



To: House Committee on Natural Resources Republican Members
From: Subcommittee on Oversight and Investigations Republican Staff; Sang Yi (Sang.Yi@mail.house.gov) (202-821-9930) and Meghan Holland (Meghan.Holland@mail.house.gov) (202-897-7480)
Date: June 28, 2021
Subject: “Toxic Coal Ash: Adverse Health Effects from the Puerto Rico Plant and Options for Plant Closure”

The Subcommittee on Oversight and Investigations will hold an oversight hearing titled “Toxic Coal Ash: Adverse Health Effects from the Puerto Rico Plant and Options for Plant Closure” on **Wednesday, June 30, 2021, at 10:00 a.m. (EDT)** via Cisco WebEx.

Member offices are requested to notify Sang Yi by **4:30 p.m. (EDT) on Monday, June 28, 2021**, if their Member intends to participate in person in the hearing room or remotely from his/her laptop from another location. Submissions for the hearing record must be submitted through the Committee’s electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (EverettWinnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- Puerto Rico set a goal of obtaining 40 percent of its electricity from renewable resources by 2025, 60 percent by 2040, and 100 percent by 2050. Additionally, the island will phase out the use of coal-generated electricity by 2028.
- AES’ coal plant provides reliable, affordable energy to Puerto Rico’s electric grid. The sudden loss of this power source would be detrimental to the citizens of Puerto Rico.
- Republicans are supportive of an all-of-the-above energy strategy. Puerto Rico should utilize all the resources available to provide safe, efficient, reliable electricity to its citizens. Without reliable energy, Puerto Rico’s economy will suffer.



II. WITNESSES

- **Mr. Alex Epstein**, President and Founder, Center for Industrial Progress [*Republican Witness*]
- **Mr. Alberto Colon**, Comunidad Guayamesa Unida por tu Salud, Guayama, Puerto Rico
- **Dr. Gerson Jimenez**, Doctor of Internal Medicine, Guayama, Puerto Rico
- **Mr. David Owens**, Vice Chairman, Puerto Rico Electric Power Authority Board of Directors
- **Ms. Ruth Santiago**, Community and Environmental Attorney, Salinas, Puerto Rico

III. BACKGROUND

In May of 2019, the Puerto Rico Energy Public Policy Act became law.¹ It requires the Puerto Rico Electric Power Authority (PREPA) to obtain 40 percent of its electricity from renewable resources by 2025, 60 percent by 2040, and 100 percent by 2050.² Additionally, coal-fired generation must be phased out by 2028.³ For fiscal year 2020, petroleum-fired power plants generated almost half of the island's total electricity, natural gas provided 29 percent, coal provided 19 percent, and renewables provided two and a half percent.⁴

In June of 2020, LUMA Energy (LUMA) was awarded the contract to operate PREPA's electricity transmission and distribution system.⁵ The selection process lasted 18 months and required approval from the Public-Private Partnership Authority, PREPA's Governing Board, the Financial Oversight and Management Board (FOMB), the Puerto Rico Energy Bureau (PREB), and the Governor of Puerto Rico.⁶ On June 1, 2021, LUMA began operating PREPA's electricity transmission and distribution system.⁷

AES and Coal Ash

AES' coal-fired electricity generation plant in Guayama began operating in 2002, with a 25-year license.⁸ This plant serves as a reliable, affordable source of energy for Puerto Rico. It was the first generation plant available to dispatch energy after Hurricane Maria in 2017, and the earthquakes in 2020.⁹ AES is working to transition its plant and develop renewable resources to comply with Puerto Rico's mandate to end coal generation by

¹ *Puerto Rico Territory Energy Profile*, U.S. ENERGY INFORMATION ADMINISTRATION, <https://www.eia.gov/state/print.php?sid=RO#:~:text=natural%20gas%20projects,-.Coal,reserves%20and%20produces%20no%20coal>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ LUMA's Role in the Puerto Rico Energy Transformation, LUMA Energy, Presentation (April 7, 2021) (on file with Comm.).

⁷ Dánica Coto, *Private Company Takes Over Puerto Rico Power Utility Service*, AP NEWS (June 1, 2021), <https://apnews.com/article/caribbean-puerto-rico-business-135b9ec52e130f3716f8862021a524d4>.

⁸ *Supra* note 1; *Our History*, AES PUERTO RICO, <https://www.aespuertorico.com/en/our-history>.

⁹ Briefing from AES (June 16, 2021).

2028.¹⁰ Despite being the purported subject of the hearing, the Majority did not invite AES to testify.

Coal ash is a byproduct of burning coal.¹¹ The U.S. Environmental Protection Agency (EPA) regulations provide for the safe disposal of coal ash.¹² AES began stockpiling its coal ash, after legislation prohibited the disposal of coal ash in Puerto Rico.¹³ Since passage of that law, AES has transported the coal ash to certified landfills in the United States.¹⁴ AES is working to reduce the pile of coal ash present in Puerto Rico. Over the past three years, AES has disposed of 1.5 million tons of coal ash, with a disposal cost of \$4.5 million for every 30,000 tons of coal ash.¹⁵ AES is taking precautions to protect the environment and has invested at least \$50 million in managing the coal ash and installed a liner at its facilities.¹⁶ In response to questions about coal ash, AES stated,

“We comply with all local and federal regulations, and furthermore, the EPA classifies coal ash as a non-hazardous material. In fact, it is a major component in most cement and concrete produced in the United States. We continue to work with Puerto Rico in its transition to greener energy while maintaining the system’s safety and reliability.”¹⁷

IV. REPUBLICAN APPROACH

The focus of the hearing should be on ensuring Puerto Rico maintains access to safe, efficient, and reliable energy. Puerto Rico has determined its targets for incorporating renewable resources into its energy production profile and phasing out the use of coal. Based on the targets set by the Puerto Rico legislature, the Integrated Resource Plan, approved by the PREB, and PREPA’s fiscal plan, approved by the Financial Oversight and Management Board, PREPA is moving toward greater utilization of renewable energy resources and energy storage without coal. The Integrated Resource Plan provides for phasing out fossil fuel generation on a schedule that reduces adverse impacts on electric system reliability and resiliency. Maintaining and improving system reliability and resiliency in a cost-effective manner, however, will not be possible if sudden, unexpected changes impact the baseload generating resources available to the grid. Republicans should advocate for a thoughtful, analytical discussion surrounding Puerto Rico’s energy supply. Not only does reliable, affordable energy benefit the citizens of Puerto Rico, it helps the economy grow. Without improvements to the electric grid, the economy will shrink.¹⁸ The

¹⁰ *Id.*

¹¹ *Frequent Questions about the 2015 Coal Ash Disposal Rule*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/coalash/frequent-questions-about-2015-coal-ash-disposal-rule#1>.

¹² *Id.*

¹³ *Toxic Coal Ash Is Making Its Way to Florida from Puerto Rico. Experts Warn Of Its Adverse Health Effects*, CBS NEWS (Feb. 7, 2020), <https://www.cbsnews.com/news/toxic-coal-ash-from-puerto-rico-aes-power-plant-is-being-shipped-to-florida/>.

¹⁴ *Supra* note 9.

¹⁵ *Id.*

¹⁶ *Supra* note 9.

¹⁷ *Supra* note 13.

¹⁸ *Supra* note 7.

AES Coal Plant has a determined end-date of year-end 2027. Rushing its closure in advance of this date, which was approved in the Integrated Resource Plan, will have negative energy cost and reliability impacts.

The transition from coal should be done in a manner that meets Puerto Rico's 2028 energy transition deadline, while respecting the amount of reliable, affordable energy the AES plant provides to the grid. AES has expressed their commitment to comply with the existing mandate to transition from fossil fuels to renewables.

Mr. Alex Epstein is the Republican Witness. His testimony is expected to focus on the importance of accessible and affordable energy. It is anticipated he will highlight the negative impacts Puerto Ricans and rate payers could experience if the AES coal plant is immediately shut down.

Notwithstanding PREPA's legal constraints and the schedule established in the approved Integrated Resource Plan, Democrats may press PREPA on expediting the AES Coal Plant's closure. Per the Puerto Rico Energy Public Policy Act, PREPA continues to make progress to transition to renewable energy. Democrats' push for expediting timelines established by law and the approved plans for electric system renewal ignore that the existing energy system operated by PREPA is reliant on large baseload power plants like the AES Coal Plant. AES' Coal Plant is one of the most reliable and the lowest cost source of energy in Puerto Rico. While PREPA prepares for the AES Coal Plant's closure, per law and plan, an expedited closure would endanger the resiliency and reliability of the Puerto Rico electric system and significantly increase costs to rate payers. Any change to the contract under which PREPA purchases the output of the AES Coal Plant, and any related change to the resource mix assumed in the Integrated Resource Plan would require approvals by the PREB and FOMB.

Lastly, Democrats may criticize PREPA for its incorporation of AES Coal Plant in its power grid more than 20 years ago and for not having sought previous closure of the plant. PREPA, however, has proposed the procurement of the largest amount of renewable energy generation and battery storage at one time of any utility in the United States.

V. ISSUES DEMOCRATS MAY RAISE

Chairman Grijalva Wants the AES Coal Plant Shut Down

Majority staff repeatedly expressed that Chairman Grijalva wants the AES Coal plant shut down as soon as possible. Democrats may use this hearing to advocate for that priority.

Environmental and Health Concerns Surrounding Coal Ash

In 2019, Ms. Ruth Santiago testified before the House Committee on Energy and Commerce Committee about the AES Coal Plant. In her testimony, she asserted that fugitive dust from the coal ash pile impacted residents for years and noted that inhalation of coal ash was the cause of multiple adverse health impacts, including heart and lung

disease.¹⁹ In her testimony, she claimed “elevated levels of pollutants indicate the AES coal as waste pile is releasing hazardous chemicals to the groundwater, which are flowing offsite.”²⁰ We expect Ms. Santiago to focus on environmental justice, criticize the Trump Administration EPA’s actions, and highlight her concerns about coal ash and health impacts. Despite her criticism, the Biden Administration’s EPA has completed its review of the Trump Administration’s coal regulations and found “the most environmentally protective course is to implement the rules.”²¹

Dr. Gerson Jimenez has previously asserted a connection between the presence of the AES coal plant and increasing numbers of patients with respiratory problems.²² Additionally, he shared with Human Rights Watch that between 1990 and 2000, the average annual rate was 103 new cancer cases for every 10,000 residents in Guayama.²³ This rate increased to 169 new cancer cases for every 10,000 residents between 2010 and 2014.²⁴ It is important to note, however, that despite this anecdotal evidence, the EPA regulates coal ash as a non-hazardous waste.²⁵

Democrats may also raise reports that found, between 2004 and 2011, AES disposed of coal ash that was later found in water systems.²⁶ Other environmental concerns may be raised about the transportation of coal ash off the island. Recently a ship transporting coal ash from Puerto Rico to Georgia ran aground at the mouth of the St. John’s River.²⁷

Mr. Alberto Colon is a community activist and former resident of Miramar, Puerto Rico.²⁸ He alleges that his neighbors have suffered negative health effects due to coal ash from AES Coal Plant.²⁹

¹⁹ *Building a 100 Percent Clean Economy: The Challenges Facing Frontline Communities: Hearing Before the Subcomm. on Environment and Climate Change, H. Comm. on Energy and Commerce*, 116th Cong. (2019). (Statement of Ms. Ruth Santiago) available at https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Witness%20Testimony_11.20.19_Santiago%20%28updated%29.pdf.

²⁰ *Id.*

²¹ *Disposal of Coal Combustion Residuals from Electric Utilities Rulemaking*, United States Environmental Protection Agency (last visited June 25, 2021), <https://www.epa.gov/coalash/coal-ash-rule>.

²² *Coal Ash Raising Concerns Over Health Risks in Puerto Rico*, PBS (Apr. 28, 2018), <https://www.pbs.org/newshour/show/coal-ash-raising-concerns-over-health-risks-in-puerto-rico>.

²³ Letter from Arvind Ganesan, Director, Business and Human Rights Division, Human Rights Watch to The Honorable Andrew Wheeler, Administrator, U.S. Environmental Protection Agency (Oct. 15, 2019) available at <https://www.hrw.org/news/2019/10/15/submission-environmental-protection-agency-regarding-proposed-changes-coal#>.

²⁴ *Id.*

²⁵ *Supra* note 22.

²⁶ James Ellsmoor, *After Pollution Crisis, Puerto Rico To Eliminate All Coal Power Next Year*, FORBES (Apr. 10, 2019), <https://www.forbes.com/sites/jamesellsmoor/2019/04/10/after-pollution-crisis-puerto-rico-to-eliminate-all-coal-power-next-year/?sh=57e3fc755f2e>.

²⁷ Sydney Boles, *Ship Carrying Coal Ash From Puerto Rico to Georgia Spills ‘Very Nasty Stuff’ Off Jax Coast*, WJCT (June 4, 2021), <https://news.wjct.org/post/ship-carrying-coal-ash-puerto-rico-georgia-spills-very-nasty-stuff-jax-coast>

²⁸ Interview by Ivette Feliciano, PBS with Alberto Colon and Gerson Jimenez (Apr. 28, 2018) available at <https://www.pbs.org/newshour/show/coal-ash-raising-concerns-over-health-risks-in-puerto-rico>.

²⁹ *Id.*

Opposition to the LUMA Contract

Chairman Grijalva and Representative Velázquez recently authored an op-ed opposing LUMA’s contract to operate Puerto Rico’s electricity transmission and distribution system. They asserted that PREPA employees were being treated unfairly, claiming permanence of current employment is not offered at LUMA, and instead employees were being reassigned to other government agencies. Additionally, union workers threatened to strike if LUMA’s contract was not rescinded.³⁰ In response, LUMA highlighted their ability to improve customer service and more reliable electricity.³¹

LUMA was invited to testify but was unable to attend the hearing. LUMA’s contract has raised debates within Puerto Rico and from some labor and political factions and their stateside allies. Democrats will likely use the hearing to raise opposition arguments. LUMA has provided briefings to Republican and Democrat staff addressing several misconceptions:

1. *Misconception:* The transmission and distribution system became LUMA’s property.

Fact: While LUMA is responsible for operating, repairing, and improving the transmission and distribution system, the system itself and its assets remain the property of the people of Puerto Rico through PREPA.³²

2. *Misconception:* That PREPA employees will lose jobs because of LUMA’s contract.

Fact: LUMA opened recruiting from the current PREPA workforce.³³ Additionally, Puerto Rico passed a law ensuring that any employee that does not transfer to a similar role at LUMA would retain employment at another division of PREPA or another Puerto Rico government agency.³⁴

3. *Misconception:* LUMA will hold a private monopoly over Puerto Rico’s energy system and hinder transition to renewables.

Fact: LUMA is required to competitively procure new renewable resources. LUMA operates the transmission and distribution system, but is not responsible for generating energy for the system.³⁵

³⁰ Jim Wyss & Michelle Kaske, *Luma’s First Day Running Puerto Rico Grid Brings Strike Threats*, BLOOMBERG (June 2, 2021), <https://www.bloombergquint.com/business/luma-s-first-day-running-puerto-rico-grid-brings-strike-threats>.

³¹ *Id.*

³² *Supra* note 6.

³³ *Id.*

³⁴ Puerto Rico Power Sector Transformation and LUMA Transition, Financial Oversight & Management Board for Puerto Rico, Presentation (May 6, 2021) (on file with Comm.).

³⁵ *Id.*

4. *Misconception:* LUMA's operation of the system will lead to higher prices.

Fact: The decision to allow LUMA to operate the transmission and distribution system is expected to result in overall savings to customers due to improved processes, and better and more efficient management and operations.³⁶ Additionally, LUMA alone cannot increase rates. It requires PREB approval to do so.³⁷

³⁶ *Id.*

³⁷ *Id.*