



October 20, 2021

Chair Raúl Grijalva  
Ranking Member Westerman

U.S. House of Representatives Committee on Natural Resources

**RE: Puerto Rico Electric Power Authority (PREPA) Post-Implementation of the LUMA Transmission and Distribution Contract, Questions for the Record**

Dear Chairman Grijalva, Ranking Member Westerman, Representative Velázquez, Representative Porter, Resident Commissioner González-Colón and Committee Members:

Thank you again for the opportunity to discuss LUMA's role in the important and historic energy transformation of Puerto Rico. Please find below our responses to the additional questions submitted by Committee Members in blue.

## Questions from Democratic Committee Members

### Questions from Rep. Nydia M. Velázquez for Wayne Stensby, CEO Luma Energy

1. When LUMA and the government of Puerto Rico executed the agreement for the operation and management of the grid, LUMA made certain representations about hiring a firm that specialized in the management of federal funds.
2. Has such firm been hired? If so, at what cost?

As per the LUMA proposal to the Partnership Committee, IEM, an experienced and well-regarded federal funds manager, is indeed part of the LUMA team and is compensated on a time and materials basis for work actually performed. IEM's rates for LUMA are comparable to IEM's negotiated rates on other contracts with the U.S. Government. IEM costs are paid by federal funds through FEMA's public assistance administration fees, which are capped by Congress at 5% of the project value.

3. Please provide in writing how many of LUMA's VPs make more than \$200k a year and how many make more than \$500k a year.

LUMA's Executive Leadership Team consists of highly qualified, skilled professionals with years of experience in leading high performing teams within the industry. LUMA has a compensation philosophy that aligns with paying its employees market based rates, which includes a total compensation package over \$200,000 annually for five Vice President roles.

As per our contract, six senior executives, including the CEO are paid for by the owners of LUMA at no cost to customers. Only the CEO is paid more than \$500,000 per year.

Historically, PREPA's executive leaders also received total compensation in excess of \$200,000.

**Questions from Rep. Porter for Mr. Wayne Stensby, Chief Executive Officer, LUMA Energy**

1. PREPA's testimony validates a rumor we heard about the real reason for one of the bigger blackouts – a transmission line failure that was managed by LUMA. Specifically: "The most significant generating unit outage involves the Costa Sur generating station. On August 22, a transmission line fault led to loss of two of the San Juan generating units and transmission system fluctuations that affected generating facilities in the south, including Costa Sur. Those fluctuations led to vibrations which eventually forced Costa Sur Unit 6 offline and damaged the steam turbine rotor."

According to PREPA's testimony, one of the biggest blackouts since LUMA took over was because of a failure of a transmission line that broke a turbine at the Costa Sur powerplant.

To be very clear, transmission line failures do not damage or break steam turbine rotors.

The facts related to this event are as follows:

- Transmission line 38900, on the north side of the island suffered a phase to phase fault and tripped at approximately 12:25 on August 22<sup>nd</sup>. This transmission line connects two transmission substations and does not have a direct connection to a generating

station. This trip caused a transmission system disturbance which was exacerbated by San Juan generating units 5 & 6 tripping and also Palo Seco generating unit 3 tripping. Throughout this event, Costa Sur unit's 5 & 6 showed expected operation and were witnessed as operating normally.

- A separate and wholly unrelated event occurred at approximately 19:25 (~7 hours later) on August 22<sup>nd</sup> when the generation output of Costa Sur 6 was manually decreased by Costa Sur operating staff. There were no transmission outages at or through this period. At 22:30 of August 22<sup>nd</sup>, Costa Sur 6 was tripped via plant operating staff.

1. Is that line under the management of LUMA?

Yes, transmission line 38900 is operated by LUMA. Costa Sur generating plant is operated by PREPA.

2. Did that outage contribute to the increased use of more expensive generating plants, possibly including peaker plants, to maintain sufficient supply of electricity?

The transmission outage early in the day is not related to the Costa Sur 6 outage.

LUMA dispatches energy based on availability and according to security-constrained economic principles to meet demand. Less expensive resources are generally dispatched first - these include available renewables and base load units. When base load capacity is insufficient to meet demand, LUMA shifts to other available sources – including peakers. The Costa Sur outage was one of many other unplanned outages that required the use of all available sources of generation in order to meet demand. Given the large shortfall of generation, caused by multiple unplanned outages across many PREPA generating units, there were many periods of insufficient supply of electricity which is what caused load shedding across Puerto Rico.

3. Was the increased use of more expensive power plants a primary justification for LUMA's proposed rate increase?

The reduced availability (unplanned outages) of multiple lower cost plants in addition to rising global fuel prices led to the variation which prompted the Puerto Rico Energy Bureau (PREB) to issue a determination to revise and adjust the FCA factor to recover fuel costs. LUMA is required, on behalf of PREPA, to submit calculations for the component of tariffs used to recover fuel cost on a quarterly basis. When actuals vary materially from forecasts, that deficit or credit is applied to the forward-looking rates designed to recover fuel costs incurred by PREPA. LUMA does not set rates, nor does LUMA benefit when rates increase. All changes to electricity rates are adjudicated by the PREB.

5. What was the cause of the failure of the transmission line?

Line 38900 suffered a phase to phase fault due to a faulty insulator.

6. If the transmission line failure is determined to be the fault of LUMA's mismanagement, will LUMA be responsible for the costs or does LUMA intend on asking the ratepayers to pay for its mistakes?

The entire electricity system, both generation and transmission & distribution in Puerto Rico is in a very poor state. It's been well documented that this state of disrepair did not occur overnight, it occurred across more than a decade. The repair and restoration of the electricity system is exactly why Puerto Rico created Act 120 and then ultimately selected LUMA as the T&D operator. This is why LUMA exists.

LUMA did not cause the transmission fault, however we did respond and restore the line to service. This transmission failure is unrelated to the Costa Sur 6 failure.

Similar to other utilities in other jurisdictions, LUMA has operational liabilities established in the contract.

## Questions from Republican Committee Members

**Questions from Rep. González-Colón (PR)** for Mr. Wayne Stensby, CEO, LUMA Energy:

- 1) Can you please provide us a specific timeline for LUMA submitting project Scope of Work documentation for FEMA/COR3 projects?

The FEMA process consist of several steps with respect to the submission of project Scope of Work (SOW) documents. In Puerto Rico, the regulator has added an additional step wherein the regulator has directed proponents to submit any SOW for review and approval by the regulator prior to submitting to FEMA. The SOWs at this stage are high-level *Initial SOWs*. Once approved by the regulator, the Initial SOWs are submitted to FEMA for its review. At this point, FEMA provides a FEMA project number which initiates preliminary work by proponents towards the development of *Detailed SOWs* for issuance to FEMA for approval. In effect, it's a two-step SOW process. Upon receipt of the approval of the Detailed SOW, the proponent can then undertake final design work and ultimately construction activities.

To date, LUMA has received approval from the regulator for 132 Initial SOWs, of which 65 have received FEMA project numbers with the remaining 67 projects are expected to be processed shortly by FEMA. This step of the process enables LUMA to undertake the necessary work to develop the Detailed SOWs.

The timeline for the Detailed SOW submissions ranges from the end of October 2021 through 2022 and 2023, depending on the complexity of the project and sequencing consideration. Initial projects whose detailed SOWs are being completed at this time will be utilized to work through and establish processes/procedures for future submission.

- 2) At last month's meeting in Puerto Rico, it was said that 37 PREPA projects totaling \$ 1 billion have already been placed in the hands of LUMA

- a) You can tell us what they are and what the status is?

As noted in response (1) above, the 65 projects noted have received FEMA project numbers based on LUMA's Initial SOWs submission. These projects are now at various steps in the

development phase towards completing Detailed SOWs for submission to FEMA. This work involves preliminary engineering work, environmental and historic preservation assessment work, and hazard mitigation work towards the potential for additional FEMA funding.

b) If any of these projects have been awarded, who are the contractors, builders?

There are no projects that have been awarded for construction activities. As noted above the projects are at preliminary engineering, environmental and historic preservation assessment, and hazard mitigation assessment stage of development.

c) Were any of those T&D projects that were already designed under PREPA, and can LUMA change the project design and specifications?

As of June 1<sup>st</sup>, there was only one project that had material early engineering work underway. All other projects required LUMA to initiate preliminary engineering activities.

The one project in question has been progressed further including modifications based on direction received from FEMA. This is the project that is targeted for an October 2021 submission of its Detailed SOW to FEMA (refer to Q1 above).

3) Is a grid that supports these community distributed renewables be incompatible with one that supports central power plants, or just more complicated?

These two ideas are not opposed, but rather complementary. Community distributed renewables requires a strong and well constructed basic electricity grid. The integration of distributed energy resources does require more complexity in terms of control systems and operational intelligence but this is overlaid or on top of the basic electricity system backbone.

a) What support will LUMA provide to these initiatives?

LUMA is supporting these initiatives with the following current and future activities:

- LUMA is actively connecting distributed renewables as we speak. There was a significant backlog when we commenced operation and we are presently connecting new customers at a pace that will clear the backlog by year end.
- Operate, maintain and restore the basic infrastructure (poles, wires, transformers, protective devices, etc.)
- Install and operate the more complex operating control system and field

devices to implement a smart grid capable of incorporating community distributed renewables and optimizing the load and generation on the system.

- Replacement of current meters with smart meters (Advanced Metering Infrastructure – AMI) to allow consumers to become prosumers.

4) Labor Issue:

- a) It was mentioned, that LUMA has required of its contractors and subcontractors a Project Labor Agreement modeled after its agreement with International Brotherhood Electrical Workers (IBEW) Local 222 of Tampa FL. This has raised the following constituent concerns, for which we need clear Yes or No answers:
  - i) Whether this means ALL electrical contractors/builders in PR who may want to do business with LUMA, will have to place ALL employees, not just who do line or substation construction work for LUMA, under the agreement.

No. LUMA will not require all employees of contractors doing work for LUMA to fall under the PLA. LUMA's priority is the safety and wellbeing of its employees and anyone working on the property. The PLA specifically outlines the scope of the agreement between LUMA, the IBEW and its contractors and it covers personnel directly working on electrical apparatus.

Safety is dependent on highly skilled trained workers. LUMA recognizes the necessity of improving safety through offering additional evaluation, education, and training of workers.

Of note, the parent companies of LUMA created the LUMA College for Technical Training at their own expense in order to train and develop skilled workers.

LUMA is actively working to train its own workforce, but it would be atypical and impractical for LUMA to do the same for the outside workforce. Therefore, to gain the highest standards of safety and skilled workers, LUMA requires contractors working on the electrical system to follow the Project Labor Agreement or PLA.

- ii) Whether in effect you are requiring anyone wishing to do this work with LUMA to become an IBEW Union Shop.

No. LUMA is not requiring any contractor to become an IBEW Union Shop.

- iii) Whether this means they would then become bound to follow the IBEW rates even when doing work for private entities that are NOT LUMA.

No. Contractors are able to do as they wish when working for other entities or customers. The PLA only applies to the Puerto Rico Transmission and Distribution system.

- iv) Does this conflict with observing prevailing market wages – where the market is Puerto Rico?

No. There are only three published wage determinations for Puerto Rico and all set out the minimum amounts that contractors must pay. The PLA enables all contractors to comply with this minimum.

- b) Was there any open-door public participation process, in leading to this PLA decision, and supporting this requirement? Were P3 or PREPA involved or consulted?

This was a labor strategy decision to ensure a safe, trained workforce and is typical for this quantity of work in other parts of the US. Labor negotiations are historically private between the company and the employee's representative.

- c) What plans do you have to employ and use local contractors and suppliers? We note that FEMA funded PREPA's reconstruction of grid maintenance and repairs.

We plan to maximize the use of local contractors and suppliers. Given the magnitude of the reconstruction work necessary, labor will be in high demand and short supply. We will use all of the local contractors and suppliers who are able to comply with labor and procurement rules, policies and practices.

- d) What Federal mandates impact your use of local contractors?

While the Federal government provides provisions within Appendix II to 2 CFR Part 200 restricting contractors from receiving contract awards for Debarment or Suspension as well as requiring compliance with a number of other mandates such



as Equal Employment Opportunity, Davis Bacon Act, Byrd Anti-Lobbying Amendment and others, these Federal mandates do not address the use of local contractors.

- e) In hiring of personnel from outside of Puerto Rico, what provisions are in place for compliance with Puerto Rico laws that requires some occupations to be locally licensed and certified? What provisions if any are there regarding when to outsource?

LUMA is actively recruiting in Puerto Rico. We strive to hire experienced workers on island and ensure that those workers that are non-residents to Puerto Rico are meeting both federal and commonwealth employment regulations. Outsourcing contractors has been limited to primarily on island contractors to date.

- f) How do you respond to the statements by the Puerto Rico's Manufacturers, small businessgroups and the local Chamber of Commerce earlier this week accusing LUMA of coercing or forcing out local contractors to bring in a single union shop from outside Puerto Rico with higher costs?

We were disappointed to hear the views of the groups opposed to the PLA. There is no coercion involved here. We will be working with them to better explain the PLA, how it works, and how it can benefit all. PLAs are common elsewhere across North America, but have not been used before in Puerto Rico – we will continue to work and communicate with stakeholders directly. The volume of project work that is in the FEMA funded pipeline is unprecedented for Puerto Rico and so the approaches taken to effectively manage this work must consider this.

In order to ensure the large amount of work gets completed in a timely manner, it is important to have an agreement that prevents labor slowdowns and strikes. The PLA provides for the arbitration of any labor issues without resulting in strikes and walkouts. It puts customers first.

- 5) Are there provisions in place governing competition and award of projects where the LUMA parent companies or other corporate affiliates within Quanta and ATCO would participate?

The T&D O&M Agreement requires that LUMA, with input from PREPA P3A, and COR3, prepare a manual to govern the procurement of any contract involving federal funding, as well a manual to govern non-federally funded capital improvements. Among other requirements, the manuals must address employee and organizational conflicts of interest (“OCI”).

To this end, the Procurement Manual (“PM”) was prepared by LUMA and approved by the P3A and COR3, as well as acknowledged by PREPA’s Governing Board. The PM requires that LUMA implement a plan to identify, avoid or mitigate actual or potential OCI concerns and issues as early in the procurement process as possible, including the participation of a LUMA parent company, covered affiliate or subsidiary, in accordance with 2 CFR Part 200 (the Uniform Rules) and other applicable laws and regulations (“OCI Plan”).

LUMA is in the process of developing and submitting for P3A and COR3 approval an OCI Plan which will include the engagement of an independent third-party to undertake key stages of the procurement process when a LUMA parent, covered affiliate, or subsidiary participates in the process. The independent third-party is expected to, among other responsibilities, review and approve the scope of work, requirements, and other bid documents, lead the RFP process whenever there’s a covered affiliate participation, as well as issue a recommendation for award of the contract. The P3A and COR3 are also expected to play a key role in the process.

- a) What is the LUMA company policy regarding procurement directed by LUMA staff, to businesses owned by LUMA shareholders and employees?

LUMA’s company policy regarding the participation of businesses owned by LUMA shareholders in procurements conducted by LUMA is that such participation implies

an OCI concern which requires the engagement of an independent third-party, as described above. Businesses owned by LUMA shareholders may not participate in any procurement conducted by LUMA in which an independent third-party has not been engaged.

LUMA's company policy regarding the participation of businesses owned by LUMA employees in procurements conducted by LUMA is that such a situation has the potential to constitute a conflict of interest under LUMA's Conflict of Interest Policy. LUMA's employees are prohibited from entering or continuing to participate in a situation that involves a conflict of interest unless it has been properly disclosed and approved in writing by LUMA's Director of Compliance and its Chief Executive Officer.

- b) Does your contract permit contracting your corporate parents or related companies?

As explained above, the T&D O&M Agreement requires the implementation of procurement manuals which address OCI. In accordance with federal funding requirements, the PM does not prohibit that LUMA contract corporate parents or related companies but does require the avoidance or mitigation of the OCI that such situation may entail, including the engagement of an independent third-party to undertake key aspects of the procurement process.

- 6) As a contractor of the Puerto Rico government, under an exclusive contract enabled by the Puerto Rico Legislature, and performing projects financed with federal funds, to what extent is LUMA accountable to disclose information to the Puerto Rico Legislature or Congress regarding activities in which public funds were or will or may be used?

Under the Operation and Maintenance Agreement, LUMA is designated agent of PREPA for certain key functions, such as collection of System Revenues (defined term). System Revenues collected by LUMA are the property of PREPA as Owner. LUMA collects such revenues as an agent of PREPA. Thus, any System Revenues can be categorized as public funds as they continue to belong to PREPA per the OMA. In

connection with System Revenues, LUMA appreciates that it is subject to all applicable law on public funds, including the jurisdiction under Applicable Law of Governmental Bodies such as the United States Congress and the Puerto Rico Legislative Assembly.

LUMA's role pursuant to the OMA regarding public funds is subject to oversight under Applicable Law. However, not all funds received or managed by LUMA are public funds under the definition of the Puerto Rico Government Accounting Act. Payments made to LUMA in payment for the services rendered, like with any other contractor to the government, they become private funds of LUMA. With regard to LUMA's private funds, LUMA is not subject to disclosure requirements applicable to public funds.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wayne Stensby', with a long horizontal stroke extending to the right.

Wayne Stensby  
President & Chief Executive Officer