extended Force Majeure Event*)). For the reasons noted above, we do not think this is a likely event and, if it did occur, the O&M Agreement provides protections for consumers and rate payers.

Second, with respect to changes in regulatory law, the O&M Agreement limits when a cap on rates would be considered a Change in Regulatory Law. A Change in Regulatory Law includes change, amendment or modification to any Commonwealth Applicable Law or any adoption of, or change to, any administrative or judicial interpretation (having the force of law) of any Commonwealth Applicable Law that caps, or has the effect of capping, rates charged to T&D Customers. Notably it expressly excludes any *temporary cap on rates to address an Outage Event*, among other scenarios. The carve out of temporary rate caps for Outage Events reflects the clear acknowledgment of both the P3 Authority and LUMA that the Legislature or Administration in Puerto Rico might seek to protect ratepayers should a devastating hurricane, such as Hurricane Maria or Hurricane Irma, strike the island and should address the Committee Members' concern with respect to energy rate hikes or penalties due to nonpayment during the course of a hurricane and the aftermath of such event.

Finally, it bears noting that the O&M Agreement does not establish energy rates (which are set by an independent regulator-the PREB) and the compensation payable to the Operator, or its duties to perform under the O&M Agreement, is not linked to nonpayment by customers or amount of system revenues. Moreover, the amount of revenues and level of the applicable rate paid by customers should not interfere with the Operator's duty to perform its obligations under the O&M Agreement. The Operator's compensation is not tied to the payment of rate charges by T&D Customers. The Operator's compensation includes a fixed fee payable to the Operator for each contract year and an incentive fee tied to the Operator's ability to meet or exceed certain performance metrics. As such, the Operator is incentivized throughout the term of the O&M Agreement to continue to operate and maintain the T&D System even if the Legislature or Administration in Puerto Rico act to protect Puerto Rico's residents from energy rate hikes or penalties due to nonpayment.

Questions Submitted by Rep. Bishop

Question 1. The Committee has heard from some witness today about all the negative aspects the newly signed LUMA contract will bring to the residents of the island. Could you reiterate to us the expected benefits to the consumers of Puerto Rico that were the basis for ultimately agreeing to the terms of the contract?

Answer. LUMA's proposal, which was largely translated into the contract, presents concrete and detailed plans and timelines for achieving substantial gains in safety, customer service, reliability and resiliency, all of which result in immeasurable benefit to the Puerto Rican economy, a demonstrable leap in economic

competitiveness, tangible and meaningful improvements in the everyday quality of life of Puerto Ricans, and better work conditions for employees.

LUMA will bring to consumers an extensive understanding of the PREPA context, which will be further developed during the Front-End Transition Period. LUMA's technical proposal, largely incorporated into the terms of the O&M Agreement, presents a tailored approach to the T&D system that demonstrates a clear understanding of the challenges and opportunities of the Project. With LUMA taking on the role of the Operator, the people of Puerto Rico will benefit from improvements in design resiliency standards, storm hardening practices, control centers, vegetation management, advanced metering infrastructure, public lighting and fleet solutions to rebuild and upgrade the performance of the electric grid and customer service. Further, LUMA projects that it will be able to generate significant cost savings throughout the life of the contract such that the savings are intended pay for the service fee under the Agreement and avoid increases to rate payers.

The people of Puerto Rico will benefit from LUMA's extensive experience with respect to Federal funding procurement, management and deployment. LUMA has committed to engaging its consortium member, IEM, to deal with Federal funds management. IEM is a comprehensive emergency management and disaster recovery firm that has supported over 300 state and local jurisdictions with a wide range of energy management services. IEM has experience with procuring and deploying Federal funding, including over $51 billion in disaster recovery programs over the past 35 years.

LUMA has made a commitment to investing in the local community and Puerto Rico's workforce through leveraging the existing PREPA workforce and developing a self-sustaining standalone utility at the end of the contract term. Further, LUMA has committed to building and managing, at its own expense, a state-of-the-art lineworker and technical training campus in Puerto Rico to offer customized curriculum and training to LUMA utility workers and the next generation of Puerto Rico's skilled workforce. The lineworkers college will significantly improve local workforce development and retention by providing best-in-class training programs and facilities. In addition, the lineworkers college is a critical component of LUMA's holistic approach to improving emergency response preparedness for the benefit of the people of Puerto Rico. Part of the lineworkers curriculum includes emergency preparedness training, which will be integrated into the mindsets of the local Puerto Rican workforce from the outset of their training.

The central goal of the Project is to transform Puerto Rico's energy system into a modern, sustainable, reliable, efficient, cost-effective and resilient one. The Project is intended to achieve the following objectives for the benefit of the people of Puerto Rico: (i) delivery of low-cost electricity to the ratepayers of Puerto Rico; (ii) increase in T&D System resiliency, achieving performance in line with codes, specification and standards consistent with mainland U.S. electric utilities; (iii) increase T&D System reliability; (iv) deployment of new technologies; and (v) implementation of industry best practices and operational excellence through managerial continuity and long-term planning.

Question 2. The Committee has heard that the RFP process that ultimately lead to the contract signed with LUMA was opaque, lacking input from valuable public member stakeholders, and conducted behind "closed doors." Can you describe the RFP process that the P3 Authority conducted? Would it be fair to claim that the process lacked transparency?

Answer. The claims you refer to are irresponsible, are born out of a lack of knowledge, or are simply designed to pursue a self-serving agenda. The entire procurement process for the PPP related to the T&D System was conducted in accordance with the highest standards and industry wide best practices. It also fully complied with applicable legal requirements including as set forth in Act 29, Act 120, the Regulation, and the evaluation criteria clearly detailed in the RFP.

Puerto Rico is a leader amongst U.S. jurisdictions with organized PPP programs. The Government specifically enacted Act 29 and its regulations in order to finance infrastructure projects that provide multiple public services. Pursuant to the framework set forth in Act 29 the Government has had success in bringing to bear best industry practices, expertise, experience and know-how to its infrastructure projects by entering into PPPs with private sector participants. For example, the Government has entered into PPPs to revitalize toll roads PR-22 and PR-5 and the Luis Muñoz Marin International Airport, both of which were awarded Project Finance International's deal of the year in the Americas award for the successful financing of significant infrastructure projects. By providing clarity, uniformity, and certainty with respect to PPP selection and contracting, Act 29 and the regulation enacted thereunder comprise one of the most robust legal frameworks for PPPs in the

Americas. In particular, Puerto Rico's PPP program is guided by the following five key components of a successful PPP program identified by the World Bank Group: clear public policy, strong legal framework, clear processes and institutional responsibility, responsible financial management, and good governance arrangements.

The detailed legal framework set forth in Act 29 includes specific rules governing the confidentiality of the PPP process and the specific timing of any disclosures regarding the process, the identity of participants and resulting agreement, in this case the O&M Agreement. During the evaluation, selection and negotiation process, including all proceedings prior to the approval of the proposed partnership by the board of directors of the P3 Authority and board of directors of PREPA and by the Governor, all information relating to the PPP process, including the identity of the participants remaining in the process, the proposals submitted, and the negotiations between the parties must remain confidential. Pursuant to Act 29, the relevant information about the PPP process is only disclosed by the P3 Authority after an agreement is approved by the Governor and executed by the parties.

Article 9(b) of Act 29 further requires that, in commencing a PPP process, the P3 Authority must devise processes directed at (i) guaranteeing the participation of the greatest number of qualified proponents and (ii) protecting and ensuring a level playing field and fair competition among such proponents. Protecting and preserving the confidentiality of the proponents, their proposals and the evaluation thereof until the execution of the O&M Agreement was essential for achieving the aforementioned goals as explained in more detail below. Act 120 makes the confidentiality and other provisions of Act 29 expressly applicable to the PPP process for PREPA. Furthermore, the Regulation similarly provides for the confidentiality of all information and documents submitted in connection with a PPP process prior to the execution of a final agreement.

Finally, Art. 4.7(b)(iii)(3) of the Regulation provides that proposals received for any PPP process under Act 120 and Act 29 shall not be read publicly nor shall the P3 Authority generate copies thereof. Instead, the Regulation requires that during the period for selection and evaluation for proposals, "only the members of the P3 Authority, the members of the Partnership Committee or persons designated by the P3 Authority or its Executive Director may have access to the Proposals or the results of the evaluation of those proposals." In turn, Article 5.1(ii)(vi), which addresses the review of proposals and eventual recommendation by the Partnership Committee requires that proposals, evaluation, discussion and negotiations be kept confidential through the evaluation, selection and negotiation process.

Thus, the applicable statutes and regulations provide for the confidentiality of the draft O&M Agreement and related Partnership Committee Report, as well as all proposals and other information received or exchanged during the evaluation, selection and negotiation process of a Project until the O&M Agreement was executed. These statutory and regulatory confidentiality requirements are geared at protecting important interests that are key to the success of the PPP process, namely the evaluation, selection and negotiation with as many qualified proponents as possible through a competitive process. It is only through a robust and competitive process that the Government would be able to achieve the best terms for the relevant PPP and thus protect the best interests of the people of Puerto Rico.

As noted above, the confidentiality of the procurement process serves two purposes, both of which ultimately benefit the people of Puerto Rico. First, protection of proponents' information and proposals through the execution of the O&M Agreement (and beyond that for certain items such as proprietary information and trade secrets) serves to encourage a greater number of participants to engage in the PPP process because they are not concerned that their data will end up in the hands of their competitors. Greater participation in a PPP process enhances competition and provides the Government with a greater number of alternatives, inevitably leading to less risk transferred to the Government and people of Puerto Rico.

Second, ensuring that proponents do not have access to each other's proposals, the Partnership Committee's evaluation of such proposals, or information about the negotiations between a proponent and the Partnership Committee is key to preserving the Partnership Committee's leverage and ability to negotiate the best terms for the P3 and ensuring the fairness of the process. In order to maintain the true competitive tension necessary for the Partnership Committee to negotiate the best terms for the O&M Agreement, it was necessary to preserve confidentiality while there were any possibilities of further negotiation with the other proponent.

It is also worth noting that a PPP process may be of interest to publicly-traded companies. These public companies may be particularly sensitive to disclosure of their participation in a PPP process before the execution of an agreement. Such disclosure could require an obligation to make certain securities law filings regarding the potential transaction and could affect the company's share price. Maintaining

confidentiality of the PPP process until an agreement is executed allows public companies to participate in a PPP process without concern of material non-public information being disclosed prior to the point at which the PPP transaction has been formalized (i.e., upon execution of a final agreement). This increased the likelihood of public company participation in a Project and thus the number of potential participants, both of which were critical to the Project. Against this backdrop and pursuant to the requirements of applicable law, the procurement process for the Project commenced with an open and transparent market sounding process and Request for Qualification ("RFQ") process. In the summer of 2018, the Government, including the P3 Authority, AAFAF and PREPA, together with the FOMB, issued a letter soliciting private sector feedback on the energy transformation generally and the Project specifically, with the stated goal of creating a modern, sustainable, reliable, efficient, cost effective, and resilient energy system. Following the market sounding process, the P3 Authority issued the RFQ for the Project, as well as a public notice with respect to the RFQ. The RFQ solicited statements of qualification, to be reviewed by the Partnership Committee, from respondents qualified to participate in the RFP process. The RFQ was made publicly available and requested statements of qualification from companies and consortia that demonstrated, among other things: (i) experience operating large-scale electric utilities, (ii) the ability to operate electric utility T&D infrastructure on an island or other stranded location, (iii) experience with formal regulatory proceedings and (iv) experience managing disaster recovery operations. A copy of the RFQ is available at the P3 Authority's website at https://www.pr.gov/p3/.

The P3 Authority then conducted a RFP process that was fair and transparent among participating proponents. The RFP for the Project was issued in February 2019 pursuant to Article 5 of Act 120 and Article 3 of Act 29. The RFP process sought proposals from companies and consortium that had been pre-qualified in the Request for Qualification process. The objective of the RFP process was to enable the Partnership Committee to determine the proponent best qualified to enter into the O&M Agreement based on their final proposal. For the following ten (10) months, the Partnership Committee oversaw (i) a robust due diligence exercise, which included access to significant information about PREPA by way of a data room, specifically, 17,988 documents related to PREPA totaling 149,181 megabytes of data, over 730 diligences questions submitted by proponents and answered by the P3 Authority, which answers were made available to all proponents, unless a proponent requested confidentiality and the P3 Authority agreed to such treatment, management presentations, site visits and information sessions, and (ii) extensive discussions with the qualified proponents regarding the structure and transaction documentation for the proposed Project, including multiple opportunities for comments on the proposed transaction documentation and discussion of such comments. The proponents were provided access to the same information and had similar access to the P3 Authority and PREPA management. All proponents were given access to the data room, and proponents were able to submit any request for clarification with respect to the contents of the RFP, the information available in the data room and other matters related to the Project.

The P3 Authority issued seven addenda to the RFP to (i) update the timeline of the RFP process, (ii) update the processes and procedures to be used to implement the RFP process, including the evaluation criteria and weighting to be applied to the proposals and proposal submission instructions, and (iii) distribute certain transaction documents provided to the proponents prior to November 25, 2019, the date on which proposals were due, including the term sheets summarizing two contemplated transaction structures and various drafts of the O&M Agreement. During the period from February through November 2019, the proponents received three draft terms sheets and four drafts of the O&M Agreement. Pursuant to the process set forth in the RFP, the proponents (i) provided written comments to and markups of two terms sheets and three drafts of the O&M Agreement, and (ii) met with the P3 Authority, certain consultants to the P3 Authority, and representatives of the FOMB on four occasions to walk through and discuss their comments to the term sheets and draft O&M Agreements. In order to maintain fairness and transparency, communications between the P3 Authority and the proponents throughout the term of the RFP process were solely distributed via PowerAdvocate[C], a digital platform specifically designed for the energy industry to make competitive procurement easy and efficient.

The proponents were required to submit their proposals by 12:00 PM AST on November 25, 2019. On December 4, 2019, each of the proponents participated in in-person meetings to discuss their proposals with the P3 Authority, various consultants to the P3 Authority and representatives of the FOMB. On December, 6, 2019, the proponents were given the opportunity to present their proposals to the

Partnership Committee and answer any questions the members had. Following a detailed review and evaluation of the proposals, and in accordance with the procedures set forth in Act 120 and its regulations, the Partnership Committee voted in January 2020 to proceed with negotiations with LUMA. Thereafter, the Partnership Committee and LUMA negotiated and finalized the terms and conditions of the O&M Agreement. For more detailed information on the RFP process, please see Section 4.4 (Request for Proposals) of the Partnership Committee Report attached as Exhibit B hereto.

Upon execution of the O&M Agreement the Partnership Committee published the Partnership Committee Report. The Partnership Committee Report is an extensive 330-page report that details (i) the Project background and objectives, (ii) procurement process, (iii) selection process and key considerations relevant to recommending that the board of directors of the P3 Authority elect LUMA to execute the O&M Agreement, and (iv) a comparison between LUMA's proposal and other proposals presented, as well as all other information pertinent to the procedure followed and the evaluation conducted. This report, as well as the O&M Agreement itself, are publicly available at the P3 Authority's website at https://www.pr.gov/p3.

In sum, the procurement process for the O&M Agreement was not only carried out strictly in accordance with the legal requirements of Act 29, Act 120 and the relevant regulations, but also was designed to allow proponents extensive access to information about PREPA and the T&D assets, significant opportunity for review and comment on the transaction documents and the ability to clarify and refine their proposals to better serve the Government's objectives and the ultimate day-to-day experience of the people of Puerto Rico.

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The following documents were submitted as supplements to Mr. Fontanés' responses. These documents are part of the hearing record and are being retained in the Committee's official files:

—EXHIBIT A—Amendment No. 7 to the Request for Proposals

—EXHIBIT B—Partnership Committee Report

The CHAIRMAN. Thank you very much, sir.

Next is the Chair of the Puerto Rico Energy Bureau, Mr. Edison Avilés.

Sir.

STATEMENT OF EDISON AVILÉS-DELIZ, CHAIR, PUERTO RICO ENERGY BUREAU (PREB)

Mr. AVILÉS-DELIZ. Good afternoon Chairman Grijalva, Ranking Member designee González-Colón, and members of the Committee. My name is Edison Avilés, and I am the Chair of the Energy Bureau also known as the PREB.

On behalf of the PREB, I appreciate the opportunity afforded to present our views regarding the transformation of the Puerto Rico Power Authority, PREPA.

PREB is an independent regulatory body consisting of a shared commissioner and four associate commissioners, all of whom have equal voting rights. The PREB has a mandate to implement and enforce the energy public policy of the government of Puerto Rico as well as to adopt the regulations necessary for such implementation.

The PREB was created in 2014 by the Puerto Rico Energy Transformation and RELIEF Act, serving as a key component for the full and transparent implementation of the Act's energy reform goals. The PREB has a mandate to ensure electric service is safe, reliable, and affordable.

PREB's commissioners are highly qualified professionals. PREB also engages recognized experts in the regulatory field to assist its informed and grounded regulatory development. It is an active member of NARUC.

The U.S. Department of Energy Office of Electricity has provided and continues to provide significant technical assistance in the areas of electric distribution planning and energy efficiency program development.

The New York Department of Public Service is currently providing support to the PREB by sharing its expertise and experience with the oversight of the Long Island Power Authority, LIPA, third party T&D operation services agreement.

The recently adjudicated T&D maintenance and alteration agreement provides the PREB with tools for enforcement. The private T&D operator has a financial incentive to improve system performance according to metrics approved by the PREB.

On the other hand, penalties will be paid by LUMA, not the ratepayers. Significant positive changes intended to rebuild public confidence have taken place since the last time the PREB testified in Congress.

I am proud to report that the PREB is already conducting numerous proceedings that account for significant steps in advancing the transformational goals of reliability, sustainability, and cost effectiveness.

Some notable proceedings include: (1) Rate Case—for the first time, electric service rates were set in Puerto Rico by an independent regulator; (2) Regulation Energy Cooperatives in Puerto Rico—this regulation contributes to the public policy established by the government of Puerto Rico to promote the development of a decentralized energy model capable of providing renewable energy options to the residents of the island; (3) Energy Efficiency Program Development—the process to adopt an energy efficiency regulatory program started in 2019, and we expect to have the regulation in place before year end. This proceeding seeks to ensure an energy efficiency goal of 30 percent is reached by 2040; (4) Regulation on Electric Energy Wheeling—as a first step, PREB adopted the regulation establishing the legal framework on electric energy wheeling. The second step, already ongoing, encompasses the abundance of PREPA assets to then adopt the applicable wheeling charges. PREB expects to complete this process within the next 8 months; (5) the Integrated Resource Plan, the IRP, is the cornerstone and roadmap of the energy conservation of the island. The PREB is currently evaluating the performance of the utility's proposed IRP with the goal set out from the Puerto Rico Energy Public Policy Act, and we expect the final resolution to be issued in August 2020; (6) Preliminary T&D Operation and Maintenance Agreement—it is important to emphasize: (a) the Puerto Rico Energy framework; (b) the certificate of compliance issued by the PREB; as well as (c) the T&D agreement acknowledging PREB's regulatory authority to ensure LUMA's compliance with the energy public policy, the applicable legal framework, and the agreement itself.

In our views, for all energy purposes, LUMA will be in PREPA's shoes. I look forward to your questions and remain committed to

strengthening the working relationship with the Committee for the benefit of Puerto Rico.

[The prepared statement of Mr. Avilés-Deliz follows:]

PREPARED STATEMENT OF EDISON AVILÉS-DELIZ, P.E., ESQ., CHAIR, PUERTO RICO ENERGY BUREAU

I. INTRODUCTION

Good afternoon Chair Grijalva, Ranking Member Bishop, Congresswoman González-Colón, and members of the Committee.

My name is Edison Avilés-Deliz, and I am the Chair of the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("PREB").[1] I am a licensed electrical engineer with a specialty in power and control systems and an attorney with a Masters in Energy Law from the Vermont Law School. I joined PREB in June 2018.

PREB is an independent, regulatory body consisting of five (5) commissioners. The Commissioners have equal voting powers. The PREB has a mandate to implement and enforce the energy public policy, as well as to adopt the regulations necessary for such implementation.

We acknowledged receipt of your letter dated July 15, 2020, inviting us to testify before the Committee on Natural Resources of the House of Representatives at an oversight hearing concerning The Transformation of the Puerto Rico Power Electric Authority (PREPA). We appreciate the opportunity afforded to present our views regarding this important matter.

As this Committee is aware, in 2017 Hurricanes Irma and María devastated Puerto Rico's already precarious electric system. Significant efforts have been and continue to be underway to rebuild the electricity system for Puerto Rico. I am here today to discuss the significant public policy changes that govern PREPA's transformation as well as PREB's crucial role in this process to ensure a successful transformation.

Having a strong and effective regulator is crucial to a stable and robust electric delivery system. The PREB is an independent regulator but subject to judicial review. This stability fosters an environment where long-term plans and strategies can succeed.

Having a strong and effective regulator is a major pillar of the energy transformation in Puerto Rico. Significant positive changes intended to rebuild public confidence have taken place since the last time the energy regulator testified to Congress.[2]

II. A STRONG, EFFECTIVE REGULATOR

The PREB was created in 2014 by the Puerto Rico Energy Transformation and RELIEF Act[3] serving as a key component for the full and transparent implementation of the Act's energy reform goals. Specifically, the PREB has the responsibility to regulate, monitor and enforce the energy public policy of the Government of Puerto Rico. PREB has a mandate to ensure electric service is safe, reliable, and affordable. PREB is an active member of the National Association of Regulatory Utility Commissioners ("NARUC") with several commissioners serving key roles within the Association. I serve in the Advisory Board of NARUC's Regulatory Training Initiative ("RTI") and Associate Commissioner Lilliam Mateo-Santos is a member of NARUC's Emergency Preparedness, Recovery and Resiliency Task Force.

1. Expertise

a. Commissioners

By statute,[4] PREB Commissioners have diverse professional backgrounds. The current Bureau has exceptionally professionally qualified commissioners. Currently, two commissioners hold dual degrees in engineering and law, and are licensed in both professions, one commissioner is a seasoned energy, land use, and environmental attorney that serves as the Second Vice President for the Southeast Association of Regulatory Utility Commissioners ("SEARUC") and one commissioner is a licensed engineer specialized in the design of electrical power systems. There is one vacancy.

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[1] Formerly known as the Puerto Rico Energy Commission.
[2] "Puerto Rico's Electric Grid", Senate Energy and Natural Resources Committee, May 8, 2018.
[3] Act 57–2014, as amended.
[4] Section 6.6 of Act 57–2014, as amended.

b. Nationally Recognized Technical Resources

PREB has recognized experts in the regulatory field to assist its informed and grounded regulatory development. These resources include former commissioners and staff from multiple U.S. Public Utility Commissions ("PUCs") as well as experts in the areas of energy regulatory affairs, economics, engineering, energy efficiency and resource/system/operations planning, among others. These experts also provide consulting services through the United States and other international jurisdictions.

c. Department of Energy ("DOE") Technical Assistance

The DOE's Office of Electricity ("DOE-OE") has provided and continues to provide significant technical assistance in the areas of electric distribution planning and energy efficiency program development. The interface among stakeholders, the utility and the subject matter experts facilitated by DOE-OE has provided the PREB a clear view of the technical current state-of-affairs at the utility, including the foundational investments that are needed to support the right sequencing of the resilience buildup efforts that are a significant operational goal for the grid.

i. NARUC's Exchange Initiative [5]

With support from DOE, NARUC and PREB resources, a delegation of nine utility commissions (PR, MI, PA, HI, FL, NY, MO, MS, and NJ) assembled for an initial exchange in San Juan during February 2020. This initial exchange represents a preliminary step in laying the foundation for a future Staff rotational program to send mainland utility Commission Staff to Puerto Rico to support the PREB with additional capacity and expertise that targets specific needs.

- New York Department of Public Service

  Arising from the NARUC's Exchange Initiative, PREB is currently receiving invaluable support the from the New York Department of Public Service ("NYDPS"). The NYDPS is sharing its expertise and experience with the oversight of the Amended and Restated Operation Services Agreement entered by the Long Island Power Authority ("LIPA") and PSEG Long Island, LLC, in accordance with the LIPA Reform Act. Under this contractual arrangement, comparable to the PREPA private third-party transmission and distribution system maintenance and operating arrangement, LIPA outsourced the operation and maintenance of its public utility grid and delivery services to a private third-party operator, PSEG Long Island. PREPA with the Puerto Rico Public-Private Partnership Authority ("P3 Authority") and LUMA Energy have recently entered a similar contractual arrangement. Both arrangements resulted from legislation enacted to address challenges exacerbated by weather events—Hurricane Sandy in New York (2012) and Hurricanes Irma and María in Puerto Rico (2017). Both New York and Puerto Rico's third-party arrangements seek to maximize Federal recovery funds for increasing system resilience. The third-party contractual accountability of these arrangements and their independent regulatory oversight are critical to ensure that performance and rate incentives align with the public interest. The PREB is currently developing the Oversight Implementation Plan for the PREPA/(P3 Authority)-LUMA Transmission and Distribution Operation and Maintenance Agreement ("T&D OMA") using the NYDPS's regulatory oversight [6] as a model. I want to highlight our appreciation to our counterparts in New York and look forward to continued engagement.

2. Notable Proceedings

Although a fairly new regulatory agency, responsible to guide and oversee the statutory transformation of the electric industry in Puerto Rico, the PREB is already conducting numerous proceedings that account for significant steps in advancing the transformational goals of reliability, sustainability and cost effectiveness.

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[5] https://www.fortnightly.com/fortnightly/2020/05/forging-regulatory-bridge-puerto_rico?authkey=6e034479ae939210ef3e50f8efae93f75a4580105a3819aa9dfe04b33060e604.

[6] The NYDPS provides oversight to the implementation of the LIPA-PSEG Operations Services Agreement, where PSEG Long Island, LLC took over management and operation of LIPA's electric system and on January 1, 2014 became responsible for LIPA's day-to-day operations, including: budgeting, maintenance, storm preparedness and response, infrastructure improvements, and energy efficiency and renewable activities.

a. Rate Case [7]

This is a landmark proceeding. For the first time, electric service rates have been set in Puerto Rico by an independent regulator based on evidence and testimony produced under oath, eliminating rates that had not been revised for 27 years. The PREB implemented the new permanent rates on May 1, 2019 and approved several riders designed to be reviewed no more than every quarter [8] to limit the frequency of when the electric bill could vary. A modified tariff book was also adopted on May 22, 2019.

b. Integrated Resource Plan ("IRP") [9]

The IRP is the cornerstone and roadmap of the energy transformation of the Island. The PREB is currently evaluating the utility's proposed IRP against the renewable resource goals set out in the Puerto Rico Energy Public Policy Act (Act 17–2019). The IRP proceeding had numerous intervenors, five (5) days of technical hearings and five (5) days of local public hearings (Ponce, Mayagüez, Arecibo, Humacao, San Juan) during February 2020. Final briefings were completed in April 2020. We expect the Final Resolution, which will consist of (i) a summary of PREB's analysis of thousands of pages of technical documentation; (ii) PREB's findings and conclusions; and (iii) specific actions for implementation, to be issued in August 2020. IRPs are reviewed on a three (3) years cycle.

c. Energy Efficiency ("EE") Program Development [10]

By statute, the PREB has authority over the EE program.[11] This proceeding seeks to ensure an energy efficiency goal of thirty percent (30%) is reached by 2040. Energy efficiency is always the least cost resource. Lowering demand can be achieved at far less cost than new generation with its associated transmission and distribution. It also lessens dependence on oil-fired generation. Finally, with enhanced ability to better measure demand reduction that allow energy efficiency to participate as a firm resource, it can increase system stability.

A successful EE program is key to achieving the energy sustainability goals of the Puerto Rico Energy Public Policy Act. However, the insolvency currently experienced by the utility is a barrier to the successful implementation of energy efficiency programs for the Puerto Rico electric consumer.

With support from the DOE, we are holding a virtual stakeholder engagement event on July 31 to consider best approaches to deploy energy efficiency measures in Puerto Rico. Presenters include nationally recognized EE experts, resources from the Lawrence Berkeley National Laboratory, the USDA Rural Development Electric Program, the American Council for an Energy Efficient Economy ("ACEEE"), the National Association of State Energy Officials ("NASEO"), the Arkansas Public Service Commission, and the Ouachita Electric Cooperative.

d. Regulation on Electric Energy Wheeling [12]

This Regulation was adopted and enacted in September 2019 to implement the energy wheeling mechanism in Puerto Rico, in accordance with applicable legislative mandates. More specifically, to implement a system that allows an exempt business, dedicated to the production of energy, as described in Section 2(d)(l)(H) of Article 1 of Act No. 73–2008, as amended, known as the Economic Incentives Act for the Development of Puerto Rico, or similar provisions in other incentive laws, as well as Electric Power Service Companies, Micro grids, Energy Cooperatives, Municipal Ventures, Large Industrial and Commercial consumers, and Community Solar and other demand aggregators, to participate in the energy wheeling mechanism in Puerto Rico.

e. Regulation Energy Cooperatives in Puerto Rico [13]

Through the adoption of this Regulation in October 2019, the PREB contributes to the public policy established by the Government of Puerto Rico to promote the development of a de-centralized energy model capable of providing renewable energy

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[7] CEPR–AP–2015–0001.

[8] In Re: Puerto Rico Electric Power Authority Rate Review, Case No. CEPR–AP–2015–0001, Final Resolution and Order, January 10, 2017. pp. 130–131, §§ 377–378.

[9] CEPR–AP–2018–0001.

[10] NEPR–MI–2019–0015.

[11] *See* Section 6.29B(a) Act 57–2014.

[12] https://energia.pr.gov/wp-content/uploads/2020/02/9138-Regulation-on-Electric-Energy-Wheeling.pdf.

[13] https://energia.pr.gov/wp-content/uploads/2019/10/9117-Regulation-on-Energy-Cooperatives.pdf.

options to the residents of Puerto Rico, which strengthens the electric system resilience to natural disasters.

f. Preliminary T&D OMA Certificate of Energy Compliance [14]

PREPA is required to obtain an Energy Compliance Certificate from the PREB for every transaction it enters. PREB must certify that a preliminary contract complies with the energy public policy and regulatory framework established by Puerto Rico's Energy Public Policy Act.[15] On June 17, 2020, the PREB issued a Certificate of Energy Compliance for the preliminary T&D OMA between PREPA/(P3 Authority) and LUMA. It is important to note that the T&D OMA acknowledges the PREB's regulatory authority to ensure this compliance by LUMA, as the T&D Operator.

3. Strong Regulatory Landscape

The previous notable proceedings demonstrate the strong comprehensive regulatory landscape created by Act 57–2014 and Act 17–2019. More significantly, this landscape includes an enforcement infrastructure for compelling compliance with the statutory transformational measures to develop a reliable and sustainable electric system.

a. PREB's Enforcement Mechanisms—Real Incentives/Real Penalties

The recently adjudicated T&D OMA provides the PREB with real teeth for enforcement. The private T&D Operator has a financial incentive [16] to improve system performance according to metrics approved by the PREB.[17] The PREB can also fine the T&D Operator for noncompliance with its regulations.[18] In the past, imposing fines on PREPA effectively meant fining the Puerto Rico government, thus negatively impacting the people of Puerto Rico twice. Third-party accountability means that any potential penalties imposed on the private T&D Operator will erode its fixed fee payments under the contract. Having this regulatory tool available to the PREB is nothing short of transformational.

b. Independent Office of Consumer Protection (IOCP)

The electric regulatory landscape in Puerto Rico is well supported by a strong legal framework that directs the Independent Office of Consumer Protection (IOCP) to represent and defend, among others, the energy services customer in all matters in front of the PREB, including the IRP, rate revisions, electric utility bill disputes and disputes originating from customer dealings with electric service companies.

III. HURRICANES IRMA AND MARÍA (2017) AND EARTHQUAKE EVENTS (2020)

We are all familiar with the devastating impact that Hurricanes Irma and María had on the electric grid in Puerto Rico in 2017 and its inability to quickly recover. We all also recognize that this cannot happen again. Significant actions, including those I have described earlier, have been taken that together is already advancing this objective.

1. Puerto Rico Electric Power Transformation Act—Act 120–2018

Act 120–2018 addresses longstanding electric utility deficiencies that were clearly exposed during the aftermath of hurricanes Irma and María and the earthquake events of 2020. This Act authorizes the legal framework required for the transfer of the operation and maintenance of PREPA's Transmission and Distribution systems. This Act enabled the PREPA/(P3 Authority)-LUMA T&D OMA that went into effect on June 22, 2020.

2. Puerto Rico Energy Public Policy Act—Act 17–2019

Act 17–2019 was enacted for the purposes of establishing Puerto Rico's public policy on energy in order to set the parameters for a **resilient**, reliable, and robust energy system with just and reasonable rates for all customer classes; make it feasible for energy system users to produce and participate in energy generation; facilitate the interconnection of distributed generation systems and microgrids, and unbundle and transform the electrical power system into an open system.

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[14] NEPR–AP–2020–0002.
[15] Section 5(g), Act 120–2018.
[16] *See* Annex IX and X of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement.
[17] *Id.* Section 4.2(f).
[18] *Id.* Section 7.6(a)(ii).

a. Increased System Resilience

The restoration work is now complete. The next phase of reconstruction needs to follow an orderly plan based on sound economic and engineering principles. The recently adjudicated T&D OMA assigns the T&D Operator with the responsibility of implementing long-term strategies to plan the electric system for increased resilience and in compliance with the energy public policy.

b. Fully Accessible Stakeholder Engagement

To increase the transparency of regulatory proceedings affecting the energy sector in Puerto Rico, the PREB embarked in a series of stakeholder engagement activities that continue to this date. All stakeholder engagement events are simulcast in Spanish/English onsite and over the internet to facilitate participation from all Puerto Ricans. To our knowledge, we are the only energy regulatory commission in the United States that offers these accommodations. These stakeholder activities support the following energy public policy elements:

Electric Distribution Planning

The DOE-OE has made available subject matter experts during this comprehensive Initiative that have meaningfully engaged with PREPA's technical resources on what would be the most effective sequencing to build up system resilience. Given the multitude of utilities helping to expedite restoration after the hurricanes of 2017, the electric distribution system needs to be baselined in the utility GIS to ensure effective planning/reconstruction. Three (3) working groups were created to support this Initiative, (1) Electric Infrastructure Resilience, (2) Hosting Capacity/ Data Availability, and (3) Planning Coordination. This Initiative has also benefited from collaborations from the Hawaii PUC and the Hawaiian Electric Company ("HECO").

Interconnection Rules

Considers methods, technologies, and standards to streamline the interconnection process to best support increased integration of renewable sources.

Renewable Energy Certificate ("REC") Market

Considers the elements for the effective creation of the REC market in Puerto Rico, the challenges arising from its implementation as reflected in Act 82–2010, and mechanisms to efficiently support its operation.

Energy Efficiency

With technical assistance from the DOE, the PREB has held several stakeholder engagements events to consider different approaches to best deploy an effective energy efficiency program incorporating measures that address the specific characteristics of the Island.

c. Renewable Portfolio Standard ("RPS")

The new goals for compliance with the RPS are 20% by 2022, 40% by 2025, 60% by 2040, and 100% by 2050.

IV. STRONG AND EFFICIENT OVERSIGHT OF THE ELECTRIC INFRASTRUCTURE RECONSTRUCTION [FEDERAL RECOVERY FUNDING]

1. The Transmission and Distribution Operation and Maintenance Agreement ("T&D OMA") [19]

Under the T&D OMA, an independent third-party private operator assumes operational control and management of PREPA's electric grid. This operator has responsibility for long-term plans and strategies to expand and upgrade the Island's grid, proposals for resilience buildup of the electric infrastructure, and management of Federal recovery funding. The emphasis is on rebuilding to meet current national codes and standards and to integrate electric industry best practices that will make it easier to interface with other U.S. Mutual Aid utilities during emergency responses. It is important to highlight that even though system plans may have existed or may still exist for the electric grid in Puerto Rico, all T&D system planning and operations are now the responsibility of the T&D Operator, who is subject to the full oversight of the PREB. It is expected that LUMA, as the T&D Operator, will be able to commence implementation immediately of well-studied long-term strategies to improve reliability that assures Federal recovery funding is effectively

[19] http://www.p3.pr.gov/assets/executed-consolidated-om-agreement-td.pdf.

and efficiently invested to build up the resilience of the Island's electric network system.

2. The Private T&D Operator is Subject to PREB's Oversight

The arrangement of the T&D OMA places a private operator to manage PREPA's electric grid. This operator is the single entity in charge with orchestrating the long-term plans and strategies for the electric T&D system.

a. PREB has effective regulatory tools to ensure that the T&D Operator will comply with Puerto Rico's energy public policy and contractual performance metrics that include:

- Making the electric system more resilient to sustain weather events;
- Aligning restoration and repair time on par with similar utilities in the United States;
- Improving the reliability of the system to sustain economic and industrial growth;[20]
- Charging affordable rates; and
- Increasing adoption of clean energy.

b. PREB's New Enforcement Tools

- Incentives[21] are permitted to enhance T&D Operator's yearly payments, thus incentivizing the Operator to improve compliance with performance requirements; and
- Fines[22]—incentivize the Operator to improve compliance with performance requirements, because fines will be paid directly by the T&D Operator.

c. The PREB has already begun interfacing with LUMA's regulatory team and have identified almost 30 deliverables that the PREB will approve and/or monitor throughout the span of the T&D OMA, the most notable of which include:

- Initial Budgets
- System Remediation Plans
- Performance Metrics
- Vegetation Management Plan
- System Operation Principles
- Emergency Response Plan

V. CONCLUSION

Two Core Elements of the Energy Transformation of the Island are well underway:

1. Well-funded, professionally staffed, strong, effective, and independent electric utility regulator enabled by statute to impose penalties that will not be paid by ratepayers but will erode the fixed fee payments[23] of the contracted T&D Operator.

2. A selected T&D Operator responsible for daily operations and long-term planning of the electric system and who is properly incentivized to improve performance.

We all saw the devastation and the aftermath of Hurricane María on the frail conditions of the electric transmission and distribution systems and the earthquake events that exposed the vulnerability of legacy generation facilities, risking the safety and security of our people, particularly our most vulnerable. I was there. Millions of people were there.

Today, the people of Puerto Rico stand together with a common objective to never repeat the misfortunes experienced in that dark period of our Island's history. I am here, representing the public interest of my fellow citizens through the legal mandate that has been bestowed upon the PREB, to help lead the recovery and

[20] Consistent with attracting manufacturing opportunities to the U.S.
[21] *See* Section 7.1(c) and Annexes VII, IX and X of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement.
[22] *Id.* Section 7.6(a)(ii).
[23] *See* Section 7.6(a)(ii) of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement.

revitalization, through industry's proven methods, and yield a dependable, resilient, clean and efficient electrical infrastructure for our people.

The transformation of our public policy regime to secure long-term benefits to the people of Puerto Rico has been significant. In 3 years, while the island was recovering from its extreme devastation, the leaders of Puerto Rico undertook the analysis of the mind-numbing details of the hallmarks of effective regulation. Today, I am proud to say that Puerto Rico has now a competent framework, more-than-competent human resources, and a competent plan for the future. This has come about with a remarkable effort of many to ensure a resilient and vibrant future electric sector for the Island. I want to personally thank this Committee for its support of this transformation.

I look forward to your questions and remain committed to strengthen the working relationship with the Committee for the benefit of Puerto Rico.

QUESTIONS SUBMITTED FOR THE RECORD TO EDISON AVILÉS-DELIZ, CHAIR, PUERTO RICO ENERGY BUREAU

Questions Submitted by Rep. Grijalva

Question 1. Various entities, including the Electrical Industry and Irrigation Workers Union (UTIER), claim the LUMA contract will increase electricity prices for consumers. However, government officials and LUMA deny this.

Answer. The PREB thinks that this statement is the basis of your next two questions. We hope that the answers to these two questions provide the information that you seek, please advise otherwise.

Question 2. Has the Puerto Rico Energy Bureau received any correspondence and requests from LUMA to review the current rate?

Answer. No.

Question 3. What is the probability that the rate will increase and the potential timeline?

Answer. In Puerto Rico rate revisions are regulated by Act 57–2014, Act 83–1941, and the Puerto Rico Energy Bureau's (PREB) regulations. A rate revision could result in a decrease or increase on the electricity bill. Any rate revision must follow an extensive proceeding before the PREB with ample public and stakeholder's participation.

Act 57–2014 mandates PREB to formulate and implement the strategies to achieve the goal of reducing and stabilizing energy prices. These goals and responsibilities remain unchanged and must be adhered to by any entity assuming the operation of the Puerto Rico's Electric and Power Authority (PREPA) Transmissions and Distribution System ("T&D System"), including LUMA Energy. We are unable to predict the probability and timeline of a rate increase or decrease because no evidence supporting one or the other has been presented to the PREB.

The recently signed Puerto Rico's Electric and Power Authority Transmissions and Distribution Operating and Maintenance Agreement ("T&D Agreement") provides a timeline for the beginning of a process—to be conducted before PREB—to ensure that adequate amounts are available for inclusion in the T&D System budgets. However, we should clarify that a rate revision does not merely imply adding LUMA's Service Fee to other T&D System expenses. We must consider several factors toward our determination that the resulting rate is fair and reasonable. PREB is the body vested with the responsibility to safeguard the public interest and has the authority to provide strong oversight over the implementation of the LUMA/(PREPA-P3 Authority) T&D Agreement and any action that has an impact on the enacted energy public policy.

We reiterate that in any rate revision process the PREB will work diligently to achieve the goal of reducing and stabilizing energy prices in Puerto Rico and ensure that all achievable savings identified and materialized are immediately transfer to the customers.

Question 4. The UTIER and consumer representative at the PREPA board claim that you participated in both the evaluation and approval of the LUMA contract. The claims state you served on the government committee that selected LUMA and, afterward, participated in the PREB process that granted the certificate of compliance to the LUMA consortium. Why didn't you recuse yourself from participating in these processes?

Answer. The Certificate of Energy Compliance issued by the PREB in connection with the T&D Agreement is being challenged in the Puerto Rico Court of Appeals (Case Civil No. KLRA2020000170[1] and Case Civil No. KLRA2020000186[2]). UTIER's claim described in your question is specifically part of the pending judicial proceeding. Due to fact that this issue is currently under judicial review we must refrain from making public expressions. Therefore, we respectfully cannot answer your specific question.

Question 5. Why isn't there an approved post-hurricane Integrated Resources Plan yet?

Answer. The first ever electric utility Integrated Resource Plan (IRP) was submitted by PREPA on July 7, 2015.[3] Before the creation of the energy regulator in 2014 there was no mandate for an IRP to be the submitted and approved by the energy regulator. The PREB[4] gave its final approval to PREPA's Modified IRP on February 10, 2017.[5] The IRP then became legally binding and enforceable on March 13, 2017[6] and remains the currently approved IRP. Given the impact of hurricanes Irma and María on the electric grid during September 2017, the PREB held that it was prudent to accelerate the 3-year IRP cycle to accommodate the new reality of the electric system.[7] The March 14, 2018 Resolution and Order commenced an IRP proceeding and directed PREPA to file a revised IRP in October 2018. On October 15, 2018, PREPA requested an extension to file a final IRP report by January 21, 2019, which was granted without administrative penalties. On January 23, 2019, PREPA filed some portions of the IRP Report and requested an extension until February 12, 2019 to complete the IRP filing, which was again granted[8] without imposing penalties. On February 11, 2019, PREPA requested a 3-day extension to file the complete IRP. The PREB refused this extension, imposed an administrative fine and ordered PREPA to file the complete IRP by February 15, 2019.[9] On February 13, 2019, PREPA filed its IRP. On March 14, 2019, the PREB found that the IRP filing did not comply with Regulation 9021[10] and identified a set of actions to address the deficiencies identified.

We note that it is not uncommon for a Public Utility Commission to reject and/or seek modifications to submitted utility plans.[11] The IRP regulatory process has become even more burdensome across jurisdictions due to the numerous scenarios that need to be analyzed to account for increased integration of renewable energy resources in order to comply with renewable portfolio standards.

A Technical Conference took place on April 1, 2019 to address the IRP's deficiency issues. On April 5, 2019 PREPA was ordered to refile its IRP by May 10, 2019.[12]

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[1] Filed by Union de Trabajadores de la Industria Eléctrica y de Riego, ("UTIER" by its Spanish acronym).

[2] Filed by certain Local Environmental Organizations.

[3] See Final Resolution and Order on the *First Integrated Resources Plan of the Puerto Rico Electric Power Authority*, Case No. CEPR-AP-2015-002, dated September 26, 2016 (https://energia.pr.gov/wp-content/uploads/2016/09/23-sept-2016-Final-Resolution-and-Order-IRP-CEPR-AP-2015-0002.pdf) and Resolution on the Verified Motion for Reconsideration of Puerto Rico Electric Power Authority, Case No. CEPR-AP-2015-002, dated February 10, 2017 (https://energia.pr.gov/wp-content/uploads/2017/02/10-feb-2017-Resolution-Ruling-on-PREPAs-Verified-Motion-for-Reconsideration.pdf) (the aforementioned resolutions and orders collectively referred to as "PREPA's IRP". PREPA's IRP was not subject to judicial review and became enforceable on March 13, 2017.

[4] The PREB was known as the PREC in 2015.

[5] See the Resolution on the *Verified Motion for Reconsideration of the Puerto Rico Electric Power Authority*, issued on February 10, 2017, Case No. CEPR-AP-2015-0002, https://energia.pr.gov/wp-content/uploads/2017/02/10-feb-2017-Resolution-Ruling-on-PREPAs-Verified-Motion-for-Reconsideration.pdf.

[6] See the Resolution and Order on the *Review of The Puerto Rico Electric Power Authority Integrated Resource Plan* issued on March 14, 2018, Case No. CEPR-AP-2018-0001, https://energia.pr.gov/wp-content/uploads/2018/03/Resolution-and-Order-IRP-CEPR-AP-2018-0001.pdf.

[7] *Id*.

[8] https://energia.pr.gov/wp-content/uploads/2019/01/Resolution-CEPR-AP-2018-0001-4.pdf.

[9] https://energia.pr.gov/wp-content/uploads/2019/02/Resolution-and-Order-CEPR-AP-2018-0001-3.pdf.

[10] Regulation on Integrated Resource for the Puerto Rico Electric Power Authority.

[11] The Hawaii PUC ("HIPUC") initiated the HECO companies IRP process on March 1, 2012 and rejected HECO's IRP on April 28, 2014, see HIPUC Order 32052, (https://dms.puc.hawaii.gov/dms/DocumentViewer?pid=A1001001A14D29A91612182852).

[12] https://energia.pr.gov/wp-content/uploads/2019/04/Resolution-and-Order-CEPR-AP-2018-0001-3.pdf.

On May 3, 2019, PREPA requested a 3-week filing extension.[13] In response, the PREB ordered PREPA to finalize its IRP submission by June 7, 2019 to avoid further administrative penalties. On June 7, 2019, PREPA filed its IRP.

The IRP is the cornerstone and roadmap of the Island's energy transformation. The PREB is currently evaluating the utility's proposed IRP (June 2019) against the renewable resource goals set out in the Puerto Rico Energy Public Policy Act (Act 17–2019). The IRP proceeding has had numerous intervenors and has held numerous technical conferences, five (5) days of technical hearings, and five (5) days of local public hearings (Ponce, Mayagüez, Arecibo, Humacao, San Juan) during February 2020. Final briefings were completed in April 2020. We expect to issue the Final Resolution later this month.

Question 6. Why is PREPA binding public funds in long-term natural gas projects, when the Integrated Resources Plan has not been approved by the Puerto Rico Energy Bureau, and Act 17–2019 requires the integration of 100 percent renewables by 2050?

Answer. Between 2018 and 2019, two natural gas purchase agreements have come under the consideration of the PREB:

- 5-year agreement[14] between NFENERGÍA, LLC and PREPA that allowed the conversion of San Juan generation Units 5 and 6 to natural gas [15];
- 12-year agreement[16] between EcoEléctrica, LP-Naturgy Aprovisionamientos, S.A. and PREPA that required no new sitting in Peñuelas and is set to expire in September 2032.

The above contracts, as required by Act 57–2014, have been evaluated in accordance with the current IRP. Where circumstances have allowed, the contracts have also been evaluated taking into consideration information and analysis submitted as part of the IRP under evaluation.

PREB conducted extensive analysis of the above natural gas projects, which analysis ensured consistency with the approved IRP.[17] PREB applied strict standards in the evaluation of the criteria to determine the project's viability within the needs of Puerto Rico.[18] A series of recent natural disasters (hurricanes, earthquakes) have had immediate effects in the available energy generation capacity supplying the Island's bulk electric system. Evidence presented by PREPA and evaluated by the PREB demonstrates significant energy generation cost savings and power capacity capabilities that outweighed all other available near-term options.[19]

PREB remains committed to providing the necessary oversight to assure achievement of Puerto Rico's goal of 100 percent renewable generation by 2050.

Question 7. The LUMA agreement establishes that the private operator will prepare a proposed Integrated Resource Plan for the long-term development of the electric system, which also includes power generation operations, subject to the Puerto Rico Energy Bureau's review and approval.

Answer. The PREB thinks that this statement is the basis of your next two questions. We hope that the answers to these two questions provide the information that you seek, please advise otherwise.

Question 8. Would Luma prepare the Integrated Resource Plan for the future long-term development of the Puerto Rico electric system?

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[13] https://energia.pr.gov/wp-content/uploads/2019/05/1-Memo-New-Results-ESM-and-Scenario-4-Strategy-2-Base-Plans-Request-CEPR-AP-2018-0001-copy.pdf.

[14] Three (3) 5-year extensions can be considered at PREPA's discretion, https://contratos.ocpr.gov.pr/contract/downloaddocument?documentid=981840.

[15] See the Resolution and Order on the Request for Proposals for Conversion of San Juan Units 5 and 6 to Natural Gas issued on January 25, 2019, Case No. CEPR-AI-2018-0001, https://energia.pr.gov/wp-content/uploads/2019/01/Resolution-and-Order-CEPR-AI-2018-0001.pdf.

[16] See Exhibit B—*PREPA's Urgent Motion for Entry of an Order Authorizing PREPA to Assume Certain Contracts with EcoEléctrica, L.P. and Gas Natural Aprovisionamientos SDG, S.A., Case No. 17-BK-4780-LTS, United States District Court District of Puerto Rico*, https://document.epiq11.com/document/getdocumentsbydocket/?docketId=765553&projectCode-PR1&docketNumber=1951&source=DM; the original EcoEléctrica Power Purchase and Operating Agreement dated March 10, 1995, and amended in 1997 and 2006, committed PREPA to a 27-year contract term set to expire in March 2022.

[17] See the Resolution and Order on the *Review of The Puerto Rico Electric Power Authority Integrated Resource Plan* issued on March 14, 2018, Case No. CEPR-AP-2018-0001, https://energia.pr.gov/wp-content/uploads/2018/03/Resolution-and-Order-IRP-CEPR-AP-2018-0001.pdf.

[18] See NFENERGIA Docket CEPR-AI-2018-0001 (https://energia.pr.gov/wp-content/uploads/2019/01/Resolution-and-Order-CEPR-AI-2018-0001.pdf and EcoEléctrica-Naturgy Docket NEPR-AP-2019-0001, https://energia.pr.gov/wp-content/uploads/2020/03/Resolution-and-Order-NEPR-AP-2019-0001-1.pdf.

[19] *Id*.

Answer. Yes. The preparation of the IRP is part of the services rendered under the T&D Agreement.[20] From time to time, a proposed IRP will be submitted by LUMA to the PREB for evaluation and approval (or disapproval), in accordance with the applicable laws and regulations.[21]

Question 9. Can you provide more information about the rationale to delegate this responsibility to the private operator of the transmission and distribution system?

Answer. Responsibility for IRPs was expressly delegated to the Operator of the Electrical System by law under Act 17–2019 (the Puerto Rico Energy Public Policy Act) amending Article 6.23 of Act 57–2014 that had previously imposed such responsibility on PREPA. The current language of Article 6.32 Act 57–2014 is the following:

> *The electric power company responsible for operating the Electrical System shall submit to PREB an Integrated Resource Plan (IRP) consistent with Section 1.9 of the Puerto Rico Energy Public Policy Act. The electric power company shall devise the IRP with the input of the companies that operate the power plants.*

Question 10. The Federal coordinator for the reconstruction of Puerto Rico, Peter Brown, recently expressed that nuclear energy is an option to diversify Puerto Rico's energy sources. PREPA's Integrated Resources Plan does not integrate nuclear energy as an option. Will PREPA maintain this position in compliance Act 17–2019, which requires reaching a minimum of 40 percent renewable energy integration by 2025; 60 percent by 2040; and 100 percent by 2050?

Answer. PREPA proposed the specific mix of generation resources in the currently effective IRP, and thus, is the appropriate entity to answer this question. The PREB does not propose which resources should make up the IRP mix but approves or disapproves what is proposed.

The PREB's core responsibility is to assure a regulatory path realizes the energy public policy goals established under the laws of Puerto Rico. Accordingly, PREB must continue to evaluate all plans and proposals that help accelerate the adoption of renewable energy to meet and exceed the goals of the adopted Renewable Portfolio Standard ("RPS"), which could limit consideration of nuclear resources that are not deemed renewable nor alternate renewable generation under the law.[22]

Question 11. In April, I joined my colleagues in a letter to the Federal Energy Regulatory Commission (FERC) urging them to examine New Fortress Energy's natural gas project in San Juan, since the company failed to ask FERC for approval. What was the role of the Puerto Rico Energy Bureau reviewing, awarding, and/or authorizing the contract between PREPA and New Fortress Energy? Did PREB raise any concerns with New Fortress Energy executing the contract without FERC authorization? If not, why?

Answer.

A. Administrative Proceeding at PREB

1. PREB's Regulatory Scope for Review of the New Fortress Contract
   a. As a first step, in accordance with Act 57–2014 and PREB's Regulation 8815,[23] PREB shall evaluate and approve (or disapprove) Request for Proposals (RFP) that are to be issued by PREPA regarding certain projects. PREB must determine if the proposed project is consistent with the Integrated Resources Plan ("IRP"). It also shall evaluate other factors depending on the nature of the proposed project, e.g., capital costs, operating costs, fuel costs and so forth.
   b. As a second step, PREB shall evaluate and approve (or disapprove) the Proposed Contract. For such purposes PREB receive a report from PREPA after the completion of a competitive process. PREB shall determine if the Proposed Contract is consistent with the IRP, compliance with PREB's previously approved RFP, as well as other parameters specifically prescribed in Regulation 8815.

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[20] Section 5.6(f) of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement, http://www.p3.pr.gov/assets/executed-consolidated-om-agreement-td.pdf.

[21] Section 6.23, Act 57–2014.

[22] Act 82–2010.

[23] Joint Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation and Award Process for the Modernization of the Generation Fleet, https://energia.pr.gov/wp-content/uploads/2016/10/AJ-07795-REGLAMENTO-1.pdf.

2. PREB Approval of RFP and New Fortress' Proposed Contract
   a. In October 2018 PREB approved the RFP. [Resolution and Order dated October 4, 2018, Case No. CEPR-AI-2018-0001] [24]
   b. Then, on January 2019, PREB approved the proposed contract. [Resolution and Order dated January 25, 2019, Case No. CEPR-AI-2018-0001] [25]

B. Permits and Authorizations necessary for the Execution of the Proposed Contract

The PREB did not raise concerns during its evaluation of the proposed contract because many of the regulatory processes related to the development of a facility are typically pursued and conducted simultaneously. Consequently, it is not uncommon for permits and authorizations required from other agencies and governmental authorities to be pending or not yet filed during a contract review proceeding under the Regulation 8815. This is why, in the present case, that the New Fortress' Contract includes provisions that require New Fortress to secure all the permits and authorizations necessary for the execution of its obligations under the Contract and that a failure to do so would constitute a breach of contract.

PREB is aware that the Federal Energy Regulatory Commission (FERC), within the scope of its enforcement authority, commenced a proceeding to determine whether it has jurisdiction over New Fortress' Facility in San Juan. That matter is currently under FERC's evaluation and has not yet been adjudicated. Still, PREB is closely monitoring the proceedings at FERC and will exercise its authority, when necessary, with regards to the New Fortress' Contract.

Questions Submitted by Rep. Bishop

Question 1. We've heard from some witnesses on the panel today that there is the potential for rate hikes on Puerto Rico consumers under the new LUMA contract and potentially future contracts cut by PREPA. Could you talk about the role the Independent Office of Consumer Protection plays under the PREB? How likely of a scenario is it that consumers in Puerto Rico will experience dramatic rate hikes given the current regulatory landscape where PREB has a strong role to play as a third-party independent regulator?

Answer.

A. The role of the Independent Office of Consumer Protection ("IOCP")

The Independent Office of Consumer Protection ("IOCP") was created by virtue of Act 57–2014, as amended. Its role is to defend the interests of consumers of energy before the utility and PREB, thereby providing another layer of consumer protectionism for the Island's energy customers. The IOCP is in part responsible for coordinating public participation in the matters affecting their energy rates and services. Through the IOCP, customers are empowered through capable and independent representation resources offered at no cost to the public. The IOCP may also initiate a rate revision in representation of the interests of energy consumers.

B. Likelihood of electricity rates hike under the T&D Agreement

In Puerto Rico rate revisions are regulated by Act 57–2014, Act 83–1941, and the Puerto Rico Energy Bureau's (PREB) regulations. A rate revision could result in a decrease or increase on the electricity bill. Any rate revision must follow an extensive proceeding before the PREB with ample public and stakeholder's participation.

Act 57–2014 mandates PREB to formulate and implement the strategies to achieve the goal of reducing and stabilizing energy prices. These goals and responsibilities remain unchanged and must be adhered to by any entity assuming the operation of the Puerto Rico's Electric and Power Authority (PREPA) Transmissions and Distribution System ("T&D System"), including LUMA Energy. We are unable to predict the probability and timeline of a rate increase or decrease because no evidence supporting one or the other has been presented to the PREB.

The recently signed Puerto Rico's Electric and Power Authority Transmissions and Distribution Operating and Maintenance Agreement ("T&D Agreement")

[24] https://energia.pr.gov/wp-content/uploads/2018/10/Resolution-and-Order-CEPR-AI-2018-0001.pdf.
[25] https://energia.pr.gov/wp-content/uploads/2019/01/Resolution-and-Order-CEPR-AI-2018-0001.pdf.

provides a timeline for the beginning of a process—to be conducted before PREB—to ensure that adequate amounts are available for inclusion in the T&D System budgets. However, we should clarify that a rate revision does not merely imply adding LUMA's Service Fee to other T&D System expenses. We must consider several factors toward our determination that the resulting rate is fair and reasonable. PREB is the body vested with the responsibility to safeguard the public interest and has the authority to provide strong oversight over the implementation of the LUMA/(PREPA-P3 Authority) T&D Agreement and any action that has an impact on the enacted energy public policy.

We reiterate that in any rate revision process the PREB will work diligently to achieve the goal of reducing and stabilizing energy prices in Puerto Rico and ensure that all achievable savings identified and materialized are immediately transfer to the customers.

The CHAIRMAN. Thank you very much, sir.

Let me now invite Ms. Ruth Santiago, Member of Queremos Sol Coalition, for her comments.

Ms. Santiago, the time is yours.

STATEMENT OF RUTH SANTIAGO, MEMBER, QUEREMOS SOL COALITION

Ms. SANTIAGO. Good afternoon Chairman Grijalva and members of the House Committee on Natural Resources, and to the public in general. On behalf of the Queremos Sol Coalition, we appreciate the opportunity to testify on the transformation of PREPA.

The Coalition is composed of civil society groups, including community, environmental, labor, professional organizations, and academia that have come together to promote the transformation of the Puerto Rico electric system. The Coalition promotes the transformation of the Puerto Rico electric system as a public service, both relating to PREPA governance and the technology that empowers citizen participation.

Recently, PREPA entered into a contract with LUMA Energy via a lengthy operation and management agreement not only for the transmission and distribution system and customer service, but also for power generation dispatch and control, planning, acquisitions, and many other functions.

The contract's initial transition period requires numerous conditions prior to full takeover by LUMA that signifies anything but a foregone conclusion that the transaction will be consummated.

We urge this Committee and the Federal and Puerto Rican governments, to encourage PREPA to annul the LUMA contract and develop a plan focused on on-site solar and battery systems and energy efficiency programs based on the recommendations of numerous experts.

The LUMA contract in the midst of multiple crises, including the pandemic, seismic activity, socio-economic dysfunction, and the threat of an active hurricane season will not provide the 21st century electric system and service that the residents of Puerto Rico require.

PREPA needs to transform its governance structure to integrate residents, employees, and businesses. The high poverty rates in Puerto Rico and the economic crisis require energy conservation, efficiency, demand response programs, and renewable energy technologies, primarily rooftop or on-site solar and battery energy

systems to substitute the fossil generation and the centralized transmission and distribution system.

Queremos Sol opposes the use of billions of dollars in Federal funds to rebuild and to "harden" the T&D system and add more fossil generation, especially methane gas, or natural gas, infrastructure that the LUMA contract would facilitate.

Queremos Sol proposes the Federal Government work with PREPA to take measures to initiate a transparent process for procurement of solar equipment and battery systems to be installed and maintained by the dozens of PREPA employees who have been trained in renewable energy technology already.

The LUMA contract is a 20th century approach that will not prepare Puerto Rico for the climate crisis. It dismantles PREPA while simultaneously providing LUMA with multiple opportunities to abandon its responsibilities under the agreement.

LUMA will prepare the PREPA IRP, may become part owner of the electric system, and may request increases in electric rates. The contract requires alignment of the proposed T&D work with the grid modernization plan which requested $21 billion from FEMA of which $12.2 billion is for reconstruction of existing T&D systems rather than transformation of the system and an additional $4 billion of that is for new fossil plants.

The London Economics International report estimates that even with Federal funding, the electricity rates would increase to 27.8–30 cents per kilowatt hour if the proposed T&D work and the RSA for the PREPA debt restructuring are implemented.

LUMA is granted undue control to manage Federal funds. It can participate in selection of the grant administrator and can request changes to Federal funding. LUMA can abandon the tasks required under the contract after PREPA has been dismantled and when reinforcements of the electric system are most needed.

The LUMA contract infringes upon the rights of PREPA employees as they will not be required to hire even the majority of PREPA employees. The contract provides for priority payments to LUMA to the detriment of other PREPA obligations.

LUMA may suspend or terminate electric service to government entities that in turn provide public services. The LUMA contract would perpetuate central station fossil fuel generation and the T&D system.

An example of this kind of old generation is the New Fortress Energy LNG terminal in San Juan. FERC recently issued an order to show cause against New Fortress because it built and operates the terminal without FERC's authorization.

If New Fortress had requested FERC authorization, it would have been required to study the health and safety risks of the LNG terminal to nearby communities, workers, and properties prior to building and operating it. The potential illegalities of the New Fortress project are exposed in an in-depth report published by Cambio and IEEFA.

The cost of electricity for San Juan private citizens, as we have already seen, burning gas is 10.79 cents per million BTU, the most expensive baseload units in PREPA's system.

The Federal Oversight and Management Board approved the New Fortress project and the new EcoEléctrica agreements, which

cost approximately $500 million more than competitively bid contracts.

The disastrous experience with the privatization of energy and other sectors in Puerto Rico include the AES coal burning power plant, which has contaminated the South Coast Aquifer.

The CHAIRMAN. Ms. Santiago, you need to wrap up.

Ms. SANTIAGO. Thank you.

The CHAIRMAN. You are welcome.

[The prepared statement of Ms. Santiago follows:]

PREPARED STATEMENT OF RUTH SANTIAGO, MEMBER, QUEREMOS SOL COALITION

Chairman Grijalva and members of the House Committee on Natural Resources, on behalf of the Queremos Sol Coalition, ("We Want Sun", queremossolpr.com), we appreciate the opportunity provided by the House Committee on Natural Resources to testify and submit comments on the Transformation of the Puerto Rico Electric Power Authority ("PREPA"). The Queremos Sol Coalition is composed of numerous civil society groups, including community, environmental, labor, professional organizations and academia that have come together to promote a sustainable, more affordable platform for the transformation of the Puerto Rico electric system, consistent with the Puerto Rican government's commitment to 50 percent renewable energy by 2030 and 100 percent renewable energy for Puerto Rico by 2050.

As further explained below, our Coalition members have substantial concerns with both the process and the outcome of PREPA's recent "T&D System Operation and Maintenance Agreement" with Luma Energy, LLC (the Luma contract"). These concerns are shared by Puerto Ricans in the diaspora, as evidenced by the recent protests on the mainland.

As such, we urge this Committee, the Federal Government and the Puerto Rican government to encourage PREPA to annul the Luma contract and develop a plan focused on on-site solar and battery systems and energy efficiency programs, based on the recommendations of numerous experts, as further detailed below.

I. INTRODUCTION

Puerto Rico is at a crossroads with respect to its electric system. One of the main issues confronting the territory is whether to double down on rebuilding Puerto Rico's inadequate 20th century infrastructure or to embark on the creation and construction of a 21st century electric system, based on the Puerto Rican government's commitment to renewable energy that enables Puerto Rico residents to participate in this essential public service. The Queremos Sol Coalition vigorously promotes the transformation of the Puerto Rico electric system as a public service including PREPA governance and the technology that empowers citizen participation as "prosumers"—producers and consumers of energy in order to achieve energy democracy.

The Luma contract structures an almost complete privatization of Puerto Rico's electric system via a lengthy operation and management (O&M) contract, not only for the transmission and distribution (T&D) system and customer service department, but also for power generation dispatch, acquisition and planning, among other issues discussed below. However, the contract calls for an initial transition period requiring numerous conditions prior to a full takeover by Luma that signifies anything but a forgone conclusion that the transaction will be consummated.

The privatization of the Puerto Rico electric system as embodied in the Luma Energy contract in the midst of multiple crises, including the COVID-19 pandemic, recent and ongoing seismic activity, unaddressed socio-economic dysfunction unveiled by Hurricanes Irma and Maria, and the threat of another active hurricane season will not provide the 21st century electric system and the empowerment and service that the residents of Puerto Rico require. More than ever, PREPA must undertake a swift transformation of its electric system to integrate residents, communities and businesses. The high poverty rates in Puerto Rico and the economic chaos engendered by the COVID crisis require the transformation of PREPA to incorporate energy conservation, efficiency, demand response programs, and renewable energy technologies, primarily roof-top or on-site solar and battery energy storage systems ("BESS"), as well as other alternatives to central station imported fossil fuel generation and centralized transmission and distribution. These alternatives stand in stark contrast to the use of billions of dollars in Federal taxpayer funds to rebuild and "harden" the T&D system and add more central station fossil

generation, especially so-called "natural" methane gas infrastructure that the Luma contract would facilitate. The Federal Government should work with PREPA to take measures to initiate a transparent process for acquisition or procurement of solar equipment and BESS to be installed, operated, and maintained by the dozens of PREPA employees who have been trained in renewable energy technology in conjunction with local communities and other alternatives discussed below.

II. FIRST STEPS FOR TRANSFORMING THE PUERTO RICO ELECTRIC SYSTEM

During the technical hearings in the PREPA Integrated Resource Plan ("IRP") process before the Puerto Rico Energy Bureau ("PREB") multiple experts provided numerous recommendations for the Action Plan that would immediately implement on-site renewables, storage, and energy efficiency programs, and begin the transformation of Puerto Rico's electric grid to better serve the people of Puerto Rico. Federal funding afforded to PREPA should be earmarked for these types of programs. PREPA's Preferred Plans, on the other hand, would ensure decades of continued reliance on large, centralized power plants and long, vulnerable South-to-North transmission lines that would not promote the resilience of the electricity grid to climate-related and other disasters. Hurricane Maria and the seismic events of this year showed the importance of decentralizing the power network. A distributed generation system centered on on-site/rooftop solar will be more resilient and, after an emergency, will allow for prompt restoration of energy services, fulfilling the responsibility of saving lives.

A. Energy Conservation, Efficiency, Customer Engagement and Demand Response Programs

The Queremos Sol proposal highlights the importance of starting the necessary technical transformation with energy conservation, efficiency, customer engagement, and demand response programs. During the IRP technical hearings, expert witnesses identified several cost-effective Quick-Start Energy Efficiency programs:

- Solar water heaters. At the hearing, PREPA's consultant, Siemens Industry agreed that the Siemens experts were wrong to reject solar water heaters as part of an energy efficiency program.[1] PREPA could facilitate communications between providers and customers, provide technical assistance with installation, incentivize adoption through PREPA budget allocations, and educate customers through engagement.
- Refrigerator incentive programs. Local Environmental Organizations' expert witness pointed out that these programs have already had success in the past in Puerto Rico.[2] In addition to the steps detailed above, PREPA could provide historical data from these programs.
- PREPA could provide energy audits, including energy efficiency measures, as well as solar and storage options.[3]
- Various expert witnesses listed other programs that would be cost-effective and popular:[4]
  - — appliance replacement programs
  - — tuning up air conditioners
  - — replacing very old air conditioners
  - — expanding the Office of Public Policy's low-income weatherization program, which has served 15,000 homes already

The IRP assumes that PREPA will comply with the 2 percent annual reduction in load due to energy efficiency as required by the Puerto Rico Energy Public Policy Act ("Law 17–2019"), culminating in a 30 percent reduction in PREPA's total load by 2040. Yet, the Action Plan does not explain how PREPA would accomplish this change.[5] Siemens/PREPA acknowledge that in order to increase energy efficiency

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[1] Negociado de Energía en vivo, Evidentiary Hearing/CEPR-AP-2018-0001, YouTube (Feb 5, 2020), https://youtube/vIXWJt52Hfk?t=8350.

[2] Negociado de Energía en vivo, Evidentiary Hearing/CEPR-AP-2018-0001, YouTube (Feb 4, 2020), https://youtube/RXb0bf5ScY?t=8970. Mr Sandoval has more than a decade of management experience with energy utilities. Mr Sandoval's experience includes work in transmission and distribution system planning, demand side management, grid efficiency, grid transparency, and clean energy.

[3] Negociado de Energía en vivo, Evidentiary Hearing/CEPR-AP-2018-0001, YouTube (Feb 4, 2020), https://youtube/RXb0bf5ScY?t=13532.

[4] *Id*.

[5] Act 17–2019, Section 1 6 (11).

uptake, PREPA must offer a greater variety of energy efficiency programs,[6] and indeed Law 17–2019, Section 1.9(3)(B) requires the IRP to include an evaluation of the conservation resources, including electricity demand management and the necessary programs to improve energy conservation. The Energy Bureau's consultant, Dr. Asa Hopkins, highlighted the most important conclusion of these scenarios: the initial $300M investment in energy efficiency would save PREPA $1B in avoided generation costs over the planning period, and the next $700M in energy efficiency spending would save an additional $1.8B in avoided generation costs over the planning period.[7]

PREPA must coordinate with the Bureau, the Energy Efficiency program administrator, and stakeholders in designing a customer engagement plan "to educate citizens and electric power service customers on energy efficiency, consumption reduction, distributed generation strategies, and other available tools to empower consumers to have more control over their energy consumption," as required by Law 17–2019 Section 1.5(4)(b). We note that PREPA titled Part 3 of its Action Plan "Engaging the Customer" but did not actually include a customer engagement plan.[8] A customer engagement plan would also help PREPA develop a "reasonable set of assumptions for econometric and/or end use variables," as required by the Regulation on Integrated Resource Plan for the Puerto Rico Electric Power Authority (Regulation 9021) Section 2.03(C)(2)(c).

B. Renewable Energy, Bess, Power Electronics, and Other Alternatives

Law 17–2019 directs PREPA to "maximize the use of renewable energy" and, at the same time, "aggressively reduce the use of fossil fuels" and "minimiz[e] greenhouse gas emissions . . ."[9] Dr. Agustin Irizarry conducted the analysis that PREPA/Siemens should have done: he obtained real quotes for photovoltaic (PV) and storage equipment costs at retail price in Puerto Rico, along with financing expenses, widely available to Puerto Ricans for these projects. Dr. Irizarry's real-world, Puerto Rico-specific analysis of solar PV costs resulted in a forecast of Levelized Cost of Energy for rooftop PV of 7.8 cents per kWh in 2019, declining to 1.8 cents per kWh in 2038.[10] After Dr. Irizarry obtained his results, he found they were quite similar to the National Renewable Energy Laboratory's ("NREL") forecast for the costs of rooftop solar.

The draft IRP prepared by Siemens Industry, Inc. for PREPA indicates that the costs of customer alternatives are lower than the final all-in Energy System Modernization (ESM) and S4S2 plans generation portfolio rates. (Pages 8–40 and 8–59 of the IRP, third draft dated 06/07/2019.) The cost of customer generation is significantly lower than the total rate even before the non-bypassable component is added. Despite on-site, rooftop solar being cheaper in the IRP, customer-sited solar is severely limited to only about 20 percent of the generation mix at the end of the IRP planning period in 2038 (Exhibit 8–46 ESM Future Installed Capacity Mix, third draft dated 06/07/2019).

In the IRP, energy consumption by group indicates that commercial and residential clients constitute the lion's share of energy demand in Puerto Rico while industrial clients barely consume about 13 percent of energy generation. The commercial sector consists of sprawling malls and other installations with expansive parking lots and rooftops that can be used to site solar arrays to power operations. Much residential construction in Puerto Rico consists of single-family housing developments known as urbanizations. They are especially expansive and prevalent in the San Juan metropolitan area and can provide the on-site "rooftop resource" referenced in the Department of Energy ("DOE") commissioned studies by faculty at the University of Puerto Rico at Mayaguez ("UPRM"), recommending widespread use of existing structures to site PV installations, which also coincides with the major energy demand center in Puerto Rico.[11]

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[6] Negociado de Energía en vivo, Evidentiary Hearing/CEPR-AP-2018-0001, YouTube (Feb 4, 2020), https://youtube/RXb0bf5ScY?t=12664.

[7] Negociado de Energía en vivo, Evidentiary Hearing/CEPR-AP-2018-0001, YouTube (Feb 6, 2020), https://youtube/HO40ImpqKe8?t=3669. The above $300M investment in energy efficiency is the cost of moving from the "no energy efficiency" scenario to the "low energy efficiency" scenario, while the $700M cost represents moving from the "low energy efficiency scenario" to the base case scenario. Each increase in the level of energy efficiency investments generates savings at well over a factor of two Id.

[8] IRP, Section 10 3.

[9] Law 17–2019 Section 1 5(6)(b), Section 1 11(d).

[10] Irizarry-Rivera Direct Test at 27–29.

[11] http://www.uprm.edu/aret/docs/Ch_1_Summary.pdf. Multiple studies have proven the resiliency of on-site photovoltaic (PV) and battery energy storage (BESS) systems. https://

Continued

The proposal for the initiation of transparent procurement or acquisition of PV and BESS, installed on rooftops or on-site by PREPA employees, aligns with the Queremos Sol proposal which sets forth a vision, objectives, and mechanisms to achieve incremental advances in energy efficiency, demand response programs, and escalating amounts of renewable generation based on community rooftop solar that would achieve 100 percent renewable generation by 2050.

The advantages of on-site, rooftop solar or solar installations close to the point of use are many. They include the use of existing sprawling housing development and commercial rooftops to avoid further impacts to open spaces, agricultural land, and ecologically sensitive areas. Rooftop solar eliminates the need for large investments in transmission infrastructure. It avoids transmission losses. Grid maintenance costs are reduced and impacts to tropical forests and vegetation as a result of tree cutting and pruning are minimized. The on-site solar alternative doesn't require establishing extensive easements or servitudes on private property, while helping to lower temperatures within the structures and providing protection to the buildings. Rooftop solar installations add value to the structures and promote local wealth. Distributed renewable generation on rooftops creates greater reinvestment in the local economy than utility-scale projects. It enables ratepayers to become producers or 'prosumers' of energy, not mere consumers and allows for control by residents and local communities and businesses, which is particularly important during outages of the main grid as was experienced after Hurricane Maria and the earthquakes. On-site solar enjoys broad support from civil society contrary to land-based installations that have been the subject of considerable opposition.

1. Renewables and BESS can Serve Critical Loads and Provide Resilience

Siemens acknowledged that renewable resources could be available immediately after a major event (e.g., hurricane, power outage). Therefore, the company's original assumption in the IRP that base fossil generation was indispensable was wrong.[12] Siemens's rebuttal testimony acknowledged that the June 2019 IRP did not recognize the full value of renewables, stating that solar panels could be certified to withstand major events, and therefore should have been considered to supply critical loads.[13] In December 2019, the Energy Bureau's Energy Storage Study confirmed that "thermal resources are not required to prevent loss of critical loads."[14] At the hearing, Siemens' project head further explained that if the IRP had correctly recognized the full resiliency value of renewables, then the fixed decision to build 414 MW of gas-fired peaking units in 2021 may not have been necessary.[15]

The Energy Storage Study commissioned by PREB also confirmed that Siemens' incorrect decision to force gas-fired resources into the modeling had improperly lowered the amount of renewables and storage selected:

> The analysis finds that the gas-fired plants (thermal resources) required by PREPA's minigrids approach to meet critical and priority load impact the buildout of solar and storage. Because the model is forced to include thermal resources, it cannot add as much solar and storage as it would if it were allowed to seek out the most cost-effective options for meeting demand.[16]

PREPA should coordinate with the Puerto Rico Energy Office to provide education about storage, as recommended in the Energy Bureau's Energy Storage Study.[17]

PREPA acknowledges that transformation of the system using distributed generation is both viable and must take a **predominant** role in the Puerto Rico grid.[18]

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www.nrel.gov/docs/fy15osti/62631.pdf, https://www.nrel.gov/state-local-tribal/blog/posts/how-solar-pv-can-support-disaster-resiliency.html.

[12] In addition, Siemens did not take distributed storage into consideration. See PREPA response to Local Environmental Organizations' ROI 3 56.

[13] PREPA's Mot to Submit Corrected Rebuttal Test, Direct Test of Nelson Bacalao, PHD at 7, (Jan 20, 2020), http://energia.pr.gov/wp-content/uploads/2020/01/Corrected-Rebuttal-Testimony-of-Nelson-Bacalao-PH_D_in-Support-of-PREPAs-Draft-Integrated-Resource-Plan-CEPR-AP-2018-0001.pdf. [hereinafter Bacalao Rebuttal Test].

[14] Puerto Rico Energy Bureau, Energy Storage Study For a renewable and resilient island grid for Puerto Rico at Section 6 1 (Dec 19, 2019), filed in Dkt NEPR-MI-2020-0002, http://energia.pr.gov/wp-content/uploads/2020/01/NEPR-MI-2020-0002-Estudio-Sistemas-de-Almacenamiento-de-Energi%CC%81a.pdf. [hereinafter PREB Energy Storage Study].

[15] Negociado de Energía en vivo, Evidentiary Hearing/CEPR-AP-2018-0001, YouTube (Feb 5, 2020), https://youtube/vIXWJt52Hfk?t=2190.

[16] PREB Energy Storage Study, Section 6 1.

[17] PREB Energy Storage Study, Section 6 2.

[18] "Customer-Centric: which includes customer participation via energy efficiency, customer side energy resources and demand response with a predominant role in the supply and

Law 17–2019 and the PREPA Governing Board mandate require that the electric system be customer centric.

2. Financing the Necessary Transformation

Financing strategies and instruments can be sourced from various sectors: the Federal Government, credit unions, cooperatives, and other organizations to achieve renewable generation goals with a distributed generation strategy. PREPA could also use its budget to incentivize customers to build distributed solar and storage systems and share implementation costs with customers. Puerto Rico Senate Bill 1879 detailed such a program. PREPA could implement a system to incentivize customers to build distributed solar and storage systems and share implementation costs with customers. Bill 1879 would require PREPA to fund 80 percent of the total cost and installation of renewable energy systems in the residences of the participating owners that have the average consumption of a family of four members, or 800 kilowatts of energy per month, whichever is greater. In turn, the excess energy produced by the systems installed and acquired through the incentive must be used to reduce the energy cost in Puerto Rico. The funds for on-site/rooftop initiatives can come from short-term and long-term sources including Federal funds that would not result in rate increases. Through these programs, Puerto Rico could achieve the goals of the Queremos Sol proposal: 75 percent of homes must have a rooftop solar system of around 1.5 kW of generation capacity accompanied by a 10-kWh storage system by 2035 to increase the efficiency of residential electric service.

III. THE LUMA CONTRACT IS A 20TH CENTURY APPROACH THAT WILL NOT PREPARE PUERTO RICO FOR THE CLIMATE CRISIS OR SERVE THE PUBLIC INTEREST

The Luma contract goes against the necessary transformation of PREPA that would allow Puerto Rico residents and communities to participate in the electric system through energy conservation and efficiency, PV systems sited on rooftops or close to the point of use, BESS and other alternatives to centralized generation at fossil fuel fired power plants and T&D. As discussed above, the alternatives to a centralized electric system set out in the Queremos Sol proposal are recommended by multiple experts and studies. By perpetuating South-North transmission, the contract with Luma facilitates the operation of the AES coal burning power plant in Guayama potentially beyond the end of the AES contract term if the regulatory provisions against coal combustion are amended, as well as the rest of the central station fossil fuel plants located in Southern Puerto Rico.

The Luma contract is a long, expensive and exclusive scheme that creates a private monopoly. The Luma contract spans 15 years and may be terminated before or extended by mutual agreement with the approval of the PREB. Under the contract, PREPA must pay Luma a service fee that ranges from $83 million to $125 million per year and, in addition to virtually all Luma's costs through the so-called Operator T&D Pass-Through Expenditures,[19] some capital expenses and expenses during outage events. Luma has no obligation to invest its own funds.

From the service start date and for the rest of the term of the contract, the Operator, the contractors and their subcontractors will have the exclusive right, subject to Section 3.5 (right of access), to enter, occupy, and use the T&D system and its related areas.

Although the Agreement recognizes that electric service is an essential public service, no duty is established to provide that service to the public, though the entire T&D system would be under the Operator's control and Luma would also exercise control over the dispatch of the generation plants. (Luma contract page 35, pdf 42).

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consumption matrix of Puerto Rico, and empowering customers to participate and take ownership on their energy security and affordability" IRP, at 1-1.

[19] **Details of T&D Pass-Through Expenditures to Be Paid by PREPA to Luma**

T&D transfer expenses will include, among others, the following four types of expenses as an example of the list of 22 expenditure types that PREPA must reimburse to the Operator:

1. wages, salaries, bonuses, employer contributions to medical pension and employee plans;
2. costs incurred by ServCo in the provision of O&M services, including the costs of all subcontracted employees, all goods and services, **subcontractor costs, employee allowances, administrative costs such as fees, subscriptions, meals, and entertainment**.
3. costs related to system capital improvements, including project management costs incurred by ServCo employees and the cost of debt for assets and all other costs associated with financing these improvements, except for Operator-owned capital improvements as provided in Section 5.5 (d) (Capital Improvements—Option to Propose Operator-Owned Capital Improvements) of the Agreement;
4. costs incurred with respect to professional services, including legal, engineering, accounting, finance, auditing, information technology, etc.

The Luma contract divides and dismantles PREPA into two different companies, while simultaneously providing Luma with multiple opportunities to abandon its responsibilities:

"GenCo" will be the entity that owns the generation assets—the existing generating plants—after the PREPA dismantling. (Luma contract page 17, pdf 24). "GridCo" is defined as the entity that acquires or obtains ownership of the T&D system. This arrangement essentially dismantles PREPA and creates heightened risk for Puerto Ricans should Luma terminate the agreement or fail to provide the requisite services under the extremely broad force majeure contract clause.

Luma is granted monopoly control over Puerto Rico's electric system that goes beyond the T&D system and customer service. In relation to generation services, Luma will control the dispatch of the power plants and management of energy supply. Luma is granted the authority to manage the acquisition of generation projects and generation supply contracts. Luma would acquire easements, fee interests and concession rights and, identify and constitute new easement areas. Similarly, the Operator can acquire concession rights that allow for the use of real estate assets in the public domain, including **submerged lands, wetlands and areas designated as part of the terrestrial maritime zone by the Puerto Rico Department of Natural and Environmental Resources** for the operation, maintenance, repair, restoration, replacements, improvements, additions, and alterations to the T&D system.

Luma would provide "other" services, including "implicit" services. In addition, if requested by the Administrator, the Operator may perform additional services reasonably related to the T&D system not included in O&M services. (Luma contract pages 73–6, pdf 80–6).

The Luma contract mandates that the Operator must have complete flexibility as to the budget, and although it must consult the Administrator and PREB, their approval is not required, to (i) reassign, accelerate, or postpone expenses within the approved Operating Budget, (ii) reallocate, accelerate, or postpone expenses within the approved Capital Budget financed by the Federal Government, subject to Federal financing requirements, and (iii) reallocate, accelerate, or postpone expenses within the approved Capital Budget not financed by the Federal Government, in each case, in such a way that the reallocations do not exceed 5 percent of the Budget. (Luma contract page 89, pdf 96). The grant of discretion to Luma over public funds, including Federal funds is problematic as previous energy contracts in Puerto Rico have shown.

Luma will prepare the PREPA IRP. The Operator, as an agent of PREPA, will prepare a proposed IRP for the future long-term development of the Puerto Rico electric system, subject to PREB's review and approval. (Luma contract page 67, pdf 74). As the experience with the Siemens IRPs has shown, the ability to draft the IRP bakes in biases, such as a preference for fossil fuel generation into modeling inputs.

Luma may become part owner of the Puerto Rico electric system. Luma could carry out capital improvement projects that could become its property if it invests its own funds to build them. (Luma contract page 66, pdf 73).

Luma may request increases in the electricity rate. Although it is alleged that the Agreement is intended to lower the cost of electric energy, the Operator may submit a request to PREB to increase or change the customer rates or charges. (Luma contract page 67, pdf 74). In fact, according to PREPA's Fiscal Plan, PREPA now has a deficit roughly equivalent to the amount of the payment to Luma for the current fiscal year.

The Luma contract cites the Grid Modernization Plan ("Grid Mod Plan")[20] and other documents and requires alignment of the proposed T&D work. (Luma contract II–36, pdf page 2014). **The Grid Mod Plan was drawn up to request $20.3 billion or $21 billion in Federal funds from the Federal Emergency Management Agency ("FEMA"), of which $12.2 billion is slated for reconstruction of existing transmission and distribution systems and some substations rather than the transformation of the system**. The major expense requirements of the Grid Mod Plan focus on the direct rebuilding of transmission and distribution systems and substations. Total expenses in those categories are $12.2 billion, or 60 percent of the total. Table 4-5 of the Grid Mod Plan details a list of South-North transmission infrastructure. Table 4-12 proposes spending $1.7 billion to strengthen that transmission. Fossil infrastructure spending would be $3.8 billion, according to the Grid Mod Plan.

[20] https://recovery.pr/documents/Grid%20Modernization%20Plan_20191213%20(2).pdf.

The London Economics International ("LEI") report[21] estimates that the Puerto Rico's electricity rates would increase to between 27.8 to 30 cents per kWh (nominal) over the next 5 years if the proposed T&D system projects and the Restructuring Support Agreement (RSA) for the restructuring of the PREPA debt are implemented **even with the investment of Federal funds**. Rates will increase further, to 103 cents per kWh in 2047 (65 cents per kWh in 2019 real dollars) in the base case, and 60 cents per kWh (38 cents per kWh in 2019 real dollars) in the alternative case. These astronomical increases are mainly due to the proposed investments in T&D.

Under the Agreement, Luma is granted undue control over Federal funds. The Operator will work with IEM (as its subcontractor) to manage Federal funds. The Operator's first step after the initial transition begins is to establish a governance framework to manage long-term recovery using Federal funds on behalf of PREPA. (VII. Federal Funds Procurement Manual). Under the Luma contract, the "Grant Administrator" is defined as "the relevant government agency and any third party, authorized by PREPA, and reasonably acceptable to ManagementCo, ie, Luma to act as manager to administer Federal funds. ManagementCo may request, to the extent permitted by applicable law, changes or modifications to Federal funding (including modifications or reassignments between project worksheets related to the T&D system prepared by FEMA pursuant to Section 428 of Stafford Act) or the Integrated Resource Plan." (Luma contract page II–39, pdf 207).

Luma can abandon the tasks required under the contract after PREPA has been dismantled and when reinforcements for the electric system are most needed and almost at any time. In an extended force majeure event, Luma, as Operator has the right to terminate the contract, in the event that the force majeure event continues for a period longer than eighteen (18) consecutive months and materially interferes, delays or increases the cost of initial transition services (front-end) or operation and maintenance services (O&M). (Luma contract page 125, pdf 132). In addition, according to the contract, "force majeure event" is defined so broadly that it excuses Luma from performing the services required for almost any reason, including an interruption or blackout event (page 22, 29), computer sabotage or virus, quarantine, epidemic, or civil disobedience; any event that causes any Puerto Rico or Federal Government agency to declare any part of the geographical area of the T&D system as part of a "disaster zone", "state of emergency" or any other similar declaration; and a change in the law. (Luma contract pages 14–5, pdf 22. The definition of force majeure is very broad and allows the Operator to evade responsibility after receiving the benefits of the contract.

The Luma Agreement infringes upon the rights of PREPA employees. Neither ManagementCo nor ServCo will be required to hire or compensate PREPA employees. ServCo will not be required to hire even the majority of PREPA employees and the determination of which employees it will hire will be made by ServCo in its sole discretion. Job offers will remain open for a period of 10 business days. Any offer accepted within the 10-day period will be irrevocable only until the service start date. Job offers will provide employment with ServCo on the terms and conditions established in ServCo's sole discretion. (Luma contract page 69, pdf 76). The Operator will not be required to assume PREPA pension payments. Employees hired by the Operator will not receive any credit for their previous service unless required by Law 120–2018. ServCo's benefit plan will not be obliged to cover pre-existing health conditions or other benefits for employees and their dependents. (Luma contract page 47–8, 54–55).

The contract provides for priority of payments to the Operator as administrative expenses in the PREPA bankruptcy Title III process to the detriment of other PREPA obligations. (Luma contract page IV–1, pdf 218).

Luma may suspend or terminate electricity service to government entities, such as municipalities. Luma will assume the implementation of Regulation 8818 of September 27, 2016 (Regulation on Contribution in Lieu of Taxes (CILT/CELI).Contrary to a public utility, Luma is not guided by the services that government agencies provide and how they may be impacted by suspension of electric service.

The contract requires PREPA to grant a liability waiver for damages to customers in favor of Luma. With the presentation of the initial budgets to the PREB, the parties agree to request the inclusion in the rate order of an exemption from liability from PREPA in favor of ManagementCo and ServCo as to customers or anyone who receives energy and electricity for any loss that arises in any way or in connection with the operation of the T&D system and the supply of energy and electricity, including any outage event, irregular or defective electrical service

[21] https://creditorspr.com/wp-content/uploads/2020/02/Redacted-LEI-Report-filed-version.pdf.

due to force majeure events, other causes beyond the control of PREPA, ManagementCo or ServCo or common negligence, gross negligence or willful misconduct of PREPA, ManagementCo or ServCo, or their respective employees, agents or contractors; and exemption in all cases of liability for any loss of earnings or income, among others. (Luma contract, page 44, pdf 51).

Luma may evade the requirement to maintain insurance policies. If any required insurance policy is not available at commercially reasonable prices, the Operator will have the right to request the Administrator's consent to obviate the requirement, the consent will not be denied, delayed or unreasonably conditioned. PREPA is required to pay the claims that would be covered under an insurance policy if Luma does not purchase the policy. (Luma contract page 103, pdf 110).

The Luma contract would perpetuate central station fossil fuel generation and the associated T&D system. The Grid Mod Plan to which the Luma contract must be aligned lists multiple methane gas facilities, including San Juan, Mayagüez, Palo Seco, Yabucoa, and other peaking units but admits that having four gas import points increases costs and is not "optimal". However, the government's consultants go on to discuss multiple mechanisms to deploy new methane gas infrastructure, which have been the subject of stiff civil society opposition. On page 55 of the Grid Mod Plan, Figure 4-10 shows that natural gas constitutes 43.72 percent (adding EcoElectrica and Costa Sur) of "Total Production per Fuel Type Accumulated," while diesel amounts to 13.53 percent and bunker C is 19.36 percent, totaling 32.89 percent for oil combustion generation. Therefore, methane gas generation already exceeds oil-fired generation. This undermines the argument of increasing gas generation as a "transition" to renewable energy or for "fuel diversification" purposes. Instead, any increase in gas generation would necessarily further exacerbate reliance on a single, imported fuel source.

The Luma contract, by virtue of the requisite "alignment" with the Grid Mod Plan perpetuates centralized generation with imported fossil fuels, especially new "natural," highly explosive, methane gas infrastructure that involves investments of billions of dollars and continued dependence on the transmission of electricity from southern Puerto Rico to the San Juan metropolitan area. It should be noted that methane gas plants and pipelines usually are taken out of operation during earthquakes to minimize explosions of this highly volatile fuel. This practice implies that the gas infrastructure would be inoperative during earthquake aftershocks that can go on for months as is currently the case in Puerto Rico.

The Action Plan in the draft IRP calls for the construction of three ship-based LNG terminals to be sited in San Juan, Mayaguez, and Yabucoa and one land-based LNG terminal in San Juan, four new Combined Cycle Generation Turbines (CCGT) of 302 MW each in Palo Seco, Costa Sur, Yabucoa, and Mayaguez, and the possibility of the conversion of the AES coal burning power plant in Guayama to burn gas; three (3) CCGTs of 38 MW each in the San Juan metropolitan area; 18 mobile 23 MW units, between 900 to 1800 MW of land-based solar projects and between 600 to 900 MW of BESS. The Plan also proposes the conversion of several existing plants to burn imported methane gas. The construction of these projects would create long-term dependence on methane gas imports and impede the adoption of on-site and rooftop solar and related options.

PREPA senior executives have indicated that the funds for methane gas infrastructure and the reconstruction of the current T&D system will come from Federal sources. Implicit in this approach is the presumption that the people of Puerto Rico will be getting a "free lunch" and that they can request large sums for infrastructure of doubtful utility and security because it is paid by the Federal Government and ultimately, U.S. taxpayers. This reflects a mentality of dependence driven by the methane gas/LNG industry and corporations that sell fossil generation units. The "free" methane gas infrastructure would tie Puerto Rico to methane gas-burning plants and endanger public health and safety.

A recent example of how the methane gas infrastructure can go against the public interest is the New Fortress Energy/NFEnergia (NF) Liquefied Natural Gas ("LNG") terminal in San Juan Harbor. Recently, the Federal Energy Regulatory Commission ("FERC") issued an Order to Show Cause against NF because NF built and operates the LNG terminal in San Juan without previously having obtained the requisite authorization under Section 3 of the Natural Gas Act. If NF had submitted an application for FERC authorization it would have been required to study the health and safety risks of the LNG terminal to nearby communities, workers, and properties.[22]

[22] Faith groups that represent thousands of concerned citizens living in or around the area of the proposed NFEnergia LNG facilities, including Christian churches from various denominations in the Municipalities of San Juan, Guaynabo and Cataño sent a letter to FERC requesting the agency's intervention in the project. (See the attached letter). The churches include the

The NF project is plagued with irregularities and potential legal violations, recently revealed in an in-depth report published by Cambio Puerto Rico and the Institute for Energy Economics and Financial Analysis ("IEEFA").[23]

The NF terminal is supplying methane gas to the PREPA San Juan 5 & 6 units, which are burning light distillate or gas.[24] **The cost of electricity from San Juan 5 & 6, burning gas is $10.79/MBTU, which makes those units the most expensive baseload units on PREPA's system**.

All the gas infrastructure build-out proposed is based on dubious legal exceptions and a proposed waiver of the Jones Act (Merchant Marine Act) exclusively to allow for shipping of methane gas extracted via hydraulic fracturing (fracking) from the continental United States in foreign vessels, which is not likely to be approved according to news sources. The executive branch's gas infrastructure buildout will leave no space or resources for customer-sited renewables.

IV. THE LUMA CONTRACT WILL EXACERBATE PREPA'S CURRENT SYSTEM VULNERABILITIES AND HARM PUBLIC HEALTH AND SAFETY

Hurricanes Irma and Maria demonstrated that the 230 kV and 115 kV lines that carry power from the large, centralized power plants in the South to the North were a key vulnerability of the system. The Luma contract requires continued reliance on centralized fossil fuel combustion plants and these transmission lines, and even contemplates more large, centralized plants, also connected to the grid through the same vulnerable transmission lines. The South-to-North transmission lines are vulnerable to extreme weather events, vegetation growth, wildlife impacts, lack of investment in maintenance, and difficult access to servitudes and easements, among others.

The seismic events further demonstrated the vulnerability of large, centralized plants and the affiliated transmission system: Costa Sur and EcoElectrica are both damaged. The U.S. Geological Survey has determined that the areas where the San Juan and Palo Seco plants are located present high risk of liquefaction in the event of earthquakes.[25] The Great Southern Puerto Rico Fault Zone runs through the Jobos Bay area where the Aguirre Power Complex and the AES coal burning power plants are located.[26]

The Palo Seco plant, depot and accompanying infrastructure are in a tsunami flood area.[27] The IRP fails to consider how much of the existing or proposed energy infrastructure is in flood prone areas or to provide documents related to sea level rise, storm surge, or other flooding risks for the plants and T&D infrastructure.[28]

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following: (1) Iglesia Cristiana (Discípulos de Cristo) in Amelia, Guaynabo (serving Barrio Pueblo Viejo de Guaynabo, Sabana, Amelia, Vietnam, La Puntilla and others sectors between Guaynabo & Cataño); (2) Iglesia Cristiana (Discípulos de Cristo) in San Patricio (serving Northeast/Northwest Puerto Nuevo and Barriada Borinquen); (3) Iglesia Luterana El Redentor (serving Puerto Nuevo); and (4) Iglesia Cristiana (Discípulos de Cristo) of Puerto Nuevo (serving Puerto Nuevo and the Hermanas Dominicas de la Santa Cruz community in Cataño). The group is also backed by the Puerto Rican Council of Churches with more than 500 congregations among its ranks. Combined, the group represents more than a dozen pastors seeking answers as to why FERC has not assumed jurisdiction on such a dangerous project involving large amounts of flammable methane gas in proximity to communities and places of worship.

[23] https://ieefa.org/wp-content/uploads/2020/06/Is-Puerto-Ricos-Energy-Future-Rigged_June-2020.pdf.

[24] In May 2020, it appears that PREPA burned about 240,000 barrels of light distillate at San Juan 5 & 6, and 85,000 barrels of methane gas, according to the Reconciliation File May 2020, May-2020 Fuel Cost & Consumption tab, rows 45–52, PREPA's June 17th filing in PREB's rate case docket, NEPR-MI-2020-0001.

[25] Bachhuber, Hengesh, & Sunderman, Liquefaction Susceptibility of the Bayamon and San Juan Quadrangles, Puerto Rico, at Figure 6, PDF p 30 (2008), https://earthquake_usgs_gov/cfusion/external_grants/reports/03HQGR0107.pdf (noting very high susceptibility zones in areas along the Bayamon coastal plain, Bahia de San Juan, and Laguna San Jose); Hengesh, & Bachhuber, Liquefaction susceptibility zonation map of San Juan, Puerto Rico, in Mann, P (ed), Active tectonics and seismic hazards of Puerto Rico, the Virgin Islands, and offshore areas: Geological Society of America Special Paper 385, at 249–262 (2005).

[26] *Id*. at 250.

[27] GridMod Plan, at 107, Figure 6-6 ("Map of Palo Seco Plant and Depot in Flood Area," listing PREPA as the source of this information).

[28] The terms "Storm surge" and "Flooding" each appear only once in PREPA's IRP, while "Sea Level Rise" is left out completely Cf Puerto Rico Climate Change Council (PRCCC), Puerto Rico's State of the Climate 2010–2013: Assessing Puerto Rico's Social-Ecological Vulnerabilities in a Changing Climate at 7 (2013), http://pr-ccc_org/download/PR%20State%20of%20the%20Climate-FINAL_ENE2015.pdf (noting the demands of the scientific and academic community in Puerto Rico for "an immediate halt to the endorsement and approval of projects in coastal areas vulnerable to the effects of sea level rise").

The operation of all fossil fuel plants in Puerto Rico emit multiple contaminants that adversely impact public health and the environment. The Applied Energy System (AES) Corporation coal-fired power plant and the Aguirre Power Complex, located in southeastern Puerto Rico are the two primary sources of toxic emissions in Puerto Rico and disproportionately impact some of the poorest communities.[29] These two plants also extract large amounts of freshwater from the South Coast Aquifer and have contributed to the water scarcity that led to water rationing in summer 2019 and in previous years.[30]

The AES coal burning power plant in Guayama transmits electricity to northern Puerto Rico, including the San Juan metro area and accumulates hundreds of thousands of tons of coal ash waste at its plant site. The facility and its polluting practices already contaminated part of the South Coast Aquifer, the sole source of potable water for tens of thousands of people in Puerto Rico.[31]

The Costa Sur and EcoElectrica plants in southwestern Puerto Rico both burn imported methane gas and also transmit energy long distance. Gas combustion is the substitution of one group of contaminants for others. The myth that methane gas is a cleaner energy source is a fallacy. The methane LNG used in Puerto Rico must be stored under cryogenic conditions and revaporized/regasified before it can used at the plants. These additional processes add to the total emissions of LNG use in a way that exceeds the CO_2 emissions of other fossil fuels. Methane gas combustion also emits increased Volatile Organic Compounds (VOCs) such as formaldehyde, benzene, toluene, hexane, and styrene.[32]

Multiple scientific studies, including a recent Harvard University report found that, "A small increase in long-term exposure to PM2.5 leads to a large increase in COVID-19 death rate, with the magnitude of increase 20 times that observed for PM2.5 and all-cause mortality. Exposure to air pollution and COVID-19 mortality in the United States.[33] The study results underscore the importance of continuing to enforce existing air pollution regulations to protect human health both during and after the COVID-19 crisis." The specific findings demonstrate that, an increase of only 1 ug/m3 in PM2.5 is associated with a 15 percent increase in the COVID-19 death rate, at a 95 percent confidence interval. https://projects.iq.harvard.edu/covid-pm. Particulate matter is emitted by electric power plants, motor vehicles and other sources of air contamination. Continued reliance on these plants for energy transmission to San Juan and northern Puerto Rico is another disaster in the making.

V. THE DISASTROUS EXPERIENCE WITH PRIVATIZING ENERGY AND OTHER SECTORS IN PUERTO RICO

Within the electric power sector, Puerto Rico already has several examples of generation by private corporations. The AES coal-fired plant generates approximately 17 percent of Puerto Rico's electric power and has incurred in multiple violations and instances of noncompliance with the plant siting permit, orders, and resolutions of the Puerto Rico Environmental Quality Board (EQB), violations of the Federal Clean Water Act and other violations that constitute sufficient basis for the rescission of the power purchase agreement between PREPA and AES prior to the expiration of the contract term. Evidence of environmental contamination by AES is documented in various Groundwater Monitoring reports commissioned by AES to its contractor, DNA Environmental, LLC as a requirement of the Federal Coal Combustion Residuals Rule. AES is now in the process of determining the corrective measures to implement to clean the groundwater contamination and prevent further water pollution at its plant site.[34] However, there are at least 40 sites where AES' Agremax was used as fill material over the South Coast Aquifer and various other

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[29] https://enviro.epa.gov/triexplorer//tri_factsheet.factsheet_forstate?pZip=&pParent=NAT&pCity=&pCounty=&pState=PR&pYear=2018&pDataSet=TRIQ1&pPrint=0.

[30] (https://waterdata.usgs.gov/pr/nwis/wu; https://www.periodicolaperla.com/acuifero-del-sur-retrocede-la-unica-fuente-de-agua-potable-de-30-mil-surenos1/).

[31] Report On Corrective Measures Assessment Aes Puerto Rico—Agremax™ Staging Area, Guayama, Puerto Rico https://aespuertorico.com/wp-content/uploads/2019/11/Corrective-Measures-Assessment-English.pdf, AES Puerto Rico Coal Combustion Residuals website; https://aespuertorico.com/ccr/.

[32] Pediatric Environmental Health Specialty Unit (PEHSU), Mount Sinai Medical School. pgs. 1–2. https://elibrary_ferc.gov/IDMWS/search/advResults.asp, Case No. CP13-193-000.

[33] Xiao Wu, et al. medRxiv 2020.04.05.20054502; doi: https://doi.org/10.1101/2020.04.05.20054502.

[34] DNA-Environment, LLC, 2017 Annual Groundwater Monitoring Report AES Puerto Rico LP, Guayama, Puerto Rico (Jan. 31, 2018). Available at: http://aespuertorico.com/wp-content/uploads/2018/02/2017_01_31_AES_Groundwater-Monitoring-and-Corrective-Action_Annual-Report.pdf.

sites in municipalities throughout Puerto Rico that have not been tested and are likely leaching heavy metals into water supplies.

Other examples of private energy generation in Puerto Rico are the renewable energy power purchase agreements. Table 5-6 of the 2015 Supplementary IRP prepared by Siemens Industry lists 43 power purchase agreements totaling 1056 MW. The prices of some of these contracts are as high as $197.00 per MWh, in addition to annual escalation costs and requiring payment for renewable energy certificates ("RECs"). In addition, almost all of these projects are built or proposed to be built on agricultural land or ecologically sensitive areas.

The Federal Oversight Management Board ("FOMB") approved the NF LNG project in San Juan Harbor as well as the new EcoElectrica/Naturgy agreements. Based on the LNG market analysis of Poten & Partners, the EcoElectrica/Naturgy agreements could cost approximately $500M in excess of competitively bid contracts over the 12-year term of the agreements. The NF contract also includes above-market rates for LNG. Ultimately, PREPA ratepayers would be required to shoulder this burden. It's imperative that the FOMB explain the basis for its approval of the various dubious transactions mentioned above.

A study on the privatization of the Puerto Rico Aqueduct and Sewer Authority ("PRASA") concluded as follows:

> [P]rivatization did not improve the quality of water services either, and certainly led to many more fines and expenses for Puerto Rico, as evidenced by the work done by the Office of the Comptroller of Puerto Rico. Contrary to what was believed and argued by those that supported privatization of the water supply services, two different privatization projects, with different companies and varying contractual terms, failed. Cortina de Cardenas, Susana Maria. "Does private management lead to improvement of water services? Lessons learned from the experiences of Bolivia and Puerto Rico." PhD (Doctor of Philosophy) [35]

The study concludes that, "There is no evidence that supports the notion that privatizing any service *per se*, including water, through any kind of contract, a concession or otherwise, will lead to the delivery of better services." Id pg. 192.

VI. THE PUBLIC MODEL IS NECESSARY TO TRANSFORM THE PUERTO RICO ELECTRIC SYSTEM

The Queremos Sol platform envisions the vindication of the public utility in Puerto Rico through citizen participation and "prosumer" generation. According to the American Public Power Association, known as APPA, public energy companies in the United States generally provide electric service at lower prices than private companies:

Public power utilities provide reliable electric service at comparably low cost, and they do so because they are staffed by dedicated and highly qualified individuals who have years of experience. Employees of public power utilities understand their local communities and take pride in keeping the lights on for their neighbors—(http://c.ymcdn.com/sites/members.iamu.org/resource/resmgr/informer_2016/APPA_Pay_Report.pdf, pg.1). The study cited indicates that the residential rates of public energy companies were 14 percent lower than the rates of private energy companies known as Investor Owned Utilities ("IOUs"). (Id. pg. 2). Meanwhile, in the commercial sector, the rates of public companies are a little lower and in the industrial sector they are comparable with the rates of private companies. The total rates of public companies are on average 7 cents lower than the tariffs of the IOUs. Id. pg. 2. In terms of service reliability, public electric power companies in the United States, on average outperform private companies in the industry parameters. Subscribers of public companies on average experience fewer blackouts than customers of other kinds of electric companies (Id. pg. 3).

In Puerto Rico, private companies that generate electricity have received very generous tax exemption benefits. While PREPA has historically made contributions in lieu of taxes ("CILT") to municipalities and other branches of government and provides substantial subsidies by virtue of multiple provisions of law. According to a survey conducted in 2014, private electric power companies in the United States only pay 4.2 percent of their total operating income to state and local governments while public utilities contribute an average of 5.6 percent of total operating income, this is 33 percent more than the payments of private companies (Id. pg. 4).

Public utilities provide other tangible and intangible benefits to their local communities. Public ownership of the assets provides local control over investments,

[35] Thesis, University of Iowa, 2011, pg.109, http://ir.uiowa.edu/etd/941.

energy supply options and programs. Representatives of subscribers of public companies have the right to participate in meetings where decisions are made. Planning is often done with a view to incorporating community input. The contributions, together with the local participation also promote local economic development. Public utilities are also innovative in terms of technology and many public energy companies have taken a leadership role in preparing their communities for the future by searching for new technologies as an integral part of community growth. They serve as sources of information in a variety of technological fields, such as environmental stewardship, high-speed internet capacity, security and the development of community technology. Some public electricity companies have begun to offer telecommunications services, which foster economic development because private companies cannot offer these services to smaller communities at competitive prices. Other advantages of public companies include greater efficiency of local government through the exchange of personnel, equipment, and supplies. The management and operations of public companies provide additional community leadership for innovation and development. This local leadership tends to have a greater commitment to conservation, security and the environment. Local control affects special programs such as energy conservation, rate relief for certain classes of customers, the aesthetics of the electrical distribution system and design. Local control allows local resources to be linked to local needs without an economic and political bias toward high-cost and capital-intensive techniques or technologies. Place-based management facilitates the implementation of innovative techniques and technology to meet the energy needs of communities. The main mission of public companies is to provide a reliable and more affordable service. (Id.)

VI. THE NECESSARY TRANSFORMATION OF PREPA GOVERNANCE

The following specific proposals included in Queremos Sol are necessary for the transformation of PREPA governance to best serve the public interest:

1—PREPA's **board of directors** should be appointed or elected to fixed terms and possess relevant professional qualifications and energy industry expertise. Terms should be staggered. Three board members should be appointed by the governor from lists submitted by: (1) environmental organizations; (2) labor unions; and (3) small business organizations. Two board members should be appointed directly by (1) the Puerto Rico Cooperative League and (2) the Association of Economists. A sixth member should be selected from the engineering faculty of Puerto Rico universities. Two members should be elected by PREPA's residential and commercial customers as consumer representatives, and one should be elected by industrial consumers as an industry representative. Board members should be dismissed only for cause and only if the resolution authorizing dismissal receives more than six votes. The board must have finance and audit committees, and the members of these committees should not overlap.

2—The PREPA **executive director** should be appointed by the board through an open recruitment process. The board should have just cause before dismissing an executive director.

3—**Reform of contract and enforcement policies** to systematically address all contract irregularities discovered in audits by the Office of the Comptroller and by the 2016 Senate investigation into the purchase of fuel.

4—**Internal restructuring** should be informed by various audits and investigations of PREPA fuel purchase practices that have highlighted the centralization of power and responsibility within its Fuel Office. The board should undertake a structural analysis of PREPA's operations to ensure that potentially conflicting operations are not centralized in a single office, particularly the Fuel Office.

5—The Legislature should authorize the creation of a non-profit, membership-based **PREPA Consumer Advisory Board** with access to all information available to PREPA board members, including all internal audit reports, and with the right to responses from the executive director to all written questions and statements submitted by advisory board members and with the ability to compel enforcement by the PREB in the event that PREPA does not cooperate.

6—**Attraction and retention of an appropriate labor force** through policies aimed at reducing administrative costs associated with the large number of political appointments within the agency. Opportunities for workforce training, especially in renewable energy, should be prioritized. An effective investigation into the costs of salary and benefits that PREPA has incurred due to political appointments should be conducted.

7—Acknowledgement of **climate change as central to decision-making**. Climate change must be understood as one of the central forces in the transformation of the energy sector, which is why it is imperative that PREPA integrate adaptation measures in infrastructure planning and that climate considerations be inserted as a pillar in the design of all public policy, legislation and decision-making processes.

8—**Effective opportunities for citizen participation and education**. Providing and supporting spaces for citizen participation in PREPA in the spirit of publicly owned power companies, vital to achieving baseline levels of agreement informed by inclusiveness and transparency. An energy literacy program including energy audits should be developed and aimed especially at small- and medium-sized businesses and industry to implement conservation and reduction in electric bills.

9—**Promotion of labor sector participation**. Electrical industry workers are key to the sort of system change that will lead to a clean energy future. The term "just transition" is defined as societal evolution toward cleaner energy resources and lower-emission economies while guaranteeing sustainable lifestyles and suitable workforce transition. In a just and equitable transition, affected workers, unions and communities are equal partners in a well-planned and carefully managed shift from fossil fuels to clean energy. A just transition provides employment opportunities and guarantees job security and livelihoods for energy-industry workers and impacted community members. Pensions and health plan benefits are preserved, and workers and members of affected communities have the right to first employment for the jobs created through the dismantling of fossil fuel energy structures. Workers also receive education and training and ideally are unionized with similar salaries and benefits. A just and equitable transition will commit each level of government and business in a unified effort; provides workforce training; replaces lost tax revenues; and creates lasting and good jobs that strengthen the economy and support working families, especially jobs related to clean energy, energy efficiency and climate resilient infrastructure. A just transition requires that those responsible for pollution are held accountable for clean-up to achieve usable land and clean water.

10—**Appointment of an Independent Private Sector Inspector General (IPSIG)**. An IPSIG is an independent firm with expertise in auditing and management that would have the power to investigate and audit the day-to-day PREPA operations and report relevant findings and progress.

11—**A comprehensive audit of the debt** (and holding accountable those who participated in illegal debt issuances) **and a debt restructuring** that protects local bondholders (individuals, small businesses, cooperatives) while ensuring a substantial reduction or elimination of debt repayment by PREPA ratepayers to achieve an affordable and financially sustainable electrical system.

Sustainable, technically viable and cost-effective alternatives that include the combination of energy conservation, efficiency and demand response programs, community-sited renewables, especially on-site roof-top solar, and BESS are currently viable as documented above. Puerto Rican electric customers pay the second highest electric rates of any U.S. jurisdiction and ratepayers will ultimately pay for the transformed electric system. The Luma contract would perpetuate a centralized, imported fossil-fuel based electric system and compromise energy resiliency in Puerto Rico. The proposed acquisition and procurement for on-site, rooftop solar systems and BESS, installed by qualified PREPA personnel and the other measures discussed above will help to achieve the necessary transformation of the Puerto Rico electric system toward a locally controlled, decentralized, renewable energy system.

The CHAIRMAN. Mr. Ángel Figueroa-Jaramillo, President, Electrical Industry and Irrigation Workers Union. Your statement will be read by the translator. And the translator will be available for the Q&A and Mr. Jaramillo will be participating in those with the translator.

With that, Mr. Jaramillo, the floor is yours.

STATEMENT OF ÁNGEL FIGUEROA-JARAMILLO, PRESIDENT, ELECTRICAL INDUSTRY AND IRRIGATION WORKERS UNION (UTIER)

Mr. FIGUEROA-JARAMILLO. [Speaking through interpreter]. Good afternoon. My name is Angel Figueroa-Jaramillo. I appear as president of the union and UTIER. I am with Attorney Jessica Coldberg. I thank the Committee for the invitation. My statement will be read by the translator.

UTIER represents 3,000 of the 6,000 workers that PREPA will lay off due to the LUMA Energy contract. However, UTIER speaks not only for the benefit of its members, but also for the 12,000 PREPA retirees and the people of Puerto Rico as a whole. It is essential that this Committee know that we agree PREPA needs to be transformed.

However, handing over all current PREPA functions to a private operator is not a transformation. LUMA Energy will do everything PREPA is already doing and is charging an additional $125 million in public funds for it. A true transformation requires an investment and expert input.

UTIER and other organizations have made proposals for a true transformation and they have fallen on deaf ears. UTIER sponsors Queremos Sol, which has a comprehensive proposal to transform PREPA. We have also proposed changes, such as: (1) altering the composition of the Governing Board and the Energy Bureau to increase transparency and consumer representation and limit the discretion that leads to contracting; (2) the implementation of an independent private sector inspector general, IPSIG, as a control to ensure compliance with existing laws and regulations without the need to appoint a trustee; and (3) most importantly, the reinvestment of funds in PREPA's workforce which has been severely depleted in recent years and led to so many difficulties after Hurricane Maria.

But apparently what the government wants is to wash its hands of the deficiencies of those who have been appointed to manage PREPA and not transform it. An example, the current CEO, José Ortiz, has done nothing for the real transformation.

The contract with LUMA does not provide any benefit for the people of Puerto Rico. The payment of the contract has already placed PREPA at a $125-million budgetary deficit as certified by the Financial Oversight and Management Board in the latest budget.

There is no doubt that PREPA does not have the resources to pay that money, which is why the Oversight Board is requesting an administrative expense priority in the Title III for LUMA Energy, which in turn will affect the retirement system and other creditors.

The only way to pay this deficit will be by increasing the rates, which will affect the people of Puerto Rico and disproportionately harm the population living below the poverty level, especially those with annual incomes between $0 and $14,399. This population will have to dedicate between 36 and 42 percent of their income to pay their electrical bill.

Under the contract, LUMA Energy has even been given the deference that the plan of adjustment under Title III of PREPA must

be "reasonably acceptable to LUMA Energy." Otherwise, LUMA can terminate the contract.

The concession on LUMA to have veto power over the approval of the plan of adjustment will pressure the Oversight Board and the Title III Court to approve a plan that is not necessarily in the best interest of the people of Puerto Rico.

The question to ask is why should LUMA Energy have that kind of power. LUMA will not be accountable to the people of Puerto Rico. It can terminate the contract practically at any time with only 120 days' notice and leave Puerto Rico without an electric service operator.

In addition, despite being a private entity, it will make public policy decisions and manage at its own discretion the $18 billion in Federal funds assigned to Puerto Rico. In fact, LUMA has already started bragging about those Federal funds to its investors and affiliates. The Federal Government should stop this.

Speaking about accountability, the locally registered corporation was created in January of this year for the sole purpose of signing this contract and was created as a limited liability company to avoid responsibility. Furthermore, the contract has an exemption from express liability for any damage that LUMA may cause to its ratepayers.

In summary, LUMA Energy will take over PREPA's operations without investing a dime in PREPA or in Puerto Rico. It will charge a fee of $125 million and manage $18 billion in Federal funds and will be able to award contracts to Quanta Services and ATCO while PREPA pays for its transition and operation. It is not accountable to the people of Puerto Rico, and it is not required to transform the electrical system. In fact——

The CHAIRMAN. You need to wrap it up, sir.

Mr. FIGUEROA-JARAMILLO. Thank you.

The CHAIRMAN. Yes. You are welcome.

[The prepared statement of Mr. Figueroa-Jaramillo follows:]

PREPARED STATEMENT OF ÁNGEL FIGUEROA-JARAMILLO, PRESIDENT, UNION DE TRABAJADORES DE LA INDUSTRIA ELÉCTRICA Y RIEGO (UTIER)

I. INTRODUCTION

When the Puerto Rico legislature passed the Puerto Rico Electric Power System Transformation Act (Act No. 120–2018) it said, and I quote:

> PREPA's employees have made a **Herculean effort** to serve Puerto Rico. They have played a **key role** in the reestablishment of the electric power system after hurricane Maria. Their knowledge **is critical** in ensuring the electric power systems' success. **They are not the problem**. (Statement of Motives) (emphasis added).

To make good on those expressions, the Legislature dedicated the entire Section 15 of the law to protect the rights of PREPA's workers, ensuring that none of them would lose any rights in the process of transforming PREPA. Yet, when PREPA and the Public-Private Authority entered into this Contract with Luma Energy, they completely ignored that mandate, in more than one way.

While it is true that the Contract with Luma Energy completely ignores the rights of PREPA's workers, which we have been sure to denounce loudly and with conviction, it is also true that the Contract misses the mark in other ways. The Legislature was clear, PREPA's workers "are not the problem." So, what is the problem?

In a recent study, the Economist José I. Alameda-Lozada, Ph.D. noted that PREPA's financial woes are not the same as those of the Commonwealth nor do they

share identical causes.[1] This conclusion stems from two premises that are undisputed: First, PREPA is a public corporation, independent from the Commonwealth Government. As an independent public corporation, PREPA has its own budget, revenue and debt issuance. Second, PREPA was created to provide an essential service that has been valued as a derived human right. Thus, Alameda-Lozada studied the independent causes of PREPA's financial situation.

He concluded that there were particular circumstances that contributed: (1) that the Governing Board of PREPA was highly politicized along party lines, leading to poor decisions, and (2) that the issuance of debt did not lead to investment in infrastructure and maintenance. Of course, there is also the issue of the Commonwealth Government's outstanding debt with PREPA, which amounted to $208 million by 2016, and the $412 million owed by the municipalities. However, there is another trend that contributed to PREPA's deterioration: the reduction of its workforce.[2]

In the period between 2000 and 2013, PREPA had an average diminution of 81 workers. While in 2000 PREPA had 9,540 workers, by 2013 it was down to 7,822. Then, with the enactment of laws that directly infringed upon the rights of workers in 2014, PREPA lost 516 workers per year. Then after an additional law of this kind was passed in 2017, the reduction was of 292 workers per year. By 2018, the workforce was reduced to 5,687. This heavy decline impacted PREPA's retirement system, due to an increase in retired workers, and reduced the active stock of human resources.[3] This, as we know, took its toll when Hurricane María made its way through the island, as PREPA did not have the manpower to reenergize the island quickly; hence, the "Herculean effort" of those employees recognized by the Legislature of Puerto Rico. There seems to be an affinity for removing PREPA's workers from the table, where they are invaluable for the search for solutions. This could not have been more evident than when PREPA attempted to outsource to Whitefish, the work that its workforce, had it not been reduced so drastically, could have completed efficiently and expediently. This was another failed attempt to find solutions outside of PREPA's workforce and evidence of the issues UTIER insists are what needs to be attended.

In view of that background, UTIER posits that the problem with PREPA is (1) the party-politics dynamic that dominates the Governing Board; (2) the lack of investment in infrastructure in maintenance; and (3) the systematic reduction in its workforce by acts of PREPA and the Legislature, in mislead attempts to achieve savings by impairing workers' rights rather than assuming any of the available alternatives. These alternative methods of achieving income and savings were discussed by Alameda-Lozada in the study referenced above and it is part of the submissions made for the record of this hearing. None of these problems are addressed by the Luma Contract. That "transformation" initiative creates more problems than it solves.

UTIER recognizes that PREPA is in great need of reform, but its proposed alternatives are much less burdensome for the people of Puerto Rico and PREPA itself than the adoption of this, frankly, bad contract. Privatizing for the sake of privatizing is not a solution. If we have learned anything in Puerto Rico it's that private actors are not exempt from the party-political dynamics that PREPA suffers from. Scandals surrounding high profile public contracts with private contractors are usually traced back to political party connections. A recent example is the contracts for the COVID-19 tests, which have been revealed to be part of a scheme with government party members.[4] Party politics corruption in Puerto Rico extends to private contractors, who are favored because of their affiliations. Furthermore, the Luma Contract does not require it any investment to PREPA's infrastructure or maintenance. PREPA will be paying for those "services" just as it always has. Lastly, the Luma Contract will continue to impair the rights of PREPA's workers, which, as we have seen, leads to reduction of the workforce, increase in retirees who will burden the pension system and the inacceptable risk that we face another

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[1] José I. Alameda-Lozada, Ph.D., The Impairment of UTIER's Collective Bargaining Agreement and the Calculation of Damages (June 15, 2020).

[2] *Id*. at 19–27.

[3] *Id*. at 78–80.

[4] The Center for Investigative Journalism has covered the scandal and the connections to the statehood party in these contracts: Luis J. Valentín Ortiz & Joel Cintrón Arbasetti, *El esquema de la venta de pruebas en Puerto Rico*, CPI (May 28, 2020) https://periodismoinvestigativo.com/2020/05/el-esquema-de-la-venta-de-pruebas-en-puerto-rico/; Luis J. Valentín Ortiz & Cristina del Mar Quiles, *Tierra de nadie la compra de pruebas y suplidos para la emergencia del COVID-19*, CPI (April 8, 2020) https://periodismoinvestigativo.com/2020/04/tierra-de-nadie-la-compra-de-pruebas-y-suplidos-para-la-emergencia-del-covid-19/.

hurricane or natural phenomenon without the necessary number of experienced workers to address the aftermath.

In this opportunity to present our position before this Committee, we will first, establish the basis of our opposition to the Contract with Luma Energy. We will then submit our proposals as better alternatives than the Luma Energy Contract for the actual problems that PREPA is facing. Finally, we will respectfully highlight the areas in which Congress can intervene to address the actual situation of PREPA.

II. OPPOSITION TO THE CONTRACT WITH LUMA ENERGY

We will start pointing out the reasons this Contract should be **voided**. As we have argued in our legal opinions and memorandums, as well as in the ongoing litigation regarding the Contract, this Contract with Luma Energy is, in itself, unconstitutional, illegal and in every way, a great detriment for PREPA. The gist of our opposition is that this Contract is bad business, thus, contrary to basic public policies enacted by Puerto Rico's legislature. Moreover, legally specific arguments aside, PREPA does not derive a single benefit from it, unless you consider dismantling PREPA to be in its own benefit, like the Oversight Board does.[5]

A. The Contract is Unilateral, PREPA Reaps No Benefits

In summary, the Contract with Luma Energy shifts PREPA's operations into Luma Energy's hands, intact. That means that our once public monopoly on energy distribution becomes a **private** monopoly. PREPA retains only the property rights, while Luma Energy takes on: operations, customer service, billing, legal, capital improvements, Federal fund procurement and management, some generation services, the Integrated Resource Plan procedures, PREPA's representation in Government bodies, renewable energy public policy goals, electricity rates, and so on. Meanwhile, PREPA will be paying for Luma Energy's transition in, out and all the expenditures it incurs during the Contract, the contract will increase its financial burden, contrary to the requirements of restructuring, debt adjustment and financial soundness. The Contract will cause an increase in the service's cost to ratepayers. This in turn, will affect demand, because the staggering amount of population that lives under the poverty line will have to drastically reduce its energy consumption in order to balance the percentage of its income they dedicate to that payment, thus, securing other bills such as rent and food. This is confirmed in a recent study by Sociologist Héctor Cordero-Guzmán, Ph.D.[6]

In Puerto Rico, 44.5 percent of the population lives below the Federal poverty guidelines.[7] As such, increases in electricity rates will disproportionately impact people below the poverty line. Specifically, for the bottom 40 percent, with incomes between $0 and $14,399, electricity will take up between 36 percent and 42 percent of their income.[8] These circumstances only serve to pressure migration and exacerbate the financial crisis. This in turn, results in a decrease in demand that further suppresses progress.[9] Therefore, the increase in rates that the Contract requires affects the availability of sustainable cash-flow to cover all of PREPA's obligations, including the retirement system and bond payments.

B. The Contract is Illegal and Unconstitutional under Puerto Rico Law

Under the Contract, Luma Energy will not respect the rights of PREPA's workers, as they have acquired them in their collective bargaining agreement with PREPA and deprives them of the union representation that they have. This is expressly stated in Section 5.2 of the Contract, where Luma Energy says it will assume "system contracts" which are defined in Section 1.1 as not including collective bargaining agreements. In Puerto Rico, this is not legal, and it is diametrically opposed to the Constitution, the law and public policy. Thus, it taints the already questionable Contract with additional constitutional concerns.

The Puerto Rico Constitution contains explicit protections for worker's rights in the Bill of Rights, which is Article II of the Constitution. Section 17 of Article II of the Constitution states that workers have the constitutional right to unionize and

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[5] PREPA's Motion for Entry of an Order Allowing Administrative Expense Claim for Compensation for Front-End Transition Services under Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement with Luma Energy, Case No. 17 BK 4780-LTS, Docket No. 2053–1 at 16.

[6] Héctor R. Cordero-Guzmán, Ph.D., The Socio-Economic Impacts of the Puerto Rico Electric Power Authority (PREPA) Restructuring Support Agreement (RSA) on the Population of Puerto Rico (rev. September 10, 2019).

[7] *Id*. at 11.

[8] *Id*. at 20.

[9] *Id*. at 34.

negotiate collective bargaining agreements. This protection is also present in Act No. 130–1945, P.R. Laws ann. tit. 29 §§ 62 *et seq*., a labor law that explicitly declared the Puerto Rico public policy regarding collective bargaining agreements. That public policy states that maintaining industrial peace, adequate and stable wages and production through collective bargaining agreements is essential for Puerto Rico's economic development. P.R. Laws ann. tit. 29 § 62(2). That depends, the law says, on maintaining fair, friendly and mutually satisfactory labor relations. *Id*. For that reason, the law says that collective bargaining agreements are instruments of public policy and are, thus, vested with public interest. *Id*. § 62(5). The Puerto Rico Supreme Court has repeatedly interpreted this law liberally in favor of the constitutional protections of Article II Section 17. *See COPR v. SPU*, 181 P.R. Dec. 299, 314–21 (2011). Any act that intervenes or restrict worker's rights under that law, meaning that it frustrates the collective bargaining effort, is deemed illegal. P.R. Laws ann. tit. 29 § 69(1)(a).

In addition, Act No. 120–2018, P.R. Laws ann. tit. 22 §§ 1111 *et seq.*, which is the law that allows PREPA to enter into the Contract with Luma Energy in the first place, specifically states that it cannot be used as grounds to deprive a worker of rights acquired through a collective bargaining agreement. Furthermore, Article II, Section 7 of the Puerto Rico Constitution prohibits laws that substantially impair contractual obligations, just like the U.S. Constitution. However, in Puerto Rico, if the impaired contractual obligation has a government party, the scrutiny that the law must survive is more rigorous than the traditional rational scrutiny. *See Domínguez Castro v. ELA*, 178 P.R. Dec. 1, 80–84 (2010). If Act No. 120–2018 were interpreted in any way that it allows the impairment of the collective bargaining agreements then it would be susceptible to additional constitutional challenges and so would the Contract with Luma Energy.

C. The Contract Dismantles PREPA and Risks Severe Service Interruption in Case of Termination

In addition, the Contract is, as the Oversight Board puts it, the crucial first step to dismantling PREPA.[10] The Contract contemplates breaking PREPA down into four private corporations.[11] These are not four private corporations that will give consumers and ratepayers more options. These are four private corporations that will divide amongst themselves PREPA's most vital functions. Luma Energy will take over operations, including customer service and public policy formulation through ServCo; GenCo will take over the power plants and generation operations; GridCo will take over PREPA's property rights over the T&D System, and an additional corporation will administrate debt issuance. While we appreciate that the Government has some reservations about PREPA's monopoly, we should all be able to agree that a private monopoly is the worst solution.

Private monopolies are illegal for a reason. They hold consumers hostage in the name of profit, rather than welfare. Both Puerto Rico and Federal law rightfully prohibit any scheme that monopolizes a product or service. For all their postulating about PREPA's monopoly holding Puerto Ricans hostage, the Government missed the mark with this Contract. At least if PREPA made decisions that affected ratepayers, Puerto Ricans had the power of the political process and public influence to address them. On the contrary, in a private monopoly, there is nothing that consumers can do. Thus, it is unconscionable to subject the people of Puerto Rico, who are still suffering interruptions in their electricity because of hurricanes and earthquakes to the whims of a private corporation. By definition, private corporations seek profit. No amount of empty promises or honor code contractual provisions will change that. Dismantling PREPA in this way does not foster competition. It creates a private monopoly of intertwined but independent corporations. This creates a huge problem for consumers. If and when Luma Energy leaves Puerto Rico, for the numerous reasons the Contract allows it to, rebuilding the utility we lost will be onerous and burdensome for Puerto Rico, leaving it without the essential public service that it needs.

As we showed in our summary of the termination clauses of the Contract, to terminate the Contract, Luma Energy only needs to give the Public-Private Partnership Authority ("P3") a 120 day notice. Although the Contract states that before it leaves Luma Energy must make efforts to find a successor, as part of the Back-End Transition, this Transition only lasts until the earlier of these two: when 120 days are up or when the service accounts run dry. With that time and funding restriction, there is little chance that Luma Energy will find a successor to their

[10] *Id*.

[11] Section 4.5(g) of the Contact references the PREPA Reorganization, which is defined in Section 1.1.

position, as Section 16.1 of the Contract requires only that they coordinate efforts. The reality is that once Luma Energy places their 120 day notice, PREPA will be left scrambling to rebuild the public utility so that consumers do not suffer the consequences. This will undoubtedly be close to impossible once PREPA has been gutted and divided into four companies. Furthermore, PREPA will have to find a way to rebuild its workforce, most of which will have been forced into early retirement, pushed to migrate for job opportunities or even coerced to accept employment with Luma Energy.

With all of these obstacles, it will be near impossible to reassemble the public utility, which puts all of Puerto Rico at risk: businesses, hospitals, retirement homes, residents, etc. Without the transmission of electricity everything comes to a halt and people suffer a myriad of consequences from loss of income to damaged property to death for lack of life saving machinery. These are not inconveniences, these are severe risks that could come up at any moment if Luma Energy is unsatisfied with business in Puerto Rico.

D. The Contract Directly Contradicts PROMESA's Goals

Furthermore, the Contract conflicts with the supposed goals of PROMESA. Luma Energy's transition has already put PREPA in a deficit. The Oversight Board certified a 2020 Fiscal Plan that puts PREPA at a budgetary **deficit of $132 million** for Fiscal Year 2021.[12] Also, the FY 2020–21 budget is $125 million underwater.[13] This is attributed by the Oversight Board to the burden of the Luma Contract. Meanwhile, the Oversight Board is requesting an administrative expense priority for the payment of $136 million for Luma Energy's transition. This puts PREPA's rehabilitation in peril and prioritizes paying Luma Energy's expenses above paying PREPA's creditors, including its bondholders and pension obligations.

When Congress imposed the Oversight Board on Puerto Rico, it told us that its goal was to help Puerto Rico and its instrumentalities rehabilitate, pay their debts, and have access to the bond markets again. However, we should marvel at the fact that the Luma Contract is being approved under the reign of PROMESA and the Board. It is unjustifiable to put a Title III Debtor in a situation where it will not receive anything in return for handing over its operations and, on top of that grant priority to million-dollar payments for that Contract over PREPA's other creditors, putting their claims at risk. Luma Energy won't invest a dime in Puerto Rico or PREPA, it will charge for its services and it will be prioritized in Title III. Furthermore, if Luma Energy doesn't get prioritized in Title III, it will terminate the Contract and leave, because it can under Section 4.1 of the Contract. Then, when it leaves, PREPA will be left with the bill for its failed efforts.

On July 7, 2020, the Oversight Board filed the motion to seek administrative expense priority for what it projects will be $136 million, while the Board itself has admitted that the Contract with Luma Energy has resulted in a **$125 million deficit in PREPA's 2021 certified budget**. Thus, in addition to putting PREPA in a deficit, the Contract will have a $136 million priority which means that PREPA will be forced to pay that amount to Luma Energy before it can pay its bondholders and other creditors, such as pension obligations. The pension obligations at this point consist, in part, of a claim for over $350 million that PREPA owes to the pension system for its employees. If PREPA cannot pay these dues and Luma Energy will be prioritized in Title III, then the system will undoubtedly become insolvent and leave thousands of PREPA's retirees without a proper retirement.

The Contract does not provide any revenue for PREPA, because Luma Energy will make no investments throughout the contractual relationship and will, instead, use up PREPA's revenues to pay for its operations. There is no indication in the contract that Luma Energy will increase PREPA's revenues by increasing demand or by fostering economic development. On the contrary, the Oversight Board projections of demand for the next 30 years only show a steady decrease in demand and a steep increase in rates to compensate for loss of revenue.[14] The demand is projected to drop 2,817 GWh in the next 5 years alone and continues to drop. Meanwhile, rates seem to take a dip in 2021, which seems to depend entirely on successful pension reform but consistently increase for the remainder of time. These numbers reflect that even the Oversight Board's projections based on the complete success of their own proposed measures will not result in any benefit for PREPA or its ratepayers.

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[12] 2020 Fiscal Plan for the Puerto Rico Electric Power Authority, as certified by the Financial Oversight and Management Board for Puerto Rico on June 29, 2020, at 10 https://drive.google.com/file/d/1paRgy0dJBkUH4-5eev7z2SuR0diil8g9/view?fbclid=IwAR1ztJuq1z1gs9qP7JhZi1AxKync2ZO3kzXYLmIPOsGrzR-kH0L0tvbqIKw.

[13] Puerto Rico Electric Power Authority, Fiscal Year 2021 Certified Budget, at 3, https://drive.google.com/file/d/1yIV664F009bi3UeE9WBHi3J6U6r42tFQ/view.

[14] 2020 Fiscal Plan for PREPA, *supra* note 11, at 42–43.

Furthermore, it should be noted that the Oversight Board is not contemplating any of PREPA's debts in its calculations, which undoubtedly will result in further increase of rates and affect demand. Therefore, we are seeing a lot of money going out to Luma Energy and no money coming in for PREPA to pay its debts. This will make it impossible for PREPA to adequately complete its Title III bankruptcy, which is contrary to the goals of PROMESA and the intent of Congress when it imposed the Oversight Board on Puerto Rico. The fact that the debtor here is a public utility and, in fact, the only public utility of its kind, and, on top of that, the sole distributor of electricity in all of Puerto Rico, puts in extreme peril the potential for successful financial restructuring that would contribute to the much needed economic development. Even the Oversight Board's most generous projections do not promise well for this Contract.

E. The Contract Gives Luma Energy Control Over Public Policy

On the other hand, the Contract allows Luma Energy to control and implement important aspects of public policy, while it does not respond to the public in any way. Luma Energy will be in charge of implementing public policy on renewable energy, according to Section 5.18 of the Contract. It will also replace PREPA in the Integrated Resource Plan procedures before the Puerto Rico Energy Bureau, according to Section 5.6(f). This means that Luma Energy will decide what resources will be used for generation and control the long-term development of Puerto Rico's entire electric system. Additionally, Luma Energy will have complete control over the Federal funds, emergency or otherwise, that come in for the people of Puerto Rico, according to Section 5.9 of the Contract. Lastly, Section 6.1 of the Supplemental Agreement of the Contract seems to grant Luma Energy influence over or control the plan of adjustment in Title III court, because it conditions the Contract on "the Title III Plan and an order of the Title III Court confirming same shall be reasonably acceptable to Operator [Luma Energy]."

F. The Contract Gives Luma Energy Control Over Federal Funding

Another issue with the Contract with Luma Energy is that it requires channeling Federal aid through his private contractor. We are all aware of the many problems we have faced in the aftermath of Hurricane María regarding Federal funding. Thus, we should all be cautious of Contracts that funnel those funds through private companies, whose ends are profit and not welfare. Luma Energy has already begun flaunting the Federal funded capital improvements to PREPA's infrastructure for its own investors and affiliates:

> Significant Opportunity for Electric T&D System Modernization and Transformation—Quanta believes there is opportunity for it to compete for work associated with Puerto Rico's electric T&D system modernization efforts that are separate from its ownership interest in LUMA. Puerto Rico's electric T&D system is at a critical juncture after the destruction caused by Hurricanes Maria and Irma. As a result, the government of Puerto Rico, through the P3 and in collaboration with PREPA, have embarked on a plan to rebuild, modernize, harden and "green" its power grid, a majority of which is expected to be funded by U.S. Federal disaster relief agencies and managed by LUMA. The P3 estimates that more than $18 billion of electric T&D capital investment could be required through 2028 for this initiative.[15]

Thus, we see a tendency toward Luma Energy's "people" which has two principal problems. First, evidently, these contractors will not be investing in Puerto Rico and all the funds that are transferred to those companies will leave Puerto Rico. Federal funds that are assigned to Puerto Rico should be put to work for Puerto Rico and the citizens that reside there, not for companies that will not contribute to the economic development of the archipelago. This allows a handful of corporations and their officers to profit from Federal aid, while the people of Puerto Rico do not see a dime. This is why UTIER proposes that Federal funding be channeled directly to PREPA's workforce, ensuring that the money stays in Puerto Rico.

Secondly, it is evident that, as a private actor, Luma Energy will be operating in a way that benefits it first and foremost, regardless of the effect on PREPA and its ratepayers. Public corporations in Puerto Rico are subject to competitive bidding requirements that are protected and implemented by law. They are also open to public

[15] Quanta Services and ATCO-Led Consortium Selected by the Puerto Rico Public-Private Partnership Authority for the Operation and Maintenance of Puerto Rico's Electric Power Transmission and Distribution System, https://investors.quantaservices.com/news-events/press-releases/detail/277/quanta-services-and-atco-led-consortium-selected-by-the.

scrutiny and can be challenged through political or judicial processes. On the other hand, Luma Energy will have complete freedom and discretion to spend the Federal funds assigned to Puerto Rico for its own benefit. With such discretion come great risks for corruption, especially in a private corporation over which the people of Puerto Rico have no accountability mechanisms or transparency requirements. UTIER's proposal to reinvest in PREPA and its workforce limits that discretion and provides inherent accountability and transparency.

III. ALTERNATIVES TO THE CONTRACT WITH LUMA ENERGY AND UTIER'S PROPOSALS

Because UTIER has the firsthand experience with PREPA's operations and flaws, it is in a unique position to make proposals, however, they have been repeatedly ignored by the authorities.[16] As outlined previously, the main issues to address are in the areas of top management, not at the workers and operations level. As such, UTIER presents the following alternatives:

A. Independent and Professional Governing Board

As we have said, there is a troubling issue of party-politic dynamics regarding the PREPA Governing Board. Those party lines have a tendency to stunt growth and deviate efforts from making lasting improvements to other more politically attractive patchwork solutions. Thus, the first and most important solution is to alter the method for selecting the incumbents of these managerial positions and amending the composition of the Governing Board to retrieve the participation for consumers that was lost in the recent years.

The Governing Board is made up of 7 members: 6 are Governor Appointed members, only 3 of which require the consent of the Senate, and, of the remaining 3, only one of which must be independent; 1 Consumer Elected Member. There used to be two consumer representatives, but the notorious Ex-Governor Ricardo Rosselló's administration pushed for an amendment to the law and achieved it. These members have 5-year terms, except for the two non-independent members appointed at the sole discretion of the Governor, who are subject to the Governor's caprice. Those two non-independent members appointed at the sole discretion of the Governor do not need to have any qualifications to occupy their position. Only four votes out of those seven members are required for any decisions regarding PREPA. (PREPA's Organic Act, Act No. 83–1941, as amended). The problem should be self-evident. We are talking about a board where three members must have blind loyalty to the Governor; three other members are appointed by the regular political process and only one is directly scrutinized by the public before assuming the position.

UTIER proposes that the Governing Board members be selected on merits rather than affiliation. That is, rather than politically appointing members to the Governing Board, where there is absolutely no check or balance against the political inclinations of the Administration in Term. The proposal is for the experts on the island to be tasked with the selection. The professional colleges of engineers, certified public accountants and legal professionals can provide a well-rounded evaluation of potential candidates and select those members that would truly represent the best interests of PREPA and address those areas that require attention from their own expertise, rather than postulate on their political platforms. This would lead to an independent and professionally capable Governing Board, more capable of making those decisions that will truly rehabilitate PREPA.

Additionally, UTIER proposes a return to more participation for consumers. Reducing the consumer representation on the Governing Board makes its contribution negligible. The consumer representative is constantly passed over and unable to tip the scales of voting. This would mean that the Governing Board would be composed of at least two representatives of PREPA's consumers, the most vulnerable party affected by PREPA's actions, and the remaining members would be selected from the professionals of Puerto Rico, increasing the chances of making decisions based on consensus rather than number superiority.

B. Appointment of an Independent Private Sector Inspector General

While an independent and professional Governing Board is essential, an additional alternative to the issues of PREPA's poor management is the appointment of an Independent Private Sector Inspector General ("IPSIG") to oversee, audit and report deviations in the laws and procedures that control PREPA's operations. It is UTIER's position that there is absolutely no need to over-legislate. PREPA has many laws and regulations in place to control the processes that it undergoes and to curb the possibilities of corruption and mismanagement. What is sorely missing

[16] *See, for example*, Tom Sanzillo, Examination of the alternatives available to PREPA in order to not impair the Labor Contracts of UTIER and its members (June 15, 2020).

is an independent agent to inspect, report and enforce compliance with those laws and regulations. We have noticed that there is a penchant in the Puerto Rico Government to legislate rather than to implement accountability measures.

An IPSIG is "an independent, private sector firm (as opposed to a governmental agency) that possesses legal, auditing, investigative, and loss prevention skills, that is employed by an organization (i) to ensure that organization's compliance with relevant laws and regulations, and (ii) to deter, prevent, uncover, and report unethical and illegal conduct committed by the organization itself, occurring within the organization, or committed against the organization."[17] In other words, an IPSIG can be individuals or entities and they are charged with legal, auditing, investigative, and other powers, so they help monitor the activity of public contractors.[18]

The primary roles of an IPSIG are to monitor, audit and investigate the activities of the organization in order to detect unethical conduct, violations to the laws, regulations or collective bargaining agreements and to report them to law enforcement authorities or other entities with jurisdiction. It may also design and implement programs for the prevention of illegal, unethical and wasteful behavior.

The purpose of installing an IPSIG at PREPA would be to move the agency away from its current state of organizational dysfunction and to an organizational culture that embraces the practice of professional and ethical standards as first principles, at all levels. The simple idea is that "good ethics is good business." The overriding objective of this proposal is to put PREPA on an internal track toward sound management that can support efforts to modernize the electrical system and secure the confidence of the market and public.

The basis of an IPSIG would compile findings and recommendations from existing oversight reports and stakeholder input, including business partners, labor organizations, individual employees and interested outside organizations. At the end of its tenure the IPSIG would produce a report including a long list of specific recommendations for administrative, financial and operational changes at PREPA. The scope of the IPSIG's mandate would cover the review of personnel decisions, fuel and non-fuel procurements, budgets and regulatory compliance, financial practices, etc. But it must be clear that the IPSIG would not have authority to usurp the management responsibilities of the Governing Board. It would need to identify the illegal or unethical activity that it is tasked with identifying and taking its case to the corresponding authorities. It is not a receiver, it will not displace PREPA's Governing Board, just audit it.

We are confident that the Puerto Rico Government has legislated enough and there is more than enough regulation in place to keep PREPA on the straight and narrow. The problem is accountability and auditing, two things the Government seems to have an aversion to. The IPSIG is a viable solution to that problem.

C. Investment of Funds in the Workforce

Throughout PREPA's crisis, a simple solution which can avoid the squander of public funds, reduce corruption, put money back into the Puerto Rican economy and contribute to strengthen PREPA in one fell swoop, has been overlooked: investing in PREPA's workforce. By allocating funds directly to rebuilding PREPA's workforce, on the ground not management level, PREPA will be securing the necessary professionals for its day-to-day operations and for the essential response in case of emergencies. This allocation does not give management the discretion to move money imperceptibly. Workers have wages and benefits with fixed and easily verifiable quantities. Thus, corruption is reduced by the limits of discretion. Rather than waste money on outsourcing to contractors who inevitably have to subcontract and charge outrageous fees, PREPA could make use of its own workforce and provide the incentives to keep workers. These workers in turn will use their money in the Puerto Rican economies, unlike contractors and subcontractors who are usually shell companies that have no interest in Puerto Rico.

We have witnessed the detrimental effects of the reduction of PREPA's workforce and the fascination of contracting private actors to attend situations that PREPA's workers would have been more than capable of dealing with if they had not been forced out. By reinvesting in PREPA's workforce, we reinvest in a better future for PREPA.

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[17] Expert Declaration of Mr. Tom Sanzillo, Director of Finance for the Institute for Energy Economics and Financial Analysis (IEEFA) in Support of Utier's Objection to Insurers' Motion for Relief from Automatic Stay (Dkt#975) and to Pray for the Appointment of an Independent Private Sector Inspector General ("IPSIG") (Dkt#1158), Case No. 17 BK 4780–LTS, Docket No. 1211.

D. Independent, Transparent and Participatory Energy Bureau

Recent legislation implemented the Integrated Resource Plan ("IRP") Process. This was meant to be a robust procedure with public participation and transparency as its pillars, where PREPA would ultimately achieve an IRP, that is a roadmap for generational acquisitions and sound environmental goals. This was meant to limit the discretion that PREPA may have in fuel procurement and assist a more aggressive transition toward renewables. This has not been the case.

UTIER has repeatedly argued that an energy bureau is an unnecessary body where there is only a public utility and no private utilities. However, the Government decided to create one and now uses the Puerto Rico Energy Bureau as a rubberstamp for its political decisions. The recent approval of the Contract with Luma Energy is evidence of this. This is unacceptable.

If the Energy Bureau is going to continue, it must serve the purpose it was meant to, that of an independent regulator. This means that, as UTIER's proposal for a governing body with the integration of professional non-partisan members, the Energy Bureau should be composed of independent professionals which should include members representing and directly responsible to consumers and the public welfare. Also, any legal provision that hinders public participation must be abolished to make its proceedings open for the population to scrutinize.

Just this year, the Energy Bureau deprived the population of access to the process to approve the Contract with Luma Energy. Once the Contract became public, we were able to point out the numerous flaws and illegalities with the process. But we were also able to appreciate that the Energy Bureau committed a grave error by allowing the Energy Bureau Chairman Edison Avilés to participate in the decision when he was also a member of the Committee that selected Luma Energy and proposed the approval in the first place. Public participation is a check on the discretion of our officials, one that tends to reveal the nefarious conflicts that Government contracts can cause.

E. Adoption of Proposed Energy Reform "Queremos Sol" ("We Want Sun")

"We Want Sun" is a collaborative effort of multiple professionals from different organizations dedicated to environmental and energy issues. UTIER is proud to be one of the organizations that endorse this project. This is a proposal for transformation of the electric system in Puerto Rico based on clean, renewable energy and a concentration on energy efficiency and conservation. "We Want Sun" posits that sale and privatization of PREPA perpetuates fossil fuel-based generation and impedes the transition to renewables.[19] The full proposal has been submitted to the record of this hearing.

The proposal includes a model for technical transformation. The goal is to achieve the Renewable Portfolio Standard, which the Puerto Rico Legislature adopted in the Puerto Rico Energy Public Policy Act, Act No. 17–2019. This effort includes decentralizing energy and allowing communities and individuals to have an active role in the ownership of electrical system assets. However, the proposal does not seek to eliminate the PREPA governance structure, just to dramatically transform its business model so that it promotes efficiency and conservation and facilitates and manages distributed generators and microgrids. This requires greater public participation, as we have pointed out before, and attracting and maintaining human resources. The proposal also covers issues surrounding PREPA's debt, financing options, the focus on boosting the local economy and the presence of a strong independent regulator. The proposal is "a living document" and is continuously developed based on new information and input.

Just as "We Want Sun" expressed "the privatization process established by Act 120–2018 will produce more of the same: bad political deals disguised as energy policy."[20] It is not fixing the problem; it is moving the problem to the right, so it does not block our view. That is what we see in the Contract with Luma Energy. A proposal like "We Want Sun" is a response that truly reforms the energy system in the way that Puerto Rico's legislation and public policy has said it should. This would fix the problem.

IV. CONCLUSION

Considering the problems and proposals that we have set forth, it is evident that the Contract with Luma Energy is not a solution at all. This Contract does not address the fundamental problems that have plagued PREPA, it just hands the system

[19] We Want Sun: Sustainable. Local. Clean. (Version 4.0 February 2020) https://www.queremossolpr.com/.

[20] *Id.* at 5.

over to a private enterprise that does not have any accountability toward the People of Puerto Rico while leaving the shell of the public utility to take the remaining punches from its creditors.

At the end of the day, there are many alternatives that need to be taken seriously and explored fully by the Puerto Rican Government and PREPA. However, there are issues that Congress can influence. With that in mind, UTIER requests the following:

(1) **That this Congress prevent PREPA from funneling Federal funds through Luma Energy and assign them directly to PREPA for investment in its workforce and infrastructure.**

As a private entity, Luma Energy will not be employing Federal funds for the general welfare of Puerto Rico's residents, but to facilitate its own business interests. We have already seen the signs of Luma Energy's public proclivity to favor its own subsidiaries and affiliates as contractors in federally funded projects, rather than enter fair competitive bidding and provide opportunities for local enterprises.

Rather than put Federal funds to work for Puerto Rico, Luma Energy will favor its investors, subsidiaries and affiliates. This is unacceptable, especially when the Luma Contract is already displacing most of PREPA's workforce and is not investing a dime in Puerto Rico. These Federal funds are the jack-pot, the prize that Luma Energy wants to claim for the already lucrative Contract with PREPA. We respectfully ask that Congress see through that and intervene. Luma Energy cannot be allowed to hoard these funds. These funds must be invested in more efficient ways that foster economic growth in Puerto Rico.

As we have argued, the Federal funding for PREPA's transformation should be invested directly into the workforce. It is PREPA's workforce that is uniquely qualified to transform PREPA from an aging, centralized, fuel-based system with poor infrastructure into what it would be, a clean, modern and sustainable electric system. This is not to say that private contracting should be prohibited, but it should be limited to those exceptional cases where PREPA's workers do not have the necessary skills or experience and for the acquisition of materials that are not locally available. Evidently, because PREPA has competitive bidding requirements by law, with adequate oversight and scrutiny by an IPSIG, these contracts are more likely to be granted on the basis of merit than due to the corporate relations with Luma Energy, with its evident predisposition to outsource to its own.

(2) **That Congress reactivate the Task Force for the purpose of articulating specific recommendations that stimulate economic development and renewable energy.**

The Congressional Task Force found that high cost and low reliability of electric power was one of the most serious obstacles to economic growth in Puerto Rico, this in part because of the reliance of Puerto Rico on petroleum. The Task Force recommended that the government of Puerto Rico continued efforts for reform and seek technical assistance from the U.S. Department of Energy.[21] We would ask that the Task Force to examine the problems that we are putting forth and accept the input from PREPA's stakeholders, not just from the Puerto Rico Government. We are confident that our proposed solutions are superior to selling off and gutting PREPA and more beneficial for PREPA and the people of Puerto Rico. We hope that a recommendation from the Task Force would tip the scale and make the Puerto Rican Government listen.

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The following documents were submitted as supplements to Mr. Figueroa-Jaramillo's testimony. These documents are part of the hearing record and are being retained in the Committee's official files:

TABLE OF APPENDIXES

1. Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated as of June 22, 2020 by and among The Puerto Rico Electric Power Authority as Owner, the Puerto Rico Public-Private Partnerships Authority as Administrator, Luma Energy, LLC as ManagementCo, and Luma Energy ServCo, LLC as ServCo.

[21] Congressional Task Force on Economic Growth in Puerto Rico, Report to House and Senate (December 20, 2016), at 37–40, https://www.finance.senate.gov/imo/media/doc/Bipartisan%20Congressional%20Task%20Force%20on%20Economic%20Growth%20in%20Puerto%20Rico%20Releases%20Final%20Report.pdf.

2. Certified Translation of Bufete Emmanuelli CSP Legal Opinion on the Luma Energy Contract.
3. Bufete Emmanuelli CSP Memorandum on Termination Clauses and Penalties of the Luma Energy Contract with English Summary.
4. Written Statement to the Puerto Rico Senate and English Summary of Additional Legal Arguments Presented.
5. José I. Alameda-Lozada, Ph.D., The Impairment of UTIER's Collective Bargaining Agreement and the Calculation of Damages (June 15, 2020).
6. Hector R. Cordero-Guzman, Ph.D., The Socio-Economic Impacts of the Puerto Rico Electric Power Authority (PREPA) Restructuring Support Agreement (RSA) on the Population of Puerto Rico (rev. September 10, 2019).
7. Tom Sanzillo, Examination of the alternatives available to PREPA In order to not impair the Labor Contracts of UTIER and its members (June 15, 2020).
8. Expert Declaration of Mr. Tom Sanzillo, Director of Finance for the Institute for Energy Economics and Financial Analysis (IEEFA) in Support of UTIER's Objection to Insurers' Motion for Relief from Automatic Stay (Dkt#975) and to pray for the Appointment of an Independent Private Sector Inspector General ("IPSIG") (Dkt#1158), Case No. 17 BK 4780–LTS, Docket No. 1211.
9. PREPA's Motion for Entry of an Order Allowing Administrative Expense Claim for Compensation for Front-End Transition Services under Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement with Luma Energy, Case No. 17 BK 4780–LTS, Docket No. 2053.
10. 2020 Fiscal Plan for the Puerto Rico Electric Power Authority, as certified by the Financial Oversight and Management Board for Puerto Rico on June 29, 2020.
11. Puerto Rico Electric Power Authority, Fiscal Year 2021 Certified Budget.
12. We Want Sun: Sustainable. Local. Clean.
13. Congressional Task Force on Economic Growth in Puerto Rico, Report to House and Senate (December 20, 2016).

The CHAIRMAN. The next person is Mr. Josen Rossi, President, Puerto Rico Institute for Competitive and Sustainable Economy.

Mr. Rossi, the floor is yours.

STATEMENT OF JOSEN ROSSI, PRESIDENT, PUERTO RICO INSTITUTE FOR COMPETITIVE AND SUSTAINABLE ECONOMY (ICSE)

Mr. ROSSI. Chairman Grijalva, House Ranking Member designee González, and members of the Committee, thank you for this opportunity to examine the much-needed transformation of the Puerto Rico Electric Power Authority.

We continue in the crisis after hurricanes of historic proportion, recent damaging earthquakes, and now the pandemic. Amongst these challenges and still impeding Puerto Rico's rebound stands the broken electrical system.

I am before you today as Chairman of the Institute for Competitive and Sustainable Economy, the ICSE. I am president of the Puerto Rico Manufacturers Association and partner in a building services group of companies in the eastern United States.

Puerto Rico has an ongoing need for electrical system reorganization, investment planning, and contracting oversight that protects consumers and U.S. taxpayers' monies.

It is a great concern that in the latest PREPA Fiscal Plan by the Fiscal Oversight and Management Board, the Fiscal Board ignores the fact that the restructuring support agreement, PREPA's RSA or debt reorganization structuring, is unsustainable.

There have been no attempts to update it in 2 years. And it has never been presented to the legislature nor the Puerto Rico Energy Bureau (PREB). The Fiscal Plan does not include PREPA's most recent interim financial statement with capital deficit, nor has it met budget review and approval by the PREPA Board, nor the regulator, the PREB.

Furthermore, PREPA's consumer representative, the only publicly elected member of the Board and ICSE executive director, has challenged the government's ongoing suggestions of adequate PREPA Board independence and professionalism.

The PREPA Board hastily approved the stalled and inaccurate RSA in 2019, despite a shallow fiduciary process that the consumer representative opposed with supporting evidence.

More recently, PREPA's handling of Costa Sur's generation repairs following the January earthquakes has been suspect at best, and raises questions about project execution and capacity to govern through operational crisis.

There has been no accountability to the fact that Costa Sur's Unit 5 remains off-line during peak season demand today. We know damages to this unit were minor and temporary fixes were available while longer term solutions could be implemented, yet PREPA put forward a questionable emergency summer generation plan to save the day, and even this has not been executed today.

PREPA needs an independent professional board governance with world-class supervision from the utility regulatory framework of the Puerto Rico Energy Policy Act, known as Act 17. Yet, major decisions are still dominated by the same political appointees of ex-Governor Ricardo Rosselló.

The Fiscal Board is ill-equipped to address this lack of government commitment to the best performance metrics that should drive transformation in our government agencies. The Fiscal Board can and must work closely with our utility regulator with adherence to Act 17 and PROMESA with the consumer participation rights and obligations that Act 17 mandates.

The Fiscal Board and the PREB have recently approved two utility scale investments with no tariffing proceedings, no Act 17 compliant adjudicatory processes, nor an approved infrastructure plan. One is a 10-year natural gas generation contract; the other a 15-year transmission and distribution management and operations agreement.

Eighteen months after enactment of Act 17, the unapproved PREPA infrastructure plan still pushes fossil fuel infrastructure at the expense of large and small private renewable energy markets.

Fragmented and non-transparent contract approval processes with no lawfully approved energy transformation roadmap will give way to lengthy regulatory or legal proceedings like the 2-year-old RSA. No amount of supposed government transparency portals and public relations spin can overcome this operational and legal dysfunction.

I hope with your continued oversight and robust engagement of all to improve local utility regulatory capacity issues hindering real progress at PREPA and the sustainable electrical system reorganization.

ICSE can be of service to the Committee and the PREB so that PREPA, PROMESA, and the Fiscal Board effectively support the Act 17 transformational framework to finally achieve energy justice for the more than 3.2 million American citizens living in Puerto Rico. Thank you.

[The prepared statement of Mr. Rossi follows:]

PREPARED STATEMENT OF JOSEN ROSSI, PRESIDENT, PUERTO RICO INSTITUTE FOR A COMPETITIVE AND SUSTAINABLE ECONOMY (ICSE)

Chairman Grijalva, Ranking Member Bishop and members of the Committee—thank you for this opportunity to examine the much-needed transformation of the Puerto Rico Electric Power Authority. Puerto Rico continues in economic crisis, after hurricanes of historic proportion, recent damaging earthquakes, and now the pandemic. Amongst these challenges and still impeding Puerto Rico's rebound stands the broken electrical system.

I am before you today as the Institute for a Competitive and Sustainable Economy of Puerto Rico's Chairman. I am past President of the Puerto Rico Manufacturers Association (PRMA), and Partner in a building services group of companies in southeast United States.

Members on both sides of the aisle want for PROMESA to succeed and to ensure recovery funding is put to good use. Puerto Rico has an ongoing need for electrical system reorganization, planning and contracting oversight. We must protect Puerto Rico's future and taxpayer investments.

It's of great concern that the latest PREPA fiscal plan by the Fiscal and Oversight Management Board (FOMB) ignores the fact that the Restructuring Support Agreement (RSA) debt is unsustainable. There have been no attempts to update this 2-year old RSA, which has never been presented to the legislature nor the Puerto Rico Energy Bureau (PREB). The Fiscal Plan does not include PREPA's most recent interim financial statement capital deficit, nor has it met budget approval by the PREPA Board, nor the regulator.

Furthermore, PREPA's Consumer Representative, the only elected Member of the Board, and ICSE Executive Director, has challenged the government's ongoing suggestions of adequate PREPA Board independence and professionalism. The PREPA Board hastily approved the stalled and inaccurate RSA in 2019, despite a shallow fiduciary process the consumer representative opposed with supporting evidence.

More recently, PREPA's handling of Costa Sur's generation repairs following the January earthquakes has been suspect at best and raises questions about project delivery, and capacity to govern through operational crisis. There has been no accountability to the fact that Costa Sur's Units 5 remain offline during peak seasonal demands. We know damages to these units were minor and temporary fixes were available while long-term solutions could be implemented through competitive procurement. Yet PREPA put forward a questionable emergency summer generation plan to save the day, and even this has not been executed.

PRPEA needs independent professional board governance and world-class supervision from the utility regulatory framework of the Puerto Rico Energy Policy Act, known as Act 17. Yet major decisions in Puerto Rico are still dominated by the same political appointees of ex-Governor Ricardo Rosello. The FOMB is ill equipped to address the lack of commitment to best-in class supervision and performance metrics that should drive transformation in our government agencies. The FOMB must work closely with our utility regulator, overseeing its adherence to Puerto Rico law as mandated by PROMESA, and to supervise PREPA, LUMA and all utility planning and contracting decisions with the consumer participation rights and obligations that Act 17 mandates.

The FOMB and the PREB have recently approved two utility scale investments, with no tariff impact proceedings, no Act 17 compliant adjudicatory processes, nor an approved infrastructure plan. They are a 10-year natural gas generation contract and a 15-year Transmission and Distribution management and operations agreement. The infrastructure transformation roadmap was promised by the regulator after the hurricanes. Eighteen months after enactment of Act 17 the unapproved PREPA plan still pushes fossil fuel infrastructure at the expense of private distributed or utility scale renewable energy markets. Fragmented and non-transparent contract approval processes and no lawfully approved energy transformation roadmap have given way again to traditional backroom evaluations and unsustainable approvals of new contracts that are destined for lengthy regulatory or legal

proceedings like the RSA. No amount of supposed government transparency portals and public relations spin can overcome this operational and legal dysfunction.

I hope with your oversight and the engagement of our regulator to attend to the most troublesome governance and utility regulatory capacity issues hindering real progress at PREPA and sustainable electrical system reorganization. ICSE can also be of service to the Committee in improving upon PROMESA and FOMB support of Act 17 transformation framework. Puerto Rico consumers and investors can and must continue advocating for robust public participation per Act 17 and PROMESA as they stand, to finally achieve energy justice for the more than 3.2 million American citizens living in Puerto Rico.

The CHAIRMAN. Thank you very much. To begin the questioning, let me turn to the Chairs of Subcommittees to begin with.

Mr. Lowenthal, if you have any comments or questions? Let me recognize you.

Dr. LOWENTHAL. I will come back and ask.

The CHAIRMAN. OK. Mr. Gallego.

Mr. GALLEGO. Yes. Thank you, Mr. Chairman. I would like to ask just a couple questions. The first question is for Edison. I want to make sure I see him up there.

For many years, we have been talking about trying to make the grid both energy independent and being able to use more renewable energies, but also at the same time being able to be resilient.

What are the steps that we even have to take before we start moving in that direction in your opinion in order for us to have both a resilient grid as well as one that is largely solely run on renewables?

Mr. AVILÉS-DELIZ. Thanks for the question. And we are right now in the evaluation of the PREPA IRP. The PREPA IRP submitted to the Bureau presents a new grid, a resilient one, that takes into consideration the impact of Hurricanes Maria and Irma.

But what they proposed—and I can refer to Mr. Ortiz to better explain what they submitted—is that the island will be divided in many different mini-grids. And the grids will be interconnected and will be provided by generation within the grid and also with the centralized generation.

We are right now awaiting what PREPA submitted. And we will have a final say in August. Again, I think that in order to better explain what they already submitted to the Bureau, I defer to José Ortiz to answer your question.

Mr. GALLEGO. Thank you. And, unfortunately, I was not here, I think, when Ruth Santiago spoke, Queremos Sol Coalition, but I was hoping to get your opinion, Ruth, on the plan to basically solarize the Puerto Rican energy grid as well as obviously to make it durable and resilient.

Ms. SANTIAGO. Thank you for the question. The government of Puerto Rico last year passed the Energy Public Policy Act which has a renewable portfolio standard as you know that requires 40 percent renewables by 2025, 60 percent by 2040, and 100 percent by 2050.

Unfortunately, what we have seen from the government has been totally in the other direction. Look at the New Fortress project in San Juan or conversion of those two big units to burn so-called natural methane gas.

Look at the renegotiation of the EcoEléctrica contracts under the unfavorable terms. And although there is talk of supposedly renegotiating some of the existing contracts, we have not seen any of that. And the conditions do not seem favorable to the people of Puerto Rico.

On the contrary, what we saw both in the draft IRP and during the hearing is that customer sided generation is the least cost alternative of all energy supply arrangements in Puerto Rico.

So, even the economics of the technological viability is there. And that should be coupled with energy efficiency and conservation and demand response programs in order to take Puerto Rico really to the 21st century using resources that are locally available. And as I mentioned, proven to be financially both admittedly in the IRP and technically viable.

Mr. GALLEGO. OK. Thank you.

Ms. SANTIAGO. Thank you.

Mr. GALLEGO. I just want to get one more question in. Thank you. A question for Mr. Ortiz. I hear a lot about solarizing real energies and durability.

There is a plan for large battery storage or this type of energy you are going to try to contain because it doesn't work unless you actually have large battery storage, working with microgrids in order for you to basically be able to smooth out the peaks and the valleys of electricity.

Mr. ORTIZ. You are absolutely right, Congressman Gallego. Certainly, we are ready with P3 Authority for a request for proposal.

Mr. GALLEGO. OK. And I ran out of time, but when you are telling somebody that you have already issued your test proposal for battery storage to compliment the microgrid—OK, I yield back.

The CHAIRMAN. Thank you. Miss González-Colón, for comments or questions.

Miss GONZÁLEZ-COLÓN. Thank you, Mr. Chairman. My first question will be to Mr. Ortiz. Mr. Ortiz, you were talking in your statement about different amounts of funds. And we were discussing that prior to this hearing. How much Federal funds has PREPA received, not just from FEMA but all the Federal entities to this date?

And if you can provide a letter to the Committee, a detailed breakdown on how much PREPA receives or expects to receive in the next 2 years from different Federal agencies, FEMA, HUD, the Army Corps of Engineers, and the Department of Energy to rebuild and modernize Puerto Rico's energy infrastructure.

Mr. ORTIZ. For the fixing of the system, we have over $2.5 billion already received and reimbursed in many cases for PREPA. We have completed basically the agreement of the estimates for the long run, the full modernization of the grid. That would be disclosed in the next few days probably.

And for about the next 1½ to 2 years, we have a program for $1.7 billion to be invested mostly on the critical loads, like the hospitals, water systems, shelters, and for some medical centers, the airport, and such critical facilities. So, that is——

Miss GONZÁLEZ-COLÓN. Yes sir, you have not included in there the $1.9 billion approved from CDBG-DR.

Mr. ORTIZ. Not yet. Well——

Miss GONZÁLEZ-COLÓN. And what has happened that these funds have not yet been disbursed to the island?

Mr. ORTIZ. The CDBG-DR are basically at the end of the line. It would be basically after we exhaust the 428 funding. We hope to start doing something with the 428, the redo of the grid in the third quarter of this year. We are very close to that moment.

Miss GONZÁLEZ-COLÓN. How explicitly are the Federal funds going to help the modernization process of PREPA? And how will the new contract be working with Federal funds?

Mr. ORTIZ. Well, the new contract basically approves an entity who has been 35 years with Federal funds that will be taking care of the compliance and the procurement. The way to spend the Federal funds are in alignment with the IRP, the PREB and it is going to be considering at this point, but certainly as Edison Avilés just mentioned that will show a decentralized energy system consisting of about 40 percent renewables by year 2025, being supported by a cleaner fuel fossil driven equipment, for example, like natural gas in San Juan and natural gas in the south, in EcoEléctrica, and Costa Sur.

We will divide the island in eight small islands or eight minigrids. And those would basically be able to operate independently. And assuming we have hurricane strikes, you may lose one or two of those areas, but the rest of Puerto Rico will be able to continue working.

A lot of undergrounding of power lines will be happening as well. Two of the biggest are the east coast, what we call the grid, the Humacao system that includes the municipalities Humacao, Naguabo, Las Piedras, and Yabucoa. Normally, that is the door to all the events we have had in the past 100 years basically. And also a very strong support, an undergrounding of the important power lines to the industrial sector along the northeast. There you have Medtronic, the engines, and all these big companies.

And if we are overlooking it, bringing those types of companies to Puerto Rico, we certainly have to provide a very reliable power.

Miss GONZÁLEZ-COLÓN. One last question at this time. We are now in the hurricane season, so it is an obligated question to make—is Puerto Rico's electric infrastructure ready to face and withstand another hurricane or a storm in the next months? Are you ready?

Mr. ORTIZ. Yes. The answer is yes. We are in a very different condition. We have five times the inventory we had before Maria. We have $22 million in inventory. Today, we have $140 million in inventory. The strengthening of the transmission lines from south to north certainly is redone for 145 miles per hour.

And certainly the project we have with San Juan 5 and 6 in San Juan provides a lot of reliability to the metropolitan area. One of the biggest issues was that 70 percent of the Puerto Rican demand is in the north. And we lost all the transmission from south to north. So, having all that generation with natural gas we will provide additional generation——

The CHAIRMAN. Time is up. Let me now turn to Mr. Tonko. You were here earlier, sir.

Mr. TONKO. Thank you, Mr. Chair, and thank you Ranking Member Bishop, and all of our witnesses for their expertise today. Like many, I am hopeful that a compendium of tragedies that had to fall in Puerto Rico, a recession, to hurricanes, to earthquakes, and a pandemic, have a silver lining in that the island can emerge with a clean and resilient electric grid.

We know now that we need clean power for urgent climate reasons, however, particularly in the case of Puerto Rico, clean power is also overwhelmingly the cheapest solution. The average cost of power on the island is currently at an extremely burdensome 17 cents per kilowatt hour. That is twice the average cost of power generated from rooftop solar energy in Puerto Rico and nearly nine times the average cost of wind power.

I commend the goals of Law 17 that drive the island to renewable power. I am now particularly interested in seeing how they will be practically implemented. Of course, the trick in implementing these renewable sources is always front-end cost. They tend to be somewhat expensive to build and then payback over the long term.

That is where the silver lining comes in. There is already a need to spend substantial sums of money on new electricity construction. I think it is clear that in order for PREPA to live up to its mission of delivering reliable, low cost electricity to Puerto Ricans that money must go toward constructing renewables.

So, Mr. Ortiz, Puerto Rico is expecting around $1.9 billion of community development block grants disaster relief funds for the electric grid reconstruction. Those funds represent a great opportunity to help low- and moderate-income families finance community-based energy projects such as rooftop solar.

These funds are also an opportunity to promote community energy resiliency projects. Does PREPA currently have a plan for how those funds will be used? And is PREPA committed to use these funds for those much-needed purposes?

Mr. ORTIZ. Absolutely. And I certainly agree with you. The $1.9 billion will certainly supply what is needed for the poor and mid-income families that need to have their own detached solar system. I certainly vouch for that. The solar system cannot be only for wealthy families in Puerto Rico.

We have to be very careful. When we talk about sun for everybody, it is not really that way. I think the $1.9 billion—I really would focus on the use of those for 1,800 megawatts of solar power that will be needed by 2025, certainly the best use we can make for the CDBG-DR funding.

Mr. TONKO. Thank you. Thank you very much. And I would like to turn to a different issue now regarding some of the challenges of ensuring that a public-private partnership serves people in the way it is intended.

I am particularly worried about the implications of future natural disasters which are projected to become both more common and more severe, particularly in the Caribbean as the climate warms.

Mr. Fontanés, can LUMA terminate the agreement in an extended force majeure event? And if so, wouldn't an extended

force majeure event such as after a hurricane be a time when grid work would be most needed?

Mr. FONTANÉS. Thank you for your question. I think what you may be referring to is the standard force majeure clause in the contract. I think as in a typical contract there are force majeure provisions to account for delays in services or operations, but that is definitely not intended to address for the response to a hurricane.

This is what the LUMA team excels at. These are the companies that are called in to work in disasters not only in the United States but all over the globe. They have attended disasters in California for the fires. They have attended hurricanes in Texas and in Florida. They have attended the wildfires in Australia. This is really one of their major strengths.

I think one of the things that they are doing now during the transition period is working together with PREPA, so that even though they have not commenced operations officially and are still in transition, they can assist PREPA in the event that we get struck by a hurricane during this season.

I think that is definitely a misconstruction of a typical contract clause that is included in the P3 contract, but it is definitely not meant to be used as an excuse not to respond to the hurricane. That is actually what they are here to do as part of being the T&D operators. They are emergency responders.

And they are going to be out there. They are already working on plans to help PREPA, and that is what they do. That is one of the criteria that we selected them upon.

And I think if you look at the operation committee report that is available on our website, you can see what they proposed, their plans, and what they intend to do once they are here.

Mr. TONKO. Thank you. I had a question, Mr. Chair, on decarbonization for Ms. Santiago, but I have run out of time. But I will get that to the Committee.

The CHAIRMAN. We have been called to do a vote.

Mr. TONKO. I yield back.

The CHAIRMAN. Thank you, sir. My turn is up in the sequence. And Ms. Haaland, I think we are in the same group. Somebody available for the Chair? If not, then we are going to call a recess. And we will return after completion of at least the first vote or the second vote.

So, with that, we will recess until the votes are done. And I apologize to the witnesses. Thank you.

[Recess.]

Mr. TONKO [presiding]. The Chair recognizes Ms. Velázquez for questions for 5 minutes, please.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman and Ranking Member for holding this important hearing. My first question will be addressed to Mr. Ortiz.

Mr. Ortiz, I have introduced legislation entitled, the Puerto Rico Recovery Accuracy and Disclosures Act, which requires all consultants and advisors to PROMESA to publicly disclose their relationships and conflicts in order to increase transparency.

In fact, I have documents in my power that demonstrate that consultants to the Board are also consultants to SoftBank which

also has an interest in New Fortress Energy. Moreover, SoftBank also happens to be a client of the consulting group, McKinsey.

Mr. Chairman, I would like to submit these documents to the record.

Mr. TONKO. Without objection.

Ms. VELÁZQUEZ. Mr. Ortiz, do you believe that this arrangement is appropriate between McKinsey, Fortress Energy, and SoftBank?

Mr. ORTIZ. I cannot judge something I haven't really seen. We can check that very closely. Knowing that we have been——

Ms. VELÁZQUEZ. I ask you, sir, if you think that this arrangement is appropriate.

Mr. ORTIZ. Knowing that we have been——

Ms. VELÁZQUEZ. Mr. Ortiz, would you please answer my question? Do you think this arrangement is appropriate?

Mr. TONKO. Mr. Ortiz, you may be muted. Can you unmute, please, and answer the question?

Mr. ORTIZ. I'm unmuted. Do you hear me?

Mr. TONKO. Yes.

Ms. VELÁZQUEZ. Now we can hear you.

Mr. ORTIZ. OK.

Mr. TONKO. Did you hear the question?

Mr. ORTIZ. Yes, I did.

Ms. VELÁZQUEZ. So, my question is, do you think that arrangement is appropriate?

Mr. ORTIZ. My answer, again, responsibly is I don't know what arrangement you are talking about. I haven't seen that before. I cannot give you an opinion on something that I haven't seen.

Ms. VELÁZQUEZ. Sir, you haven't seen the documents that——

Mr. ORTIZ. I cannot give you an opinion on something I haven't seen. It would be irresponsible for my side.

Ms. VELÁZQUEZ. Mr. Chairman, I would ask that the documents be sent to Mr. Ortiz, and Mr. Ortiz answer the question in writing to the Committee.

Mr. ORTIZ. Perfect.

Mr. TONKO. OK. The gentleman will provide an answer in writing.

So granted.

Ms. VELÁZQUEZ. Mr. Ortiz, did PREPA do any due diligence to ensure that consultants with access to the procurement documents did not have conflict of interest?

Mr. ORTIZ. Yes. That is a normal procedure.

Ms. VELÁZQUEZ. However, we have a relationship between McKinsey, Fortress, and SoftBank. And you are telling me that that doesn't impact the procurement process.

I can tell you that I have been fighting to get my legislation passed. It passed the House. We are waiting for the Senate which passed the Committee. Because the people of Puerto Rico are cynical. They are tired of the lack of transparency when it comes to issues that are important and that are going to impact their lives.

So, we have to make sure that the public trust, the New Fortress Energy contract is beneficial for the people of Puerto Rico when there is a lack of transparency and a prior conflict of interest during the procurement process.

Mr. Avilés, can you explain why the Puerto Rico Energy Bureau failed to submit the New Fortress Energy contract for review by the Federal Energy Regulatory Commission?

Mr. AVILÉS-DELIZ. The Energy Bureau is the local regulator. And we don't have to submit the contract to the FERC.

Ms. VELÁZQUEZ. So, the Federal Energy Regulatory Commission didn't send a show cause document asking New Fortress why the contract was not submitted for FERC approval? You are not aware of that?

Mr. AVILÉS-DELIZ. Yes. We are aware that FERC is right now evaluating why New Fortress didn't submit to them some document for the permitting, but FERC is not the regulator. And all we did was to comply with the applicable laws and regulations in the evaluation of the documents submitted by PREPA when they submitted the contract.

Ms. VELÁZQUEZ. Mr. Fontanés, will LUMA Energy—oh, my time is up, but there were some technology issues and so some time was——

Mr. TONKO. Ask your final question, Representative.

Ms. VELÁZQUEZ. Yes. Mr. Fontanés, will LUMA Energy be required to assume the pension payments covering pre-existing health conditions and any other benefits that those PREPA employees it hires had?

Mr. FONTANÉS. Thank you, Congresswoman, for the question. LUMA Energy is coming as an operator of the system so they will assume the obligations that PREPA has as an operator of the system. Under Act 120, all acquired rights that the employees have under PREPA are transferred to LUMA once they have moved through.

So, any acquired rights that they have under the law on the regulation or under the collective bargaining agreement moves with them to LUMA. If they choose to stay with a PREPA pension plan, then LUMA has an obligation to fund the PREPA pension plan. If they choose to join the LUMA pension plan, then they will be offered what the LUMA pension plan offers to them once they join.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. I yield back.

Mr. TONKO. The gentlelady yields back. The Chair now recognizes Representative Gosar for 5 minutes, please.

Dr. GOSAR. I thank the Chairman. I yield my time to Ms. Colón.

Mr. TONKO. OK. The gentlelady is recognized for 5 minutes.

Miss GONZÁLEZ-COLÓN. Thank you, Mr. Chairman. Thank you, Representative Gosar for yielding. One of the questions I have is going to be to Mr. José Ortiz again. And it is regarding the process for contracts and RSP in PREPA.

In terms of the contracts that are being discussed here today, did the Financial Oversight and Management Board and the Puerto Rico Energy Bureau review the RSP process?

Mr. ORTIZ. Yes, Congresswoman. Not only did the PREB and the Fiscal Oversight Board, but also in many cases the Title III for the EcoEléctrica contract and also the court of appeals and the administrative judge as well. So, it has been reviewed for all possible entities or bodies to rule over them.

Miss GONZÁLEZ-COLÓN. So, the contract that we are talking about was challenged in the courts. It was challenged by who?

Mr. ORTIZ. It was challenged by Puma, which was basically the second bidder. He went to the administrative judge. It didn't proceed. They then went to a court of appeals. The court of appeals granted to PREPA again their position.

So, it was done in a proper way. This has been reviewed not only there, but also public. And actually at the end of the day, Puma came to our offices to say we tried to do the best, but anyway we failed this one. We messed up.

But to be honest, at the end of the day, we have the best of both worlds in that facility. Right now, you are able to burn natural gas which is a lot cleaner. You make it comply with the EPA standards right now.

And also you have Puma as a supplier for diesel if needed. So, you have the best of both worlds in terms of reliability and resiliency, in terms of a shortage of any of those fuels.

Miss GONZÁLEZ-COLÓN. The question will now be in terms of the FERC. There are many talks and letters from members of this Committee regarding FERC and a requirement to show cause of why it was not approved or requested at that approval.

What is the due diligence for PREPA of making the new contract? Do you need to have a FERC authorization? And what were the processes you made with FERC regarding the new contract?

Mr. ORTIZ. Yes. In 2018 and in 2019, we met with the FERC officials. And, basically, they made the representation to us, to PREPA, to our board members as well which visited the FERC officials that this is a small project that will not basically be under jurisdiction of FERC.

The same representation was made to New Fortress Energy. And the same representation was made to the Coast Guard. So, all those meetings were very consistent in that no jurisdiction was needed here. And these discussions have been back to 2012 when I was the chairman of the board.

At that time, I met with John Wellinghoff, the FERC executive director in 2012. He came to Puerto Rico and we met. And we talked about the project. He did not at any point discuss anything about jurisdiction. I remember at that time he said you just have to check the buffer zone to preserve for any potential problem or whatever. But that is it. That is all you have to take care of.

So, this is a project that has been discussed around for more than 8 years with different administrations in FERC. And up to this point, it was good. The representation that no FERC permit was needed was presented to me and to my board.

And it is good today as well if you foresee all the different awards that FERC has been granted without any jurisdiction basically. One example I can tell you from the island is Costa Sur.

In Costa Sur, we have over a mile pipeline connected to EcoEléctrica. FERC didn't require taking any jurisdiction there. We are talking a mile pipeline. Here we are talking about a 75-foot pipeline, very close to the dock.

So, it doesn't make sense. If one was not needed, the other even less. It makes perfect sense, the representation from FERC officials with what is being discussed today.

Miss GONZÁLEZ-COLÓN. Thank you, Mr. Chairman.

Mr. TONKO. The gentlelady yields back. The Chair now recognizes Representative Sablan for 5 minutes of questions.

Mr. SABLAN. Mr. Chairman, did you just call me out?

Mr. TONKO. Yes, I did, sir, for 5 minutes of questioning.

Mr. SABLAN. OK. Does anyone need time? I really have no questions.

Mr. TONKO. We have Mr. Soto here who might take 5 minutes for questioning if you prefer.

Mr. SOTO. Sure. Thank you.

Mr. TONKO. OK. The Chair recognizes the gentleman for 5 minutes.

Mr. SOTO. I thank the gentleman from the Northern Mariana Islands for that courtesy. Even during these difficult times, we have a tremendous opportunity to bring Puerto Rico's energy industry into the 21st century. And I want to reiterate some guiding principles that are important for the Committee: (1) we need power to be resilient and reliable; (2) we need it to be affordable; and (3) we need to make every effort to boost renewable energy where feasible.

First, I want to talk a little bit about resiliency and reliability. Hurricane Maria exposed the vulnerable state of Puerto Rico's energy system. We took the rare step of amending the Stafford Act for Puerto Rico to be able to rebuild the grid better.

Hurricane Dorian reminded us how precarious a position Puerto Rico still is in. It is not a question of if another hurricane will hit, but when. That is why it is critical that we use Federal disaster relief funds to focus in part on rebuilding a more resilient and reliable system that can withstand another Category 4 or Category 5 hurricane.

We also need it to be affordable. Puerto Rico is in an over decade long recession, was hit by Hurricane Maria and Hurricane Irma, is facing terrible budget cuts by the PROMESA Fiscal Board, endured a wave of earthquakes, and now faces a coronavirus pandemic.

The people of Puerto Rico must have affordable energy in order to survive and to bring the island back to prosperity. And, finally, we need to adopt more renewable and cleaner fuels. Right now, we see 40 percent petroleum, 39 percent natural gas, 18 percent coal, and 2.3 percent renewables.

First and foremost, it is clear that petroleum and coal are dirty and expensive and have to go as soon as possible. Puerto Rico law now requires the visionary standard of 100 percent renewable energy by 2050. These Federal funds can and should also be used to meet this renewable goal.

We must start by boosting individual rooftop solar and battery systems, particularly in La Cordillera Central, like what the Committee saw in Toro Negro during our trip as well as other rural and low population areas. We also must convert other power generation to a combination of both renewable and natural gas.

My question to several of you is—and I will call on you individually—can Puerto Rico get rid of oil and coal by 2030? And if so, what is an achievable mix of renewables and natural gas that we could achieve by 2030 and why?

I am going to start with you, Mr. Ortiz.

Mr. ORTIZ. Yes. Well, the renewable technology is getting better and better year by year. I doubt we can go, for example, 100 percent renewable by 2030, but certainly——

Mr. SOTO. But that is not what I am asking. I am asking if we could get rid of oil and coal and convert to both renewables and natural gas by 2030?

Mr. ORTIZ. Yes, absolutely. That is an absolute yes.

Mr. SOTO. OK. Thank you.

Mr. ORTIZ. We are moving to natural gas to replace all the liquid oils—absolutely.

Mr. SOTO. And Ms. Santiago, do you think we could get rid of oil and coal by 2030? And if so, what achievable mix can we get between renewables and natural gas by 2030?

Ms. SANTIAGO. Yes. I think that we heard expert after expert at the Puerto Rico Energy Bureau hearings this past February talking about the steps that we need to really transform the Puerto Rico electric grid.

Those steps start with energy efficiency programs, energy demand response programs, and certainly, yes, rooftop solar, renewables, coupled with battery energy storage systems and other alternatives to centralization of fossil fuels.

Mr. SOTO. My time has expired.

Mr. TONKO. The gentleman has 30 seconds more because of the delay of the clock.

Mr. SOTO. Please continue, Ms. Santiago.

Ms. SANTIAGO. All right. So, we can absolutely make huge gains starting with those programs. And I expect that we can eliminate the burning of fossil fuels very rapidly.

I would not say definitely in 2030, but certainly what we saw and what the experts said, and even the Siemens Industry which is the PREPA contractor agreed, that renewable with the complimentary battery energy storage systems and other programs that I mentioned can do the job even as to the critical facilities like hospitals.

Mr. SOTO. Thank you. I yield.

Mr. TONKO. The gentleman yields back. The Chair now recognizes Representative Graves for 5 minutes for questioning.

Mr. GRAVES. Thank you, Mr. Chairman. Mr. Chairman, I have a quick question for Mr. Ortiz. First of all, I do want to follow up on the questions that the gentlewoman from Puerto Rico brought about the extraordinary investment.

I, too, am interested in learning more about the billions of dollars that have been invested and have been borrowed by PREPA for investment into the energy system there, yet the system still lacks performance.

But I had another question. I know that a number of utilities went to Puerto Rico to provide assistance in restoring the system. And I know that a number of those utilities have provided invoices or billing to PREPA. And I know that FEMA has actually provided the reimbursement to PREPA for that work that was done by the utilities.

However, the utilities in many cases have not been reimbursed, but only been reimbursed a fraction of what was owed. Mr. Ortiz, could you explain sort of the disposition of those reimbursements

and when PREPA plans on fulfilling their financial commitments that FEMA has already provided to them?

Mr. ORTIZ. Actually, yes, you are absolutely right. We had some struggles at the beginning paying those companies. It was resolved already finally. PREPA took like a year and a half in designing cost codes to be able to pay them, to reimburse them. That was resolved already. I hope in the next couple of months that everybody will be paid.

Mr. GRAVES. I just want to make sure I heard you. Your estimate is that in the next couple of months you think that everyone is actually paid.

Mr. ORTIZ. Yes. Everything should be solved. Yes.

Mr. GRAVES. All right. Mr. Chairman, I yield my remaining time to Ms. González.

Mr. TONKO. The remaining time is spent to the gentlelady from Puerto Rico.

Miss GONZÁLEZ-COLÓN. Thank you, Mr. Chairman and thank you, Representative Graves for yielding and actually for visiting the island after Hurricane Maria and Irma and helping us out.

My question will be the same as before the time expired. I was asking Mr. Ortiz about deferred diligence prior to selecting the contract.

And after your answer, my next question should be, if you have moved forward with the connection of the new company. Did FERC tell you at that time that you needed any other provision or submit an application or have an authorization—you have been moving forward even having that or you stopped that kind of a contract?

Mr. ORTIZ. Well, certainly, the contract, the permitting belongs to the contract. So, that is their responsibility. I would have to keep burning diesel which is much more expensive. It is much more damaging to the environment until they get the permit. So, we are not going to be penalized. The people of Puerto Rico would be penalized basically. But that is what is going to happen. It is their responsibility to get the contract—sorry, to get the permit.

Miss GONZÁLEZ-COLÓN. Question, was there any other Federal regulator that was concerned or expressed any reservation about that San Juan Harbor project before or during the process it was developed or built——

Mr. ORTIZ. No. No.

Miss GONZÁLEZ-COLÓN. No.

Mr. ORTIZ. The answer is no. The other one that is basically in a co-responsibility there is the Coast Guard. And they met with FERC. And they argued that they were represented that no FERC jurisdictional permit is necessary. So, that is why I don't understand their last moment request.

Miss GONZÁLEZ-COLÓN. Quick question, does that mean contracting could provision for user pay provisions that you must use in PREPA?

Mr. ORTIZ. No, we don't have any take or pay clause. We will just be paying for whatever we use. If at some point diesel becomes cheaper, we can turn to diesel. But at the end of the day, we need to comply with the EPA emissions.

But it is very important not only for the price purposes but to comply with the non-attainment sum in EPA for many years in the area of San Juan to get natural gas there.

Miss GONZÁLEZ-COLÓN. Question, what will be the net saving for the government and for the people of Puerto Rico just for giving this can of transitional conversion?

Mr. ORTIZ. Well, we can talk about one cent per kilowatt hour, but that translates—basically in a family that consumes $150 a month, they will be saving like $12 at best.

Miss GONZÁLEZ-COLÓN. Can you repeat that number again?

Mr. ORTIZ. If a family consumes $150—I am talking about dollars—now that family will be paying $138 rather than $150 using natural gas.

Miss GONZÁLEZ-COLÓN. Thank you, my time expired, Mr. Chairman. Thank you, Ms. Haaland.

Ms. HAALAND [presiding]. Thank you. The Chair recognizes Mr. Lowenthal for 5 minutes.

Dr. LOWENTHAL. Thank you, Chair. And first I want to apologize for running back because I know other Members have done this also running back and forth and voting and especially one who is voting remotely, it is getting to be quite difficult trying to stay on top of both the hearing and what is going on in the Floor.

My question may have already been asked to some extent, but I am going to go back—and if it is worth saying it once, it is worth saying it more than once.

This is for Mr. Ortiz at the Electric Power Authority. The workers are really critical to the utility's success. But their ability to excel has been limited somewhat by these outdated procedures that are not really consistent with industry best practices at this moment.

So, the questions that I have, a few of them—how will LUMA actually improve working conditions? Have they had experience working with unions—they are a consortium—in some of their other operations?

And how will that LUMA contract affect the existing union, the electrical industry and irrigation workers union, and does LUMA support unionization? Do they allow for unionization?

Mr. ORTIZ. Yes. A part of LUMA is Quanta. Quanta is basically the biggest utility company with the biggest number of unionized workers, so they know how to work with unions. And the benefit I will say—and this is what I have noticed so far—is that they devote a lot of time to training other people, mostly on the safety issues. And secondary, since they have workers worldwide basically, they can provide a lot of best practices, not only from the mainland, but also from the world to our employees. PREPA is a very difficult terrain. It is a tropical environment as well. So, it has all the challenges.

But let me tell you, the people of Puerto Rico are excellent. I think some additional training with all these new potential ways of seeing the things that are happening somewhere else, good practices, will be a plus for all these employees.

Dr. LOWENTHAL. I have another question though.

Mr. ORTIZ. OK.

Dr. LOWENTHAL. And thank you for that—about the pension system. My understanding is it is woefully underfunded. And I would like to know just how underfunded it is and what are you going to do to ensure pensions—will PREPA now make or LUMA make greater contributions and will that add to the cost of electricity? How do you propose dealing with this shortfall in the pension system?

Mr. ORTIZ. Yes. Good question. The shortfall—let me tell you that needs $5.5 billion. They have assets for $1.2 billion. So, they are in the hole $4.3 billion. Bringing LUMA will stop the bleeding basically. And we can cut from there—and the LUMA worker can decide to keep putting their monies in the pension plans. So, we are trying to stop the bleeding here.

Now, PREPA has to deal with the $4.3 billion. And, certainly, it will have to be PREPA's responsibility to find that money. Obviously, the retirees do not have the way to do it. We are looking for ways to reduce the tariff so that we can plug in some money to support the pension fund.

There is no other way unless there is a tax, something—the tax system of Puerto Rico to provide money to that pension fund, but certainly the pension fund is in a very difficult situation.

Basically, what LUMA makes is not fixing it. They are just stopping the bleeding so that we can deal with it in arrears, the $4.3 billion. That is the way I foresee this.

Dr. LOWENTHAL. I have just a little bit of time left. I chair the Natural Resources Subcommittee on Energy and Mineral Resources. And we have held a number of hearings on the North Atlantic on offshore wind. Have there been any attempts to begin to deal with offshore winds as an alternative for renewable energy?

Mr. ORTIZ. No. There hasn't, but certainly I visited the wind farm close to the north of Montauk. You have a very nice wind farm there. And I know New York is trying to do something bigger offshore——

Dr. LOWENTHAL. And Massachusetts.

Mr. ORTIZ. And they are talking about 9 cents per kilowatt hour, which is very competitive for Puerto Rico. Puerto Rico in the south is very shallow and it is very windy.

So, I foresee something being explored in the near future. But those are the conditions I discussed already with the New York Power Authority and with the Long Island Power Authority.

Dr. LOWENTHAL. Well, thank you for that. And I yield back, Madam Chair.

Ms. HAALAND. Thank you, Mr. Lowenthal. The Chair recognizes Mrs. Radewagen for 5 minutes.

Mrs. RADEWAGEN. Thank you very much. Can you hear me?

Ms. HAALAND. We can hear you.

Mrs. RADEWAGEN. I want to thank the Chairman and Ranking Member for holding this hearing. I welcome the panel. At this time I yield all my time to Congresswoman González-Colón. Thank you, madam Chair, I yield back.

Miss GONZÁLEZ-COLÓN. Thank you, my friend, Madam Radewagen. I know you are in America Samoa at this time, so I thank you for yielding. And I will just take my turn at this time

to enforce what Representative Lowenthal just mentioned about the opportunities in offshore energy.

And in that sense, I just want to highlight bipartisan legislation I introduced that could help Puerto Rico's energy transformation. It was passed during the last Congress.

Again, it was recommended by this Committee unanimously. All territories are original sponsors of this bill, in a bipartisan way. And I am referring to H.R. 1014, the Offshore Wind for Territories Act. The bill will amend Federal law to study the potential for an authorized offshore wind energy development in the exclusive economic zone adjacent to the five U.S. territories.

I mean, you may have that in the eastern part of the United States, but territories are not authorized by Congress. So, it could establish a dedicative fund for coral reef conservation and a direct portion of the offshore wind revenues back into the local communities.

Again, this Committee reported this unanimously last year. And the bill was passed under suspension. If enacted, this bill will create not just jobs, but hours of energy needs and the prices in the territories. And for me, very important in our reliance on imported foreign petroleum products while boosting revenue sources and helping protect our coral reefs.

So, that is something that will promote the study of it. It is not that we are going to be doing it, although we visited the windmills in the south part of the island recently with the delegation of the Department of Energy.

Now, I am going back to Mr. Ortiz. There are several issues that have been part of the questionings today regarding not just the private contracts but whether PREPA is in a good position to face new developments in the south, like the earthquakes or the hurricanes.

And I was asking prior to this turn about the situation with the FERC. My question will be—let's assume and this is a bad omen, but anyway—what should be the impact for PREPA and for people of Puerto Rico if FERC orders the facility to shut down? What is going to be the immediate impact for PREPA?

Mr. ORTIZ. Well, immediately, Congresswoman, we will have to rely more on the south generation, the same area that has been shaken in the last 6 months. We will be passing all the responsibility to provide energy to the 70 percent of the Puerto Ricans from the south basically because the main plant is in San Juan.

And we are not allowed to use these 100 percent because that provides limitations from the EPA due to the emissions with diesel. So, we will have to go back to provide energy to the north from the south. And that was the biggest problem after Maria.

When we lost the transmission from the south to north, we basically lost power for like 70 percent of the population for close to 5 months until we restored the central area of the island. So, we will be in a weaker position. We will be using in a limited way the San Juan 5 and 6. And we will be limiting the reliability of the system very seriously.

Miss GONZÁLEZ-COLÓN. And that means that if we need to go back to Costa Sur in the south part of the island that we will not have neither 500 or 800 megawatts that are needed in reserve just

to manage the capacity of the demand of electricity on the island. Am I right?

Mr. ORTIZ. You are correct.

Miss GONZÁLEZ-COLÓN. At this time, how much megawatts will you still have in reserve to meet the demands of the energy on the island?

Mr. ORTIZ. Right now, we are at 3,200 megawatts. The demand is close to 2,800. Basically, on average, we are around those numbers.

Miss GONZÁLEZ-COLÓN. Thank you. I yield back.

Ms. HAALAND. Thank you, Ms. González-Colón. The Chair now recognizes Mr. Cox for 5 minutes.

Mr. COX. Thank you so much, Madam Chair. Thank you to our witnesses for being here today. My question has more to do with some of the previous disasters that have unfortunately befallen Puerto Rico.

And as Ms. González-Colón noted earlier, and Mr. Tonko as well, we are right upon a new hurricane season. And there are certainly going to be future natural disasters.

My question is really for Mr. Ortiz, if he will indulge me. There is quite a bit of concern about the FEMA payments or no payments that have been made to contractors who stepped in during the aftermath of Hurricanes Irma and Maria. And I would really like to know what has PREPA and the agency done with submitting and getting these contractors paid? And if they haven't, has FEMA shared with you any of the reasons that these contractors haven't been paid, why they are awaiting payments. And what has PREPA done to submit and to advocate for these reimbursements?

Mr. ORTIZ. Yes. Most of the contractors that are still not paid or not fully paid are from the Edison Electrical Institute, the ones brought by that institution. That will be resolved in the next few days because what was missing was a cost code from FEMA in order to pay them. It is something in their system that was resolved recently. We were basically fighting with that issue for a year and a half. That is resolved. And as I said to a previous Congressman, I hope everybody will be paid in full within the next 2 months.

Mr. COX. OK. Well, great. Thank you so much. And if we could impress upon you about how necessary that is. And if need be, could you provide the Committee with detailed information on these project worksheets so that in fact we could follow up with you if necessary?

Mr. ORTIZ. Gladly.

Mr. COX. Thank you so much. And, certainly, the question to go out to both of you is—Mr. Ortiz and Mr. Rossi—have you seen or can you imagine any lack of willingness for other contractors to conduct emergency response work when future natural disasters impact the island because of the situation that we found ourselves in with subsequent Hurricanes Irma and Maria?

If contractors aren't going to get paid, they are certainly going to be less likely to be able to step up when they are needed.

Mr. ORTIZ. That is a very important point. And let me tell you we have communication with them. They know what we are waiting for, and they know we have moved forward with their

payments and all that. I foresee a good relationship with them keeping the good bond down.

And let me tell you, we actually participated in the mutual aid training for all utilities back in October in New York. And our team was there with the other teams. So, we keep a good communication. And I foresee all of them willing to come on and help Puerto Rico if needed and the same way in the other direction.

Mr. COX. Well, thanks so much, Mr. Ortiz. And I don't know if Mr. Rossi would like to chime in as well.

Mr. ROSSI. I would. I think that PREPA would find a way to convince contractors to come in. I think the general problem we have is not just with contractors in emergencies. It is in general just a lack of trust and confidence in PREPA's ability to execute, makes everything more costly for PREPA and thus for consumers.

I think that is what my statement had to do with. And we need a world class regulation along with world class LUMA and a world class investment in renewable energy markets that means something to homes.

And I think that is the biggest challenge we face. It is just a Puerto Rico risk, the PREPA risk would be very costly if we don't do something where congressional oversight, PREB, CDBG-DR come together to fix that Puerto Rico risk that won't be fixed for many years, and that is my greatest concern.

Mr. COX. Great. Thank you so much. And the Committee certainly stands ready, willing, and able to help you in any way possible. And I yield. Thank you.

Ms. HAALAND. Thank you, Mr. Cox. And the Chair will recognize—I will recognize myself for 5 minutes. And I will start with Mr. Ortiz and Mr. Avilés.

Why is PREPA binding public funds and long-term natural gas projects which is not a renewable energy source when the Integrated Resource Plan has not been approved by the Puerto Rico Energy Bureau and Act 17–2019 requires the integration of 100 percent renewables by 2050?

Mr. ORTIZ. If I may start—do you hear me?

Ms. HAALAND. Yes, we can hear you.

Mr. ORTIZ. OK. Thank you. Yes. Well, let me tell you why we grow in the renewables and we are growing very fast really.

Nothing much has been done in the past many years, and today we have 18,000 homeowners with detached rooftop solar good for 200 megawatts—but the perfect partner in this dance of growing into renewables is a stable cheap system with batteries. As I said before, we have three projects of batteries—battery farms in the east of Puerto Rico and two in the north in the metropolitan area with 480 megawatts.

But the thing here is that you cannot grow responsibly on renewables unless you have a very stable system that would catch up all the voids inherent to the renewable generation today. If you look at the graph of the consumption in Puerto Rico, it has peaks.

And once you reach 8:30, 9 p.m. every night, you have a big drop of renewable because you exhausted your batteries at that point. So, you need something to catch up. And if you are talking about bringing industrials or manufacturing to the island, certainly you need a standardization of the voltage.

The short-term projects we have with natural gas, because let me remind you that the natural gas, for example, in San Juan is a 5-year project that you can extend in periods of 5 years all depending on the need of injection of additional power due to the condition of the system.

It all depends on how fast and how good the renewables behave. Certainly, you need to fill the voids of the variability of the renewables in the system. And that is why the natural gas is so important.

Ms. HAALAND. Thank you. OK. Let me ask—is Mr. Avilés still available? Mr. Avilés, did you want to respond in some way?

Mr. AVILÉS-DELIZ. Yes. I would like to add that in order to achieve the renewable goals established in Act 17, we need some kind of transition fuel. And I can say that gas at this moment is much better than the system oil and efficiency petroleum gas. That is why at some point we have to invest in gas in order to achieve the renewable goals clearly established in Act 17. That is the answer.

Ms. HAALAND. Thank you so much. I don't have a whole lot of time left—both gentlemen if you can answer jointly again. The Federal coordinator for the reconstruction of Puerto Rico, Peter Brown, recently expressed that nuclear energy is an option to diversify Puerto Rico's energy sources.

PREPA's Integrated Resource Plan does not integrate nuclear energy as an option. Will PREPA maintain this position in compliance with Act 17–2019, which requires reaching a minimum of 40 percent renewable energy integration by 2025, 60 percent by 2040, and 100 percent by 2050?

Mr. ORTIZ. If I may, about the nuclear generation, it is not a technical problem. It is really a public policy problem. I don't foresee any community in the world saying that they are for the nuclear power. We could have the most advanced technology, very safe, and all that. But with the myriad of events happening in the past 4 years in the world, I don't foresee that being pushed by any public official. You can certainly say that this is technically adequate, but it is very tough to sell to any community.

Ms. HAALAND. Thank you. Mr. Avilés, I am over time now. Do you have anything to add just for a few seconds?

Mr. AVILÉS-DELIZ. Just like Mr. Ortiz already said, it is not a technical issue. This is a policy issue. Right now, Act 17 clearly states what the goals are. And nuclear energy is not there. But if our legislature decides otherwise, we, PREB, have to follow it. That is what I have to say about that.

Ms. HAALAND. Thank you all so much. Thank you for your time. I thank the witnesses for their valuable testimony, and the Members for their questions. The members of the Committee may have some additional questions for the witnesses. And we will ask you to respond to these in writing.

Under Committee Rule 3(o), members of the Committee must submit witness questions within 3 business days following this hearing. And the hearing record will be open for 10 business days for these responses.

If there is no further business——

Miss GONZÁLEZ-COLÓN. Madam Chair.

Ms. HAALAND. Yes.

Miss GONZÁLEZ-COLÓN. Just to add something, Ms. Velázquez made a question to Mr. Ortiz referring to documents that were submitted for the record. I am just asking the Committee to submit those documents to Mr. Ortiz as well as the Ranking Member so we can examine the documents, because there was no direct reference of what it was.

Ms. HAALAND. Without objection, so ordered.

This Committee stands adjourned.

[Whereupon, at 5:32 p.m., the Committee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

PREPARED STATEMENT OF THE HON. ROB BISHOP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Since Hurricanes Irma and Maria devastated the island 3 years ago, the Puerto Rico Electric Power Authority (PREPA) has struggled greatly with maintaining a power grid with any semblance of reliability.

Even before those two historically devastating hurricanes blew through the island, PREPA was a utility that could barely manage to keep its fragile grid maintained. Decades of mismanagement of PREPA's assets left the grid in a state of disrepair, standing no match for the storms that eventually left the island in darkness 3 years ago.

Fast forward to today, and PREPA still faces a momentous uphill climb toward strengthening their infrastructure. Recent earthquakes in the beginning of the year and now the effects of the COVID-19 pandemic have further increased the stress on PREPA's infrastructure needs.

Under the PROMESA law that this Committee passed, PREPA has the tools it needs to restructure its crushing $9 billion debt, but that process still continues to advance at a snail's pace through the courts. So, today we're here to discuss the next steps PREPA has taken to address their endless tasks of rebuilding their grid more resilient and more reliable for the citizens of the island that depend on it.

The recent news of PREPA striking a deal with LUMA to semi-privatize the T&D side of operations, but not the power generation side of the grid, gives some of us here in Congress hope that actual strides are being taken by leaders on the island toward modernizing their power grid.

I am hopeful that more substantial progress to strengthen the power grid is forthcoming in the near future, as increased Federal funding granted by Congress has provided a lifeline to PREPA. However, I must caution folks not to squander this opportunity to correct decades of mismanagement and poor decision making at the utility by foolishly engaging in rash boondoggles that leave the grid under-prepared to face future crippling disasters, whether they're of the natural or financial kind.

It is my opinion, I assume the same goes for any rational being, that PREPA needs to continue to pursue conversion of their power generation assets off of burning inefficient Venezuelan bunker fuel and onto clean and efficient liquified natural gas. This isn't to say there may be a place for expanding renewables within the generation side of the grid, but let's let markets work and what's best for Puerto Rico's near- and long-term recovery guide the way.

I look forward to hearing from the witnesses today on these important issues on how PREPA may continue to make the necessary strides forward to providing the clean, efficient, and cost saving energy the people of Puerto Rico have been starved of for years now.

I also want to thank the Resident Commissioner for her continued leadership on these matters. She works tirelessly for her constituents and it is a pleasure to have her guidance and wisdom here on this Committee.

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE COMMITTEE'S OFFICIAL FILES]

— Testimony of Tom Sanzillo, Director of Finance, Institute for Energy Economics and Financial Analysis (IEEFA), dated August 4, 2020.

— *El Nuevo Día* Article titled, "LUMA seeks to train thousands of line guards," dated July 21, 2020.

— *Utility Dive* Article titled, "PREPA CEO sees bright future for embattled utility, but funding, grid mod challenges remain," dated July 20, 2020.

— Quanta Talking Points re Union Obligations under PRLRA and NLRA.

Submissions for the Record by Rep. Velázquez

— U.S. District Court of Puerto Rico, Case: 17-03283-LTS, Doc# 8010, re: FOMB and PREPA, dated July 15, 2019.

— U.S. Bankruptcy Court, Northern District of California, San Francisco Division, Case 19-30088, Doc# 5924, re: PG&E Corp. and Pacific Gas and Electric Company, dated March 10, 2020.

— Merger Release—SoftBank Group Completes Acquisition of Fortress Investment Group, dated December 27, 2017.

— U.S. Bankruptcy Court, Southern District of Texas, Houston Division, Case 18-35672, Doc# 2120, re: Westmoreland Coal Company, dated July 3, 2019.

Submissions for the Record by Rep. Bishop

— Letter from Wayne Stensby, LUMA Energy President and CEO, to Chair Grijalva and Rep. Bishop, dated July 22, 2020.

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