

HOUSE OF REPRESENTATIVES

H. R. 136

FINAL REPORT

MAY 11, 2021

TO THE HOUSE OF REPRESENTATIVES OF PUERTO RICO:

The Committee on Economic Development, Planning, Telecommunications, Public-Private Partnerships, and Energy of the House of Representatives of the Commonwealth of Puerto Rico, upon study and consideration of House Resolution 136, is pleased to submit a Final Report with its findings, conclusions, and recommendations, requesting the approval thereof.

SCOPE OF THE MEASURE

House Resolution 136 directs the Committee on Economic Development, Planning, Telecommunications, Public-Private Partnerships, and Energy of the House of Representatives of the Commonwealth of Puerto Rico to conduct a thorough investigation on the agreement executed by and between the Electric Power Authority (PREPA) and LUMA Energy Services, LLC., to operate, administer, maintain, repair, and restore the electric power grid of said public corporation for a period of 15 years; and for other related purposes.

BACKGROUND

According to the Statement of Motives of Resolution 136, under investigation and analysis by this Committee, on June 17, 2020, the administration of the then-Governor, Wanda Vázquez-Garced, executed a concession agreement granting LUMA Energy, LLC and LUMA Energy ServiCo, LLC, hereinafter, LUMA, the

right to operate and maintain the Electric Power Authority's, hereinafter, PREPA, transmission and distribution system, upon launching an advertising campaign with the slogan: "Lo mejor para Puerto Rico." [The Best for Puerto Rico; our translation].

According to the Public-Private Partnership Authority, hereinafter the P3A, and the Puerto Rico Energy Bureau, hereinafter PREB, LUMA Energy is a type of consortium composed, initially, of Quanta Services, ATCO, and IEM, which was chosen by P3A to operate, manage, maintain, repair, and restore the public corporation's electric power grid for a period of fifteen (15) years. This transaction was carried out with the expectation that the privatization shall allow for the transformation of our current electric power system into a clean energy system.

P3A officials from the preceding administration (2017-2020) believed that LUMA Energy was the most capable to achieve the transformation of Puerto Rico's electric power system. In addition, they alleged that they presented the lowest proposal and offered the best terms to the Government of Puerto Rico.

The LUMA Energy transaction was exempt by the eighteenth Legislative Assembly through legislation from complying with Section 7 of Act No. 29-2009, which requires the preparation of *specific studies and analyses*, in order to evaluate and determine, based on scientific evidence and not mere speculations, the necessity, convenience, cost effectiveness of the agreement, and other relevant considerations. The objective was to place the People of Puerto Rico at a better position to evaluate and oversee whether said contract is beneficial.

From the public hearings and the requests to produce documents, we learned that LUMA Energy shall collect a fixed fee and an incentive fee to administer the energy transmission and distribution system. Furthermore, PREPA shall transfer to LUMA Energy the funds received from the Federal Emergency Management

Agency, hereinafter, FEMA, and the U.S. Department of Housing and Urban Development (HUD) to make use of these allocated federal aids.

The agreement establishes an estimated twelve (12)-month transition period between the parties. This period expires on June 1, 2021, as agreed in the Front End Transition Year. However, the established period may be extended if PREPA is unable to complete its debt restructuring and exit the PROMESA Title III case.

Upon the completion of the transition, PREPA shall pay LUMA Energy an annual fixed fee which shall start at \$70 million. For the second and third years, that amount shall increase to \$90 million and \$100 million, respectively. Furthermore, it is established that the fixed fee shall be in the amount of \$105 million from the fourth year, and thereafter for term of the agreement. Additionally, if LUMA Energy achieves the efficiency and service improvement objectives stipulated by LUMA Energy and agreed upon with PREB, LUMA Energy would receive a \$20 million incentive fee in addition to the annual fixed fee up to a maximum payment of \$125 million. Likewise, LUMA Energy would have access to \$10.7 billion in federal funds allocated by FEMA for the reconstruction of the electric power system. PREPA would be responsible for the payment of other expenditures incurred.

However, it is worth noting that, even though it has always been stated that LUMA Energy would only be in charge of the energy transmission and distribution system, the agreement also stipulates that the company shall be in charge of the system's operations, which includes customer service and billing, and energy distribution from the Energy Control Center. Nevertheless, PREPA shall maintain ownership of the transmission and distribution system assets as well as control over the electric power generation system until its privatization.

Furthermore, the Electrical Industry and Irrigation Workers Union (UTIER, Spanish acronym) has stated that PREB denied it its right to participate in the process, and in turn, certified LUMA Energy thus enabling the P3A to enter into the agreement. UTIER has emphasized that both the agreement and the P3A report were kept secret, without allowing for citizen participation. However, within less than a week, the LUMA Energy agreement was approved by PREPA and the P3A, and endorsed by the Financial Oversight Board and the then-Governor of Puerto Rico, Wanda Vázquez-Garced.

The participation of the Commissioner and Chair of the Puerto Rico Energy Bureau, Eng. Edison Avilés-Deliz, Esq., in the agreement's award process has also been challenged. According to the investigation, the Commissioner was a member of the Partnership Committee that selected LUMA Energy to manage PREPA's electric power transmission and distribution, and negotiated the proposal and later, requested PREB, of which he is the Chair, to approve it. Subsequently, acting as Commissioner and adjudicator in the Energy Bureau he approved the Energy Compliance Certificate.

ANALYSIS OF THE MEASURE

As part of the investigation, the following public hearings were held and oath was administered to the public officials upon giving them the warnings for Deponents and Witnesses summoned by the Committee:

1. On Tuesday, February 23, at 10:00 a.m., at the Hall of Sessions 1, the Executive Director of the Public-Private Partnership Authority, P3A, Fermín E. Fontanés-Gómez, Esq., appeared to offer his testimony.
2. On Wednesday, February 24, at 10:00 a.m., at the Hall of Sessions 1, the Director of the Energy Bureau, PREB, Edison Avilés-Deliz, Esq., appeared.

3. On Friday, February 26, at 2:00 p.m., at the Hall of Sessions 3, an Executive Hearing was held to discuss and approve the First Partial Report.

4. On Friday, March 5, at 9:00 a.m. at the Hall of Sessions 1, the Chair of the Electric Power Authority's Governing Board, Eng. Ralph Kreil-Rivera, and the Executive Director of the Puerto Rico Electric Power Authority, Eng. Efran Paredes-Maisonet, appeared.

5. On Tuesday, March 9, at 10:00 a.m., at the Hall of Sessions 1, the Spokesperson for the Alliance of Active and Retired Employees of the Electric Power Authority, Mr. Ángel Figueroa-Jaramillo, and the Electrical Industry and Irrigation Workers Union's (UTIER) Legal Advisor, Rolando Emmanuelli-Jiménez, Esq., appeared.

6. On Wednesday, March 10, at 10:00 a.m., at the Hall of Sessions 1, the Executive Director of the Puerto Rico Fiscal Agency and Financial Advisory Authority, hereinafter, FAFAA, Omar Marrero-Díaz, Esq., appeared.

7. On Wednesday, March 10, at 10:00 a.m., at the Hall of Sessions 1, at 3:00 p.m., the Director of the Government of Puerto Rico Human Resources Administration and Transformation Office (HRATO), Zahira Maldonado-Molina, Esq., appeared.

8. On Monday, March 15, at 10:00 a.m., at the Hall of Sessions 3, the Representative of Customer's Interests to the Governing Board of the Puerto Rico Electric Power Authority, Eng. Tomás Torres-Placa, appeared.

9. On Monday, March 15, at 2:00 p.m., at the Hall of Sessions 3, a group of private citizens and PREPA retirees, Ivelisse Sánchez-Soultaire, Esq. a PREPA retiree, and former Secretary of PREPA's Governing Board, Mr. Héctor Rosario-Hernández, Esq., former Executive Director of PREPA, and Luis R. Santini-

Gaudier, Esq., former Consumer Representative to PREPA's Governing Board, appeared.

10. On Tuesday, March 16, at 10:00 a.m., at the Hall of Sessions 5, an Executive Hearing was held to discuss and approve the Second Partial Report.

11. On Thursday, March 18, at 10:00 a.m., at the Hall of Sessions 1, the Director of Human Resources and Labor Affairs of the Electric Power Authority, Marc F. Thys-Torres, Esq., appeared.

12. On Thursday, March 18, at 2:00 p.m., at the Hall of Sessions 1, the Director of the Office of Management and Budget, Juan Carlos Blanco Urrutia, Esq., appeared.

13. On Friday, March 19, at 10:00 a.m., at the Hall of Sessions 1, the President of the College of Engineers and Surveyors of Puerto Rico and former Executive Director of PREPA, Engineer Juan F. Alicea-Flores, together with the Chair of the Energy Commission, Eng. Javier Quintana, and Rhonda Castillo, Esq., Advisor and member of the Energy Commission, appeared.

14. On Friday, March 19, at 3:00 p.m., at the Hall of Sessions 1, the President of the Bar Association of Puerto Rico, Daisy Calcaño-López, Esq., appeared.

15. On Sunday, March 21, at 11:00 a.m., at the Hall of Sessions 1, the President and CEO of LUMA Energy Puerto Rico, Engineer Wayne Stensby, appeared.

16. On Tuesday, April 6, at 10:00 a.m., at the Hall of Sessions 1, the Director of the Institute for Energy Economics and Financial Analysis (IEEFA), Mr. Tom Sanzillo, appeared.

17. On Thursday, April 8, a Markup Session was held for the approval of the House Joint Resolution (H. J. Res 88).

18. On Monday, April 12, at 2:00 p.m., at the Hall of Sessions 1, the Public Policy Director of the Center for a New Economy, Sergio M. Marxuach-Colón, appeared.

19. On Friday, April 23, at 10:00 a.m., at the Hall of Sessions 1, PREPA's Director of Human Resources and Labor Affairs, Nydza Irizarry-Arvelo, Esq, the Director of the Government of Puerto Rico Human Resources Administration and Transformation Office (HRATO), Zahira Maldonado-Molina, Esq., and the Director of the Office of Management and Budget, Juan Carlos Blanco-Urrutia, Esq., appeared a second time.

20. On Friday, April 23, at 2:00p.m., at the Hall of Sessions 1, the Chair of the Puerto Rico Electric Power Authority's Governing Board, Eng. Ralph Kreil-Rivera, and the Executive Director of the Puerto Rico Electric Power Authority, Eng. Efran Paredes-Maisonet, appeared a second time.

21. On Friday, April 30, at 10:00 a.m., at the Hall of Sessions 1, the Secretary of State and Chair of the Steering Committee, Engineer Larry Seilhamer-Rodríguez, appeared.

During the investigation process, testimonies and explanatory statements were requested and received from the following persons or entities:

1. The Public-Private Partnership Authority.
2. The Puerto Rico Energy Bureau.
3. The Puerto Rico Electric Power Authority.
4. The Alliance of Active and Retired Employees of the Electric Power Authority.

5. The Puerto Rico Fiscal Agency and Financial Advisory Authority.
6. The Office of Management and Budget.
7. The Government of Puerto Rico Human Resources Administration and Transformation Office.
8. The Director of Human Resources and Labor Relations of the Electric Power Authority.
9. Engineer Tomás J. Torres-Placa, Representative of Customers' interests to the Governing Board of the Puerto Rico Electric Power Authority.
10. Ivelisse Sánchez-Soultaire, Esq., retiree and former Secretary of PREPA's Governing Board, Mr. Héctor Rosario-Hernández, former Executive Director of PREPA, and Luis R. Santini-Gaudier, Esq., former Representative of Customers' interests to PREPA's Governing Board.
11. Bar Association of Puerto Rico
12. The College of Engineers and Surveyors of Puerto Rico
13. LUMA Energy
14. Institute for Energy Economics and Financial Analysis (IEEFA)
15. Center for a New Economy
16. Puerto Rico Manufacturers Association
17. Food Marketing, Industry, and Distribution Chamber (MIDA, Spanish acronym)
18. UPR School of Law, Legal Aid Clinic, Environmental Section
19. South East Environmental Community Alliance
20. El Puente - Latino Climate Action Network
21. *Comité Yabucoeño Pro-Calidad de Vida, Inc.*
22. *Red Continental Cristiana por la Paz (RECONPAZ) de Puerto Rico*

23. *Hermanidad Pastoral de Puerto Nuevo*
24. Resolution No. 28 of 2020-2021 Caguas Municipal Legislature
25. Resolution No. 61 of 2020-2021 Hormigueros Municipal Legislature.
26. Resolution No. 25 of 2020-2021 Yauco Municipal Legislature.
27. Resolution No. 43 of 2020-2021 Isabela Municipal Legislature.
28. Resolution No. 24 of 2020-2021 Morovis Municipal Legislature.
29. Resolution No. 1 of 2020-2021 Comerío Municipal Legislature.
30. Resolution No. 18 of 2020-2021 Rincón Municipal Legislature

In addition, the Committee approved two (2) partial reports filed with the House of Representatives assembled as a Whole.

In the **First Partial Report**, the Committee recommended the Whole House of the House of Representatives to **refer Edison Avilés, Esq. to the Office of Government Ethics and the Supreme Court of Puerto Rico** to evaluate the attorney's potential violations of Act No. 1-2012, as amended, known as the "Puerto Rico Government Ethics Office Organic Act," Act No. 57-2014, as amended, known as the "Puerto Rico Energy Transformation and RELIEF Act," and the Regulation on the Standards of Ethical Conduct for Employees of the Puerto Rico Energy Commission and the Principles that Should Govern the Commissioners' Actions as Representatives of the Commission, Regulation No. 8542, approved on December 18, 2014.

This referral was the result of his testimony under oath during a public hearing where Edison Avilés, Esq. declared to have participated **directly** in the Partnership Committee and used his judgment **to evaluate and select** the consortium ATCO Ltd., Quanta Services Inc., and IEM, **among other proponents**, and subsequently, in his capacity as Chair and Commissioner of the Puerto Rico Energy Bureau,

directed and voted on the approval of the Energy Compliance Certificate of the PSA of the same business he had previously evaluated and selected. These facts raised serious concerns among most Committee members, since they believed that Mr. Avilés-Deliz' participation in both sides of the process **raised serious questions about his impartiality or lack thereof**, and they also believed that given his broad knowledge and experience in matters of professional ethics, as per his own testimony, and particularly in a matter of great public interest, **he should have abstained or recused himself when acting in the latter capacity, thus exercising a prudent and reasonable conduct to avoid an appearance of bias.**

The **Second Partial Report** includes a summary of the opinions of the following witnesses: the Director of the Public-Private Partnership Authority, Fermín E. Fontanés-Gómez, Esq.; the Chair of the Puerto Rico Energy Bureau, Edison Avilés-Deliz, Esq., the Executive Director of the Puerto Rico Electric Power Authority, Eng. Efran Paredes-Maisonet and the Chair of the Electric Power Authority's Governing Board, Eng. Ralph Kreil-Rivera, who submitted a very brief explanatory statement and testified under oath that they were unable to read the agreement, which has 366 pages, 15 attachments, and 10 exhibits. Said agreement was approved by the Governing Board at a meeting that lasted 43 minutes, and was held after a Father's Day weekend. Moreover, their report included the opinion of the Spokesperson for the Alliance of Active and Retired Employees of the Electric Power Authority, Mr. Ángel Figueroa-Jaramillo, and of Rolando Emmanuelli, Esq.

This Second Report recommended the Whole House of the House of Representatives to direct the Governor of Puerto Rico, the Fiscal Agency and Financial Advisory Authority, the Puerto Rico Public-Private Partnership Authority, the Electric Power Authority, the Puerto Rico Energy Bureau, the Office of

Management and Budget, the Government of Puerto Rico Human Resources Administration and Transformation Office, and every concerned agency, entity, and public corporation to postpone, suspend, or stay any transaction in connection with the implementation of the LUMA Energy agreement until January 15, 2022, and until the amendments and recommendations included in House Joint Resolution No. 88 filed on March 15, 2021 are addressed.

Furthermore, throughout the investigation process, requests for the production of information were served on the Government agencies in charge of evaluating and approving the agreement executed between PREPA and LUMA Energy. In addition, hundreds of relevant documents were received and evaluated which are related or connected to the process of contracting LUMA Energy in Puerto Rico. These documents are under the custody of the Committee and are part of the public record, and they were requested for the sole purpose of obtaining pertinent information to **oversee state and federal public funds in order to protect at all times the best interests of the People of Puerto Rico from the interests of a for-profit private company**, given that this is a matter of utmost importance and relevance under the consideration of this Committee.

Moreover, the following resolutions from municipalities, and environmental, community, and faith-based entities were received in opposition to the agreement executed between PREPA and LUMA Energy, as negotiated:

Resolution No. 28 of 2020-2021 Caguas Autonomous Municipality
Legislature

Resolution No. 61 of 2020-2021 Hormigueros Municipal Legislature

Resolution No. 25 of 2020-2021 Yauco Municipal Legislature

Resolution No. 43 of 2020-2021 Isabela Municipal Legislature

Resolution No. 24 of 2020-2021 Morovis Municipal Legislature

Resolution No. 1 of 2020-2021 Comerío Municipal Legislature

Resolution No. 18 of 2020-2021 Rincón Municipal Legislature

Resolution of the *Red Continental Cristiana por la Paz (RECONPAZ)*

Resolution of the *Puerto Rico Hermandad Pastoral de Puerto Nuevo*

South East Environmental Community Alliance

El Puente - Latino Climate Action Network

In addition, once public officials were administered oath and the appropriate legal warnings were given to them, the following information was stated for the record through Explanatory Statements:

I. Public Private Partnership Authority

Fermín E. Fontanés-Gómez, Esq., Executive Director of P3A after reading the definition of the term Public-Private Partnership, as defined in Act No. 29-2009, admitted at a public hearing that LUMA Energy did not contribute money as part of the transaction carried out for the execution of the LUMA Energy agreement. Upon inquiries of the chair of the Committee as to what is LUMA Energy's contribution to the transaction and the Island, the witness answered: expertise, experience, and knowledge, but they make no economic contribution whatsoever, given that their investments are reimbursed. He indicated that from their \$105 million guaranteed "investment," \$125 million could be reimbursed to them for five years.

Moreover, he indicated that as of November 23, 2019, when the proposal evaluation process began, LUMA Energy did not exist as a registered corporation; that the requests for qualifications process was conducted in December 2018; in November 2019, the proposals were submitted, and in December 2019, the proposal evaluation meetings began. On January 11, 2020, the ATCO, QUANTA,

and IEM consortium was chosen, which then became LUMA Energy, LLC and LUMA Manage Co, LLC and were registered in the Department of State of Puerto Rico on January 17, 2020 to subsequently execute the agreement with PREPA on June 22, 2020.

The Director of the P3A admitted that for the LUMA Energy transaction, the models of the Long Island Power Authority, hereinafter LIPA, and the Public Service Electric and Gas Co., hereinafter PSEG, located in New Jersey, were used. It should be noted that these companies' execution have been challenged and they are currently in the middle of a court proceeding.

When inquired by the Chair of the Committee, the Director of P3A had to admit that he lacks specific documents that concretely show how LUMA Energy is going to improve Puerto Rico's electric power transmission and distribution system. Moreover, he categorically asserted that PREPA and LUMA Energy have the right to terminate the agreement in the event of breach. In the event of a breach by LUMA Energy, the penalty entailed ranges from \$40 to \$105 million in damages, **despite the fact that the company's operations are defrayed in full with PREPA's public funds, and that the company shall bill between \$70 and \$125 million annually for a period of 15 years, all of which is in addition to the \$10.7 billion in FEMA federal funding for the reconstruction and improvement of the electric power transmission and distribution system for which use LUMA Energy is responsible.**

The Director of the P3A admitted that the agreement did not have any provision prohibiting LUMA Energy or its parent companies against contracting its parent companies or affiliate entities. He also indicated that the agreement provides

that LUMA Energy shall provide temporary services to PREPA including support services for the energy generation and fuel purchase portions.

The Director of the P3A also recognized that every PREPA employee has to resign in order to become an employee of LUMA Energy, and in the event they are dismissed, said employees would have to file a claim under Act No. 80 only for the time they worked at LUMA Energy. This answer is contrary to the statements made by said official in his explanatory memorial, which states that the employees would be transferred to LUMA Energy and keep all their rights, including the collective bargaining agreements. This was also denied by other witnesses at subsequent public hearings. Fontanés specified that LUMA Energy had promised that PREPA employees transferred to the company would not be subject to a probationary period. The official also denied having information as to why LUMA Energy had reduced the number of engineer positions, compared to the positions PREPA had.

The Director of P3A explained that the Government of Puerto Rico Human Resources Administration and Transformation Office, hereinafter HRATO, had to determine where would the funding come from to pay PREPA's employees who are not hired by LUMA Energy and are transferred to other government agencies. **He also specified that neither the agreement nor the law provide that PREPA would continue paying these employees' salaries and that no funding item nor money is allocated to pay said salaries. The official admitted that the Central Government shall be responsible for this, even when the former is undergoing a bankruptcy procedure under PROMESA before the Federal Court.**

Despite the public statements made that LUMA Energy would achieve savings, the Director of P3A had to admit that the agreement provides no guarantee to prevent an increase in the operating costs of LUMA Energy.

He was asked whether there was a prohibition in the agreement against LUMA Energy subcontracting their own affiliates for the transmission and distribution operation to avail themselves of the \$10.6 million in FEMA funds. The answer was no. He only indicated that any subcontractor must comply with the established laws and criteria.

Moreover, it was clear that the agreement has no protections in the event of a natural disaster or an event of Force Majeure to prevent LUMA Energy from shutting down and leaving the Island without service.

II. Puerto Rico Energy Bureau

Edison Avilés-Deliz, Esq., the Director[sic] of the Puerto Rico Energy Bureau, affirmed that PREB had the opportunity to evaluate some of the drafts of the LUMA Energy agreement and submit its comments and observations to the P3A. He also explained that a company under a Partnership contract to manage the electric power transmission and distribution system cannot work or perform any task related to energy generation.

PREB's Director[sic] certified at a public hearing that the LUMA Energy agreement empowers the company to request an increase in Puerto Rico's electricity rate. He also admitted that the agreement has no prohibition against an electricity rate increase in the next 3 years.

PREB's Director[sic] had to admit that the Island's energy demand is decreasing, which affects the cost thereof. He also affirmed that if this situation is not solved, the savings projections made would not be achieved, among other things.

When inquired by the Chair of the Committee on the energy generation aspect, which the Electric Power Authority is responsible for, and thus, LUMA Energy shall not manage it, the witness agreed that LUMA Energy has discretion to decide how the distribution of the generation shall be managed given that LUMA Energy shall manage the generation dispatch, which it is expected to be eventually privatized too. He admitted that PREPA would only keep two power generation plants in the south of the Island.

The witness informed that Act No. 17-2019 seeks to end the vertical public monopoly and does not allow for a horizontal monopoly to be established either. He admitted that PREB has not evaluated the cost of what shall be transferred to LUMA Energy, however, said transaction has allegedly saved the people thousands of dollars, contrary to the statements of the P3A Director, who accepted that said savings would not be achieved. However, he agreed that LUMA Energy would earn up to \$1.5 billion in 15 years.

He also noted that PREB continues to regulate LUMA Energy just as it does PREPA, and that every three (3) years it would review the costs; if LUMA Energy believes that there has been an increase, the latter could request PREB a rate review which PREB could authorize upon evaluating the situation. The Chair of the Committee inquired him about whether the agreement stated it thus, which the witness was unable to answer.

Edison Avilés, Esq. explained that a committee was established to receive the proposals, which committee was appointed by P3A and that the latter appointed him as a member thereof, thus disregarding the fact that he would later evaluate the award of the contract to the winner. This could be interpreted as a conflict of interest, given that the decision was not free from bias. The witness

answered that given he had no financial interest in the transaction, he never requested the opinion of the Government Ethics Office, for he deemed it unnecessary. The Chair of the Committee insisted that he should have either requested it or disqualified himself as a member of the group that would select the company so as to ensure the greatest transparency in the transaction. He was then informed that this situation would be brought before the consideration of the Committee members at an executive hearing as part of the first partial report on the investigation, to be referred to the Government Ethics Office and the Supreme Court of Puerto Rico for its evaluation and adjudication.

Moreover, the witness alleged that PREPA assets would be left in the hands of the government, because the agreement does not provide for the sale of PREPA, but rather for the operation and maintenance thereof. Once PREPA exits the bankruptcy case, it could regain full control. He was then inquired why LUMA Energy is able to operate PREPA's distribution and transmission system, but PREPA itself cannot; his answer was that it was thus established in the Act, not PREB, which is the entity he chairs. The only determination he makes is whether it complies with the regulatory framework and the public policy set forth.

He further informed that he chose LUMA Energy because its offer constituted a \$30 million savings when compared to the proposals submitted by other bidding companies. He was reminded that at the time of proposal evaluation, LUMA Energy did not exist, it was not incorporated, it was not a juridical entity, and that it was the consortium of its parent companies, QUANTA, ATCO, and IEM, the one that participated in the requests for proposals (RFP).

He was reminded also that in the past, there had been an attempt to establish in Puerto Rico a structure similar to the Aqueduct and Sewer Authority

(ASA), and that both the Water Company and Ondeo failed to achieve the expected success; hence, ASA had to pick up the pieces of what remained from said Authority. The possibility that LUMA Energy would have more economic benefits given that it is allowed to subcontract its affiliates and subsidiaries was also discussed.

III. Electric Power Authority

Eng. Ralph A. Kreil-Rivera, Chair of PREPA's Governing Board, hereinafter Governing Board, expressed that he became the Chair of the Governing Board since the change of command from former governor Ricardo Rosselló to former governor Wanda Vázquez. After explaining the composition of the Board, he affirmed that around November 2019, while he was attending a presentation given by the proponents, was the first time he saw a document related to LUMA Energy. At that time the company had not been selected yet.

The Chair of the Governing Board admitted under oath that the LUMA Energy agreement was submitted for review to the Governing Board for the first time on Friday, June 19, 2020, for the review thereof, and that they met on Monday, June 22, 2020, at the Puerto Rico Convention Center for the approval thereof. The press was invited to such meeting given that the Governor of Puerto Rico was going to make it public.

Kreil-Rivera also indicated that the process was confidential until the last minute and that the meeting only lasted 43 minutes. He also had to admit that 20 of those 43 minutes were spent listening to the statements of Engineer Tomás Torres-Placa, Public Interest Representative [sic] to PREPA's Governing Board, against the approval of said agreement. He also admitted that said agreement is complex and technical. The Chair of the Governing Board recognized that he has no financial knowledge or experience, and that, at the meeting to approve the agreement, **he was**

not provided with legal or financial advisory from PREPA, when approving the LUMA Energy agreement. The Chair of the Governing Board adduced that he had no recollection of having received other documents such as a financial analysis or any other study that would have assisted them in clarifying any doubts before approving the agreement.

The Chair of the Governing Board admitted that the minute of the approval of the agreement, which states faithfully what happened that day, fails to indicate that the impact and the financial consequences, among other important aspects of the LUMA Energy agreement were also discussed. Moreover, he affirmed that the greatest concern he had during the process of approving the agreement was what would happen to PREPA's employees during the transition. He also confirmed that under the LUMA Energy agreement the jobs of PREPA's employees were not guaranteed.

The Chair of the Governing Board indicated that no funds had been set aside for a potential incentivized retirement for PREPA's employees who are not transferred to LUMA Energy and that PREPA does not have a fund to pay the salaries nor the retraining of PREPA's employees who are transferred to other government agencies.

Engineer Efran Paredes-Maisonet, PREPA's Executive Director, stated under oath that he was unaware that the LUMA Energy agreement provided for the payment of the company's entertainment expenses as pass-through expenses; however, the Chair of the Governing Board confirmed that the agreement did provide therefor, but he specified that payments on account of said expenditures had not been made. Moreover, he explained that he is unaware of the details of the invoices that LUMA Energy has submitted to date.

IV. Alliance of Active and Retired Employees of the Electric Power Authority

The Alliance of Active and Retired Employees of the Electric Power Authority, hereinafter the Employee's Alliance, through their spokesperson, Mr. Ángel Figueroa-Jaramillo, and its legal advisor, Rolando Emmanuelli-Jiménez, Esq., opined that the LUMA Energy agreement is an unconscionable contract and contrary to the law, given that most of its clauses benefit LUMA Energy over PREPA's interests and those of the People of Puerto Rico. They explained that the agreement is void for it is inconsistent with the law, the morals and the public order; in addition, said agreement fails to comply with Act No. 120-2018, which provides that the rights of workers under collective bargaining agreements must be protected and guaranteed; it also fails to comply with Act No. 17-2019, which seeks to promote a renewable energy public policy.

They argued that the LUMA Energy agreement shall cause the electricity rate to increase exponentially and they believe that such increase will definitely be detrimental to the People of Puerto Rico, particularly the poor sectors of the Island. Moreover, they opine that devastating consequences will ensue for the Island's economy.

Furthermore, they mentioned that the LUMA Energy agreement would deplete and render PREPA's Retirement System insolvent, increase PREPA's financial fragility by compelling it to pay exorbitant amounts of expenditures for which payment the revenues collected on account of rates may be insufficient, hence, PREPA would be forced to take out loans or substantially increase the electricity

rate in order to increase its revenues. **This disproportionate rate increase to cover excessive expenditures would inevitably lead PREPA to a second bankruptcy.**

They stated that the LUMA Energy agreement has the effect of dismantling PREPA and leave an essential service and a human right to the discretion of a for profit private corporation. Moreover, they mention that the LUMA Energy agreement promotes the creation of multiple corporations with divided functions as well as obliges the execution of contracts with these corporations, thus affording LUMA Energy the opportunity to make hidden gains.

They noted that the LUMA Energy agreement poses a permanent risk of LUMA Energy abandoning the country with only a 120-day notice under any of the numerous causes for contract termination. Even though they agree that PREPA needs a transformation, they believe that handing over all of PREPA's current functions to a private operator just because, it is not the appropriate manner to conduct said transformation.

They added that the LUMA Energy agreement, as such, allows the company to do everything that PREPA currently does, and they explain that their operations would be funded with not only the revenues from the electricity rate, but also the over \$125 million that would be additionally paid from public funds. They said that the only transformation would be the recipient of the public monies.

The Employee's Alliance believes that a true transformation requires private capital investments and expert contributions. In this case, they noted that LUMA Energy does not contribute any money and uses PREPA's own staff.

The Employee's Alliance explains that, in the past, UTIER has proposed some changes, namely:

- Altering the composition of PREPA's Governing Board and the Puerto Rico Energy Bureau to improve transparency and consumer representation as well as limit the discretion that enables them to contract private companies.
- Creating an Independent Private Sector Inspector General for PREPA as a control measure to ensure compliance with the existing laws and regulations without the need to appoint a trustee.
- Reinvesting the funds in PREPA's workforce, which has been severely depleted in recent years and which has caused so many difficulties after Hurricane Maria.

The Employee's Alliance reminded us that the ideas or beliefs that influenced PREPA's transformation process were the following:

- The idea or belief that it was necessary to put an end to the Commonwealth's monopoly to allow market forces to intervene in a free competition.
- That it was prudent given PREPA's lack of capital and the PROMESA Title III procedure as well as the need for private investment.
- The privatization would lead to a rate decrease.

Moreover, the Employee's Alliance added that none of these ideas were stated or included in the approved LUMA Energy agreement. **First, there would be only one operator and one monopolistic service provider on the Island which shall only be LUMA Energy. Second, this company has no obligation to invest its own funds given that the entirety of its profits and gains would be generated from payments or reimbursements of state and federal (FEMA) public funds. Third, no electricity rate reductions were contemplated, on the contrary, LUMA**

Energy already announced that there will be no rate “increases” thus rejecting the possibility of a rate reduction.

They explained that, from the execution of the LUMA Energy agreement, PREPA’s budget was placed at a deficit of \$132 million and this is only as a consequence of the Front-End Transition process. This is stated in detail in the Fiscal Plan certified by the Financial Oversight Board, hereinafter FOB. This budget deficit shall have to be covered through rate increases to the rate proposed by LUMA Energy in the agreement. FOB announced that in order to implement the LUMA Energy agreement or contract, PREPA would need a loan in the amount of \$894 million. This loan would have to be paid with interests thus imposing a financial burden on the already distressed public entity.

According to a study of the Institute for Energy Economics and Financial Analysis (IEEFA), in addition to the rates and reimbursements payable to LUMA Energy, the loan would require additional disbursements that could amount to \$92 million annually. This loan shall increase PREPA’s current operating deficit from \$132 million to \$224 million. **This increase would have to be paid through an additional increase of around two cents per kilowatt-hour which will be added to any other rate increase on account of fuel purchase, the 4.6 cents per kilowatt-hour required under the Restructuring Support Agreement executed with the bondholders, and around 2 additional cents to pay PREPA’s retirement system pensions. All of these expenditures would increase PREPA’s rate to over 30 cents per kilowatt-hour.**

V. Puerto Rico Fiscal Agency and Financial Advisory Authority

The Puerto Rico Fiscal Agency and Financial Advisory Authority, AAFAF (Spanish acronym), through its Executive Director, Omar J. Marrero, Esq., included in its explanatory statement a brief summary of the background of and the legal framework for the LUMA Energy agreement as well as a succinct explanation of some of the general aspects pertaining to front-end transition process.

In the testimony provided under oath, the official admitted that **the agreement, as drafted, places Puerto Rico in a high risk situation, which is a logical conclusion, as he accepted that despite the fact that the Government of Puerto Rico is aware that the island is located the right in the center of the tropical hurricane and storm paths in the Caribbean, in the case of a force majeure event (as such term is defined in the agreement), which clearly includes hurricanes or any other similar weather event, or in the event that the federal government declares Puerto Rico a disaster zone, the LUMA Energy agreement allows this private company, to be validly excused or freed from its responsibility to resolve any crisis that Puerto Rico faces.**

He also confirmed that the LUMA Energy Agreement places Puerto Rico in a high risk position in the aforementioned scenario, and since the PREPA infrastructure would no longer exist, and there would be no personnel available to deal with such a situation, we would be unable to render emergency services to the People of Puerto Rico. With regards to this issue, the official further explained that this waiver of liability clause for force majeure events is included in the agreement as a mechanism to free LUMA Energy from its responsibility to the People of Puerto Rico in the case of an extraordinary event.

In what pertains to the recommendation made by the FOB with regards to the need to grant PREPA a loan for the amount of \$894 million to fund the LUMA Energy agreement, the public official gave a negative answer and rejected the possibility of taking out such a loan, and he categorically affirmed, as the fiscal agent of the Government of Puerto Rico, “that it is not a viable option” because “PREPA customers do not have the capacity to repay that debt.” He also categorically stated that he did not recommend raising the electricity rate to repay a loan. With regards to the repayment of any possible debt, the official literally stated that “the People can’t take it.” However, he also stated that any PREPA debt repayment, including the retirement system debt, will have to be repaid with the electricity rates imposed on customers.

Furthermore, the official clarified that LUMA Energy was not required to contribute any money or capital under this Partnership agreement because they (referring to the public officials responsible for this transaction) did not want LUMA Energy to contribute money since the agreement stipulates that such contributions would have to be reimbursed to LUMA Energy. The official categorically stated: “in the case of LUMA Energy, since it is a different model, they do not have to invest, we do not want them to invest, because that would affect the rates.”

The official recognizes that the Government of Puerto Rico accepted that all investments or contributions made by LUMA Energy on the Island be reimbursed or repaid, thus confirming the contentions that the LUMA Agreement has been drafted with terms that completely favor the private company and places private interests above public interests.

The official admitted that LUMA Energy would operate with the federal funds assigned to Puerto Rico through FEMA (since PREPA is unable to borrow money from the market), and with the revenues from the rates paid by PREPA customers.

The official recognizes that the implementation of this agreement faces many obstacles and that there is room for improvement. He also notes that, with regards to the claims made by PREPA employees, the Governor created a Steering Committee through an Executive Order to address their claims and they have already met several times.

He stated that, as a result of the Steering Committee meetings, there is a clear understanding that uncertainties regarding PREPA's public employees must be clarified and that all concerns surrounding the agreement shall be heard in order to take affirmative actions. However, news media has reported that the Governor of Puerto Rico has remained adamant that the LUMA Energy agreement should not be modified.

Lastly, he confirmed that the agreement stipulates that reserve accounts must be kept in the general fund in order for LUMA Energy to be able to make the corresponding payments in accordance with the agreement. In other words, the monies of the People of Puerto Rico in the general fund are made available to a for profit private company so that it has the authority to make payments, as it deems appropriate, under the liberties granted by the LUMA Energy agreement.

VI. Government of Puerto Rico Human Resources Administration and Transformation Office

The Government of Puerto Rico Human Resources Administration and Transformation Office, through its Director, Zahira A. Maldonado-Molina, Esq., briefly explained her duties as Director of the HRATO and acknowledged she is

responsible for the transition process of PREPA employees who are not hired by LUMA Energy and are thus transferred to any government agency as provided by Law. **The public official also affirmed that she only read the part of the LUMA Energy agreement which concerned the employees.**

As part of the questioning, it was clearly established that, even though the laws clearly provide that the rights of PREPA employees must be safeguarded, when testifying under oath, the Director of the HRATO had to admit that **it is not explicitly stipulated in the LUMA Energy agreement.**

The Director read the agreement and specified that, with regards to PREPA employees, the only responsibility it imposes on LUMA Energy is that it “shall use commercially reasonable efforts to interview and evaluate” them. She also admitted that the agreement does NOT stipulate that the company has to employ or hire PREPA employees. The Director noted that, according to the agreement: “they are hired at LUMA’s sole discretion.”

The official confirmed that it was correct to conclude that PREPA employees are not guaranteed employment with LUMA Energy. In other words, LUMA Energy has sole discretion to decide whether it hires them or not.

The official further admitted that, even though the law provides that PREPA employees who are not hired by LUMA Energy shall be transferred to another agency of the Government of Puerto Rico, the agreement does not specify it.

The official responded, under oath, that by June 1, 2021, LUMA Energy should have enough personnel to conduct operations. She also stated that she did not know how many employees had been hired by the company.

The official explained that PREPA has to establish which structure shall remain in such entity after the agreement’s front-end transition process. She also

stated that it was the HRATO's responsibility to relocate PREPA employees who are not hired by LUMA Energy and to ensure that they do not remain in PREPA after June 1 or after the agreement's front-end transition process.

The Director of the HRATO admitted that, beyond what is provided by law, there is no concrete or specific plan for the transition process of PREPA employees who shall be transferred to other government agencies.

The Director of the HRATO expressed that, even though it has requested to PREPA the specific information regarding how many employees would be transferred to other government agencies as provided by law, PREPA had not responded.

She further stated that even though she had requested to all agencies and public corporations a list of all vacant positions, she had not yet received the information, and noted that she had not yet requested such information from the Office of Management and Budget, hereinafter the OMB.

The Director of the HRATO affirmed that if there is no vacant position within the government that is of the same classification as that of the PREPA employee, as is the case of lineworkers, the employee must be retrained so that he may hold a different position within the government.

Lastly, the official categorically stated that she does not know how many vacant positions are available in the government of Puerto Rico for PREPA employees who are to be transferred during the transition process. Furthermore, she does not have any information regarding how many employees would require retraining and there is no concrete plan for the relocation of such employees.

VII. Director of Human Resources and Labor Affairs of the Electric Power Authority

PREPA's Office of Human Resources and Labor Affairs, through its Director, Marc F. Thys-Torres, Esq., who was terminated by the Executive Director of PREPA after appearing at the public hearing, quickly began his testimony by explaining that he first started working in PREPA in 1995 and he specified his duties and responsibilities as the Director of such Office.

Thys-Torres confirmed that he had extensive knowledge of the collective bargaining agreements and labor laws applicable to PREPA employees. The official also stated that he had read the LUMA Energy agreement and had paid close attention to that which pertained to the rights of the employees for various reasons; one of those reasons being that the agreement directly affected the labor rights of PREPA employees and that was part of his duties as the Director of PREPA's Office of Human Resources.

The official affirmed, under oath, that the agreement does not compel the company, LUMA Energy, to hire PREPA employees. During the Committee's questioning, he clarified that the company was only required to interview them as stipulated in the agreement. He further specified that the agreement did not compel LUMA Energy to choose PREPA personnel.

After explaining the term "vested rights" (according to his understanding of the term as an experienced labor attorney), the Director of Human Resources further clarified that such term includes employee salaries and seniority and he affirmed that PREPA employees have various collective bargaining agreements in effect.

While under oath, PREPA's Human Resources Director explained that, as is stipulated in the agreement, PREPA employees have to resign from their

positions in PREPA in order to be transferred to LUMA Energy thereby losing, as a matter of fact, all the vested rights acquired up to that moment. He also testified under oath that PREPA employees would be transferred to LUMA Energy as new employees, that is, without their vested rights.

The official also had to testify that, under the current rule of law, which includes Act No. 26-2017, all PREPA employees who are transferred to other government agencies would lose any vested rights acquired under previous collective bargaining agreements while in PREPA. **He further stated that PREPA employees have the highest salaries in comparison to the other agencies of the government of Puerto Rico and would therefore be the most affected. The official also explained that another benefit that PREPA employees would lose immediately upon being transferred to another government agency is the PREPA health plan. He explained to the Committee that no collective bargaining agreement could be incompatible with Act No. 26-2017, which includes the collective bargaining agreements of PREPA employees.**

The Director of Human Resources explained that PREPA employed the merit principle for management employees and the seniority principle for union employees. **However, he clarified that employees lose all their rights, including their seniority, upon resigning from PREPA to transfer to LUMA Energy and they are not guaranteed a job with the company.**

The official explains that PREPA's retirement system is different from that of other agencies and PREPA employees are the only ones who contribute to it. When questioned by the Chair of the Committee, the official admitted that he did not know how PREPA employees who were transferred to other

government agencies would continue to contribute to PREPA's retirement system, as provided by law.

The Director of Human Resources stated that he did not know how many PREPA employees have requested employment with LUMA Energy, despite the fact that he is the person responsible for administering the human resources of such entity, and he further explained that he is not aware if that information is officially available officially. **The official believes that approximately 4,422 employees would fall under the mobility bubble. This makes the employees vulnerable to losing their vested rights as a result of the LUMA Energy agreement.**

In conclusion, PREPA's Human Resources Director does not have full knowledge of the PREPA employees that would be affected by the LUMA Energy agreement.

VIII. Office of Management and Budget

In his explanatory statement, Juan Carlos Blanco-Urrutia, Esq., the Executive Director of the Office of Management and Budget, certified that **the government of Puerto Rico does not have the funds available to take out a loan for \$894 million as recommended by the Financial Oversight Board to pay for the LUMA Energy agreement.** He further adds that, from a budgetary stand point, **the LUMA Energy agreement does not have access to the resources necessary to achieve its intended purpose. The Director also stated that its impact on the General Fund, in reference to the loan recommended for the LUMA Energy agreement, cannot be estimated. He explained that PREPA is a public corporation that defrays its operations with its own revenues and therefore does not receive appropriations from the General Fund. He noted that with regards to its budget, PREPA has**

a Fiscal Plan that has been certified by the Financial Oversight and Management Board for Puerto Rico.

The Director of the Office of Management and Budget **stated that he has no information on the number of vacant or “frozen” positions within the government of Puerto Rico.** This is due to the fact that **there is no single report** that encompasses the entire government even though such information is crucial for the transition process of the PREPA employees who shall be transferred to other government agencies as one of the possible outcomes of the LUMA Energy agreement. He also acknowledged that the number of vacant positions which are frozen is higher than those which are available as a result of the current rule of law.

The Executive Director of the OMB stated that he does not know where the money to pay PREPA employees who are transferred to other government agencies is going to come from, and he affirmed that no money has been budgeted. He also testified that, to the best of his knowledge, PREPA employees would keep all their vested rights during the transfer. The aforementioned contradicts the testimony given under oath by Marc Thys-Torres, Esq., who stated precisely the opposite and was recently removed from his position by PREPA’s Executive Director. **The Executive Director of the OMB also confirmed that a reserve of \$10 billion does not exist in the government of Puerto Rico’s Treasury.**

IX. Bar Association of Puerto Rico

The Bar Association of Puerto Rico (hereinafter “the Bar”) presented its testimony through its Chair, Daisy Calcaño-López, Esq., who began the Bar’s testimony by stating that PREPA is one of the most important driving forces for Puerto Rico’s economy. **Remember that maintaining PREPA’s assets in the**

hands of the People of Puerto Rico has enabled Puerto Ricans to receive electric power regardless of social class, financial status, or the location of their homes or businesses, thus allowing them to have access to this essential service. The Bar added that electricity has been recognized as an essential service by the international community as a derived right.

In what pertains to the LUMA Energy agreement, the Bar concluded that it threatens the ability of Puerto Ricans to receive such an essential service at an affordable price. Based on their legal analysis, they believe that the agreement is an unconscionable contract and, therefore, contrary to law. It explained that our code of laws prohibits unconscionable contracts because they do not comply with the principles of commutative justice, to wit, there is no equality or proportionality between the parties' rights and obligations. **This is particularly important in the case of government contracts in which the conscientious utilization of public funds, the People's money, is critical.** In their judgment, the agreement, as it is drafted, only benefits LUMA Energy. They stressed that unconscionable clauses are contrary to law because, as held by our honorable Supreme Court of Puerto Rico, they "seriously threaten the good order of our legal system." **Therefore, the Court has the power to declare unconscionable clauses in contracts unenforceable.** The Supreme Court explained that these clauses "disturb the balance between rights and obligations under a contract [...] [and] provide unjustified advantages...in contravention of the reciprocity of contractual obligations and interests, which are fundamental to the legitimacy of contracts."

The Bar believes that, if this agreement were to reach the Supreme Court, it would undoubtedly not be the first time this Forum holds an unconscionable clauses unenforceable **in view if the fact that the benefit obtained by the State upon**

executing contracts were outweighed by the costs to be incurred by agency to fulfill the terms thereof.

Furthermore, it stresses that the agreement fails to consider PREPA's current financial and operational situation or its debt restructuring and payment process at a time when **PREPA itself has stated that it lacks the necessary resources to pay the bondholders or make the \$544.7 million payment it owes to the Retirement Plan of its employees.** They conclude that the agreement does not represent savings for PREPA.

They further conclude that **none of the provisions, clauses, or policies of the agreement compel LUMA Energy to reduce operating costs and rates** as required by the regulatory framework. In that sense, the agreement does not provide any benefit whatsoever for PREPA or its customers.

The Bar confirmed that LUMA Energy makes no financial contribution whatsoever to PREPA or the operating costs thereof. They also stress that the agreement subjects PREPA to a 15-year financial commitment that entails payments amounting to almost **\$1.5 billion** during said period, which does not allow us to reasonably understand whether LUMA Energy will provide a service different than that PREPA by itself already provides. In fact, it will use the same personnel to perform the work. They add that the agreement allows LUMA Energy to request a review of consumer rates for the purchase of electricity, which is nothing but a rate increase.

The Bar notes that, in accordance with the agreement, LUMA Energy has no obligation whatsoever to hire all of PREPA's regular employees and PREPA does not have sufficient positions to relocate said employees. In addition, LUMA Energy has no obligation to make any payment toward PREPA Retirement System's debt.

During their analysis, they also concluded that, under such an agreement, LUMA Energy has no obligation to comply with the renewable energy policy established by Act No. 17-2019, to reduce and eventually eliminate electric power generation from fossil fuels by integrating renewable energy in order to achieve a minimum of forty percent (40%) on or before 2025; sixty percent (60%) on or before 2040; and one hundred percent (100%) on or before 2050.

As stated by the Bar, according to the agreement, the payments to be made to LUMA Energy have priority in the PROMESA Title III case. In other words, LUMA Energy will be receive full payment first, over PREPA's operating obligations and the contributions to the Retirement System.

The Bar concluded that, according to the agreement, LUMA Energy is not compelled to recognize the obligations incurred by PREPA under collective bargaining agreements, including PREPA employees' job classification and seniority. LUMA Energy is also not compelled to recognize the "exclusive representatives" status of PREPA's various labor unions. Even worse, the Bar believes that the agreement releases LUMA Energy from the payment of any type of compensation owed to PREPA employees as a result of the transition.

The Bar reports that any investment in infrastructure made by LUMA Energy during the effective term of the agreement will be for its benefit and, as of the termination date of the agreement, PREPA will be bound to pay LUMA Energy for said investment, if it is interested in keeping it.

The Bar concluded that, as drafted, the agreement releases LUMA Energy from having to pay for insurance during the effective term of the agreement. Furthermore, LUMA Energy may terminate the agreement unilaterally. For instance, in the event of a Force Majeure Event that affects the T&D System

and that continues for a period in excess of eighteen (18) months, LUMA Energy may terminate the agreement.

According to the Bar, in practice, the responsibility of administering PREPA's Energy Public Policy is delegated to LUMA Energy, thus creating, as a matter of fact, a private monopoly on the direct services provided to the People.

The Bar Association of Puerto Rico is not the only institution that has concluded that the agreement entered into with LUMA Energy only favors the interests of said private entity and operates to the detriment of the best interests of the People of Puerto Rico. The Bar states that the agreement constitutes an onerous burden for all Puerto Ricans, since it increases the cost of electricity and deprives the Island of its main patrimonial and social asset.

Lastly, the Bar states that this agreement is the result of a negotiation made behind our People's back, without any transparency or citizen participation, in violation of the Constitution of Puerto Rico and the laws approved, since it impairs the rights of its employees under the collective bargaining agreements and its Retirement System as well as violates the regulatory framework of authorized PREPA transactions. Therefore, there should be no room for the implementation of this agreement.

The Bar Association of Puerto Rico believes that this agreement should be declared void.

X. College of Engineers and Surveyors of Puerto Rico

The College of Engineers and Surveyors of Puerto Rico, hereinafter the College of Engineers, gave its testimony with regards to the LUMA Energy agreement through its President, engineer Juan F. Alicea-Flores; the Chair of the Energy Committee, engineer Javier Quintana; advisor and member of the Energy

Committee, engineer Rhonda Castillo Esq.; and engineer Manuel Vélez who is also a member of the Energy Committee. Engineer Alicea-Flores began his testimony by explaining Act No. 120 and summarizing its statement of motives which mentions that PREPA lacks the conditions to offer an efficient service at a reasonable cost for customers, as well as the necessary financial resources to carry out its operational restructuring, achieve financial recovery, and make the substantial infrastructure changes it requires.

The analysis conducted by the College of Engineers identified the factors which contributed to PREPA's current situation:

- The high cost of fuel in a variable and speculative market,
- An antiquated and deteriorated electric power infrastructure with frequent service interruptions,
- The constant environmental compliance demands made by the Environmental Protection Agency, EPA, which cost millions of dollars,
- Myriad labor disputes,
- Failed and costly attempts to modernize the infrastructure,
- A debt of approximately \$9 billion.

In the judgment of the College of Engineers, there was an expectation with Act No. 120-2018 that the process to transform the Island's electric power system into a modern, sustainable, reliable, efficient, cost-effective, and resilient to the ravages of nature, and earthquakes, among others, was about to begin.

The College of Engineers concludes that the LUMA Energy agreement authorizes this private company to execute contracts of up to \$10 million without approval from P3A or PREPA, request an electricity rate increase, and to carry out all T&D System operation and management duties as well as control all of PREPA's

operations except for the electric power generation. In other words, LUMA Energy will be responsible for managing, controlling, and planning Puerto Rico's electric power system in the long term.

The College of Engineers makes the following recommendations:

- That who is responsible for environmental compliance be specified.
- That the agreement be reviewed to establish a more balanced risk distribution between the owner and the operator thus reducing the risk assumed by PREPA, and, consequently, the People of Puerto Rico.
- That the operation of the electric power system, the implementation of grid reliability standards, and electric power grid planning remain in the public sector. Such duties should fall on one or several independent organizations whose sole interest is the Island's wellbeing.
- That the agreement define what PREPA's final role will be beyond being the infrastructure owner and other limited functions.
- That an organizational structure remain within PREPA with an Executive Director who will continue to answer to PREPA's Board of Directors. This reduced structure must administer and oversee the agreement with persons who have the technical knowledge of and experience in electric power utility company workings and operations, power transmission and generation, and financial and environmental regulations. This will mitigate losses if, for any reason, it is necessary for the government once again assume operational control.
- That a **contingency plan** be prepared in case the agreement is terminated early and for when it expires.

- That the agreement specify whether the operator shall be in charge of the irrigation system for which PREPA is currently responsible.

After an analysis of the LUMA Energy Agreement's expenses and disbursements, the College of Engineers concluded that the agreement represents an additional expense for the People of Puerto Rico.

In view of the LUMA Energy agreement's exorbitant expenses, the College of Engineers makes the following recommendations:

- That the Agreement fix penalties for not achieving the projected savings or that performance bonuses be contingent upon the achievement of such savings.

- That the established performance metrics be expanded to adopt metrics which take into account economic dispatch, the purchase of fuel, PREPA's biggest customers, the electric power quality, and voltage and frequency control, among others.

- That a third party evaluate the data or the information to determine whether LUMA Energy is complying with the metrics.

- That the resources contracted by P3A for the evaluation of the agreement's metrics have the experience and knowledge necessary to perform such work.

- That performance expectations be improved and clear objectives established for operations during states of emergency caused by insufficient generation and natural disasters.

- To include, in the manuals and procedures which regulate investment in capital improvements with state and federal funds, provisions which impose controls on LUMA Energy with regards to performing capital improvements

in order to prevent conflicts of interest between public and private interests, guarantee effective competition in the selection of the companies that shall perform such projects, and ensure that the operator does not select the projects to be performed based on its own interests rather than public priorities and interests.

- That priority be given, whenever possible, to the contracting of local resources and companies for infrastructure improvement projects.
- That all infrastructure improvement project contracts using federal funds in excess of \$10 million be subject to an audit by an independent government entity.
- That the agreement be revised to establish a more balanced risk distribution as well as expand the role and powers of the owner given that the LUMA Energy agreement favors benefitting and protecting the company.
- That the duties related to the operation of the electrical system (dispatch control), the establishment of grid reliability standards, and the planning of the electric power grid remain in the public sector. Such duties should fall on independent organizations whose sole interest is the Island's wellbeing.
- After the agreement enters into effect, a smaller version of PREPA should exist whose leader answers to a Board of Directors, and whose structure is responsible for managing and overseeing the agreement. This structure should have the capacity to take over the operation and maintenance of Puerto Rico's T&D System in case it is necessary in the future.

Lastly, it is the position of the College of Engineers of Puerto Rico that the LUMA Energy agreement, at a minimum, be amended to include the aforementioned recommendations.

XI. Engineer Tomás Torres-Placa, Representative of Customer's Interests to the Governing Board of the Puerto Rico Electric Power Authority

The Representative of Customer's Interests to the Governing Board of PREPA expressed that, even though it is necessary to transform Puerto Rico's electric power system into a system that provides customers with a reliable service at a low cost, the Energy Compliance Certificate was approved **without any citizen participation or input whatsoever** during the LUMA Energy certification process.

Engineer Torres-Placa certified that, on June 17, 2021, PREB issued the Energy Compliance Certificate without any citizen participation which is inconsistent with the broad citizen participation principles set forth in Act No. 17-2019.

Torres-Placa stated indicated that **the agreement was discussed only once** by the Governing Board of the Electric Power Authority before the vote for its ratification was held. Furthermore, he explained to the Committee that there was no interaction between the Board of the Electric Power Authority and LUMA Energy or any of its subsidiaries or parent companies beyond the private meetings held between some of the members of the Governing Board and P3A.

Engineer Torres-Placa further indicated that, even though the execution of the agreement requires over \$800 million, to this day, there is no certainty as to where would those funds come from. He explained that these costs are in addition to the annual payment of \$125 million, including incentives.

Engineer Torres-Placa highlighted that Section 7.1 of the agreement establishes that fixed fees shall be used for a limited portion of the operations related to LUMA Energy services, which include:

- The compensation for its six (6) executives: (1) the Chief Executive Officer, (2) the Chief Financial Officer, (3) the Head of Human Resources, (4) the Head of Capital Programs, (5) the Head of Information Technology, and (6) the Head of Customer Service.
- Payments to the Board of Directors of ManagementCo.
- Administrative costs, overhead costs, advisors, accounting, and related costs.
- Any costs related to the Puerto Rico Lineworkers College, in addition to the one already operated by the Electric Power Authority.

Moreover, Torres-Placa emphasized that, according to Section 7.2 of the agreement, the other costs related to the operations of the electric power system originate from payments on account of reimbursements, identified in the agreement as **“Pass-Through Expenditures,”** incurred by LUMA Energy. According to **Annex XI** of the agreement, Pass-Through Expenditures include: wages, salaries, bonuses, employer contributions to pension and employee medical plans, other benefits and post-employment benefits; costs incurred in the performance of T&D System operation and maintenance services, including the costs of all subcontracted and seconded employees, all goods and services, vehicles and mileage, employee per diems, office supplies, **meals, entertainment, leases,** equipment rental, among others; capital improvements; professional services; security of physical assets; lawsuits and litigation; **costs related to Outage Events;** costs associated with the System Remediation Plan, the Emergency Operations Plan, and other plans; taxes on assets or revenues, including costs incurred in connection with any tax audits; Commonwealth taxes; any special municipal construction taxes; refunds to customers; insurance costs, including premiums, claims, and deductible payments;

intellectual property costs; data security; costs incurred in connection with ServCo's performance serving in the role of T&D System operator; costs incurred in connection with performance of the Back-End Transition; the cost of compliance with the Puerto Rico Energy Bureau; costs necessary to achieve cost reductions or for initiatives to the benefit of customers; **costs incurred in connection with branding** and public communications; community service programs; and costs incurred in connection with the administration and performance of the system contracts. In addition, other parts of the agreement, such as Section 3.9(b)(ii), provide for additional payments to the Operator.

Engineer Torres-Placa recommended that LUMA Energy only be paid a fixed compensation as well as any other variable pass-through expenditure that is strictly necessary, and any subsequent incentive validated through a process before PREB with broad citizen participation. Furthermore, he recommended the elimination of any possibility that LUMA Energy receive funding for the purchase of fuel, and for the payment of other operating costs which can be defrayed directly by the Electric Power Authority as is currently done. The only exception to the aforementioned is the financing of capital projects with federal funds, and any emergency fund necessary to address outage events caused by natural disasters which may require funding, although such funding shall be disbursed by PREPA.

Torres-Placa stated that one fault in the agreement is that **the Public-Private Partnership Authority shall be the only entity responsible for the contract supervision and it excludes the Electric Power Authority**, which is the entity with expertise in the energy field. He explains that the result of this lack of supervision by an entity with expertise in the energy field may lead to petitions and positions on the bankruptcy proceeding under Title III of PROMESA, before the regulatory

entity, the Puerto Rico Energy Bureau, with respect to compliance with the New Energy Public Policy, Act No. 17-2019, and aspects related to rates, without any supervision whatsoever from the Electric Power Authority, which is the public entity that remains as the owner of assets of the electric power system. This lack of supervision by the Electric Power Authority is not appropriate given that this is not a concession agreement where the Operator invests its capital to obtain a return thereon, but rather, it is an agreement whereby the Electric Power Authority pays LUMA Energy a fixed fee to provide operation and maintenance services in connection with the transmission and distribution assets of the public corporation.

Engineer Torres-Placa highlights as another fault in the agreement, the fact that it provides for LUMA Energy to be able to contract its affiliates as part of the services rendered thereby. In this case, the official states that strict supervision of the company is essential to guarantee there is no bias in its subcontracting. In addition, **to establish criteria that do not prevent or hinder the contracting of local manpower, materials, equipment, supplies, services, or any other type of subcontracting is of utmost importance.**

The official warned that LUMA Energy is unable to begin operations on June 1, 2021, as established in the agreement because, as of the day of the hearing, it is well-known that LUMA Energy has not hired personnel to begin operations. The official explains that this is an alarming and concerning situation given that the National Oceanic and Atmospheric Administration of the United States (NOAA) considered changing the beginning of the hurricane season, which is June 1, 2021, to an earlier date, May 15, 2021. Therefore, not having a serviceable structure to Operate and Maintain the T&D System before the hurricane season begins is highly questionable.

Engineer Torres-Placa also confirmed that just close to one thousand PREPA employees had applied for a job with LUMA Energy and the rest, approximately three thousand employees, shall either be transferred to the central government, as established in Act No. 17-2019, or apply for retirement. According to the official, this causes two problems because, if these employees were to choose any form of early retirement, it could worsen the financial condition of the Retirement System of the Electric Power Authority which is already very weak, thus jeopardizing the retirement of the public corporation's employees. Furthermore, if the employees choose to be transferred to the central government it would entail a double payment for PREPA and the Government of Puerto Rico for they would have to reimburse employee wages and benefits as stated in Section 7.2 of the agreement in addition to the over \$125 million paid annually for the fixed fees and incentive fees.

Another aspect that should be noted according to engineer Tomás Torres-Placa is that Sections 14.1 through 14.4 of the agreement state in detail that said agreement may be terminated upon not less than one hundred twenty (120) days prior written notice, whether it is terminated by LUMA Energy or PREPA. In other words, since all PREPA operations are transferred to LUMA Energy under this agreement, except for the generation, this not only causes uncertainty as to the reliability of the service, but also entails countless other unnecessary risks given the extent of PREPA operations.

Engineer Tomás Torres-Placa reminds us that news media has disclosed that the Long Island Power Authority (LIPA) is evaluating whether to rescind the current agreement with PSEG. Among the various options under consideration is reverting to the public model. This is very important given that the agreement between LIPA

and PSEG was the model used by the P3A for the LUMA Energy agreement transaction.

Given that fundamental changes must be considered and made to the LUMA Energy agreement, we recommend postponing the **Service Commencement Date** to a date after the end of the hurricane season.

Lastly, engineer Tomás Torres-Placa believes, that even though PREPA must and needs to be transformed, sadly, this agreement, as drafted, provides no guarantee that such purpose shall be achieved. The agreement must be amended.

XII. Group of Private Citizens and PREPA Retirees, Ivelisse Sánchez-Soultaire, Esq., a PREPA retiree and Former Secretary of PREPA's Governing Board, Mr. Héctor Rosario-Hernández, Esq., retiree and Former Executive Director of PREPA, and Luis R. Santini-Gaudier, Esq., Former Consumer Representative to PREPA's Governing Board.

The Former Director of PREPA, Héctor Rosario-Hernández, and the Former Secretary of PREPA's Governing Board, Ivelisse Sánchez-Soultaire, Esq., stated that PREPA's proper management, governance or administration are important to professionalize and depoliticize the agency, and there is an urgent need to transform Puerto Rico's electric power system. They admitted that the public policies that have been implemented in PREPA degraded the system; promoted unnecessary spending such as large projects that were cancelled, in some cases even after construction had started; human capital flight; and inappropriate recruitment criteria. They further stated that a negative public perception has been constructed based on unfair comparisons, the abandonment of PREPA's sound administration to justify its privatization, and the poor decisions made after hurricanes Irma and María.

Former officials explained that the adhesion contract protects LUMA Energy's interests over the interests of Puerto Rico, and said agreement is justified based on savings they shall allegedly achieve through efficiency improvements made to PREPA. However, this is inconsistent with reality since a significant electric power demand reduction is projected for Puerto Rico. The alleged efficiency improvements are not based on scientific or careful analysis, but rather on hypothetical criteria established by FTI Consulting, a P3A consultant.

Mr. Rosario-Hernández indicated that the proposed debt restructuring agreement underlies all scenarios. The debt restructuring agreement imposes a transition charge, on top of the electricity rate, with a twenty-four (24)-year payment schedule with staggered increments that can start at 2.768 cents per kWh up to 4.552 cents per kWh. Even though a possible new debt restructuring agreement is being negotiated, this is the one currently in effect. Specifically, according to calculations, the operational deficit for fiscal year 2021 could entail an increase of more than 3 cents per kWh in the cost of electricity. As of February 2021, PREPA's operational deficit reached \$579.2 million. He added that there will eventually be an increase of approximately 3.66 cents per kWh on account of the debt restructuring. If we add these charges to the current cost of 19.63 cents we get a projected cost of 26.29 cents per kWh. To the aforementioned we can add close to one cent to partially defray the debt of the Electric Power Authority Employee Retirement System. All of this adds to a grand total of 27.29 cents per kWh, not taking into account any possible increase in fuel costs. **All of the foregoing could entail an increase in the cost of electricity of approximately 50.52% when compared to the month of March 2021. Such an increase would worsen if the loan in the amount of \$894 million is taken out**

to pay for the LUMA Energy transition since it would have to be repaid with interest.

Héctor Rosario-Hernández stated that, according to publicly available documents, the projections for the variables used to justify the agreement are too optimistic and fail to include an analysis that takes into account the uncertainty associated with certain variables. He further explains that the FTI Consulting report, which was included in the Partnership Committee Report to justify the awarding of the contract to LUMA Energy, compares the cost of energy in Puerto Rico to other jurisdictions of the Continental United States, and concludes that such costs are higher in Puerto Rico. However, Rosario-Hernández explained that this premise vitiates the analysis because Puerto Rico should be compared to similar jurisdictions that have an isolated system and rely on maritime transport for their fuel. He added that an isolated system is different from an interconnected system because the latter requires a much lower capital investment for electric power generation. The investment can be as much as 30% higher for isolated systems like the one in Puerto Rico, as is the case of Hawaii. This is because an isolated system must have enough electricity generation capacity to meet the demand and have enough in reserve in case a generation unit is forced offline or is out of service due to scheduled maintenance.

The former officials explained that LUMA Energy has claimed \$60.2 million in expense reimbursements in addition to \$41.5 million on account of the fixed fee for a total of \$101.7 million in just eight months and they have already requested increase of \$15,648,069 for the Front-End Transition. This affects PREPA's finances and can lead to an increase in electricity rates. Furthermore, these expenses

are paid by PREPA without receiving an itemization thereof which could result in the misappropriation of public funds.

They also indicated that, even though the original version of Act No. 57-2014 created a mechanism to achieve an autonomous and independent Governing Board, sadly, this Act was amended several times after the change in government administration in 2017 in order to revert it back to its politicized structure.

The former officials expressed their concern with regards to the expressions made by LUMA Energy's CEO, Wayne Stensby, in which he affirms that he will not publicly disclose the salaries of his executives and that the transition year will require greater refundable expenses because they were building LUMA Energy, despite the fact that such salaries and refundable expenses are paid with public funds and Section 9 of Article VI of the Constitution of the Commonwealth of Puerto Rico establishes that: "Public property and funds shall only be disposed of for public purposes, for the support and operation of state institutions, and pursuant to law."

In addition, they stated that Section 5.5 of the agreement establishes that LUMA Energy shall prepare analyses and forecasts to determine the need for capital improvement projects, including the need for generation-related capital projects in accordance with Section 5.13(d) and the Shared Services Agreement, including the need for PREPA to enter into new generation supply contracts and power purchase agreements. This shall allow LUMA Energy to invest in capital improvement projects and any acquired or constructed assets shall be property of LUMA Energy. They explained that LUMA Energy could adjudicate these projects, as well as the projects defrayed with federal funds, to any affiliates or subsidiaries of its parent companies. Likewise, any LUMA Energy subsidiary or affiliate, and its parent companies could develop any of the new power plant projects thus creating a

potential conflict of interest both during the adjudication process, as well as upon deciding how the generated energy shall be dispatched to the Transmission and Distribution (T&D) System in the Energy Control Center.

The former officials highlighted that Section 406 of the Stafford Act, which is FEMA's Organic Act, explicitly provides that FEMA funds are for government entities or nonprofit facilities which provide critical services to a government entity. They further explained that, in the case of LUMA Energy, various persons and entities have criticized the agreement stating that it is a de facto privatization in which a for-profit corporation, to wit, LUMA Energy, shall discharge duties that go beyond managing the Electric Power Authority's T&D System. Under the agreement, LUMA Energy has the responsibility and power to establish plans and rates, manage assets and budgets, award contracts through bids, charge for services, and manage public relations and other financial matters. All of these characteristics indicate that LUMA Energy is not a manager, but rather a for-profit corporation that is replacing PREPA through a process that dismantles the government entity. This situation could put at risk the federal funds destined for the reconstruction of the electric power grid. The government of Puerto Rico is relying on an interpretation which could be incorrect and may prevent FEMA from disbursing such funds.

The witnesses also explained that LUMA Energy can include personnel from its affiliate companies among the subcontractors, therefore, LUMA Energy can choose Quanta Services and ATCO, and other subsidiaries, to make all the repairs to and/or reconstruct the Puerto Rico electric power system (they are their bosses and owners after all) through the awarding of contracts. Furthermore, Quanta Services and ATCO have obtained privileged information through personnel from Operator's Affiliates assigned to perform the Front-End Transition Services.

Therefore, they have an advantage over other companies participating in the bidding or contracting process for the rehabilitation and reconstruction of Puerto Rico's electric power system, and to build and operate new generation. This promotes unfair competition which could be inconsistent with the best interests of the People of Puerto Rico. Such is the case that Quanta Services communicated to its investors, through its annual reports, that there were significant opportunities to compete for the works related to the modernization of Puerto Rico's electric power system.

Moreover, the witnesses noted that the agreement provides many opportunities through which LUMA Energy may terminate the agreement unilaterally (Section 14.5 (a) through (f) except (e)) which is very concerning, and Section 14.5 (c), Extended Force Majeure Event, establishes that the Operator has the right to terminate the Agreement in the event of a Force Majeure Event:

(c) ... Operator shall have the right to terminate this Agreement upon not less than one hundred twenty (120) days' prior written notice to Operator or Administrator, respectively, in the event that a Force Majeure Event continues for a period in excess of eighteen (18) consecutive months and materially interferes with, delays or increases the cost of the Front-End Transition Services or the O&M Services.

They explained that, more importantly, Force Majeure is defined as:
... 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; ...It is specifically understood that none of the following acts, events or conditions shall constitute a Force Majeure

Event: (1) reasonably anticipated weather conditions for the geographic area of the T&D System, **except to the extent such weather condition otherwise falls under one of the circumstances described in clauses (A) or (C) above;**

The witnesses added that, during a force majeure event, LUMA Energy could increase rates and costs according to Section 17.2 (c). Subsection C of Part I of the agreement (Scope of Work [sic]) establishes that LUMA Energy shall be responsible for:

(1) managing control center operations, including generation scheduling and economic/reliable T&D System dispatch; (2) balancing the supply and demand of electricity, including reacting to changes in demand in real time, adjusting generation dispatch to be in balance with demand and maintaining the T&D System at safe operating levels in accordance with Prudent Utility Practices and System Operation Principles.

Meanwhile, Section 4.B of Act No. 83 of May 2, 1941 (22 L.P.R.A. sec. 195B [sic]), provides that the Board shall establish and maintain mechanisms that ensure the autonomous operation of the Energy Control Center:

In order to protect the reliability in the management of the electric power grid, prevent discrimination against electric power companies interconnected to the electric power grid, and ensure greater independence in the operations of the electric power grid, the Board shall appoint, with the advice of the Executive Director, a Director of the Energy Control Center who shall answer directly to the Executive Director. With the assistance of the Director of the Energy Control

Center and the Executive Director, the Board shall establish and maintain mechanisms that ensure the autonomous operation of the Energy Control Center...

The witnesses believe that this part of the agreement, which transfers the Energy Control Center to LUMA Energy, is contrary to law and the Act must be amended in order to make it feasible. A bonus of \$20 million is to be paid if the performance metrics are achieved.

According to the witnesses, the Metrics proposed by LUMA Energy under Annex IX are subject to change and require the establishment of a baseline. While it is true that the metrics established in Annex IX are typical of the electric power industry, the effective application thereof is contingent upon the establishment of an appropriate baseline. The baseline cannot be set so low that LUMA Energy is able to receive the Incentive Fee by performing the bare minimum.

The witnesses indicated that this process requires that the metrics be reviewed by a committee, P3A, and PREB. It should be a transparent process with citizen participation, requirements which have been established by law, but have not been observed up to this point in the processes pertaining to this agreement. They clarified that the metrics approval process has barely begun according to PREB's case record and the Motion LUMA Energy filed with PREB on January 29, 2021.

Furthermore, the witnesses stated that the agreement does not contain binding clauses which guarantee LUMA Energy's obligations and they explained that a Guarantee is necessary because LUMA Energy is a newly-created limited liability company which does not appear to have significant assets. The agreement provides that Quanta Services shall serve as the guarantor through a Guarantee Agreement

which must be executed before the Effective Date, to wit, June 22, 2020, since it is one of the conditions for the execution of the LUMA Energy agreement.

The witnesses believe that it is important to conduct an evaluation of Quanta Services' financials to verify it is financially sound and that it has the capacity to act as guarantor. From the proposed format included in Exhibit D of the agreement and Section 18.3 thereof, it arises that Quanta Services is willing to guarantee certain types of damages and losses up to a maximum of \$35,000,000 in any contract year and \$105,000,000 during the term of the agreement. There is a \$5 million deductible during the first two years of the agreement and a \$2.5 million deductible for the remainder of the term. The liability limit is not appropriate for this agreement because it does not ensure the interests of the residents of Puerto Rico.

The witnesses stated that there are many preparatory and complementary documents which have not been made public, therefore, it would be convenient to evaluate whether they should be requested through a person with standing to do so. This is further proof of the lack of transparency in the processes surrounding the awarding and execution of this agreement. It is unacceptable that an agreement such this one, which puts the future of Puerto Rico's electric power in the hands of a private entity for the next 15 years, has been drafted and awarded with a total lack of transparency and citizen participation.

The witnesses denounced that the adjudication process was really carried out with two bidders since the other bidders retired prior to the Request for Proposals or at the start of that process. LUMA Energy was not among the bidders participating in the RFP process. In fact, LUMA Energy joined the RFP process several days after the company was selected. The contract was adjudicated on January 1, 2020, and LUMA Energy was created and registered on January 17, 2020. For such reason,

there are questions surrounding the legality of the RFP process through which the contract was awarded. In order to determine whether such process was lawful, the adjudication process of the adjudication committee must be evaluated. This process has been kept under strict secrecy and confidentiality even though it should be a public process, pursuant to Act No. 29-2009.

The witnesses recommended the creation of an Ad Hoc Group composed of the best Puerto Rican professionals selected by Academia, Professional Associations, PREPA Retirees and Employees, and alumni from our public and private universities. This allows part of the financial gain to remain in our economy. This must be carried out in compliance with the **Integrated Resource Plan** to be implemented in accordance with PREB's statutory and regulatory provisions.

Furthermore, they recommended that critical public policy decisions, the selection and execution of infrastructure projects, the procurement and bidding processes, the selection of human resources, as well as the agency's administrative organization all be depoliticized. Competitive processes that are not corrupted by outside influences must be carried out in order to achieve this, and such processes should be transparent and include citizen participation.

They indicated that the new electric power system should promote energy efficiency and conservation, the generation of clean and renewable distributed energy with and [sic] storage, and maintain energy generation from fossil fuels to a minimum during the transition to 100% renewable energy while promoting the participation of citizens and the labor sector in the decision-making process. This should all be achieved under the supervision of a depoliticized, independent, and strong regulating entity.

They indicated there are scenarios in which LUMA Energy could remain as the PREPA operator without dismantling PREPA, thus preventing that Puerto Rico be left without an operator in the event LUMA Energy leaves for any reason. Another option is for LUMA Energy to remain as a “**project manager**” for the contracting processes and to manage the \$10 billion in federal funds. This shall ensure that at least 50% of the companies contracted are Puerto Rican companies, provided they are available. In order to achieve the aforementioned, LUMA Energy, in conjunction with PREPA, must establish competitive processes for Puerto Rican companies that can participate in the reconstruction and ensure the projects are compliant with the Integrated Resources Plan as well as the laws, regulations, and executive orders of the federal government and the President of the United States, Joe Biden.

The witnesses stated that the Operation of the Electric Power System cannot be left at the discretion of a private or public entity that does not have the expertise necessary to operate it.

The witnesses concluded that they believe the agreement should, at a minimum, be amended to correct the deficiencies discussed in this testimony, even though they have serious doubts with regards to the legality of the adjudication process as well as certain sections of the LUMA Energy agreement. Just as they stated at the beginning of their testimony, Puerto Rico has an urgent need to transform the administration and infrastructure of its Electric Power System. Said transformation should be a successful one that promotes economic development, improves the quality of life of all the residents of Puerto Rico, and promotes job creation. To achieve this goal, all the parties involved, to wit, the Government, PREPA’s Upper Management, and all of its workers, must recognize that certain

prerogatives must be relinquished in order to establish a model that meets the needs of our Island.

When asked by the Chair of the Committee whether the agreement should be amended or terminated, Ivelisse Sánchez-Soulture, Esq., concluded that it should be terminated. Santini-Gaudier, Esq., stated that the agreement “suffered from vagueness,” and it should be terminated. Former PREPA Director Héctor Rosario recommended that, at a minimum, the agreement be amended to correct the deficiencies which have been discussed, however, he favored its termination.

XIII. President and CEO of LUMA Energy

President and CEO of LUMA Energy, William Stensby, appeared in representation of the company and presented its marketing materials which consisted of generalities that highlight the benefits of his proposal, and who, furthermore, was not very responsive and chose to evade questions at the Public Hearing. During the hearing, he repeatedly argued that LUMA Energy is a private company and thus did not have to provide the information requested by the members of the Committee.

When questioned by the Chair of the Committee, engineer Stensby admitted that the expenses incurred by LUMA Energy were refundable by PREPA and that their Service Fee of up to \$125 million would be defrayed from the rates paid by PREPA’s customers. When asked by the Chair of the Committee whether he would receive a salary that oscillated between \$500 thousand and \$1 million, Mr. Stensby refused to answer.

The Chair of the Commission informed Mr. Stensby on various occasions that LUMA Energy is a privatizing entity that would manage PREPA’s T&D System, and be subsidized with public funds, therefore, the Legislative Assembly does indeed have total jurisdiction to request information from LUMA Energy. However,

Mr. Stensby stated that he did not know how much money LUMA Energy had charged PREPA to date.

The Chair of the Committee requested Mr. Stensby, in various ways, to furnish information on Quanta Services and ATCO which are the founders of the LUMA Energy consortium. The Chair also requested that he provide information on their track record managing other T&D Systems. During the public hearing, Mr. Stensby was clearly asked how it was possible that an operation and maintenance agreement for a term of 15 years was negotiated in less than an hour. Mr. Stensby answered that negotiations between Quanta Services and ATCO were already underway, but then they decided to join efforts and create the LUMA Energy consortium.

When questioned by the Chair of the Committee, Mr. Stensby refused to answer who were the members of LUMA Energy's Board of Directors. In response, the Chair of the Committee stated that it was necessary to know the identity of the persons who were going to manage PREPA, which provides electric power, an essential service, to the People of Puerto Rico. Mr. Stensby, however, did answer that he is an ATCO employee, but categorically refused to disclose his current salary with LUMA Energy. Mr. Stensby was informed that since PREPA was LUMA Energy's sole customer, his salary was strictly defrayed with public funds and for such reason he had to disclose it to the Committee. Mr. Stensby further stated that he did not remember when he was appointed President of LUMA Energy.

It transpired during the Public Hearing that LUMA Energy became incorporated in the Department of State on January 17, 2020. Mr. Stensby stated that he did not know who incorporated LUMA Energy in the Department of State of

Puerto Rico and added that he acted as a LUMA Energy representative in a meeting around January 15, 2020.

Stensby acknowledged that, in addition to managing PREPA's distribution system, LUMA Energy would manage billing, customer service, the Monacillos energy distribution center, and, as stipulated in the agreement, it shall participate in the fuel purchasing process.

LUMA Energy will need approximately 3,800 employees according to Stensby, however, he admitted that they have only interviewed 1,500 employees of which 1,132 are PREPA employees.

The Speaker of the House of Representatives appeared at the Public Hearing and, among the statements he made, he demanded that the Governor of Puerto Rico take action and discuss amendments so that the agreement truly pursues the best interests of the People of Puerto Rico.

During his turn, the representative of the Puerto Rican Independence Party, Denis Márquez, stated that engineer Stensby had not been very responsive to the Chair of the Committee's questioning and that LUMA Energy's testimony had been extremely vague. He further stated that the job security of PREPA's employees was in danger, and that there is no certainty as to how the Sole Employer Act would be applied. He further expounded that the start of LUMA Energy entailed the termination of the collective bargaining agreements reached by the unions which group the various PREPA employees. The Representative stated that this an unconscionable contract which grants LUMA Energy preferential tax treatment.

The Chair of the Committee granted engineer Stensby two calendar days to furnish, to the Committee, LUMA Energy's meeting minutes, as well as copies of all written and electronic communications between him and government officials.

Mr. Stensby was warned that, if he failed to produce the documents, they would request the authorization of the Speaker of the House of Representatives to request the court to compel the production thereof. In addition, Mr. Stensby was granted five days to produce a criminal record certificate from those places in which he worked for Quanta Services, ATCO, or LUMA Energy.

With regards to the requests to produce information made during the Public Hearing, LUMA Energy refused to produce such documents stating that it is a private company, and that such documents were confidential.

When questioned by the Chair of the Committee, Mr. Stensby alleged that he did not have knowledge of Puerto Rico's topography and was unable to place several of the Island's municipalities including Guayama. He was also asked whether he knew former governor Ricardo Rosselló, and he answered no, but later admitted to meeting with him on two occasions. Mr. Stensby stated that he had meetings with all the candidates for Governor during the November 2020 elections as well as with former PREPA director, engineer José Ortiz.

When asked by the Chair of the Committee whether he would be willing to renegotiate the Force Majeure clause and the entertainment expenses, Mr. Stensby indicated that he would not be willing to renegotiate the agreement or amend any clause, claiming the agreement is legal and legitimate.

XIV. Institute for Energy Economics and Financial Analysis

The Director of the Institute for Energy Economics and Financial Analysis, hereinafter the Institute, Tom Sanzillo, who appeared through video conference, and expressed in his analysis of the agreement that he **found various fundamental** defects which would probably prevent Puerto Rico from achieving its objective of having an electric power system that is affordable or based on renewable energy.

The Institute identified the following defects in the LUMA Energy agreement:

- Poor or weak supervision of LUMA Energy;
- Performance metrics not well designed or insufficient because they do not address the fundamental objectives, including achieving rates of 20 cents/kWh and a renewable energy standard of 40% by 2025;
- Hidden costs in the agreement;
- Mismanagement in the transition process for PREPA employees;

The Institute added that since the publication of his report, additional information has been disclosed, namely:

- Main red flags regarding the original acquisition process;
- Additional hidden costs in the agreement;
- Additional details of the budgets proposed by LUMA Energy which indicate that the latter would likely fail to fulfill its promise not to increase the electricity rates; and
- New information about federal funds which raises more concerns about the agreement hindering Puerto Rico's capacity to reach its renewable energy goals.

The Institute's investigation shows that the evaluation of offers and the negotiation of the LUMA Energy agreement were carried out by a **Partnership Committee** composed of five members. Upon reviewing the documents of the evaluation process with information obtained at Puerto Rico nonprofit organization Cambio's request for public information, which was shared with IEEFA, it was learned that **four (4) of the five (5) members of the Partnership Committee reported identical scores in 37 of the 38 categories. Even worse, three (3) of the members even copied the same numeric error when adding the scores.**

Moreover, it shows that some of the committee members indicated that their scores **were based on recommendations made by FTI Consulting, Inc.**, a non-Puerto Rico consulting firm that was hired by the Public-Private Partnership Authority.

The FTI Consulting Inc. report, which was received after a second request for information, showed specific scores related to financial metrics **that seemed to have been copied directly from the score cards**. Even though the FTI Consulting Inc. report does not show how the four (4) members of the Partnership Committee **also reached the same identical scores in the technical metrics** (which represent 45% of the total score). Our analysis shows that the score cards were calculated by the Public-Private Partnership Authority and these scores were used by the P3A Executive Director as a basis for a recommendation to vote in favor of LUMA Energy as the winning bidder.

The Institute found in the final report of the Partnership Committee that on January 11, 2020, the Committee held a meeting “to (1) discuss the Definite Proposals, (ii) determine the next steps, (iii) and select LUMA Energy as the Preferred Proponent.” However, the documents furnished by P3A show that at **this “meeting” there was a unanimous up or down vote by email to approve LUMA Energy as the preferred proponent based only on the score cards of the Partnership Committee.**

Tom Sanzillo added that even though the laws of Puerto Rico allow consultants to provide the Partnership Committee and P3A with advice, this process promoted by consultants is, in his opinion, a completely inappropriate manner to conduct a contracting procedure.

Sanzillo indicated that in the Institute’s judgment the members of the Partnership Committee should have exercised their individual discretion when

evaluating the proposals. Their scores and qualitative evaluations should have represented their own opinions developed upon reviewing the presentations about the agreement. Their analysis could have been reasonably assisted by third-parties. **However, the recommendations and conclusions of each member of the Committee should have been based on their own judgment without any third-party influence.** Alternatively, FTI Consulting, Inc. could have received instructions to submit their report directly to the Board of Directors of P3A, instead of the Partnership Committee. In this scenario, the Board of Directors of P3A would have been provided with a tool that would allow the Partnership Committee to have independent control. **By contrast, it seems that the entity, which is mostly responsible for awarding the contract to LUMA Energy was indeed FTI Consulting Inc., rather than the members of the Partnership Committee.**

The Director of the Institute, Tom Sanzillo, warned that in his experience overseeing contracting procedures for the state of New York, as First Deputy Comptroller of New York State, he would have never signed this agreement if he had been aware that the Committee members did not exercise their independent judgment when recommending the award of the contract.

The Institute recommends that an investigation be conducted on the selection process that led to the award of the contract to LUMA Energy. He explains that the fact that the voting was carried out by email and that there are no records of any debate carried out by the Partnership Committee, for instance, to verify FTI Consulting, Inc.'s study stating that LUMA Energy's annual rates for the term of the contract, as stated in their original proposal, were higher than those proposed by PSEG, raises a red flag.

The Institute's investigation also revealed that Quanta Services lobbied at the federal level during the contracting process. According to the federal lobbying disclosure reports, Quanta Energy Services participated in the federal lobbying process from the second quarter of 2019 to the second quarter of 2020 regarding a subject matter which was simply listed as PREPA in its disclosures. This time period is consistent with the dates on which Quanta Services was competing for the T&D concession agreement.

Sanzillo said that Quanta Services had no other contracts with the government of Puerto Rico during said time period and, as far as we know, there are no other transactions in connection with PREPA in which Quanta Service is involved. However, compelling the federal government through a competitive bidding process is specifically prohibited under the P3A regulations and explicitly declared in the RFP, unless directed or allowed by the P3A.

Sanzillo indicated that, in December 2020, the Financial Oversight and Management Board (FOMB) recommended PREPA to **take on a loan** from the Government of Puerto Rico **in the amount of \$894 million** to carry out the transaction. This money is allegedly necessary for PREPA to have sufficient liquidity to cover the expenditures during the first months of operations, as required under the agreement. However, to this date no information has been furnished about the terms of the loan and PREPA's certified budget nor its fiscal plan mention it. **Moreover, we understand that a loan with no interest would cost PREPA \$60 million annually during the term of the contract, which is more than enough to eliminate the alleged savings under the agreement.**

Sanzillo indicated that despite the fact that the P3A and FOMB have made public statements claiming or making reference to the so-called savings, they were

unable to find in the agreement any clause under which LUMA Energy would be liable for failing to achieve said savings. In addition, Citi—FOMB’s financial consultant— **has received a quota of over \$9 million for the successful execution of the LUMA Energy agreement and will receive an additional \$4.9 million in connection with the LUMA Energy agreement upon PREPA’s exit from a Title III bankruptcy.**

Sanzillo added that the LUMA Energy agreement has caused a labor crisis for it failed to foresee the transfer of PREPA employees to LUMA Energy and recognize the collective bargaining agreements and other rights and protections of the employees. Sanzillo stressed that, as a result of the mismanagement during the agreement negotiation process, LUMA Energy has only received around 1,300 job applications from PREPA employees, some of which may have submitted multiple applications, and 13,000 applications from persons other than PREPA employees. **According to his analysis, he believes that LUMA Energy needs to fill around 4,000 positions before June 1.**

Sanzillo mentioned that under Act No. 120-2018, PREPA’s employees who are not hired by LUMA Energy shall be relocated to other positions within the government of Puerto Rico, potentially increasing the government’s payroll budget by over \$200 million annually. Once again, this is more than enough to compensate for any potential savings under the LUMA Energy agreement.

Furthermore, Sanzillo indicated that according to his analysis, it is very unlikely that PREPA will exist its Title III case before June 1 and that all of the LUMA Energy costs for the latter to participate in PREPA’s Title III bankruptcy procedure shall be covered by PREPA’s customers. This could entail an expenditure ranging from \$5 to \$10 million annually for LUMA Energy and its attorneys. As a

result of these factors, we cannot believe that the LUMA Energy agreement will achieve any savings for the people of Puerto Rico. Neither does it seem possible for LUMA Energy to be able to maintain its public promise not to increase electricity rates within the next three years.

Sanzillo established that the budget of LUMA Energy is unrealistic, and that the budget proposed by LUMA Energy indicates a high risk of it not fulfilling its promise not to increase the electricity rates during said period for the following reasons:

- First, the budget of LUMA Energy does not foresee the repayment of the \$894 million government loan that FOMB has deemed to be necessary for PREPA to carry out the transaction.
- Second, the budget of LUMA Energy seems to be artificially constructed to comply with the restriction on increasing the electricity rates. That is, in order to maintain its operating budget for the transmission and distribution system within the current rates, LUMA Energy assumes a certain level of “efficiency” cost savings. By 2024, these “efficiencies” are generating \$110 million in savings, or around 10% of the total budget of LUMA Energy (excluding the capital expenditures funded by the federal government). LUMA Energy offers no explanation as to the sources of these savings besides a vague mention of “loss reductions.” Moreover, there are very few consequences for LUMA Energy if it fails to achieve these savings. If LUMA Energy exceeds its budget, its annual incentives payment shall only be reduced by approximately \$1 million.
- Third, the budget of LUMA Energy makes optimistic assumptions about the costs of PREPA’s Title III bankruptcy procedure, which are forwarded to the

customers in the electricity rate. The budget supposes a total of \$58.7 million in Title III procedure costs and the FOMB's advisor for fiscal year 2022. This is significantly less than what the FOMB had stated as of December 2020, which claimed that PREPA would have to fund \$550 million in costs to exit the Title III case. On the one hand IEEFA has commented on the excessive attorney's and consulting fees of PREPA's debt restructuring process; on the other hand, it is not realistic to expect this situation to change if there is no significant change in the accountability structure for professional consultants, which is an issue that LUMA Energy has given no indication to be aware of.

It should be noted that federal funding plans do not include renewable energy. The most recent version of PREPA's Ten-year Infrastructure Plan requires the use of \$853 million in FEMA funds for the new natural gas infrastructure, and \$11 billion to strengthen and improve the centralized transmission and distribution system. This does not include funds for renewable energy or storage.

Sanzillo indicated that LUMA Energy has expressed its interest in subcontracting its affiliates to carry out the reconstruction works which shall be funded by the federal government. He raised two fundamental concerns:

- Will LUMA Energy conduct a competitive bidding process to provide Puerto Rico with the best price options? and
- Can we rely on the company to help Puerto Rico to meet its renewable energy goals?

Sanzillo indicated that upon reviewing the agreement he found that the supervisory and governance structure was ill designed and that the responsible entities had weak supervisory priorities, deficient follow-up records, limited basic

competencies, and resource limitations. They are ill equipped to supervise and enforce this agreement. Specifically, the agreement foresees a not-so-clear distribution of responsibilities between P3A and PREB.

The Institute found that, despite P3A being the main entity responsible for the supervision, it lacks experience and expertise in the supervision and the operations of utility companies. They also indicated their concern about LUMA Energy resisting the Puerto Rico Energy Bureau's efforts to oversee more carefully their billing during the front-end[sic] process.

They also found that the **performance incentives** incorporated into the agreement do not address key reforms, namely (1) the Island's energy goals of transitioning to 100% renewable energy; (2) the need for a 20 cent/KWh rate; (3) specific objectives regarding the workforce productivity initiatives or labor relations; (4) the adoption of balanced budgets that also provide access to capital markets; and (5) the improvement of internal controls to avoid political contracting, favoritism in contract awarding, excessive payments, and guarantee timely and accurate financial reports.

Sanzillo stated that they were able to notice that the LUMA Energy agreement failed to include provisions to prevent or establish penalties for waste or for not meeting the operational objectives. LUMA Energy has also proposed recently to postpone or replace some of the performance metrics originally specified in the agreement given the difficulty to obtain baseline data.

Sanzillo opined that the decision to eliminate the collective bargaining agreements of PREPA's labor unions was an unwise administrative decision and this has caused an unnecessary conflict among PREPA's personnel or employees. The agreements between private network operators and labor unions are common. For

instance, the agreement between Long Island Electric Company and the private operator PSEG, which served as a model for PREPA, explicitly recognizes the International Brotherhood of Electrical Workers. Sanzillo added that, in a recent judicial proceeding between UTIER and FOMB, the Board's expert witnesses recognized that in seven cases in which the work and the management had to accept changes in the workforce during times of fiscal constraints, the final agreements included the protection of the collective bargaining agreements. In view of the fiscal situation of the Puerto Rico's electric power system, PREPA's workforce is literally its most valuable asset.

Sanzillo indicated that the consortium constituted by LUMA Energy, Quanta, and ATCO is composed of two companies with an inadequate capitalization to capture private capital if the federal funds do not materialize, which is a possibility that is not contemplated in the agreement. Quanta and ATCO have a combined market capitalization of \$11.9 billion. The estimated investment levels necessary for Puerto Rico's electrical infrastructure are within the \$20 billion range. ATCO is too leveraged. These companies are ill ranked to capture additional dollars in the capital markets, if necessary.

Lastly, Sanzillo concluded that the LUMA Energy agreement has significant faults. The fact that the contracting process for this agreement was conducted by the same body that is now the entity responsible for the primary oversight of the agreement does not inspire confidence as to the efficiency with which the agreement shall be enforced. The agreement does not further Puerto Rico's transition to renewable energy. Moreover, as it was drafted, it fails to establish penalties applicable to LUMA Energy for exceeding the budgets or for failing to achieve the operational objectives. In addition, by abandoning its collective bargaining duties,

PREPA is also depriving itself of its only solid asset in its portfolio. Given the many hidden costs of the agreement and the lack of responsibility to achieve any level of savings, it is practically certain that the rates will increase rather than decrease, under the agreement.

Sanzillo concluded that, in view of all of the foregoing reasons, the agreement, as it is, is not in the best interest of the People of Puerto Rico and it should be terminated.

XV. Center for a New Economy

Sergio M. Marxuach-Colón, Esq., the Director of Public Policy of the Center for a New Economy (hereinafter, the CNE) expressed that Puerto Rico is at a difficult juncture with respect to the future of its electric power system. On the one hand, we have the Electric Power Authority, PREPA, a bankrupt public corporation with serious administration and performance issues as well as operational faults after hurricane Maria, which probably costed the life of hundreds of Puerto Ricans. **On the other hand, he added that it is not an exaggeration to conclude that there is consensus as to the need to radically transform PREPA's operations.**

He explained, however, that the solution proposed by the government of Puerto Rico in the form of an operation and maintenance agreement executed with LUMA Energy **has major deficiencies** which the Center stated in detail in a report published in August 2020. According to Marxuach-Colón, Puerto Rico is trapped between the unmovable object that is PREPA and the apparently unstoppable force of *LUMA Energy*. He expressed that, unfortunately, the public debate regarding this transaction has been biased and, on occasion, heated, thus dividing the Puerto Rican society into two camps: one in favor of the agreement and another against it.

Marxuach-Colón believes that the issue is extremely complicated and that it will not be resolved with simple binary or simplistic solutions “in favor” or “against” LUMA Energy.

According to Marxuach-Colón, PREPA’s issues could be summarized as follows:

- The service provided by PREPA is unreliable and highly expensive; its generation fleet is old and has a disproportionate reliance on fossil fuels, primarily bunker fuel and diesel;
- Puerto Rico’s transmission and distribution system has been left unattended for years and it sustained across-the-board damages as a result of hurricanes Irma and Maria in 2017;
- PREPA has been a source of public and private corruption on the island. Appointments to top management positions depend heavily on politics rather than on personal merit. Technical and managerial decisions, in turn, were subordinated for years to short-term political interests;
- PREPA survived to a great extent by postponing capital expenses, delaying providers’ payments, using accounting tricks that masked its true financial condition, and taking out billions of dollars in loans at relatively low rates and exempt from taxation in U. S. municipal bonds markets, even when at the brink of insolvency.

Marxuach-Colón indicated that the model of doing business of energy generation companies, including PREPA, is traditionally known as “build and grow,” which is based on (1) the construction of power plants that are bigger, more efficient, and use less expensive fossil fuels, and (2) a continuous increase in electricity consumption, began to fail in the 1970s due to limitation on the efficiency

that could be achieved in power generation, the increase in the price of fossil fuels, new environmental regulations, a decrease in the electricity demand, and the introduction of new power generation technologies using renewable sources. **On this topic, he concluded that the world changed almost 50 years ago, but PREPA continued doing things as usual.**

Marxuach-Colón expressed that because at PREPA no one exercises the powers that are normally exercised by the shareholders in a private company (which in this case are all the residents of Puerto Rico), this situation has allowed various interest groups, namely suppliers, political parties, grant beneficiaries, labor unions, bondholders, bankers, and persons with political ties to join in efforts to take advantage of PREPA at the expense of the rest of the people of Puerto Rico.

Marxuach-Colón explained that this phenomenon hinders any changes to PREPA's structure given that each of these groups, which benefit from the status quo, are well organized and have a strong interest in protecting their benefits, while consumers are disorganized and the cost of taking a collective action exceed the individual benefits they would receive.

In his analysis, Marxuach concluded that PREPA reached bankruptcy due to the slow but constant drain of its revenues by these well-organized groups, which gradually sucked the soul of the state corporation. For such reason, he finds it hard to understand how organizations and individuals, which are left out of the sacred circle of beneficiaries of this legally-sanctioned yet morally corrupt scheme, continue to oppose a profound transformation of PREPA.

Marxuach noted that any transaction seeking the transformation of Puerto Rico's electric power system needs to consider the depredatory behavior of the interest groups within and without PREPA which benefit from the

current situation and provide the mechanisms to limit such behavior or eliminate it. If the current privatization process is limited only to simply transfer the assets or the operations of a corrupt company in the public sector to a group of investors in the private sector without interrupting nor dismantling the rent-seeking network previously discussed, then we would have achieved absolutely nothing. The privatization, by itself, would not solve Puerto Rico's electric power issues, if the only thing it does is to substitute a rent-seeking group for another.

Marxuach indicated that the LUMA Energy agreement does not assign the risks equitably among the parties. He explained that, according to the LUMA Energy agreement, the company must achieve and exceed the performance metrics to collect the Annual Incentive Fee as established in Annex IX of the agreement. Annex X, in turn, establishes the method to calculate the amount of the outstanding Annual Incentive Fee, if any. **The CNE's concern here is that a significant number of reference parameters have not been determined and are subject to negotiations between the parties.**

Marxuach-Colón believes that it is necessary to establish reference parameters for PREPA's previous performance during the first years of the agreement, given that the T&D System needs a significant investment to work in accordance with reasonable standards. He also indicated that the baseline metrics to measure LUMA Energy's performance must be compared to that of similar public utilities in the United States.

Another concern about the agreement is the payment of the Incentive Fee which depends on LUMA Energy achieving certain performance objectives, which, at the time the agreement was signed, had not been determined. Marxuach-Colón

believes that using the PREPA’s previous performance to measure progress could establish a standard that is too low to justify the transaction. On this issue, Marxuach-Colón recommended that the performance metrics must be developed in consultation with PREB and P3A using the best practices and the performance metrics of public service companies in a similar situation.

Marxuach indicated that the Report of the Partnership Committee states that the current value of the Fixed Fee and the Incentive Fee during the 15-year period of the LUMA Energy agreement is approximately \$1.350 billion. This means that, from a purely financial standpoint, this would be a rational agreement, if and only if, the current value of the future savings that LUMA Energy would generate exceeds those \$1.350 billion. However, according to P3A’s presentation when the transaction was announced, it is foreseen that the annual savings will reach \$288 million by the fifth anniversary of the agreement, compared to an annual \$138 million-rate, for net savings of \$150 million.

The CNE found that FTU made a savings estimate according to two scenarios. First, they assume “a 10%-reduction in the base operating costs (non-variable costs such as labor costs and maintenance expenditures) due to new work methods and improved management practices implemented by LUMA Energy, which are estimated to generate \$117 million in savings. Second, they show a “higher efficiency scenario that evaluates the impact of a reduction in the amount of fuel and energy required due to improvements in the operations which lead to a reduction in line losses,” and which savings are estimated in \$177 million.

Marxuach-Colón recommended that P3A must hire an independent auditing firm to conduct annual audits and follow up on cost reductions supposedly generated by the Operator.

Marxuach also recommended allowing PREB to review and analyze those findings. He also recommended adjusting the *LUMA Energy agreement* as necessary if the latter fails to comply with the required cost reductions.

Marxuach-Colón explained that, according to the agreement, LUMA Energy is not obligated to carry out capital improvements to Puerto Rico's transmission and distribution system. It has the option, however, in accordance with Section 5.5 (d) of the LUMA Energy agreement, to propose to PREB capital improvements that would belong to this company. The agreement also provides that PREB, in turn, would evaluate any similar proposals "on its merits" and would allow LUMA Energy "to obtain a reasonable yield rate thereon consistent with the yields allowed for companies engaged in the business of electric power transmission and distribution operations in the United States with similar activities." In fact, it seems that at least one of LUMA Energy's partners, Quanta Services, Inc., believes that there are significant opportunities to make such investments. Despite the fact that the LUMA Energy agreement obligates PREB to review these transactions, **the CNE understands that the transactions between related parties are particularly vulnerable to rent seeking and must be subject to an additional review by P3A as Administrator of the LUMA Energy agreement.**

Marxuach-Colón understands that the direct participation of LUMA Energy or any of its affiliates in requests for proposals for capital improvements, would be a transaction between related parties and such transactions tend to generate rent-seeking opportunities.

On this topic, Marxuach-Colón recommended, first, that PREB should develop a special administrative process to carry out a careful oversight of these

types of transactions. Second, these transactions must be also subject to review and approval by P3A, as the Administrator of the LUMA Energy agreement.

PREPA has submitted to FEMA an Infrastructure Improvement Plan (IIP) for an investment of approximately \$10 billion in federal funds. This Plan seems to be in conflict with the Integrated Resource Plan and the *LUMA Energy* agreement given that both have the same federal fund allocation to modernize Puerto Rico's transmission and distribution system.

For Marxuach-Colón, this is a cause for concern for it seems there is no coordination between the implementation of the IRP and certain actions that PREPA is taking, apparently on its own volition. This situation is particularly worrisome in view of the limited capacity of the government of Puerto Rico to design and carry out complicated processes.

In sum, Marxuach understands that these initiatives are developed in a parallel manner and there is no actual coordination between the entities in charge of ensuring that all components are in motion, which could potentially lead to a failed attempt at modernizing and transforming Puerto Rico's electric power grid.

On this topic, Marxuach-Colón recommended that all these initiatives should be coordinated from and by PREB, given that it is the only government agency with the legal authority and jurisdiction to supervise Puerto Rico's electric power grid as a whole.

Marxuach-Colón indicated that he is concerned about the lack of coordination in the many actions required to modernize Puerto Rico's electric power grid, which, in his judgment, could lead to a catastrophic fault in the transformation process as a whole. He also recommended that PREPA's transformation processes be

coordinated by PREB in accordance with the duly adopted Integrated Resource Plan. PREB must exercise its legal authority to compel PREPA to meet this requirement.

Regarding PREB, the CNE recommended that its legal position and powers as a truly independent regulatory entity be restored. Beyond the ideological preferences of the parties interested in this process, the truth is that having a strong and independent regulatory entity shall be key to the successful execution of PREPA's transformation. Moreover, both the Legislative Assembly and the FOMB must ensure that PREB has all of the human and budget resources as are appropriate to efficiently fulfill its mission.

Lastly, the CNE concluded that, according to its analysis, the most prudent course of action at this point is to renegotiate the LUMA Energy agreement to better allocate and balance the risks among the parties. If it is concluded that the defects of the LUMA Energy agreement cannot be remedied, then the cancellation thereof must be considered and a new process must be initiated to improve and transform Puerto Rico's electric power transmission and distribution system.

XVI. Second testimony, the Director of PREPA's Human Resources and Labor Affairs, the Director of the Government of Puerto Rico Human Resources Administration and Transformation Office, and the Director of the Office of Management and Budget

Nydza Irizarry-Algarín, Esq., the Director of PREPA's Human Resources and Labor Affairs, Zahira Maldonado-Molina, Esq., the Director of the Government of Puerto Rico Human Resources Administration and Transformation Office (HRATO), and Juan Carlos Blanco-Urrutia, Esq., the Director of the Office of Management and Budget appeared to offer their testimony.

Nydzia Irizarry-Algarín, Esq. indicated that PREPA's employees have to resign in order to become employees of LUMA Energy and that, once they resign from PREPA, the latter has to liquidate all of their benefits. When inquired by the Chair of the Committee, she admitted that LUMA Energy is a private entity separate from the government, and for such reason, the collective bargaining agreements shall not continue to be in effect and the same applies to other benefits. However, this is inconsistent with her statement that this transaction was based on the code of laws and Act No. 120, which establishes that employees shall be entitled to the same salaries and vested rights.

The Chair of the Committee asked her whether she had read the agreement, to which Irizarry-Algarín answered that she began working there 18 days ago and that the agreement was 336 pages-long. When inquired by the Chair of the Committee, Irizarry-Algarín indicated that 4,214 PREPA employees would be transferred to other government agencies, and 505 PREPA employees would be recruited by LUMA Energy, according to the information furnished to her by Ms. Ashley Miller, LUMA Energy Human Resources Director, and that she does not know who those employees are since they have not yet resigned from PREPA. Of those 505 employees, 103 have already tendered their resignation letter. She is unaware of how many have requested voluntary mobility. The most recent number of submitted requests for voluntary mobility was 80.

When inquired by the Chair of the Committee, Zahira Maldonado-Molina, indicated that the list of 4,200 employees was furnished by PREPA and that these employees shall be transferred to different state agencies. She indicated that 170 employees submitted their requests for voluntary mobility. Zahira Maldonado-Molina, Esq., indicated that her office already worked on their job equivalence and

that these employees would be guaranteed a base salary. For the job equivalences, they took into account the experience and academic preparation of the employees. For said job equivalence, the employee has to be qualified for the job. She added that the employees could chose to continue contributing the PREPA's Retirement System, but she is unaware of what is going to happen with PREPA's employer contribution or what will happen with PREPA's Retirement System for which PREPA is responsible.

When inquired by the Chair of the Committee, Juan Carlos Blanco-Urrutia indicated that they had already identified 20,000 vacant jobs and that he does not know how many of these are included in the budget. However, they are working on this information so that it is taken into consideration for the next budget request. Juan Carlos Blanco-Urrutia, Esq., indicated that the economic burden on the general fund imposed by these 4,200 employees could amount to \$200 million.

Zahira Maldonado-Molina, Esq., added that there are vacant jobs in various public corporations and that there is a need to fill such those vacancies. She clarified that she only has preliminary information and not the final numbers. Maldonado-Molina stressed and clarified the expressions of Nydza Irizarry-Algarín, Esq., stating that if an employee is transferred to a job that entails a promotion, the employee would be required to undergo or pass a probationary period.

Representative Denis Márquez-Lebrón stated and concluded that nothing had changed in many of the matters discussed since the public hearings held on March 15. He is worried that on June 1st there will be public employees assigned to different government agencies who are not discharging their duties while the government of Puerto Rico pays their salaries for doing nothing. Upon inquiring the witnesses, it was revealed that PREPA's position today is the same as on March 15. Even PREPA

does not know how many employees have resigned and recruited by LUMA Energy, how many employees have requested retirement, how many of those employees have been transferred to the various government agencies, and how many employees would be referred to HRATO. Moreover, the Study directed and required by law has yet to be finished.

XVII. Second testimony of PREPA’s Executive Director and Chair

Engineer Efran Paredes-Maysonet, PREPA’s Executive Director, and Engineer Ralph Kreil-Rivera, Chair of PREPA’s Governing Board testified a second time. The Committee Chair asked them about the status of the “dismantling” plan, to which Kreil answered that the reorganization plan is still in process. Engineer Paredes-Maysonet indicated that the LUMA Energy staff was already physically settled at the Monacillos facilities as well as in PREPA’s headquarters in Santurce, discharging their duties leading to the transition as of June 1.

The Committee Chair asked Kreil-Rivera about the Reorganization Plan that was supposed to be submitted to the Financial Oversight Board on February 23, 2021. Efran Paredes indicated that they are way ahead regarding said Plan and that it is a draft that has been reviewed by the Executive Committee composed of Engineer Ralph Kreil-Rivera, David K. Owens, and Robert G. Poe, all of which are members of PREPA’s Governing Board. He said that the Governing Board has yet to receive said draft.

The Committee Chair inquired about the justifications or an itemization of LUMA Energy’s invoices, to which Efran Paredes indicated that the invoices, receipts, or any itemization are in the hands of the Administrator, which is the P3A. Moreover, he explained that once the P3A receives the justifications of the invoices a summary thereof is delivered to PREPA, through its Director of Finances, Nelson

Morales, and the Treasurer, José Roque, who have access to any document of the P3A, and they make the payments to LUMA Energy. Paredes-Maysonet indicated that the P3A is the one responsible for supervising LUMA Energy. He also indicated that PREPA has paid LUMA Energy \$101 million only for the plans to operate the Transmission and Distribution System, namely: vegetation, emergency, safety, operations, and budget plans, among others. These Plans are required by PREB which is the regulatory entity thereof.

Paredes-Maysonet admitted that PREPA is the one that pays for the facilities where LUMA Energy operates. He also indicated, when inquired by the Committee Chair, that the School for LineWorkers shall be transferred to LUMA Energy. The Executive Director was requested to furnish a list of the employees who have resigned in order to be recruited by LUMA Energy.

Paredes-Maysonet explained that PREPA contributes a lump sum to PREPA's Retirement System. He was inquired about what would happen with contributions to the Retirement System made by employees who are transferred to other agencies, thus separating from service at PREPA, and he indicated that said contribution shall continue to be paid. Kreil Rivera indicated that the Retirement System is been evaluated by the Bankruptcy Committee of the Governing Board.

The Committee Chair asked Efran Paredes if he knew about a contract executed between him and *EngGroup*. Paredes said he did not remember. He was asked if he knew or was aware whether the President of *EngGroup* worked or was a Senior Consultant at Quanta Services. He was also asked whether he furnished privileged information to Quanta Energy before participating in the RFP. Both, Paredes-Maysonet and Kreil-Rivera stated not to remember.

The Committee Chair asked Kreil-Rivera whether LUMA Energy would be ready or prepared to begin operations on June 1, 2021, to which he responded that LUMA Energy was the one responsible for complying with the agreement and that it has to comply therewith. The witnesses are unaware whether LUMA Energy would recruit staff from abroad.

Engineers Efran Paredes and Kreil-Rivera stressed that LUMA Energy is the one responsible for knowing how many employees it needs and that they are unaware of whether LUMA Energy would have the necessary staff to begin operations on June 1, 2021. Moreover, they indicated that the salaries of PREPA's employees who are transferred to the different agencies shall not be covered by PREPA. The Committee Chair explained that the transferred employees could entail an expenditure of approximately \$200 million for the Central Government, according to the expressions of the Executive Director of the OMG at a Public Hearing. Both officials indicated that PREPA Net would not be affected by PREPA's privatization for it operates completely independent therefrom.

The Committee Chair asked engineer Efran Paredes if the Steering Committee has considered amending the agreement in order for PREPA's employees to continue to have bureaus, just as LIPA did in New York, to which the official answered, no.

To conclude, as of April 23, 2021, PREPA was unable to precisely indicate how many of its employees would become LUMA Energy employees, how many have resigned or would resign from PREPA, how many requested mobility, nor the government agencies to which PREPA employees would be transferred. It is also unknown whether as of June 1, LUMA Energy would have the necessary staff to begin operations.

XVIII. Secretary of State, Larry Seilhamer-Rodríguez

The Secretary of State, Larry Seilhamer-Rodríguez, who chairs the Steering Committee to Oversee the LUMA Energy agreement began the Public Hearing by Reading a press release issued by Pedro Pierluisi, dated June 2020, where the then-candidate for governor questioned the transparency of the process carried out to draft and approve the agreement executed by and between PREPA, the P3A, and LUMA Energy, criticizing the then-governor of Puerto Rico, Wanda Vázquez, for not allowing the participation of various interest groups in the process and foreseeing that legal disputes would arise in connection with the agreement which would increase the cost of electricity, and stressing the need to amend said agreement. The Secretary of State had to admit that that was the position of the candidate for governor, Pedro Pierluisi-Urrutia, at that time.

When inquired by the Committee Chair, the Secretary of State indicated that he has yet to bring to the attention of Governor Pedro Pierluisi the need to introduce amendments to the agreement and that he did not review the validity of the amendments submitted to the Steering Committee by PREPA's employees, given that the Steering Committee's duties did not include reviewing the agreement. Seilhamer insisted that Pierluisi's mandate to the Committee was to advise him upon the enforcement of the agreement. The Executive Order creating the Steering Committee did not specify that the duties thereof included evaluating the amendments to the agreement. However, Larry Seilhamer apparently contradicted himself at a Public Hearing when he said that the committee he chairs, evaluates the amendments and suggested amendments to the agreement executed with the company that would take control of a large portion of PREPA as of June 1. Seilhamer admitted to have received amendment proposals from UTIER, the Retired PREPA

Employees Association, the Management Employees Association, and the Unión Insular de Trabajadores Industriales y Construcciones Eléctricas.

Seilhamer indicated that the Steering Committee filed its first report with Pierluisi on April 12. The press that had access to said report indicated that it failed to state the proposed amendments in detail. Seilhamer indicated that the public stance of the governor and the Financial Oversight Board (FOB) has been that the LUMA Energy agreements needs no amendments. Seilhamer emphasized that he has not received any amendments from groups such as the College of Engineers and Surveyors, the Bar Association, the Institute for Energy Economics and Financial Analysis, or the Center for a New Economy.

Seilhamer indicated that the transition process is being conducted in accordance with the code of laws. He also defended the orientation process for PREPA employees regarding their rights and mobility options within the Government. The Committee Chair, however, inquired him about different situations such as the current situation of one of PREPA's Technical Official who was transferred to the Symphonic Orchestra, an artistic entity facing financial difficulties, and another employee who was transferred to the Sports and Recreation Department. The Secretary of State indicated that attorney Zahira Maldonado-Molina, Director of HRATO, is doing her job and reasserted that the intent is to protect PREPA's employees. He clarified that, before the letters were sent, a request was made to identify the agencies that would be fitting. Seilhamer asserted that Act No. 120 ordered HRATO to train these employees to discharge the new duties.

Larry Seilhamer indicated when citing the data furnished by Wayne Stensby, the President of LUMA Energy, that the company has received 20,000 job applications of which 1,831 are PREPA employees. From those 20,000 applications,

1,500 job offers were made, 900 of which are PREPA employees. Stensby informed to the Steering Committee that he expects to hire 2,100 workers by June 1, although he anticipated that more positions will be filled eventually. Seilhamer said that a total of 189 PREPA employees have requested to be moved to other government instrumentalities from a universe of 4,214 employees who qualify for a transfer. A total of 132 employees have resigned from PREPA.

Seilhamer indicated that the Steering Committee, composed of various government officials, has met on eight occasions, the first of which was on February 4, 2021. At the meeting this past Wednesday, Stensby, Edison Avilés, the President of the Energy Bureau, and Héctor Reyes, President of UITICE were in attendance. The subcommittee created on March 17 to address the employee situation has met twice: on March 24 and on April 6. Stensby has participated in the meetings of the Steering Committee on five occasions. Seilhamer has met with the president of UTIER, Ángel Figueroa Jaramillo, at least twice.

One of the questions that Representative Torres asked concerned the topic of the alleged savings that the LUMA Energy agreement would generate. Seilhamer indicated that he has not received a LUMA Energy report on that topic, but he stressed that the position of the Public-Private Partnership Authority, the government entity that negotiated the agreement, is that the electrical grid improvement program required to the private company would generate a cost reduction of approximately 20% by 2026 or \$100 million annually. Supposedly, the annual savings would reach \$293 million by 2027; however, the Committee Chair presented proof that LUMA Energy requested a rate increase of about 11%.

With regards to where would the \$1 billion that FOB stated was necessary to implement the agreement come from, Seilhamer explained that PREPA maintains a

\$1 billion reserves to ensure the continuity of service. He noted that FOB has stated that the Government would have to contribute \$750 million from the following budget, and the rest of the money would come from PREPA's available funds. Seilhamer said that such money would come from the General Fund, but he never indicated from which instrumentality or instrumentalities.

A letter dated April 27, signed by the FOB's executive director, Natalie Jaresko, and addressed to the presiding officers of the Legislative Assembly, and the Honorable Pedro Pierluisi-Urrutia, establishes a schedule to make the budget allocation from PREPA's Reserve Fund, while the other \$250 million would come from other funds of the public corporation. This schedule establishes that on May 3, 2021, the FOB must accept or deny a proposal submitted by Pierluisi identifying the source of funds, and the Legislative Assembly would have until May 6 to approve a resolution allocating the money.

The Committee Chair concluded that \$750 million are withdrawn from the General Fund and \$250 million from PREPA, subtracting from or depriving different government entities of their funds, namely the University of Puerto Rico and programs directed at poor sectors.

XIX. Office of the Comptroller of the Commonwealth of Puerto Rico.

On April 29, 2021, the Office of the Comptroller of the Commonwealth of Puerto Rico, hereinafter the OCPR, through the Director of Auditing Affairs, Edna Velázquez-Díaz, answered the First Requirement for the Production of Documents of April 8, 2021. It was indicated that their audits are conducted after government agencies have made public fund disbursements. She indicated that the OCPR has not conducted any audit in connection with the agreement.

When requested to provide her opinion on whether it was legal for PREPA to pay LUMA Energy entertainment expenses with public funds, the answer was that the OCPR does not support the disbursement of public funds for the so-called entertainment expenses, and these may be considered extravagant expenditures, contrary to the law, or unnecessary.

To the question as to whether OCPR has jurisdiction to evaluate the appropriation and distribution of the public funds administered by PREPA, OCPR responded in the affirmative and added that its constitutional duty is to audit the management and disbursement of public funds in the hands of public corporations such as PREPA and has statutory authority to examine and audit the disbursement of public funds in the hands of public corporations such as PREPA.

She also stated that OCPR has jurisdiction to evaluate the manner in which LUMA Energy disposes of public funds and implements the public policy, and that such authority as well as the constitutional duty to audit and examine the agreement was recognized by the Supreme Court.

XX. Department of Justice of the Commonwealth of Puerto Rico

On April 16, 2021, the Department of Justice of the Commonwealth of Puerto Rico, hereinafter “PRDJ,” through the Secretary of Justice, Domingo Emmanuelli, Esq., answered the First Request to Produce Documents issued on April 8, 2021. To questions of whether P3A, PREB, FAFAA, and PREPA requested the PRDJ to evaluate or issue an opinion on the LUMA Energy Agreement, they stated that, after searching in the physical and digital records of the Opinions Division of the Office of the Legal Counsel of the Department of Justice, no request for an opinion or evaluation related to the agreement entered into with LUMA Energy, PREPA, and P3A, or to the negotiations prior to the agreement was found. They did not find a

legal opinion issued by the PRDJ on said agreement either. Thus, a certification to such effect is attached to this report.

Furthermore, the Department of Justice anticipated potential legal actions questioning the constitutional validity or lawfulness of the agreement and pointed out that, for ethical reasons, they must abstain from offering any legal advice to the other branches of the Government of Puerto Rico on this matter, in order to avoid excess representation of potential conflicts of interest, which would put us at risk of committing a serious violation of the Canons of Ethics that govern the legal profession.

XXI. UPR School of Law, Legal Aid Clinic, Environmental Section.

The Legal Aid Clinic, Environmental Section of the School of Law of the University of Puerto Rico, through its director, Saadé Lloréns, Esq., submitted its testimony on HR 136 to this Committee.

In its testimony, it points out that the Environmental Clinic has represented various environmental and community entities in the Courts of Puerto Rico questioning the substance, procedure, and form and manner in which the agreement with LUMA Energy, LLC and LUMA Energy ServCo LLC was endorsed by the Puerto Rico Energy Bureau. The main argument before the Courts is that PREB failed to examine or properly support the far-reaching financial, environmental, and health consequences as well as the conflicts of duty resulting from this agreement.

They stated that they had to express themselves with regard to the agreement given that the execution of an agreement such as this, and the lasting effects it shall have for the People of Puerto Rico, and well as the renewable energy and environmental health objectives, has generated a high level of public interest. They pointed out that the agreement will have highly detrimental effects on Puerto Rico,

particularly on its electric power system; the economy; labor justice; the search for renewable energy and the achievement of any related goals; and the right to access information, Puerto Rico's energy autonomy, and will also worsen economic and social inequality.

They stated that the agreement unenforceable for both procedural and substantive reasons; it is not a mere concession of Puerto Rico's T&D System, but rather it grants significant and exclusive powers and controls to LUMA Energy, and its affiliates and parent companies indirectly, without proper oversight or balance, and puts Puerto Rico in a defenseless position, while simultaneously providing LUMA Energy with ample opportunities for profit and enrichment.

They added that the agreement does not compel LUMA Energy to honor and attain the renewable energy goals in a clear and definite manner, especially those that employ rooftop solar installations. This translates into more environmental damage and health problems, and delays efforts to address the climate change issue in Puerto Rico. In fact, the agreement prioritizes, in its application and structure, the perpetuation of a centralized electric power system and network based on fossil fuels.

They also stated that, according to experts, the agreement will generate rate increases and create a harmful and cruel situation for PREPA's workers and employees in general, by establishing a limbo, a sense of uncertainty and oppression and eliminating rights, all of which are for LUMA Energy's benefit.

They pointed out that the agreement must be held to be legally invalid because it violates the basic principle that no contract shall be contrary to law. There are multiple violations including violations of Acts Nos. 17-2019, 120-2018, and 57-

2014. Furthermore, the agreement is unbalanced and disproportional, and thus unconscionable and abusive.

They reasserted that the manner in which it was approved was contrary to law, because the agreement was evaluated and discussed by the PREPA Board of Directors in one or more secret meetings during the weekend of June 19-21, 2020, which is in violation of Section 16 of Act No. 120-2018, that expressly requires that every meeting held to evaluate or discuss the agreement be simultaneously broadcast or streamed.

They explained that the first thing that should be discussed is the manner in which the agreement was approved and executed, which raises serious concerns about the access to information, transparency, and the decision-making process that followed the secret negotiation. The agreement's approval stage begins with the filing of an application for an Energy Compliance Certificate with PREB by P3A. Through said application, P3A wanted PREB to endorse a partnership contract between LUMA Energy, P3A and PREPA. The application filed with PREB is dated May 18, 2020, however, PREB did not make it public. Also, neither the agreement nor the Partnership Committee Report were made public by P3A. There is no official corroboration of whether the agreement and Report approved by the PREB is the same published by P3A. A hearing on P3A's Application was held one month later. Only LUMA Energy and PREPA representatives appeared in the hearing. The hearing was held secretly, there was no public notice or participation and, to make matters worse, as of today, the recording of the hearing is not available in the record. Two days after the hearing, P3A filed a motion whereby it attached additional documents and made amendments to the agreement together with a request for confidentiality. In fact, PREB declared such documents to be confidential.

When the Electrical Industry and Irrigation Workers Union (UTIER, Spanish acronym) filed a Petition to Intervene and for Access to Documents, P3A filed an opposition and PREB denied UTIERs' petition. In fact, similar petitions filed by several community and environmental organizations represented by the Clinic were also denied. Thus, on June 17, 2020, PREB issued its decision granting the Energy Compliance Certificate. Said decision was notified only to P3A. The secretiveness described above violated the due process of law, as well as the transparency policies set forth in Act No. 17-2019 and 120-2018. P3A's consistent position, which favored the secretiveness and denial of rights is reprehensive; such a policy has not been promoted by the courts.

They pointed out that the agreement is null and void because it was secretly considered and evaluated by the PREPA's Board of Directors. They added that, as provided in Section 16 of Act No. 120-2018, the Board of Directors is required to broadcast any meeting held to consider and evaluate the contract.

Clinic stated that any meeting of the Board of Directors of PREPA to discuss proposals and make decisions on the sale of assets or the establishment of public-private partnerships must be broadcasted on the Internet or any television station for the benefit of the public in general, thus guaranteeing the full transparency of the process, in accordance with Act No. 159-2013, as amended. "Section 16.- Disclosure and Transparency of Processes."

They revealed that, according to the unofficial transcript of the joint meeting of June 22, 2020 between the Board of Directors of PREPA and P3A, the agreement was considered and evaluated by the PREPA Board in one or more session that were not broadcasted in accordance with Section 16. Given the unlawful secretiveness under which PREB conducted the Energy Compliance Certificate evaluation

process, the broadcasting required by Section 16 was the only means available to public where it could learn of the agreement's secret evaluation process before its execution. It is worth noting that the meeting of June 22, 2020 was just a pro forma exercise and vote counting process: the evaluation was performed before, and was not broadcasted. The violation of Section 16, above cited, is a fatal defect of the agreement that adds up to others that make it void.

As they had already mentioned in their testimony, Clinic considers that the agreement gives broad powers to LUMA Energy, under Articles 5 and 6, as well as Annex I (Scope of Services). According to Section 5.1, LUMA Energy shall provide management, operation, maintenance, repair, restoration and replacement and other related services for the T&D System. In fact, LUMA Energy subrogates PREPA as agent and substitutes it in the rights and obligations thereof. Therefore, it has authority to hire, subject to the provisions of Article 6 of the agreement, in the name of PREPA. In addition, it has authority to take any such actions as necessary to make those payments. However, the funds shall continue to belong to PREPA. On the other hand, LUMA Energy has authority to implement the "System Remediation Plan." They may recommend capital improvements, whether federally and non-federally funded. Likewise, it may promote capital projects related to new generation in accordance with the Integrated Resource Plan, as well as other powers related to capital improvements. Also, as part of its remediation plan, LUMA Energy has authority to monitor the annual budget; prepare risk analyses; prepare long and short range forecasts to determine the need for generation related capital projects; determine the need for capital investments for generation projects and supervise capital improvements. Moreover, it may draft and propose changes to the Integrated

Resource Plan subject to the applicable laws and the rate reduction goal. It may also resort to PREB to request rate changes.

Furthermore, LUMA Energy also acquires significant powers related to generation. To wit: dispatch, schedule, and coordinate power and electricity from available generation assets and provide related services; coordinate the scheduling of load requirements and power and electricity pursuant to their respective generation supply contracts; coordinate the delivery of power; develop load and energy forecasts; request and consider information with respect to operational constraints. Also, it may review the system operation principles, if it determines that the system operation principles should be revised, and it has the authority to submit its recommendations to PREB. In fact, it may meet with PREB on an annual basis to review and assess the prepared analyses, demand projections prepared in accordance with the Integrated Resource Plan, existing system power supply, and generation assets to determine whether additional power supply sources are needed.

Clinic also stated that the agreement compels the reorganization and transfer of PREPA functions to two entities: GenCo and GridCo. Also, as agent of the Owner (PREPA), it shall provide the GenCo shared services listed in Annex VI (GenCo Shared Services) in accordance with the Shared Services Agreement. Also, GenCo may outsource said Shared Services. Provided that any Shared Service may be terminated or suspended earlier by GenCo following at least sixty (60) days prior written notice to Operator. The foregoing and the power purchase agreements (PPA) give other significant powers to LUMA Energy in the generation phase.

Moreover, they pointed out that, with regard to the collection of debt related to the T&D System, in the event that Operator fails to timely pay any bill, the Administrator shall have the right, but not the obligation, to instruct Owner to pay

such bill and deduct an administrative fee in an amount of \$500 due to Operator. With respect to the energy policy in effect, the agreement simply provides that Operator shall coordinate and assist with the services and operations contemplated under Act No. 17-2019, including services and operations related to microgrids, distributed generation, renewable energy sources, net metering, and energy cooperatives. These are minimal obligations imposed on LUMA Energy with regard to compliance with the energy and renewable energy policies.

Additionally, the agreement empowers LUMA Energy to identify the areas that are required to be encumbered by Easements for the operation, maintenance, repair, restoration, replacements, improvements, additions and alterations of the T&D System. Also, LUMA Energy may procure the required concession rights permitting the use of real estate assets under the public domain, including submerged lands, wetlands and areas designated as part of the maritime terrestrial zone under the Operating Agreement.

Clinic stated that the agreement will provide LUMA Energy, and its Affiliates, Contractors and Associates, including the Executives thereof, with excessive enrichment opportunities. This will afford LUMA Energy, and its affiliates, contractors, and the associates thereof an opportunity for excessive gain and enrichment. This is the inescapable conclusion upon examining the various income modalities created and granted under the agreement, and the countless powers and authorities granted thereunder, as stated above. This can, and will entail higher energy costs for consumer as stated by IEEFA.

They added that LUMA Energy will derive its direct income mainly from the “Service Fee.” The Service Fee consists of a fixed fee and an incentive fee. The fixed fee is, as its name suggests, invariable, stable, and unalterable. It shall

represent an expense for the people of Puerto Rico of \$1.625 billion for the contract period. On the other hand, the incentive fee is a variable rate based on performance metrics established in the agreement. The “fixed” rate really is not a determined rate that will not vary over the years. The incentive fee, on the other hand, is based on LUMA Energy’s performance of its functions. The agreement establishes certain performance metrics that will be used to evaluate LUMA Energy’s performance and determine the amount to be paid based on the maximum amount established in Annex VIII.

However, the following aspects of the incentive fee are worrisome. Firstly, the performance metrics do not establish objective assessment criteria. Although it establishes that the performance will be evaluated by establishing a baseline performance level based on past performance and comparing it with LUMA Energy’s performance, it does not establish how a baseline performance level deviation will affect the amount of the incentive fee that LUMA Energy will earn. Even though LUMA Energy will be required to render a report on its performance to PREPA in terms of the earned incentive fee, the extent of PREPA’s power over the determination of the amount of the incentive fee is not clear. The agreement only establishes that if there is a disagreement between the Administrator and LUMA Energy, they shall attempt to resolve any such disagreement in “good faith.” However, it is not clear what would happen in case of an unresolved dispute. Although the amount of the incentive fee is significantly lower than the fixed fee, the fact that the agreement is so ambiguous with respect to such fee is alarming.

They noted that equally or more concerning than the abusive direct income that LUMA Energy will receive through the Service Fee is the indirect income that LUMA Energy will obtain by directing and being compensated by PREPA to defray

certain costs and expenses. Such costs will not be defrayed by LUMA Energy but rather by PREPA. PREPA will defray all costs such as wages, bonuses, pensions, and health plans, among others, incurred by ServCo in the course of providing O&M Services. This includes expenditures incurred by ServCo in performing the O&M Services, including the costs of all subcontracted employees, repair and maintenance costs, and the costs incurred with respect to banking services, loans, equipment rentals, licenses, permits, consents and all goods and services.

Furthermore, they stated that in *Ortiz Andújar v. Commonwealth*, 122 DPR 817, the Supreme Court held there are two types of enrichment, the negative type is premised on the fact that zero expense amounts to an income. All those expenses delegated to PREPA under the agreement constitute enrichment in its negative type for LUMA Energy. In addition to those mentioned above, they stressed that Section 5.14 establishes that all costs related to the remediation of an Emergency Event shall be T&D Pass-Through Expenditures. Therefore, in an emergency event, all costs related to remediating the emergency shall be equal to another excessive enrichment for LUMA Energy. The Generation Pass-Through Expenditures are also an onerous burden for the People of Puerto Rico and constitute enrichment for LUMA Energy. Sections 7.1 and 7.2 establish that the Generation Pass-Through Expenditures will also be defrayed by PREPA and include expenses incurred in providing power and electricity, and all costs and expenses under the GridCo-GenCo PPOA and Generation Supply Contracts. In addition to the onerous burden that defraying the expenses incurred in connection with the GridCo-GenCo PPOA and Generation Supply Contracts represents, the performance of “Shared Services” to GenCo is also worrisome. These “Slowed Series” may be and are extensive.

With regard to the agreement's economic impact, on June 17, 2020, Clinic pointed out several deficiencies contained in the Committee Report and the preliminary agreement submitted by P3A. The issues pointed out include: P3A, rather than PREB, is entrusted with reviewing and approving the annual operating budget under the preliminary agreement, thus preventing PREB from intervening in the annual budget's approval and limiting transparency; the risk of over budget costs falling on the users (the People); the lack of research, evaluation, and documentation relating to the effects the agreement will have on electricity rates, thus violating the aforementioned provisions of Act No. 120-2018, which ensures reasonable rates; and the lack of an analysis of the impact on rates and the cost-benefit of the agreement. Commissioner Rivera concludes that his disagreement is not due to the fact that the Report and the agreement are necessarily null and void, but rather that they are incomplete, and that owing to the lack of information required by the Act, he is unable to make a determination as to the whether the proposal is feasible and complies with the requirements of Act No. 120-2018, which includes ensuring a rate consistent with Act No. 17-2019.

They also pointed out that the agreement poses a serious risk and defeats Puerto Rico's compelling need to achieve a widespread and distributed use of renewable energy. This is so because, firstly, the agreement does not obligate LUMA Energy to achieve the renewable energy goals. Furthermore, they indicated that there is only one sentence in the agreement about compliance with Act No. 17-2019 and, if that were not enough, the same is conditioned. On the other hand, the broad powers given to LUMA Energy and the potential of deriving huge profits from the current T&D system inevitably conflict with a distributed system. The scope of authority granted to LUMA Energy under the agreement with respect to generation

through the control of the electric power dispatch, as well as the divisions and conflicts arising out of the creation of GenCo and GridCo, are also very concerning.

They noted that the unconscionable contract doctrine allows for a more thorough examination in cases in which public funds are involved. In *De Jesús-González*, the Court held that “when the contracting involves the use of public goods or funds, we have insisted, also, in the rigorous application of all pertinent rules of contracting and disbursement of such funds, in order to protect the interests and monies of the People. Furthermore, they stressed that the wise management of public funds is in the public interest. Moreover, they pointed out that we must avoid squandering, extravagance favoritism, and prevarication in government contracts. See: *Fernández & Gutiérrez v. Mun. San Juan*, 147 D.P.R. 824 (1999); *Hatton v. Mun. de Ponce*, 134 D.P.R. 1001 (1994); *Mar-Mol Co., Inc. v. Adm. Servicios Gens.*, 126 D.P.R. 864 (1990); *Ocasio v. Alcalde Mun. de Maunabo*, 121 D.P.R. 37, 54 (1988)”.

They further stated that they were able to confirm the unconscionable nature of the agreement in several important clauses. Firstly, they pointed out the unsustainable and absurd definition of the term “force majeure,” which in reality is no such thing, but rather a unilateral and quick way out for LUMA Energy to escape its obligations under the agreement. This is an inescapable conclusion upon an examination of article 17 which regulates the general effects and consequences of a “force majeure,” and establishes its definition. The basic effect established by article 17 is to exempt LUMA Energy from compliance in the event of a “force majeure” event. However, it is in the broad definition of what constitutes a “force majeure” event, where the actual abuse lies. Section 14.5(c) grants LUMA Energy the right to unilaterally terminate the agreement in the event that a force majeure event continues

for a period in excess of eighteen (18) consecutive months and materially interferes with, delays or increases the cost of the Front-End Transition Services or the O&M Services. As you may see, this definition is too broad and ambiguous. The definition of “Force Majeure” includes any event, act or circumstance that may affect LUMA Energy, its affiliates, or subcontractors, regarding compliance with their obligations due to unforeseen or unavoidable events. On top of that, it includes, by way of example and without limitation, a list of events that constitute a “Force Majeure” events, to wit:

(A) an act of God, Outage Event, landslide, lightning, earthquake, fire, explosion, flood or similar occurrence;

(B) war, armed conflict, invasion, acts of terror, acts of civil or military authority, sabotage or similar occurrence, computer sabotage or virus, acts of a public enemy, acts of a foreign enemy, extortion, blockade, embargo, revolution, interference by military authorities, quarantine, epidemic, insurrection, riot or civil commotion or disturbance or civil disobedience;

(C) 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;

(D) a Change in Law;

(I) strikes, boycotts, work stoppages, lockouts or other labor or employment disputes or disturbances with respect to the employees of ServCo, but only if occurring in the eighteen (18) months immediately following the Service Commencement Date; and

(J) an unanticipated, significant and sustained interruption or curtailment of System Power Supply outside the ordinary course.

They concluded that said list broadens the definition of “Force Majeure” even more. It includes “acts of God” without clearly defining them, outage events, natural events that are common in Puerto Rico without specifying the degree, and a “change in law” without specifying which law or what change. It also mentions strikes, boycotts, epidemics, quarantines, and many other general events that commonly occur on the Island, as well as the typical “kitchen sink” clause. They pointed out that after analyzing the definition of the term “force majeure” as provided in Section 1.1, there is no other alternative but to conclude that it is an unconscionable clause that provides LUMA Energy with broad discretion to unilaterally abandon its obligations under the agreement.

Lastly, they indicated that the agreement is Abusive and Violates Labor Justice. The tremendous adverse effect that the agreement will have and is having on PREPA’s workers, employees, and pensioners has been publicly debated and brought to this Committee’s attention by their representatives.

XXII. Puerto Rico Manufacturers Association

The Puerto Rico Manufacturers Association stated that it is important to thoroughly study the contents and repercussions of the agreement entered into with LUMA Energy. It added that the terms of the agreement entered into with LUMA Energy are an important decision that goes beyond the mere operation and maintenance of the public T&D system. The Manufacturers Association believes that when the transparency of a process is limited, such as in the case of the process followed to select LUMA Energy, it weakens the agreement and fails to comply with Act No. 17-2019.

They stated that without a rebuilt electric power grid for competitive and modern electric power public and private markets that is not burdened by an unsustainable old debt, we will never achieve a sustainable economic development, the fiscal stability sought by PROMESA, or access the clean distributed and competitive energy as directed under our laws before and after PROMESA.

The Manufacturers Association recommends amending Act No. 29-2009 and Act No. 120-2018 in order to establish with absolute clarity that the final approval of every agreement involving public infrastructure assets, such as the agreement with LUMA Energy should be made in accordance with the adjudicative procedures directed under Act No. 17-2009 [sic] and conducted by the Puerto Rico Energy Bureau (PREB).

In addition, it believes that the LUMA Energy agreement should not be executed without the appropriate performance and transmission and distribution metrics, among others.

It also recommends fixing serious penalties for LUMA Energy's noncompliance, among other measures to ensure the transparency of the project adjudication process and the development of local businesses that provide services to the modern electric power system.

The Manufacturers Association also believes that the agreement entered into with LUMA Energy should be studied in depth to ensure the stability and continuity of Puerto Rico's electric power system in case of force majeure or fortuitous events. Such agreement should not release LUMA Energy from liability and allow it to simply withdraw therefrom, as it currently provides.

The Manufacturers Association opines that the number and the amount of expenses reimbursable to LUMA Energy should be revised and that such amounts

should be overseen to ensure that reimbursements are duly justified and that the resources of our people are being used wisely.

Even though the Manufacturers Association believes that the agreement entered into with LUMA Energy should not be terminated, it recommends that it be professionally and publicly evaluated to ensure it is beneficial for the people of Puerto Rico.

XXIII. Food Marketing, Industry and Distribution Chamber (MIDA, Spanish acronym)

Through an explanatory memorial issued on April 26, 2021, the Food Marketing, Industry and Distribution Chamber, hereinafter, MIDA, recognized that the energy issue is complex and that analyzing legal and regulatory changes requires specialized knowledge. For such reason, it has been collaborating and joined in the common cause of achieving an efficient electric power service at the lowest possible cost. In this sense, entities such as the Institute for Competitiveness and Sustainable Economy and the Puerto Rico Manufacturers Association have expressed their concerns regarding the lack of transparency and public participation in the process that ended in the contracting of LUMA Energy. Most of all, they have expressed their concern about PREB's independence and legitimacy.

Therefore, they decided to join Institute for Competitiveness and Sustainable Economy's opinion already presented before PREB, which believes that the process failed to meet the requirements of public participation and transparency thus weakening PREB's authority, independence, and credibility. They pointed out that the LUMA Energy agreement is not clear with respect to extremely important issues such as compliance with the public policy established by Act No. 17-2019, among others, and the necessary guarantees to protect the interests of consumers.

XXIV. Alianza Comunitaria Ambiental del Suroeste.

The Alianza Comunitaria Ambiental del Suroeste made the following comments:

The agreement entered into with LUMA Energy is a scheme to place the island's electric power system in the hands of a foreign consortium organized precisely for the purpose of taking control of PREPA and the \$9.5 billion awarded by FEMA for the rehabilitation of the electric power system that they will administer. The negotiation with LUMA Energy has the following flaws:

- It surrenders the national electric power patrimony.
- LUMA Energy was solely created for this agreement.
- LUMA Energy will be paid for the work that PREPA is doing.
- LUMA Energy will not guarantee jobs for PREPA's current employees
- LUMA Energy will not guarantee the seniority or the salaries of PREPA's employees.
- LUMA Energy will not invest its own capital in the operations.
- LUMA Energy may abandon us without explanation.
- LUMA Energy has not made a commitment to achieve the renewable energy objectives established by law.
- LUMA Energy may request to increase the rates paid by consumers.
- Under the agreement, LUMA Energy will not be liable to consumers for the damages to their appliances and electrical equipment caused by power failures.
- The extent of authority given to LUMA Energy under the agreement is such that it may become owner of part of the electric power system.

- LUMA Energy may carry out capital improvement projects that may become their property if it invests its own funds.
- The agreement with LUMA Energy violates the law and the will of the people of Puerto Rico, because it empowers LUMA Energy to prepare the Integrated Resource Plan.

The Alianza Comunitaria Ambiental del Suroeste requests the Committee to recommend the whole House of Representatives of Puerto Rico to terminate the contract with LUMA Energy.

XXV. El Puente’s Latino Climate Action Network.

El Puente’s Latino Climate Action Network presented the following arguments:

The essential service provided by PREPA may be jeopardized by handing the T&D system over to a private company such as LUMA Energy. Our organization is deeply concerned about the LUMA Energy agreement.

The agreement with LUMA Energy does not comply with the recent public policy created in Puerto Rico.

The agreement makes no mention of the transformation of Puerto Rico’s electric power system into one that uses renewable energy; LUMA Energy will continue to operate a centralized system based on fossil fuels, thus delaying a first-class transformation to combat climate change. LUMA Energy is empowered to request that the Integrated Resource Plan be modified, rendering ineffective the recommendations of experts, academia, organizations, and consumers who are the ones affected by the Agreement.

The agreement does not consider strategies to adapt to climate change.

- The agreement does not provide that LUMA Energy will strengthen the T&D system thus making it more resistant to and reliable against hurricanes.
- The agreement does not provide strategies to adapt to climate change, therefore, the system will be once again vulnerable to weather events.
- Federal agencies, including FEMA, are aware that Puerto Rico's system is vulnerable to a category 5 hurricane.
- As drafted, the agreement keeps the same parameters that left us without electric power service for months and, most importantly, led to the loss of lives.
- Most of PREPA's infrastructure is located in coastal areas therefore, it is at risk of being affected during weather events.
- The agreement contains no stipulations about risk mitigation; thus, Puerto Rico will once again face hundreds of millions of dollars in losses in the event of a future natural disaster.
- The agreement releases LUMA Energy from any liability in case of an extreme weather event. LUMA Energy may terminate its operations in Puerto Rico, thus leaving us without the essential service of electricity supply.

Unsustainable costs for customers

- The agreement allocates more than \$500 million in payment to LUMA Energy for compensation and bonuses alone throughout the 15-year agreement term.
- It compromises PREPA's financial health by establishing a payment of more than \$1.5 billion over the next 15 years.

- LUMA Energy is entitled to request PREB to review the electricity rates.
- Under the agreement, LUMA Energy will have control over energy delivery, generation supply contracts, among others. LUMA Energy will exercise monopolistic control over the Island's electric power system.
- A study conducted by the Institute for Energy Economics and Financial Analysis establishes that by 2023, rates per K-Wh will reach 30 cents; this includes debt, fuel, and fees.

They recognized that Puerto Rico deserves and needs a reliable and affordable electric power system mindful of the health of the environment and of its citizens.

It recommends asking the pertinent agencies to annul the agreement for the benefit of all the citizens who will be affected by the high rates and a deficient system with a high risk of losing their electricity.

Lastly, it recommends a decentralized electric power system and the use of renewable energy, particularly rooftop energy.

XXVI. Comité Yabucoño Pro-Calidad de Vida, Inc.

Comité Yabucoño Pro-Calidad de Vida, Inc. presented the following arguments:

We oppose the agreement with LUMA Energy and PREPA's privatization. We have been raising awareness of the urgent need for a comprehensive transformation of the way PREPA generates energy from imported, highly polluting fossil fuels since the 1990s. PREPA needs to transform itself in order to generate energy from renewable and sustainable sources such as hydroelectric power, solar photovoltaic, thermal, geothermal, and wind. There is no explanation as to why, in

the 21st century, 95% of Puerto Rico's energy is produced from fossil fuels (coal, oil, and natural gas) and not even 3% is produced from renewable energy sources. We have observed how our public corporations have fallen victims to mismanagement, embezzlement, and political influence, thus collapsing before our very eyes.

They concluded that they have many reasons to oppose PREPA's privatization and the LUMA Energy agreement, which only favors the interest of its stockholders and owners, operates to the detriment of the best interests of the People of Puerto Rico, represents an onerous burden for all Puerto Ricans, raises electricity rates, and deprives the Island of its main asset.

XXVII. The Continental Christian Network for Peace (RECONPAZ) in Puerto Rico and the Hermandad Pastoral de Puerto Nuevo

These two Christian organizations expressed their rejection of LUMA Energy agreement and stated, among other things, the following:

They expressed their rejection to the LUMA Energy agreement to operate the PREPA T&D system as a private entity.

They rejected the sale by PREPA of its electric power generation system to private entities.

They denounced the lack of transparency and citizen participation in the process carried out by the Government of Puerto Rico to authorize the transfer, through the sale or concession, to private interests, of property, infrastructure, activities or services currently rendered by PREPA to the People of Puerto Rico.

They demanded that all the rights and benefits contained in the collective bargaining agreements, including the terms and conditions of employment for workers and unionized employees be upheld.

They demanded that the Government of Puerto Rico annul the agreement with LUMA Energy, for it is an unconscionable contract and, therefore, null and void; and to stay any transaction directed at enforcing the clauses of said agreement. They also demanded that LUMA Energy return all payments made by PREPA to date.

XXVIII. The Municipal Legislatures of Isabela, Yauco and Hormigueros expressed in their Resolutions Nos. 43, 25, and 61, respectively, their rejection of the LUMA Energy agreement and other arguments related to PREPA’s privatization process.

XXIX. Resolution No. 28 of 2020-21 of the Municipal Legislature of Caguas expressed its support of a rigorous examination and evaluation of the potential negative repercussions of the LUMA Energy agreement, and other arguments.

FINDINGS

IMMINENT RISKS POSED BY THE AGREEMENT IN THE FACE OF THE HURRICANE SEASON AND OTHER POSSIBLE NATURAL DISASTERS

There are serious concerns regarding the implications that a hurricane may have for the Island, such as the result of Hurricane Maria or the earthquakes in the Southern and Western areas of Puerto Rico, since that is, as provided in the agreement, one of the reasons under which LUMA Energy may request the termination of the agreement, specifically, in the face of any emergency that prevents brigades from performing services for a period in excess of eighteen months.

Section 14.5(c) of the agreement provides that *LUMA* Energy shall have the right to terminate the agreement in the event of any “**force majeure event**” continues for a period in excess of eighteen (18) consecutive months and materially interferes with, delays or increases the cost of its operations.

Extended Force Majeure Event. Each of Administrator and Operator shall have the right to terminate this Agreement upon not less than one hundred twenty (120) days' prior written notice to Operator or Administrator, respectively, in the event that a Force Majeure Event continues for a period in excess of eighteen (18) consecutive months and materially interferes with, delays or increases the cost of the Front-End Transition Services or the O&M Services.

Section 1.1 of the Agreement defines the term “**force majeure event,**” among others, as: “any event affecting the T&D System, the System Power Supply, or subcontractors that is beyond the reasonable control of and unforeseeable by, or which, if foreseeable, could not be avoided in whole or in part by the exercise of due diligence, that materially interferes and increases the costs and is not the result of a willful or negligent act.”

Subsection (C) of the agreement specifically states **that: a force majeure event may be that which 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.**

In addition, Subsection (A) states that a **force majeure event** will include, “*landslide, lightning, earthquake, fire, explosion, or similar occurrence.*”

Although, the same subsection also provides that these force majeure events do not include reasonably anticipated weather conditions, it excludes such weather events that result in the declaration of a disaster zone.

“Force Majeure Event” means any act, event, circumstance or condition (other than lack of finances) whether affecting the T&D System, the System Power Supply, Owner, Operator or any of Owner’s Contractors or subcontractors or Operator’s Subcontractors that (i) is beyond the reasonable control of and unforeseeable by, or which, if foreseeable, could not be avoided in whole or in part by the exercise of due diligence by, the Party relying on such act, event or condition as justification for not performing an obligation or complying with any condition required of such Party under this Agreement, and (ii) materially interferes with or materially increases the cost of performing such Party’s obligations hereunder, to the extent that such act, event, circumstance or condition is not the result of the willful or negligent act, error or omission or breach of this Agreement by such Party; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as a willful or negligent act, error or omission or breach of this Agreement by such Party. Notwithstanding anything to the contrary in the foregoing, the imposition of a Tax or an increase in Taxes that is the result of a revocation of the Tax Assurance or an amendment or other modification of the Tax Assurance that is materially adverse to Operator or its Equity Participants shall be deemed a Force Majeure Event.”

Subject to the requirements specified in the foregoing paragraph, Force Majeure Event will include, by way of example and without limitation, the following acts, events or conditions:

(A) an act of God, Outage Event, landslide, lightning, earthquake, fire, explosion, flood or similar occurrence;

...

(C) 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;

It is specifically understood that none of the following acts, events or conditions shall constitute a Force Majeure Event:

(1) reasonably anticipated weather conditions for the geographic area of the T&D System, except to the extent such weather condition otherwise falls under one of the circumstances described in clauses (A) or (C) above;

Furthermore, under Section 17.2(c), LUMA Energy is entitled to request an increase in rates and charges. This authority would cause an excessive increase in electricity rates during any disaster or emergency, thus causing a tragedy similar to, or worse than the one that recently occurred in the state of Texas, United States of America, during a winter storm.

“(c) Extended Event. In addition to all other relief pursuant to this Agreement, including under Section 4.1(f) (Front-End Transition Period Generally – Liability Waiver), Section 4.8(c) (Failure of Service Commencement Conditions – Effect of Force Majeure Events or Owner Fault) and Section 7.4 (Budget Policy), if and to the extent a Force Majeure Event continues for a period in excess of one hundred

twenty (120) consecutive days and materially interferes with, delays or increases the cost of the O&M Services in accordance herewith, and a Party has given timely notice and description as required by Section 17.1 (Notice; Mitigation), Administrator and Operator shall negotiate in good faith to determine whether modifications to the Service Fee, Term or other provisions of this Agreement are appropriate under the circumstances; provided any such modification (i) shall not be effective until Administrator has obtained, at the cost of Owner or Administrator, a Tax Opinion and a Reliance Letter with respect to any such modification and (ii) shall be subject to approval by PREB in accordance with Applicable Law.”

In other words, the agreement enables this for-profit company to terminate it and request an increase in rates and charges at any time the Island of Puerto Rico is hit by a hurricane or after an earthquake, among other emergency events. **In the face of these situations, Puerto Rico would be at the mercy of the will and arbitrariness of a for-profit private entity to address the emergency and repair the electric power system, at excessive costs.**

To make matters worse, if the agreement is implemented exactly as drafted, **neither the structure, nor PREPA’s personnel would be available to mitigate or address the situation, should LUMA Energy decide to terminate the agreement.**

IMPACT AND ECONOMIC AND FISCAL CONSEQUENCES OF THE LUMA ENERGY AGREEMENT

To date, LUMA Energy **has billed approximately \$101 million** for front-end transition services and **has been paid over \$90 million.** However, during the Public

Hearings held on Friday, April 30, it was revealed that LUMA Energy had requested an 11% increase over the budgeted amount.

Starting June 1, LUMA Energy will collect an annual fixed fee ranging from **\$70 to \$100 million** during the first three years and **\$105 million** thereafter for the term of the agreement. Additionally, LUMA Energy will receive an incentive (ranging from **\$13 to \$19 million annually** during the first three years and **\$20 million annually** thereafter for the term of the agreement) if it achieves the performance metrics designed by LUMA Energy itself, and evaluated by the Energy Bureau. LUMA Energy will be reimbursed even for its executives' "entertainment" expenses.

The implementation of the agreement **would cost the Government of Puerto Rico over \$894 million** and, thus far, no public official has been able to identify a source of funds therefor. In a letter dated May 3, addressed to our Committee, the Secretary of State, Larry N. Seilhamer, said that FAFAA had told him that the Department of the Treasury had made a budget allocation of \$750 million for PREPA's operating reserve accounts, which are required to guarantee the continuity of services in certain situations. Seilhamer alleges that, there are over \$10 billion in said account, which is mostly funded by reason of the Government's not paying the debt and the surplus of projected revenues, which constitute a large portion of such funds. The remaining portion required to comply with the agreement will be defrayed by PREPA from services and equipment no longer offered by PREPA, which are reserved for such purposes.

The LUMA Energy agreement, which has a duration of 15 years, includes service charges.

Such charges include the following:

- An annual fixed fee which ranges from **\$70 to \$100 million annually** during the first three years and \$105 million from the fourth year and thereafter for the term of the agreement, plus an adjustment for inflation. (Section 7.1)
- An incentive fee based on performance, ranging from **\$13 to \$17 million annually** during the first three years and \$20 million from the fourth year and thereafter for the term of the agreement, plus an adjustment for inflation. (Section 7.1(c)(i))
- The Agreement **does not provide for the imposition of penalties on LUMA Energy** in the event that it fails to achieve the projected performance metrics.
- **Reimbursement for expenses** incurred by LUMA Energy in fulfilling its contract obligations. (Section 7.2)
- Between June 22, 2020 and January 31, 2021, LUMA Energy has requested reimbursement for expenses in the amount of **\$52,346,102.00**, plus **\$36.5 million on account of the fixed fee, for a total of \$88,846,102.00 in only seven (7) months.**

These expenses have a negative impact on PREPA's already weakened finances and will inevitably entail an increase in electricity rates in Puerto Rico, and will adversely affect the Island's somber economy.

Furthermore, PREPA's Fiscal Plan (Certified by the Financial Oversight Board on June 29, 2020), projects, as of June 2020, a **deficit** of over **\$132 million** in PREPA as a **direct result of the costs associated with the LUMA Energy agreement.**

In addition, **the accumulated deficit for the first semester of fiscal year 2020-2021 amounts to \$432.8 million**, according to the Monthly Report, submitted by PREPA's management to PREPA Governing Board with data from January 2021.

Worse yet, on December 19, 2020, the Financial Oversight Board submitted to the Municipal Securities Rulemaking Board, a report stating that **PREPA will require a loan for more than \$894 million to cover the deficiency generated by the operation and maintenance agreement entered into with LUMA Energy.**

In sworn testimonies given before this Committee, Omar Marrero, Esq., Executive Director of FAFAA and the Director of the P3A explained that these **\$894 billion** are necessary to capitalize the accounts for the performance of the agreement with LUMA Energy as of June 1, 2021, **and cannot be obtained through a loan.**

Although the Director of FAFAA could not specify from where the \$894 million required to commence the LUMA Energy agreement would come from, it could be reasonably interpreted from his testimony that the source of such funds **would have to be the Government of Puerto Rico's general fund.** According to Omar Marrero, Esq., PREPA's transformation is one of the main goals of the Financial Oversight Board.

If a loan were to be obtained, and considering PREPA's current deficit, these charges would further exacerbate PREPA's financial situation and, consequently, that of the Government of Puerto Rico.

According to LUMA Energy's own projections, its projected savings shall not exceed the costs added to PREPA's operations, under any reasonable scenario until 2025. Moreover, **PREPA's debt restructuring agreement** must be added to all these scenarios, for it imposes a **transition fee that will be added to the electricity**

rate, with a 24-year amortization schedule with staggered increases, which could start at 2.768 cents per kWh and up to 4.552 cents per kWh.

Specifically, according to a calculation (for example), the operating deficit for fiscal year 2021 may entail a 3 cents per kWh increase in the electricity rate. In addition, eventually, there will be an increase averaging 3.66 cents per kWh corresponding to the debt restructuring. If we add up these charges to the current rate of 18.13 cents, we would reach a projected rate of 24.79 cents per kWh. Also, approximately one cent could be added to this rate to partially cover the debt with the PREPA's Employee Retirement System. All of this, for a grand total of **25.79 cents per kWh without considering possible increases in the cost of fuel. This scenario represents an increase of nearly 42% in the cost of electricity in Puerto Rico, which could worsen if the \$894 million needed to carry out the front-end transition to LUMA Energy were obtained through a loan that would have to be repaid with interest.**

In fact, the *Institute for Energy Economics and Financial Analysis*, a United States nonprofit corporation that renders services worldwide, whose mission is to accelerate the transition to a diverse, sustainable, and profitable energy economy, has stated that:

The contract is likely to push the price of electricity from a targeted 20 cents per kilowatt-hour (kWh) to 30 cents/kWh because of the added costs of debt servicing fuel prices, political patronage, and poor contracting.

An objective and fair analysis of all the certified financial information available, the sworn statements of the public officials in charge of this process, and an objective, comprehensive, and reasonable analysis of all possible foreseeable

financial scenarios show, without a doubt, that the agreement entered into with LUMA Energy represents **costs, expenses, and increases that will be prejudicial to all residents, businesses, and trades, and will adversely effect on the Island's economy.**

HIDDEN FEES AND OTHER EXPENSES OF THE AGREEMENT

The agreement states that PREPA will reimburse or pay LUMA Energy almost all of its expenses, which will be considered “**Pass-Through Expenditures.**” This expenditure category is extremely broad and significantly increases the payments made to LUMA Energy.

Sections 7.1 and 7.2 establish that the fixed fees shall be used for a limited portion of the operations related to the services of LUMA Energy, LLC (ManagementCo), mainly allocated to corporate overhead costs for six (6) of its chief executives, payments to the board of directors of ManagementCo, administrative and accounting costs, and costs related to the college for technical training for lineworkers (LUMA College) in addition to the one already established and operated by the Electric Power Authority.

The other costs related to the operations of the electric power system originate from payments on account of reimbursements, identified in the agreement as “**Pass-Through Expenditures,**” incurred by LUMA Energy ServCo, LLC (ServCo). **These costs include: wages, salaries, bonuses, employer contributions to pension plans and healthcare insurance plan for employees, other benefits, and other post-employment benefits;** costs incurred in the rendering of maintenance and operation services for the T&D system, including the costs related to all subcontracted and seconded employees, **all goods and services, vehicles and mileage, employee per diems, office supplies, meals, entertainment, leases,**

equipment rentals, among others; capital improvements; professional services; costs incurred with respect to the security of physical assets; **lawsuits and litigations; costs related to outage events**; costs associated with the System Remediation Plan, the Emergency Operations Plan, and other plans; any tax related to assets or revenues, including costs incurred in connection with tax audits; any Commonwealth taxes; any municipal construction excise taxes; refunds to customers; costs related to insurance, including premiums, claims and deductible payments; costs incurred in connection with intellectual property; costs incurred in connection with data security; costs incurred in connection with ServCo's performance serving in the role of the transmission and distribution system operator; costs incurred in connection with ServCo's performance of the back-end transition services; costs of compliance with the Puerto Rico Energy Bureau; costs necessary to achieve cost reductions or operating initiatives for the benefit of customers; costs incurred in connection with branding and public communications; costs incurred in connection with community service programs; and costs incurred in connection with the administration and performance of the system contracts.

As mentioned before, between June 22, 2020 and January 31, 2021, **LUMA Energy has requested reimbursement of \$52.3 million for expenses, plus the \$36.5 million on account of the fixed fee, for a total of \$88.8 million paid in only seven (7) months.** This disbursement will have an impact on the Electric Power Authority' finances and will promote an increase in the cost of electricity in Puerto Rico. Moreover, **PREPA pays these expenses without receiving an itemization thereof, which may open the door for the misappropriation of public funds.**

As for the allegations of **lack of transparency** in the process, the President of LUMA Energy, Wayne Stensby, recently said that **LUMA Energy will not make**

the salaries of its executive officers public, even though such salaries are paid with public funds.

In other statements, the President of LUMA Energy in Puerto Rico, expressed that **the transition year required greater reimbursable expenses** because LUMA Energy was being “built” in Puerto Rico.

Other costs related to the agreement include those to be incurred by P3A in connection with the administration thereof, as provided in Section 7.9, page 98 of the agreement, since P3A would have to hire several consultants in order to administer the agreement. PREPA shall be responsible for paying these consultants, using funds from the rates paid by PREPA customers. The foregoing makes this agreement even more onerous and increases the cost of electricity, or electric power as we locally call it.

Furthermore, according to the agreement and the sworn testimony of the President of LUMA Energy, Engineer Stensby, **LUMA Energy has no obligation whatsoever to invest any money in PREPA**, Section 5.5 of the agreement provides that LUMA Energy shall conduct analysis and projections to determine the need for capital improvement, including capital projects related to new generation, pursuant to Section 5.13(d) (Generation-Related Services – Procurement of Generation Projects and Generation Supply Contracts) and the Shared Services Agreement, **including PREPA’s need to enter into new electric power generation or purchase agreements. This allows it to invest PREPA funds in capital improvements projects, thus, any asset acquired or built will become property of LUMA Energy.**

LUMA ENERGY’S NONCOMPLIANCE WITH THE REQUIREMENTS DURING THE TRANSITION PERIOD

Section 4.5 of the agreement states the “**Conditions Precedent to Service Commencement Date**” and specifies all the conditions that must be fulfilled **before the service commencement date**, without which LUMA Energy cannot begin operations. These conditions include:

1. All parties shall have fulfilled all of their obligations with respect to the Front-End Transition Period;
2. All governmental approvals and certifications shall have been obtained as required by law;
3. All of the documents identified in this Section shall be satisfactory to LUMA Energy and shall be valid and enforceable;
4. No governmental prohibitions or injunctions shall be in effect which would otherwise prohibit the performance of obligations in accordance with the terms of the agreement;
5. PREPA shall have prepared **and issued** a baseline environmental study;
6. Initial budgets and rate orders shall have been approved or otherwise finalized by the Energy Bureau;
7. Proposed revised Annex IX **performance metrics** shall have been approved or otherwise finalized by the Energy Bureau;
8. PREPA shall have access to adequate funding for Capital Costs for the first three (3) years of LUMA Energy’s operations under the agreement in federal funding;
9. The Parties shall have finalized a mutually agreeable Federal Funding Procurement Manual;

10. The system remediation plan and the system operation principles shall have been approved by PREB or otherwise finalized in accordance with Front-End Transition Period;

11. In the event a Title III Plan under PROMESA has been confirmed providing for the **Securitization of the S.P.V** to issue new secured debt, PREPA shall have received a copy of the Servicing Contract, duly executed by LUMA Energy;

12. PREPA and LUMA Energy shall have agreed on the manner in which system revenues will be allocated into one or more accounts of PREPA to be managed by LUMA Energy;

13. PREPA shall have received Title III Approvals from the Title III Court, reasonably acceptable to LUMA Energy, approving PREPA's to entry into and performance of this Agreement and that are otherwise necessary therefore.

14. PREB shall have approved and implemented a waiver of PREPA and LUMA Energy liability to consumers for any losses in connection with the by T&D operations;

15. A final plan for the reorganization of PREPA shall have been approved by LUMA Energy;

16. The Parties shall have executed a shared services agreement, which shall provide the terms pursuant to which LUMA Energy will provide shared services, pursuant to Annex VI, until the generation assets owned by PREPA and LUMA Energy are retired or until certain operations are transferred to private partners;

17. The Department of the Treasury shall have issued a tax assurance;

18. A Financial Oversight Board Protocol Agreement shall have duly executed;

19. PREPA shall have received a tax opinion and LUMA Energy shall have received a reliance letter.

In the public hearing held on March 21, 2021, the President of LUMA Energy, Wayne Stensby, informed that the company will need a total of 3,800 employees to operate the six (6) areas of the Electric Power Authority that shall be transferred, thereto, namely: (1) Transmission and Distribution, (2) customer service, (3) billing, (4) commercial customer offices, (5) employees, (6) the Monacillo Electric Power Operations Center and the purchase of fuel and supplies. However, at that time LUMA Energy had only interviewed 1,500 persons of which 1,132 were PREPA employees and was unable to state how many of those employees had been hired.

These conditions (the majority) have not been fulfilled because both parties have failed to comply with the agreements, making it impossible to start operations on the established commencement date.

IMPACT ON PREPA EMPLOYEES AND RETIREES

PREPA has 5,500 employees, 1,000 of whom are in the generation area, and therefore, are not affected by the agreement. The remaining 4,500 employees will face one of the following three placement scenarios:

- They are hired by LUMA Energy, transferred to another agency or public corporation, or remain in PREPA;
- If the employee is transferred to LUMA Energy, he becomes a new employee and losses the status and benefits he had with PREPA;

- If the employee remains in PREPA or is transferred to another agency, the central government would have to search for funds to cover his compensation and benefits.

Today, shortly before LUMA Energy formally begins operations, on June 1, 2021, there is still uncertainty about the mobility of PREPA employees, nor there is an inventory of positions available in the government of Puerto Rico to receive such employees.

The agreement adversely affects PREPA employees, since it provides NO assurances for employees to keep their job classification and their rights. The agreement grants LUMA Energy discretion over an employee's continuation in his position.

Sections 5.2 and 1.1 of the LUMA Energy Agreement releases the latter from recognizing the collective bargaining agreement and the obligations to PREPA's employees.

Because collective bargaining agreements can only be enforced against employers, and there was a change of employer, without the successor employer recognizing the collective bargaining agreement, such agreement is terminated, thus affecting the contractual relationship between the parties thereto.

Under the Agreement LUMA Energy is not obligated to hire PREPA's employees; its only obligation is to interview them. *See*, Section 4.2 of the LUMA Energy agreement.

Any PREPA employee who decides to work for LUMA Energy shall forfeit his seniority and job classification, because he would have to resign from his job and the agreement does not recognize the rights of said employee.

On this matter, Section 5.8 of the agreement establishes the following:

- (i) *Hired Former Employees of Owner shall not receive credit for their service prior to the Service Commencement Date for purposes of benefit accrual except as otherwise required by Act 120.*
- (ii) *ServCo shall exercise commercially reasonable efforts to cause the ServCo Benefit Plans to waive all limitations as to pre-existing conditions and actively-at-work exclusions and waiting periods for transitioned employees (and their eligible dependents).*

The agreement does not establish either specific requirements to be met by LUMA Energy at the time of **interviewing, selecting, and hiring** PREPA employees who may potentially be hired by LUMA Energy.

The agreement provides for the relocation of employees who are rejected by LUMA Energy to other state government agencies, under the concept of sole employer.

It is common knowledge that the implementation of said concept has not been possible due to the complications it entails, especially for certain PREPA positions that do not exist in other agencies.

The transfer of PREPA employees to other agencies in the central government will cause an **additional and serious budget issue**, because the government would have to include in its payroll all of the employees who are not chosen by LUMA Energy or those who decide to remain public employees.

The LUMA Energy agreement completely avoids the successorship doctrine, the alter ego doctrine, and the single employer doctrine, and the sale of business doctrine. **All doctrines have the purpose of preventing workers from being left**

unprotected upon the purchase of stocks or other forms of entity transfers. It has been established that the successor employer concept is not applicable to stock purchase agreements because the employer does not change.

Labor rights in Puerto Rico stem from the Constitutional Law.

PREPA employees have been informed that they must resign from PREPA in order to become employees of LUMA Energy. However, Act No. 120-2018, as amended, does not provide for the resignation of PREPA employees, but rather to **become employees of the Contractor or be transferred to other agencies.** This represents a conflict with Article II of the Constitution and with a principle recognized in Puerto Rico which provides that even though the freedom of contract principle governs in Puerto Rico, no person's right to free choice of employment shall be restricted, therefore, this possible conflict should be further examined.

As drafted, the agreement leaves out worker's rights.

The agreement does not analyze the contractual provisions between PREPA and the different labor unions in violation of Section 15.- Provisions on the Employees of the Electric Power Authority (22 L.P.R.A. §1121), as amended by Act No. 17-2019, which provides that employees who, as a result of this Act, are transferred under the concept of mobility to another government entity or who become employees of a PREPA Transaction Contractor shall keep all of their vested rights in accordance with the laws, rules, collective bargaining agreements, and regulations applicable to them, as well as the privileges, obligations, and status with respect to any existing pension or retirement plan, or savings and loan fund established by law in which such employees were enrolled before the approval of this Act and that are compatible with the provisions of Act No. 26-2017.

Neither Act No. 20-2018 nor the LUMA Energy agreement unequivocally express that PREPA employees will keep their salaries upon their transition to LUMA Energy or to other government agencies.

We must conclude that both the Act and the agreement must be amended in order to **clearly and precisely establish the provisions regarding the salary of transferred employees.**

Also, the agreement makes no mention of the over ten thousand PREPA retirees who currently receive their pensions from the residual funds of the plan, which has an inescapable purpose and there is no provision whatsoever to tend to such an important group.

This scheme designed to impair the rights of employees has created unease and has the potential to create intense lawsuits and social instability.

RECOMMENDATIONS

The Committee on Economic Development, Planning, Telecommunications, Public-Private Partnerships, and Energy of the House of Representatives of the Commonwealth of Puerto Rico deems that the agreement entered into between PREPA and LUMA Energy, as negotiated and drafted is unconscionable and unlawful, does not comply with the laws that establish Puerto Rico's Public Policy on Energy and is not beneficial to our Island. Therefore, **the majority of the members of our Committee believe that said agreement should be terminated.** In view of the refusal of the Governor of Puerto Rico and the Government Agencies that negotiated the agreement between PREPA and LUMA Energy to terminate the agreement, we are compelled to present recommendations directed at amending said agreement, in order to correct at least its most significant deficiencies. Thus, we

recommend the Whole House of House of Representatives to approve of this report and direct the following:

I. That a copy of this report be delivered to the Governor of the Commonwealth of Puerto Rico, Honorable Pedro Pierluisi-Urrutia, as first executive of the Island; that every agency and entity of the Government be directed to suspend and stay any transaction in connection with the implementation of the LUMA Energy agreement until substantial amendments can be made thereto in order to protect the best interests of the People of Puerto Rico. The reasons for this request are based on the findings contained in this Final Report, emphasizing the following:

1. Fiscal insolvency of both PREPA and the Government to dispose of \$1.0 billion to be allocated to the six reserve accounts for the operation and performance of the agreement entered into between PREPA and LUMA Energy.

2. Noncompliance with the obligations of the front-end transition process, exorbitant costs and expenses allowed under the agreement, the lack of guarantees and safeguards not only in the event of natural disasters, but also in many other instances, as specified in the agreement.

3. The imminent start of the hurricane season, on June 1, 2021, for which LUMA Energy is not prepared as revealed in the Public Hearings.

4. Lack of protection and violation of rights of PREPA employees and retirees.

5. The setbacks, the lack of transparency and of clear and concrete responses of the public officials responsible for the implementation of this agreement, among other more relevant considerations specified in detail in this Final Report. **All this, to the prejudice of the best interests of the People of Puerto Rico**

and drafted in a language that seeks to unreasonably support the private lucrative interests of LUMA Energy.

II. That this Legislative Assembly, upon the appropriate evaluation, approve the bills introduced on May 10, 2021, to amend the following Acts:

1. Act No. 17-2019, House Bill No. 774

To amend Sections 2.1(e), 6.1(e), and 6.5 of Act No. 17-2019, as amended, known as the “Puerto Rico Energy Public Policy Act,” in order to eliminate from Section 2.1(e) the operation of the Energy Control Center; amend Section 6.1(e) to substitute the word supervise for oversee; and amend Section 6.5 to provide that PREPA employees shall retain their status as PREPA employees with the same rights and benefits; and for other related purposes.

2. Act No. 120-2018, House Bill No. 775

To amend Sections 6, 8(d), and 18(b) of Act No. 120-2018, as amended, known as the “Puerto Rico Electric Power System Transformation Act,” in order to eliminate the exemption granted on the applicability of certain provisions of Partnership contracts executed in connection with any PREPA Transaction; specify in Section 8(d) that the Committee shall assist the Authority solely in matters that require its assistance and that it shall be limited to its regulatory function; and amend Section 18(b) to add as an additional exception for complying with this Section in cases where conflicts of interest may exist or where impartiality may be affected; and for other related purposes.

3. Act No. 29-2009, House Bill No. 776

That the amendments included in Act No. 29-2009 to amend Section 2(d), 6(b)(ii)(F), 6(b)(ii), and 10(d) of Act No. 29-2009, as amended, known as the “Public-Private Partnership Act,” be approved in order to add in Section 2(d)

the following sentence “provided that the private person makes Capital contributions in cash or assets in any partnership agreement”; provide that if no cash or asset contribution is made, it shall be deemed a privatization of Government assets or services; to substitute the word supervise for the word oversee in Section 6(b)(ii)(F); to amend Section 6(b)(ii) to add the letter (G) in order to specify that no public funds shall be used to pay for the constitution of a private entity sought to be established under this Act; and amend Section 10(d) in order to state that the Partnering Government Entity shall oversee and supervise, in conjunction with P3A and FAFAA, the Contractor’s performance and compliance under the Partnership Agreement.

III. That the House of Representatives approve Senate Bill 213 in order to amend subsection (u) of Section 5 of Act No. 83 of May 2, 1941, as amended, known as the “Puerto Rico Electric Power Authority Act,” to provide that the creation or execution of contracts by and between the Electric Power Authority and companies, partnerships, or subsidiary corporations, whether for profit or nonprofit, affiliated or associated for certain purposes, shall be ratified by the Legislative Assembly through a Concurrent Resolution.

IV. That an Act be enacted to create the position of Inspector General of PREPA.

V. That a House Resolution was filed to investigate the process that led to the adjudication of the consortium QUANTA, ATCO, and IEM.

VI. That the LUMA Energy agreement be amended to include a clause that requires the company to comply with the provisions of Act No. 17-2019, as amended, known as the “Puerto Rico Energy Public Policy Act,” which specifies the following in Section 1.8:

Furthermore, it shall ensure that the Partnership Contract compels the transmission and distribution network Contractor, regardless of the source of funding, to make capital investments as are necessary to modernize and/or maintain in optimum conditions the Island's electric power grid in order to render it more reliable, resilient, and efficient, and to allow for the integration of renewable energy sources needed to achieve the Renewable Portfolio Standard established in Act No. 82-2010.

VII. That a copy of this Final Report be delivered to: Fermín Fontanés-Gómez, Esq., Executive Director of the Public-Private Partnership Authority; Omar Marrero-Díaz, Esq., Executive Director of the Fiscal Agency And Financial Advisory Authority; Edison Avilés-Deliz, Esq., Chair of the Puerto Rico Energy Bureau; Engineer Ralph Kreil-Rivera, Chair of the Governing Board of the Puerto Rico Electric Power Authority; Engineer Lawrence N. Seilhamer-Rodríguez, designated Secretary of State and Chair of the Steering Committee to Oversee the Execution of the LUMA Energy Agreement in Puerto Rico; Mr. William Brock-Long, Administrator of the Federal Emergency Management Agency, and José G. Baquero-Tirado, Esq., Federal Disaster Recovery Coordinator for Puerto Rico and the U. S. Virgin Islands; Domingo Emanuelli-Hernández, Esq., Secretary of Justice of Puerto Rico; Yesmín M. Valdivieso, CPA, Comptroller of Puerto Rico; Ivelisse Torres-Rivera, Inspector General of Puerto Rico; Luis A. Pérez-Vargas, Executive Director of the Government Ethics Office; Mr. David A. Skeel, Chair of the Financial Oversight Board; Judge Laura Taylor Swain from the Southern District of New York presiding over the Title III case under PROMESA; Honorable Raúl M. Grijalva, Chair of the Committee on Natural Resources of the House of

Representatives of the United States; Mr. Ángel Figueroa-Jaramillo, Spokesperson for the Alliance of Active and Retired Employees of the Puerto Rico Electric Power Authority; and the Honorable Javier Aponte-Dalmau, Chair of the Committee on Strategic Projects and Energy.

CONCLUSION

For all of the foregoing, the Committee on Economic Development, Planning, Telecommunications, Public-Private Partnerships, and Energy of the House of Representatives of the Commonwealth of Puerto Rico, upon study and consideration of House Resolution 136, is pleased to submit this Final Report with its attachments, findings, recommendations, and conclusions, requesting the approval thereof.

RESPECTFULLY SUBMITTED,

Hon. Luis Raúl Torres-Cruz
Chair
Committee on Economic Development, Planning, Telecommunications,
Public-Private Partnerships, and Energy
House of Representatives
Commonwealth of Puerto Rico

Attachments