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RICO, GOVERNMENT OF PUERTO RICO

Written Statement of Omar Marrero
House Natural Resources Committee Hearing, April 9, 2019

This statement is submitted on behalf of Mr. Omar Marrero, Executive Director of the Public-Private Partnerships Authority (“P3A”) and the Central Office for Recovery and Reconstruction of Puerto Rico (“COR3”). Established in 2009, the P3A is the sole government entity authorized and responsible for implementing the public policy of the Government of Puerto Rico (the “Government”) on public-private partnerships (“PPPs”) and for determining the functions, services or facilities for which PPPs are to be established. COR3 was established in December 2017 shortly after Hurricanes Irma and Maria. The mission of COR3 is to manage all aspects of the recovery and ensure that the government of Puerto Rico can implement reconstruction efforts with efficiency, effectiveness and transparency and capitalize on the recovery efforts to build a better, stronger, more resilient Puerto Rico. This statement addresses the status of Puerto Rico’s post-hurricane recovery efforts and the rebuilding and transformation efforts relating to the Puerto Rico Electric Power Authority (“PREPA”). This statement concludes with a summary of suggested courses of action Congress can adopt to aid Puerto Rico’s recovery and reconstruction efforts.

Puerto Rico’s Fiscal and Economic Crisis

Hurricanes Irma and Maria struck Puerto Rico in 2017 in the midst of an already dire fiscal and economic crisis. Since 2006, the Island had shouldered a public debt burden of \$72 billion and unfunded pension liabilities of \$50 billion. Negative economic growth was exacerbated by significant outmigration of the population, particularly working-age members of the labor force. The Island’s electric system was outdated and fragile due to decades of inadequate management and woefully insufficient capital investment. Against this backdrop, it was no surprise that the decimation wrought by Hurricanes Irma and Maria, which pummeled Puerto Rico less than two weeks apart, was particularly severe. Millions of residents were cut off from essential public services, including power, water, communications and transportation for months after the disasters, posing significant health and safety concerns.

In the face of these unprecedented challenges, Governor Rosselló and his administration are looking to turn crisis into opportunity for Puerto Rico. The goal is not just to rebuild but to use the recovery process to jumpstart a long-term revitalization of the economy of Puerto Rico and make the Island’s electric system more resilient against future natural disasters. The government is focused, in particular, on the transformation and modernization of Puerto Rico’s electric sector through private management of the Island’s transmission and distribution (“T&D”) system and private ownership and management of the generation infrastructure. Our vision is to implement cost-effective, forward-looking and innovative solutions for Puerto Rico’s energy sector.

Robust Organizational Framework

Simultaneously rebuilding and transforming Puerto Rico’s decaying energy system is an unusually complex undertaking. The patchwork electric system is expansive and geographically dispersed, serving 3.2 million U.S. citizens across more than 3,500 square miles. The Government remains mired in a debt crisis and subject to the fiscal oversight of the Financial Oversight and Management Board for Puerto Rico

(“FOMB”). PREPA is in the midst of an ongoing insolvency process under Title III of the Puerto Rico Oversight, Management and Economic Stability Act (“PROMESA”). Procurement processes need to be structured to comply with the requirements of various federal funding agencies, in addition to the new Puerto Rican regulatory framework for energy transformation.

In order to effectively navigate these complexities, the Puerto Rican government has established a robust, centralized organizational framework that promotes transparency, governance and accountability for the recovery and transformation process:

- *COR3*. The nerve center of this framework is COR3, which was modeled after similar agencies successfully deployed in post-disaster situations by other U.S. jurisdictions, including New York, New Jersey and Louisiana. Tasked to lead the development and implementation of a strategic plan for the reconstruction of Puerto Rico in the short, medium and long term, COR3 has been overseeing public and private sector efforts related to financial management of recovery funds, sub-recipient monitoring, training and technical assistance, internal auditing and the reimbursement review process, among others.
- *Third-party experts*. COR3 has hired and is supported by a network of third-party experts with extensive global experience in disaster recovery and reconstruction efforts, including (i) ICF Incorporated, which advises on project formulation and grant management, (ii) CGI Technologies and Solutions, which advises on technology solutions, software development, report and data management, (iii) Deloitte & Touche, which advises on strategy, compliance and financial management and (iv) Navigant Consulting Inc., which advises on energy-related matters.
- *P3A, FOMB and PREB*. Under Act 120 (discussed below), the P3A manages the solicitation of private partner proposals for PREPA’s T&D and generation systems, working closely with the FOMB and its advisors to develop appropriate transactional structures. Under Act 120, partnership contracts are also subject to review by the Puerto Rico Energy Bureau (“PREB”), which was created by Act 57-2014, as amended, to regulate, monitor and enforce the energy public policy of the Government.

The recovery and transformation are bolstered by a strong legal framework grounded in the Transformation Act, Act 120-2018 (“Act 120”), signed into law on June 20, 2018, and the Puerto Rico Public-Private Partnership Authority Act, Act No. 29-2009 (“Act 29”), which authorize and establish clear process guidelines for the procurement of long-term public-private partnership agreements in connection with PREPA’s T&D system and generation infrastructure. Act 29, in particular, contains a proven model that is well-understood by investors and was successfully used in the Luis Muñoz International Airport concession and the concession of certain toll roads, among other recent Puerto Rican infrastructure projects. Act 120 set in motion the development of a more robust regulatory framework to support Puerto Rico’s transformation. To that effect, on April 11, 2019, Governor Rosselló signed the Puerto Rico Energy Public Policy Act, Act No. 17-2019 (“Act 17”). Act 17, which was introduced in the Puerto Rico legislature in October 2018, was prepared by an advisory working group established under Act 120.

In addition, the P3A enacted the Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Partnership Contracts and Sale Contracts for the Transformation of the Electric System under

Act No. 120-2018 to establish the specific procedure applicable to transactions undertaken by the P3A pursuant to Act 120.

In sum, COR3 and the Government have the appropriate systems and processes in place to effectively manage the recovery and transformation process.

Progress in Puerto Rico's Recovery and Transformation

The Government has made significant strides in both hurricane recovery efforts and the transformation process over the past several years.¹ With respect to the electric sector transformation in particular, the government, the FOMB and PREPA issued a letter soliciting private sector feedback on the transformation in June 2018. The market sounding requested general feedback on the transformation process, the regulatory structure of the electric sector in Puerto Rico and potential structures of transactions involving the T&D system and generation assets. A number of strategic companies spanning the regulated utilities, power generation, oil and gas and general industrial sectors, and financial sponsors with experience in power-related infrastructure, responded to the market sounding, the results of which confirmed private sector interest in the transformation process. Additional milestones in the recovery and transformation are detailed below.

COR3 and the Recovery Process

COR3 has been working directly with the Federal Emergency Management Agency (“FEMA”) to coordinate and execute energy infrastructure and facilities damage inspections, repair/replacement statements of work and cost estimates, environmental and historic preservation compliance and permitting analysis and hazard mitigation and resiliency conceptualization, as required by the Section 428 (as defined below) and the Bipartisan Budget Act of 2018 (“BBA”). We have led a stakeholder process to engage industry experts from FEMA, the Department of Energy (and National Laboratories), large public power companies and others to deliver on this objective. COR3 is also developing new design and construction codes and standards for the reconstruction of the energy delivery system, ensuring conformance with current industry codes and best practices, including technically feasible and cost-effective resiliency measures.

To date, the comprehensive and effective digital information system (“DRS”) established by COR3 has facilitated the transparent distribution of over \$12 billion in federal funds across more than 400 sub-recipients. The Transparency Portal website (<https://www.recovery.pr/en/home.aspx>), set up by COR3, publicly documents the status of Puerto Rico's recovery efforts.

T&D Transformation

On October 31, 2018, Governor Rosselló began the request for qualifications process (“T&D RFQ Process”) related to the T&D system. This process sought statements of qualifications from companies or consortia interested in managing and operating Puerto Rico's electric power T&D system, including the administration of federal disaster recovery funding, pursuant to a long-term contract. On January 17, 2019, four experienced and reputable private sector proponents (including one consortium) (each such party, a

¹ For a summary timeline of the Rosselló administration's various achievements with respect to post-hurricane recovery, see Annex A.

“Qualified Respondent”) were selected to participate in the next stage of the process (the “T&D RFP Process”). The Qualified Respondents are:

1. *Duke Energy Corporation* (“Duke”). Duke is a company that, through a number of electric and gas utility affiliates, serves approximately 7.6 million customers. Duke is based in North Carolina and serves electric and gas utility customers in service territories covering 95,000 square miles across Florida, Indiana, Kentucky, North Carolina, Ohio and South Carolina. Duke affiliates operate transmission and distribution systems that extend more than 295,000 miles.
2. *Exelon Corporation* (“Exelon”). Exelon is an Illinois-based Fortune 100 listed company that owns a number of gas and electric utility companies. In 2017, Exelon utility affiliates served more than 10 million customers in Delaware, Illinois, Maryland, New Jersey, Pennsylvania, Virginia and Washington, D.C.
3. *PSEG Services Corporation* (“PSEG”). PSEG is a New Jersey-based company that, through its utility affiliate, provides natural gas and electric utility services to around 3.8 million customers in Connecticut, Hawaii, Maryland, New Jersey, New York and Pennsylvania, an area covering approximately 2,600 square miles of territory.
4. *A consortium composed of the following three entities: ATCO Ltd* (“ATCO”), *IEM and Quanta Services, Inc.* (collectively, the “Quanta Consortium”). The Quanta Consortium is composed of three companies with broad and diverse experience in the field of electric power. Quanta Services, Inc. is based in Texas and provides infrastructure solutions for the electric power, oil and gas and telecommunications industries across North America, with projects in various states of the United States, including California, Georgia, Maine, Texas and Canada. ATCO offers innovative business solutions and services on various platforms, including electricity, structures and logistics, pipelines and liquids and retail energy. ATCO is based in Edmonton, Canada and has operations in various countries around the world, including in Canada, Australia and Chile. IEM is a global security consulting company that specializes in providing strategies, technologies and innovative solutions. IEM is based in North Carolina and has offices in seventeen states of the United States, including in California, Colorado, Florida, Texas, Washington and Utah, as well as in Puerto Rico.

On February 1, 2019, the Authority issued a request for proposals inviting Qualified Respondents to prepare and submit proposals to operate and manage Puerto Rico’s electric T&D system, including the administration of federal disaster recovery funding, pursuant to a long-term contract. As part of the T&D RFP Process, Qualified Respondents have participated in meetings with the Authority, PREPA and their respective advisors, including management presentations at the beginning of April 2019. The Authority intends to award the contract to a Qualified Respondent who submits a compliant proposal and is selected in accordance with the process set forth in Act 120. The selection of a Qualified Respondent pursuant to the T&D RFP Process is expected to take place by the end of 2019 and would represent an important milestone in realizing the Government of Puerto Rico’s goal to achieve affordable, resilient and reliable power that will serve as a driver of economic growth.

Generation Transformation

In parallel with the T&D transformation process, the P3A, PREPA and COR3 have begun implementing various initiatives designed to address core transformation objectives for Puerto Rico’s

generation system, key of which include (i) reduced reliance on fuel oil, (ii) a modernized generation fleet and (iii) increased system resiliency through investments in facility repairs and enhancements, among others. The Government’s ultimate goal is for operation and ownership of Puerto Rico’s generation assets, whether currently existing or to be developed, to be fully transferred to private hands in the near to mid-term.

First, PREPA has secured major fuel cost savings by executing a contract with a private partner in March 2019 for the fuel conversion to liquefied natural gas (“LNG”) of Units 5 and 6 of the San Juan combined cycle power plant. The contract, which was procured under a competitive bid process and approved by the PREB and FOMB, is expected to yield significant fuel cost savings in its initial five-year term, in addition to resulting in substantial reductions in air emissions from the San Juan plant.

Second, the P3A has launched several competitive requests for qualifications (“RFQs”) and requests for proposals (“RFPs”) under Act 120 for private sector investment in generation infrastructure, including for the installation of battery energy storage systems (“BESS”), the deployment of distributed mobile generating units and the revitalization of PREPA’s hydroelectric power system. The bidders and expected bidders in these projects have indicated that a clear understanding of the availability and timing of federal funding is critical for them to move forward. These funding concerns have already led to the stalling of review of the four competitive bids received for the BESS project in January 2019.

Finally, PREPA and its advisor Siemens Industry are in the process of finalizing an Integrated Resource Plan (“IRP”) that, when approved by PREB and together with the energy grid modernization plan (“EGM”) developed by COR3 and the P3A, will provide a roadmap for the implementation of generation projects through a detailed action plan based on an optimized generation mix tailored to Puerto Rico. The IRP, initially filed by PREPA with PREB in February 2019, is undergoing additional rounds of PREB review prior to final approval.

Challenges to the Reconstruction and Recovery Efforts

Given Puerto Rico’s current fiscal and economic situation, the success of the government’s recovery efforts hinges on our ability to quickly secure and deploy committed federal funding, particularly as more projects advance past the initial planning and solicitation stage. Unfortunately, a series of decisions by federal agencies have stalled our progress as compared to other recent stateside disaster recovery processes. Among others, mandatory Section 428 procedures, related project worksheet delays and high cost-share allocations all pose significant challenges.

Section 428

Since 2017, all Puerto Rico funding requests for permanent work projects with estimated costs above US\$123,100 are *required* to be funneled under the “alternative procedures” funding process under Section 428 (“Section 428”) of the Robert T. Stafford Disaster Relief and Recovery Act (the “Stafford Act”).² Section 428 of the Stafford Act has a built-in optionality that permits recipients to voluntarily use it in accordance with their particular recovery needs and on a case-by-case basis. As compared to FEMA’s traditional Public Assistance (“PA”) program, which funds state, territorial, local and tribal governments in

² FEDERAL EMERGENCY MANAGEMENT AGENCY, GUIDE FOR PERMANENT WORK IN PUERTO RICO PUBLIC ASSISTANCE ALTERNATIVE PROCEDURES (SECTION 428) (Apr. 2018), at 3 n.3.

the event of a major disaster or emergency, the Section 428 procedures are intended to effect a simpler, faster and less costly process. However, the Section 428 procedures FEMA developed specifically for Puerto Rico, which must be followed for all permanent work projects regardless of their particular needs, resemble the strict procedures of the traditional PA program, resulting in a labor-intensive and administratively burdensome process and leading to levels of scrutiny of Puerto Rico's projects that are higher than average. For example:

- The Section 428 project worksheet process requires the preparation of a separate project worksheet for each "site" affected by a disaster, with each project worksheet requiring the completion of five steps – damage inventory, site inspections and assessments, development of damage descriptions and "scope of work" documents, and calculation of cost estimates – conducted by various local agencies and municipalities and subject to review by COR3 and FEMA. As a final sixth step, FEMA performs a final review to produce a fixed cost estimate, which determines the fixed amount of funds that will be obligated to the project. Currently, Puerto Rico has approximately 90,000 affected sites, which must complete the process by October 2019. However, most local agencies and municipalities have yet to complete the first two steps, and lack the resources to hire consultants to expedite the process. These highly detailed and time consuming procedural and inspection processes are undermining the Government's ability to effectively and fully utilize Stafford Act funding to support the recovery needs of Puerto Rico.
- Unlike the traditional PA process, the fixed cost estimate produced by FEMA in a Section 428 process cannot be amended after project worksheets have been approved, with the effect that Puerto Rico bears the burden of any over-budget costs. The need to account for all possible costs before commencing work on a project lengthens the worksheet preparation process. At the same time, it remains unclear whether FEMA's cost estimates will be reflective of actual costs of construction in Puerto Rico; therefore, the potential long-term financial risks are assumed by the Government through potentially inaccurate cost estimates.
- Funding cannot be disbursed for a project until work is initiated. Since key public works typically take years to complete, the amount of funds that has been disbursed by COR3 is substantially smaller than the funds currently obligated by FEMA and, as discussed below, such funds have been mostly utilized to finance debris removal and emergency assistance, rather than capital expenditures on new infrastructure and facilities, all of which is typical in the aftermath of disasters throughout the nation.

COR3 is working to expedite priority projects, explore options to develop projects below certain monetary thresholds and add capacity at the municipal level. Nevertheless, as of April 17, 2019, only 1,274 projects had been obligated by FEMA under Section 428, 87 of which were permanent work projects. In sum, \$5.6 billion have been obligated (in PA funds) in Puerto Rico in the 18 months since Hurricane Maria, of which \$5.1 billion have been obligated for emergency recovery work such as debris removal and emergency protection measures, and only \$378 million have been approved and obligated, respectively, for categories C-G, which includes permanent infrastructure rebuilding work, crucial to the recovery effort and to increasing Puerto Rico's resiliency to future storms. In contrast, 9,701 project worksheets and \$1.3 billion were approved and obligated, respectively, for categories C-G public assistance funds in the 18

months after Hurricane Katrina. For more information on the jurisdictional funding discrepancies, see [Annex B](#).

FEMA Policy Decisions

FEMA has made other policy decisions that have hampered Puerto Rico's funding process:

- FEMA has limited the scope of repairs or upgrades to “critical services” facilities it deems eligible for Section 428 funding through a strict interpretation of the statutory definition of such “critical services”, despite Congress’ clear intent to expedite Puerto Rico’s recovery process through the enactment of Section 20601 of the BBA. For example, by narrowing their interpretation of the scope of “critical services” to exclude essential governmental service facilities, FEMA’s implementation of Section 20601 of the BBA undermines Congress’ clear mandate. Further, the BBA authorized FEMA to provide Section 428 funding to restore facilities that provide critical services facilities to industry-level standards, regardless of pre-disaster condition. Nonetheless, FEMA continues to provide unclear guidance regarding the approach to implementing this provision of the BBA in terms of industry standards and funding.
- FEMA only recently lifted the onerous “270 process” for manual reimbursement of sub-recipients of federal funds in Puerto Rico, long after COR3 had developed adequate procedures. Under the 270 process, funds could not be drawn until the relevant project had been adequately documented and all funding sources had been identified in a form with supporting documentation which was subject to review by FEMA for completeness, compliance and accuracy. In effect, this process stalled new initiatives, preventing them from moving forward until all compliance requirements had been met.³
- FEMA has revised and restricted Section 428 project worksheets in Puerto Rico that it had previously approved, including requiring new cost estimates, without input from relevant stakeholders such as COR3.

CDBG-DR Grants

Alongside Section 428, the CDBG-DR grant process provides the other major source of funds for Puerto Rico’s recovery and transformation. However, as a special appropriation under HUD, the CDBG-DR does not have a permanent structure or permanent statutory authority and regulations. CDBG-DR programs are approved in each appropriations act, with grants customized in Federal Register notices. This procedure leads both to delays in the disbursement of funds and vulnerability to shifts in political leadership.

Although HUD and Puerto Rico signed a grant agreement for \$1.5 billion in September 2018 and HUD subsequently allocated an additional \$18.5 billion in CDBG-DR funds pending grant execution,⁴ only

³ The process was not applied in Florida after Hurricane Irma, in Texas after Hurricane Harvey, in the northeast after Hurricane Sandy or in Louisiana after Hurricane Katrina. Even though COR3 had established the compliance procedures needed.

⁴ Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees, 83 Fed. Reg. 40314 (Aug. 14, 2018).

\$42,000 has been formally disbursed to date. In addition to the delayed procedures described above, part of the discrepancy between allocation and authorization of CDBG-DR funds is rooted in the difficulty of using the funds for cost-sharing purposes. Puerto Rico generally does not have sufficient funds to cover the 10% cost-share allocation mandated by the FEMA PA process for Puerto Rico (with FEMA bearing the remaining ninety percent (90%) of the estimated costs).⁵ CDBG-DR funds have been used in other jurisdictions to meet the portion of the costs not borne by the federal government⁶ and COR3 has attempted to request CDBG-DR funds for this purpose but has thus far been unsuccessful. Authorization of the funds requires that the projects meet FEMA Public Assistance eligibility requirements in addition to the CDBG-DR eligibility requirements. This results in significant compliance challenges that could be addressed by recognizing the fulfillment of cost-share requirements as an eligible activity under the CDBG framework.

Availability of Federal Funding

Considering the aforementioned challenges to obtaining federal funding, we are concerned about comments by the current administration implying that the flow of disaster relief funds to the Island should be halted. These comments are rooted in the misconception that Puerto Rico has already received sufficient federal funds, and that such funds are mismanaged once received by the Government. In reality, Puerto Rico has received only a small portion of the funds it needs in comparison to the estimated cost of damages suffered, with most of the received funds being devoted to emergency assistance work rather than the permanent infrastructure rebuilding work vital to Puerto Rico's full recovery. Furthermore, Puerto Rico has created state-of-the-art institutions, such as COR3, that aim to make the recovery process as transparent and streamlined as possible. It is already detrimental to Puerto Rico's recovery that disaster relief funds are obligated and disbursed at a slow pace; completely halting the flow of disaster relief funds would deal a fatal blow to the Island's recovery and to its future.

Case Studies

One illustration of the hurdles COR3 faces in the process to obtain federal funds was the application for federal funds to rebuild Puerto Rico's public-school infrastructure. In December 2018, Puerto Rico and FEMA agreed on a project worksheet for \$1.2 billion to rebuild the schools on the Island, which exist in varying levels of decay after the hurricane. On December 31, 2018, FEMA presented a revised project worksheet, reducing the amount of funds obligated to \$900 million. The revised project worksheet removed several features that were part of industry standard practices, such as seismic retrofitting. Given that Puerto Rico is prone to earthquakes (e.g., a 4.8 earthquake on March 12, 2019), COR3 considered this demonstrably unwise and in direct contravention to the intent of Build Back Better (under the BBA) to rebuild to industry standards. In January 2019, without any explanation, FEMA further reduced funding to an estimated \$400 million. Only after repeated pushback did FEMA agree to once again conduct joint site surveys to redevelop, again, cost estimates. Eighteen months after the hurricane, COR3 is developing cost estimates for schools virtually from scratch. Furthermore, because of the Section 428 procedures, rebuilding the schools requires a single project worksheet that will take months to recreate.

Another illustration is the ongoing effort to restore the Vieques Hospital. As the sole twenty-four hours a day, seven days a week medical facility on the island of Vieques, the only emergency room and the

⁵ While this cost share distribution is not uncommon, the Federal cost share allocation has been greater in other instances. For example, the Federal Government bore one hundred percent (100%) of the cost of damages after Hurricane Katrina.

⁶ E.g. see State of Louisiana DR-4263.

sole provider of labor and delivery services, the Vieques Hospital is critically important to the Island. Due to extensive damage, the Vieques Hospital was closed immediately after Hurricane Maria. Initially, COR3 and FEMA coordinated to arrange a mold assessment of the facility, as well as subsequent cost estimates for repair versus total replacement. As a result of those estimates, in March 2018 FEMA committed to replacing the hospital. Development continued and after months of extensive study, the project worksheet for the replacement of the hospital was submitted in October 2018. In November 2018, FEMA announced its intention to reevaluate the validity of the replacement decision, stalling the project worksheet in review status. In January 2019, FEMA informed COR3 that pursuant to a new study, repair had been selected over replacement. This decision caused the development process to begin anew. Thus, as with the schools, eighteen months after the hurricane, work toward drafting a project worksheet for the Vieques Hospital has had to begin essentially from scratch. For more information on the challenges faced by Puerto Rico's public-school infrastructure and the Vieques Hospital, see [Annex C](#).

Conclusion

The probability of another disaster hitting Puerto Rico is not a matter of chance, it is a statistical certainty. We cannot stop the next hurricane, but we can prevent the next Irma and Maria. To guard against the devastating effects of another hurricane, it is important that we count on the federal government's support of the ongoing post-disaster recovery efforts, including those related to PREPA's transformation. The federal government's support of our recovery process is critical to the short- and long-term success of PREPA's transformation and to ensure that Puerto Rico's experience can serve as a benchmark of strategic cooperation for future post-disaster recovery efforts in other states and municipalities.

For example, Congress could aid Puerto Rico's recovery efforts significantly by adopting any or all of the following courses of action or amendments to existing legislation in order to directly address some of the hurdles COR3 has faced:

- Direct FEMA to implement the procedures developed for Puerto Rico pursuant to Section 428 of the Stafford Act, as intended by the Stafford Act and the Disaster Recovery Reform Act of 2018 ("[DRRA](#)"),⁷ to increase flexibility and cut down on costs and delays in the administration of PA funds, rather than to create alternate procedures that are equally or more burdensome than the traditional PA process. Congress and FEMA should focus on streamlining the procedures currently being implemented in Puerto Rico in order to address the aforementioned challenges.

- Urge the President to amend his disaster declaration to make it consistent with the Stafford Act and the DRRA by making Section 428 procedures for large permanent work projects optional, rather than mandatory, and therefore expand Puerto Rico's capacity to use PA funds outside of Section 428.

- Amend Section 20601 of the BBA to clarify that pre-existing conditions "shall not" be considered by FEMA and shall not disqualify critical infrastructure projects, and to clarify that the definition of "critical services" is inclusive of government facilities and systems, therefore broadening its scope to allow correctional facilities, damaged roads and transportation systems, among other facilities critical to providing essential services, to qualify for federal funding.

⁷ Congress, in recognition of the possible challenges with a mandatory application, included an explicit provision in the Disaster Recovery Reform Act of 2018 that prohibits FEMA from conditioning the provision of federal assistance on an election to use Section 428.

- Adopt a draft bill currently under consideration by the U.S. House Subcommittee on Oversight and Investigations of the House Committee on Financial Services, which would enact permanent rules for the CDBG-DR appropriations, streamlining the process.
- Amend FEMA and HUD statutory requirements to allow Puerto Rico to meet the 90-10 cost-share requirements through a “flexible spending cost share” regime in which a group of projects is funded 100% by FEMA and another group is funded 100% by CDBG-DR funds. For example, Congress should clarify that “cost share”, by definition, should be considered an eligible activity under CDBG.

Notwithstanding the challenges Puerto Rico faces, the Rosselló administration is optimistic that it can rebuild, revitalize and re-imagine Puerto Rico in a way that benefits the 3.2 million U.S. citizens that reside within its shores and stateside stakeholders. We are confident that the frameworks and processes we have in place can help set the stage for a dramatic turnaround of the Island’s fiscal and economic prospects. For example, we have been carrying out the PREPA transformation in a credible, methodical and transparent manner that has led to significant interest from private sector entities seeking to partake in the rebuilding of Puerto Rico’s electric system into a stronger, resilient and efficient system. However, market participants interested in participating in PREPA’s transformation have overwhelmingly expressed concern over the significant uncertainty behind the federal government’s support of our efforts, particularly with respect to the receipt of federal recovery funds to which certain projects are entitled.

As a partner in the Puerto Rico’s recovery efforts, the federal government can and should support this integral part of Puerto Rico’s recovery. Our ability to successfully transform Puerto Rico’s energy system into a modern, sustainable, reliable, efficient, cost-effective and resilient system will depend on a strong and dynamic partnership with the federal government. There is a historic opportunity for the federal government, including Congress and the White House, to play a proactive role in the long-term fiscal and economic turnaround of the Puerto Rico is, and it should be seized.

Annex A

Summary Timeline

- **September 2017** – Hurricanes Irma and Maria devastate Puerto Rico.
- **November 2017** – The government of Puerto Rico submits its first formal request for funds to Congress, Build Back Better, prioritizing long-term recovery, to rebuilding a stronger and more resilient Puerto Rico.
- **December 2017** – P3A approves the COR3 office, which implements the Government and federal governments’ centralized supervision and financial controls for the recovery process.
- **January 22, 2018** – Governor Rosselló announces the plan to transform and modernize the electric system through private ownership, management or operation of PREPA’s Assets.
- **February 9, 2018** – The U.S. Department of Housing and Urban Development (“**HUD**”) allocates \$1.5 billion as a Community Development Block Grant – Disaster Recovery (“**CDBG-DR**”). The Puerto Rico Department of Housing is required to submit a draft Action Plan for HUD approval.
- **February 12, 2018** – COR3 issues four RFPs for disaster recovery services (data management, grant claims, project formulation and strategic compliance).
- **March 18, 2018** – PREPA issues an RFP for the “Preparation and Support of the Integrated Resource Plan” (IRP).
- **June 4, 2018** – The government of Puerto Rico, FOMB and PREPA issue a letter requesting private sector feedback on the transformation process. This market sounding elicits substantial interest.
- **June 7, 2018** – Contracts executed with ICF Incorporated LLC, CGI Technologies and Solutions Inc., Deloitte & Touche LLP and Navigant Consulting Inc. for disaster recovery services (for grant claims, data management, strategic compliance and project formulation, respectively).
- **June 14, 2018** – PREPA and Siemens Industry, Inc. sign a professional services contract for the development of the IRP.
- **June 20, 2018** – Governor Rosselló signs the Transformation Act, Act 120-2018, authorizing long-term public-private partnership agreements for the T&D system and the sale of generation assets.
- **July 29, 2018** – HUD approves CDBG-DR Action Plan.
- **August 8, 2018** – As required by the BBA, COR3 submits the Economic Disaster and Recovery Plan (the “**Recovery Plan**”), prepared in collaboration with FEMA, to Congress. The Recovery Plan identifies 276 Courses of Action (“**COAs**”) grouped as Capital Investments and Strategic Initiatives (including capital investments such as water and education, and strategic initiatives such as modernization of emergency services).

- **October 17, 2018** – Senate Vice President Larry Seilhamer and Minority Leader Eduardo Bhatia introduce Senate Bill 1121, the Puerto Rico Energy Public Policy Act.
- **October 12, 2018** – P3A issues an RFP for the engineering, construction and operation of battery energy storage systems (“**BESS**”).
- **October 31, 2018** – P3A issues an RFQ for the operation and management of the T&D system.
- **January 17, 2019** – P3A announces the selection of those proponents qualified to participate in the T&D RFP process (Duke Energy Corporation, Exelon Corporation, PSEG Services Corporation, and the consortium comprised of Atco Ltd., IEM, and Quanta Services, Inc.).
- **February 1, 2019** – P3A issues an RFP for the operation and management of the T&D system.
- **February 13, 2019** – PREPA files draft IRP for review by PREB.
- **March 8, 2019** – P3A issues the Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Partnership Contracts and Sale Contracts for the Transformation of the Electric System under Act No. 120-2018.
- **March 25, 2019** – Puerto Rico’s legislature approves the Puerto Rico Energy Public Policy Act.
- **April 11, 2019** – Governor Rosselló signs the Puerto Rico Energy Public Policy Act.
- **April 16, 2019** – P3A issues an RFQ for the development, management and operation of a fleet of flexible distributed generation units, and an RFQ for the rehabilitation, upgrade, management and operation of nine hydropower facilities

Annex B

Federal Support Across Recent Hurricanes⁸

Comparison: Project Worksheet (PW) Counts and Sum of Federal Funds Obligated 18-Months Post Storm

The below data represents PW Counts for CAT A&B and CAT C-G for each of the below storms approximately 18-months post storm:



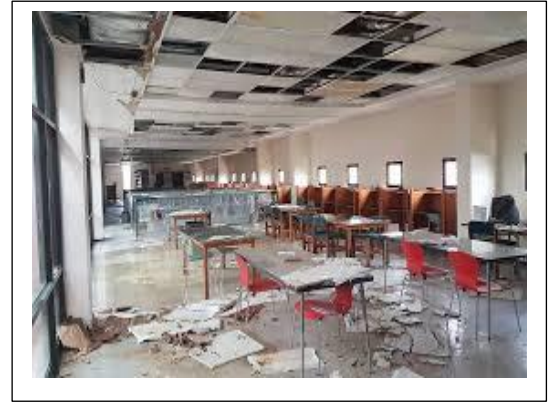
Storm	Data Source	Data As Of
Maria (PR)	EMMIE P-5 Report	04/01/2019
Irma (FL)	OpenFEMA Public Data Repository	04/02/2019
Harvey (TX)	OpenFEMA Public Data Repository	04/02/2019
Sandy (NJ)	New Jersey EM Grants Pro – Provided by NJ State Police	Point in Time: 04/29/2014
Katrina (LA)	Louisiana Recovery Data	Point in Time: 03/01/2007

⁸ “Puerto Rico Recovery from Hurricane Irma and Hurricane Maria vs. Recovery from Relevant Storms,” April 2, 2019, presented by Omar J. Marrero, Esq.

Annex C
Case Studies

Hurricane Maria (DR-4339) Case Study:

PRDE 64 Schools Project



April 16, 2019

Project Background:

The Puerto Rico Department of Education (or PRDE, which is the fourth-largest public-school system in the United States) was decimated by Hurricane Maria. Heavy rain and strong winds from Hurricane Maria caused mudslides, flooding, wind damage, structural failures, and accumulation of vegetative debris that impacted over 6,000 buildings on 1,109 campuses island-wide. The impact of these damages was magnified by the fact that schools in the system also served as shelters of last resort for hurricane survivors.

PRDE is responsible for the schooling of students from Pre-K through Grade 12 as well as vocational programs. Based upon the most recently available data (2013-2014), between seventy and eighty percent of the student population lives below the poverty line.

Project History and Milestones:

- September 20, 2017: PRDE facilities remain open as shelters of last resort throughout the island. While most structures avoided catastrophic failure, the schools were subjected to conditions far exceeding their design capacity. All schools suffered significant damage to the building envelopes – including but not limited to roof system, windows, doors, electrical, and HVAC systems.
- October 2017 to Summer of 2018: Rapid assessments and extremely limited emergency repairs are initiated at damaged school sites in order to begin evaluating and restoring educational services across the island.
- December 2018: Approximately ninety-eight percent of PRDE schools are now open on at least a partial-day schedule, however some schools remain open as shelters.
- March 2018: The last in-school shelter for the survivors of Hurricane Maria officially closes.
- Summer 2018: Rapid assessments are completed at all 1,109 school campuses in the system.
- Week of October 28, 2018: FEMA Public Assistance created a Project Worksheet (PW 526) for sixty-four priority schools identified by COR3 and PRDE and provided it for review and signature. The total value of the PW is approximately \$1.4B, and includes repairs to all damages, all codes and standards triggered directly by the hurricane, and the inclusion of industry standards made possible under the Bipartisan Budget Act. All three parties agree and sign the Damage Description, Scope of Work, and Cost Estimate.
- Week of December 10, 2018: FEMA Public Assistance stated the previously agreed and signed PW was incorrect and could not be processed. A revised Damage Description, Scope of Work, and Cost Estimate is provided to COR3 and PRDE for signature. FEMA stated an error occurred in the formulation of the Damage Description and some of the elements of the Scope of Work should not be included. The revised amount is approximately \$1.2B. COR3 and PRDE concur and sign the PW.

- December 31, 2018: FEMA Public Assistance presents another revised PW directly to PRDE- the Subrecipient - for review and signature, bypassing COR3 - the Recipient. This revision removes all industry standards allowed by the Bipartisan Budget Act, including the seismic retrofits of the schools. COR3 and PRDE oppose these changes (especially after the experience of the devastating Haiti earthquake of 2015) because of concern over life-safety in school buildings. The PW value is unilaterally reduced by FEMA to approximately \$900 million. COR3 recommends not signing the reduced PW. FEMA Public Assistance then processes the PW without input from the Recipient or Subrecipient.
- Mid-January 2019: The PW reaches the Office of the Legislative Auditor Queue (which is designed as a coordination step in the process and not a review step) and the PW is actively removed from the process by FEMA. No reason is provided to COR3 or PRDE.
- Late January 2019: COR3 and PRDE learn that a new version of the PW is in development by FEMA Public Assistance. The exact damage, scope, and cost are being developed in a vacuum without input or collaboration from PRDE or COR3, in violation of current policy and agreements between FEMA and COR3. The amount of this new version is estimated at \$400 million.
- February 2019: FEMA requests new site inspections, stalling progress on funding the 64 schools.
- March 2019: After raising concerns with the FEMA FCO, FEMA Public Assistance changed direction and is now willing to collaborate with COR3 and PRDE on the development of the Damage Descriptions, Scopes of Work, and Cost Estimates. FEMA starts to concurrently enter project information into their Grants Manager system as site inspection data is developed.

Project Challenges:

- Changing FEMA guidance, interpretation, and approach related to the application of Section 428 and the BBA to the hospital project caused FEMA to repeatedly reconsider decisions that were made, creating substantial duplication of effort and lengthy funding delays after all three parties agreed to the damage, scope, and cost.
- Repeated changes to the process and PWs without notice or input to COR3 or PRDE and blatant disregard for signed and executed agreements.
- FEMA funding of permanent repairs at the heavily damaged school campuses is no closer than shortly after the hurricane in 2017.

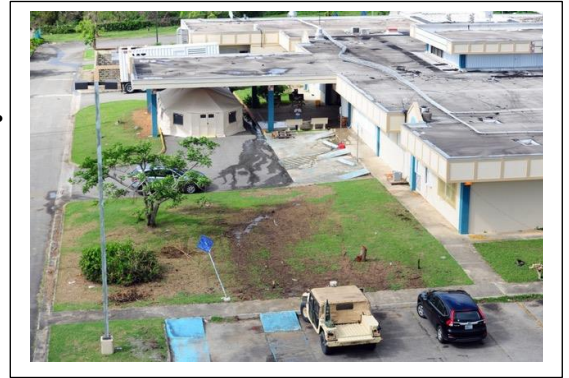
Current Project Status:

At present, more than 300,000 students are attempting to learn in temporarily repaired, patched-together classrooms. Given the barriers faced by these students and their families even before the hurricane, these delays in funding for just the first 64 of 1,109 school campuses will keep the children in inadequate learning environments. This is a continuing negative impact on the children's education.

FEMA has effectively restarted the entire project from a program and funding perspective. After agreeing on the Damage Descriptions, Scopes of Works, and Cost Estimates multiple times, we are once again starting the process of collaborating for agreement on the damages. Once this process is repeated and completed across each of the sixty-four schools, the collaboration will begin on the scopes of work before repeating again for the cost estimates. The result is that the efforts to resolve and fund these high-priority projects are at the same place as a year ago – minus the lost manhours. The current estimated value of the PW for the sixty-four schools is \$427 million.

Hurricane Maria (DR-4339) Case Study:

Vieques Hospital



v.2, March 10, 2019

Project Background:

Constructed in the late 1990s, the Vieques Hospital was the only 24 hours a day, seven days a week healthcare facility on the island. It provides the only labor and delivery services and emergency room on the island and houses the island's Veterans Affairs health clinic and dialysis treatment center. When Hurricane Maria struck the island in September of 2017, extensive damage was done to the facility and its mechanical and electrical systems, causing the hospital to cease all operations. The building was without power, ventilation, or water. It was built as a hospital as specified in the as built blueprints from the time of construction and is subject to hospital codes and standards for accreditation purposes whether it is repaired or replaced.

Project History and Milestones:

- September 20, 2017: Facility is closed immediately after Hurricane Maria as a result of damage sustained during the storm.
- October 2017: A temporary tent-based facility was set up to provide interim services.
- Week of January 8, 2018: The tent infrastructure is deemed inadequate as an interim medical solution for the island, and shelter at Las Marias is identified as a location for a temporary facility. Work to refurbish the shelter would become PW 324. Investigation of quickly deployable hard sided medical assets is solicited, resulting in the acquisition of three mobile medical clinics under PW 325. Salud would look for a suitable building from which the dialysis vendor Fresenius could restart operations. This effort never succeeded and eventually the decision to acquire a mobile dialysis unit was pursued, becoming PW 399.
- February 2018: After coordination with COR3, FEMA arranges for a mold assessment of the facility by two industrial hygienists. The results from the surface and air samples come back positive for mold types known to pose a health risk to people with compromised immune systems. Concerns are raised over the ability to adequately remediate the mold for a facility that provides medical services in general, and specifically to patients with compromised/vulnerable immune systems like dialysis patients and newborn babies.
- Week of March 5, 2018: COR3 has two subject matter experts assess the condition of the facility and provide cost estimates for repair versus replacement. The COR3 estimators spend a week on the island conducting a thorough room by room inspection and inventory of the facility. FEMA also sends a cost estimation team to Vieques. The FEMA estimators spend approximately one day at the facility.
- March 16, 2018: Based on review of the cost estimation work by COR3 and later confirmed by FEMA, it is determined that repair vs replacement cost exceeds 50%, triggering a replacement building. Additionally, due to the mold contamination it is not deemed prudent to attempt to repair

the building with the intent of re-establishing healthcare delivery at the facility. At the weekly Vieques Health Coordination meeting FEMA commits to replacing the hospital.

- April 2018: As a result of ongoing challenges in opening the temporary clinic in Las Marias and acquiring the medical trailer capabilities, it is decided that work on the permanent solution will not commence until the temporary facility is open so that focus can be maintained on the immediate need to provide care on the island.
- May 29, 2018: The temporary CDT facility in the Las Marias shelter opens.
- June 2018: FEMA PA sends a team to Vieques to conduct site surveys of the municipally owned project sites including the hospital. DDD development commences.
- Week of June 11, 2018: The mobile clinics from WHS (one providing general medical capability with X-ray, one providing OB/GYN capability, and a dental clinic) are delivered and co-located at the temporary CDT in Las Marias.
- August 2018: COR3 sends a site survey team with a 3D camera to the Vieques hospital. Team collects comprehensive 3D images of the majority of the facility to augment DDD data. ***DDD and SOW for replacement are coordinated and agreed upon.*** Cost estimate coordination between FEMA, COR3, and the municipality commences.
- October 4, 2018: The dialysis trailer is delivered and co-located at the temporary CDT in Las Marias.
- October 2018: After months of work between the municipality, COR3, and FEMA, the DDD, SOW, and CE for the replacement of the facility have all been coordinated, and the PW for the hospital is submitted to FEMA for consideration.
- November 16, 2018: Two representatives from the FEMA Cost Estimation Group (CEG) attend the weekly Vieques Coordination Meeting held at FEMA Branch 3 in Caguas. ***They state that they intend to back track and review the validity of the replacement decision.*** The situation is immediately elevated to leadership by COR3 attendees at the meeting. As a result, the hospital PW is taken from the CEG and given directly to the Expert Panel for review.
- January 18, 2019: After more than two months of the Vieques hospital PW being stalled in a review status by the Expert Panel, ***COR3 is notified that the Expert Panel (which has never visited the site) has produced a study that would indicate repair vice replacement of the hospital.*** Review of the Expert Panel report by COR3 subject matter experts familiar with the situation and facility on Vieques identifies a number of questionable assumptions by the authors of the study that significantly (and inaccurately) reduce repair costs and drop the repair vs replace ratio below 50%. In part, the inaccurate assumptions made by the expert panel were a result of their analysis of incomplete, draft versions of the repair DDD and SOW that were never finalized because the decision to replace the CDT had already been made, as well as missing documentation that was lost by FEMA during the transition from EMMIE to Grants Manager (such as the missing Mold & Remediation Report, completed by FEMA but which had to be provided again by COR3 to advance the project).
- January 22, 2019: COR3 initiates a request for the Expert Panel to conduct an in-person visit to the hospital prior to final adjudication of the repair vs. replace decision.
- January 28, 2019: COR3 supports the Expert Panel site visit to the hospital. ***The FEMA PA lead makes it clear that FEMA has effectively decided to start over on the DDD and SOW process.*** FEMA personnel determine that due to the prevalence of mold in the building and the absence of personal protective equipment (PPE) for their team members, they would not enter the building. The COR3 team (which brought appropriate PPE for themselves and the Expert Panel members) escorts the Expert Panel members through the building. ***** It is important to note that up to this point, no one from FEMA has yet conducted a thorough room to room inspection of the hospital.***
- February 12, 2019: In a collaboration meeting with FEMA, COR 3 representatives (with support from the municipality) refute several of the incorrect assumptions made by the FEMA representatives of the expert panel that erroneously reduced the repair vs. replace cost of the

hospital below 50%. These included mistaken assumptions related to the type of facility it was (hospital vs. clinic); which codes were applicable; how the provision of Veterans Affairs services impacted rebuilding requirements; the impact that mold had on the ability of the hospital to serve its pre-disaster function; and the impact of both Joint Commission and National Fire Protection Act (NFPA) standards on reconstruction; and the applicability of the Bipartisan Budget Act (BBA) on the project.

- March 5, 2019: Due to continuing pressure from Puerto Rico and Members of Congress, FEMA finally concurs with the municipality and COR3's position that the facility does in fact fall under the BBA, but refuses to include the substantial mold growth and significant associated health risks in any justification because they do not want to replace other facilities in Puerto Rico for similar reasons.
- March 8, 2019: Following coordination meetings with FEMA, COR3 begins coordination of Subject Matter Experts (SMEs) to visit the facility. This includes having the Joint Commission provide technical assistance to determine all of the standard and code modifications that would be required for the facility to obtain accreditation to ensure adequate and appropriate documentation for replacement of the hospital under BBA.

Project Challenges:

- Changing FEMA guidance, interpretation, and approach related to the application of Section 428 and the BBA to the hospital project caused FEMA to repeatedly reconsider decisions that were made, creating substantial duplication of effort and lengthy funding delays.
- Repeated delays caused by the loss of project documentation by FEMA in the transfer from EMMIE to Grants Manager. The municipality and COR3 have repeatedly had to resubmit documentation, and on several occasions have actually supplied FEMA with documents that FEMA originally produced in the first place, but no longer seemed to have (e.g. the final version of the Mold Report on the hospital facility).
- Despite the decision to replace the facility in March of 2018, FEMA has dedicated a team to effectively overturn this decision, as well as rewrite the DDD, SOW, and Cost Estimate that was agreed upon and committed to in August of 2018. FEMA has effectively wasted an entire year of effort on the part of COR3 and the municipality to address the long-term healthcare needs of the people of Vieques.
- Coordinating SME visits in a timely matter has been extremely challenging and has resulted in significant loss of time.

Current Project Status:

FEMA's recent position change on BBA applicability to the hospital is a positive step forward, however there is still substantial work to be done to actually get the project moving forward – much of which being work had been performed and dismissed several times previously. Unfortunately, FEMA's efforts to limit the extraordinary growth of mold in the facility for fear of having similar issues in other medical facilities elsewhere on the island indicates FEMA's continuing efforts to limit the applicability of BBA in Puerto Rico.

At this point we have lost nearly a year to FEMA's vacillations on this project, without funding approved or providing the municipality the ability to even begin architecture and engineering work necessary to replace the hospital.