



To: House Committee on Natural Resources Republican Members
From: Republican Committee Staff; Ken Degenfelder
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Date: October 4, 2021
Subject: Full Committee Oversight Hearing on “*PREPA Post Implementation of the LUMA Transmission and Distribution Contract*”

The Committee on Natural Resources will hold a Full Committee Oversight hearing on “*PREPA Post Implementation of the LUMA Transmission and Distribution Contract*”, on Wednesday, **October 6, 2021, 1:00pm EDT online via Cisco WebEx.**

Member offices are requested to notify **Brandon Ashley** (Brandon.Ashley@mail.house.gov) **by 4:30 p.m. EDT on Monday, October 4, 2021**, if their Member intends to participate from his/her laptop in 1324 LHOB or 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

- For many years, Puerto Rico’s original electrical utility, the Puerto Rico Electric Power Authority (PREPA), has been challenged by an aging electrical system and issues of financial mismanagement.
- With \$9 billion in debt, PREPA has not finalized certain structural reforms to address its debt, so that power generation can operate efficiently and affordably.
- In 2018, then-Governor of Puerto Rico, Ricardo Rosselló, announced that certain assets of PREPA, such as operation and maintenance of the electrical grid, will be sold or placed in public-private partnerships as part of a general privatization of PREPA.
- In a competitive bid, a private consortium, LUMA Energy, took control of electrical power distribution and transmission from PREPA on June 1, 2021, under a 15-year contract. However, LUMA is not allowed to own or operate any of the electrical power generation plants that provide electricity to the island.
- Over the summer of 2021, after LUMA’s contract became effective, there has been a spike in power outages on the island, significant both in frequency and duration. The outages have been attributed to PREPA due to shortfalls in electricity generation

capacity resulting from either unexpected failures or the effect of long-deferred maintenance, and not as a result of the transmission and distribution functions of the grid.

- There has been great dissatisfaction with the consumer-facing side of the system that involves both PREPA and LUMA.

II. WITNESSES

- **Mr. Fermin Fontanes**, Executive Director, Puerto Rico Public-Private Partnerships Authority (P3), Santurce, P.R. [*Republican Witness*]
- **Mr. Manuel Laboy**, Executive Director, Central Office of Recovery, Reconstruction, and Resiliency, San Juan, P.R. [*Republican Witness*]
- **Mr. Fernando Gil**, President, Puerto Rico Electric Power Authority (PREPA) Governing Board, San Juan, P.R.
- **Mr. Wayne Stensby**, President & CEO, LUMA Energy, San Juan, P.R.
- **Mr. Edison Aviles-Deliz**, Chairman, Puerto Rico Energy Bureau, San Juan, P.R.
- **Ms. Ruth Santiago**, Community and Environmental Attorney, Salinas, P.R.
- **Mr. Agustin Irizarry**, Professor, University of Puerto Rico at Mayaguez, Mayaguez, P.R.

III. BACKGROUND

This hearing is expected to focus on the privatization of Puerto Rico's energy grid (transmission and distribution) system and the LUMA Energy contract. In July 2020, the Puerto Rico Electric Power Authority (PREPA) and power consortium LUMA Energy LLC (LUMA) finalized a new transmission and distribution (T&D) deal for the island that will run until at least 2035. On June 1, 2021, LUMA took control of Puerto Rico's electrical grid. However, widespread power outages continue to plague the island and complaints about customer service have increased significantly.

Puerto Rico Electric Power Authority (PREPA) and PREPA Governing Board

PREPA is the primary power utility operating in the territory, providing power generation to more than 3 million people residing on the island. Formed in 1941, PREPA was a public corporation owned by the Commonwealth of Puerto Rico with approximately 4,500 employees. PREPA is directed by a governing board comprised of nine members.

As a government-controlled entity the impression was that many of the leadership posts at PREPA were coveted patronage jobs, often believed to be held by individuals who were unqualified in the areas of expertise required to hold these positions, contributing to the

inefficiency of operations within PREPA.¹ There was also a perception that the utility leaders would place protecting the political image of those who appointed them above the good governance of the authority.

For decades, PREPA was plagued by mismanagement, inefficiency, political cronyism, and a lack of transparency. The utility has a record of unacceptable rates of theft of electricity, failure to collect accounts, including government and municipal users, and a history of continually foregoing critical maintenance of the island's electrical infrastructure.

On February 16, 2016, the Legislative Assembly of Puerto Rico passed, and the Governor of Puerto Rico signed into law, Act 4-2016, known as the PREPA Revitalization Act (Act). As a condition of the Act and in an effort to de-politicize the Governing Board, a third-party consulting firm was hired to source industry professionals with experience in operating and managing major utility companies. Then-Governor Garcia Padilla appointed these new members in November 2016 with the goal of establishing an independent, non-partisan Governing Board with the relevant experience and industry expertise necessary to make the structural changes within the utility to increase managing efficiency.

In the ensuing years, Act 120-2018, the Electric System Transformation Act, and Act 17-2019, the Puerto Rico Energy Policy Act, further provided for changes in the management of PREPA, with the view towards divesting generation, transmission and distribution assets and establishing new regulatory structures, opening up the Puerto Rico market to competition.

Restructuring Support Agreement (RSA)

On May 3, 2019, PREPA and its creditors reached an agreement and executed an RSA to restructure more than \$9 billion worth of bond debt.² One of the provisions of the RSA proposes an increase of at least 4 cents per kilowatt hour. Various organizations, including non-profits and environmentalists have complained about the proposed RSA.

The basis of the RSA is a fiscal agreement about the settlement of claims and treatment of classes in the restructuring of the PREPA debt under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act, commonly known as PROMESA.³ PROMESA is a federal law enacted in 2016 that established a financial oversight board, a process for restructuring debt, and expedited procedures for approving critical infrastructure projects. More specifically, PROMESA empowers the Fiscal Oversight Management Board (FOMB) to negotiate and to present to a designated Federal Court the restructuring terms to be offered between PREPA and its creditors.

¹ For an in-depth review on operations within PREPA consult the Committee memo from January 11, 2016 Oversight hearing, “*Exploring Energy Challenges and Opportunities Facing Puerto Rico*.” http://naturalresources.house.gov/uploadedfiles/emr_hearing_memo_1_12_16.pdf

² The PREPA debt deal and the future of Puerto Rico creditworthiness. <https://www.aei.org/articles/the-prepa-debt-deal-and-the-future-of-puerto-rico-creditworthiness/>

³ 48 USC 2101 et seq.

The RSA requires approval of a federal court. On March 26, 2020, the FOMB released a statement to postpone the hearings for PREPA's RSA as a result of the COVID-19 pandemic.⁴ To date, the RSA has not been finalized by a federal court.

Public Private Partnership and LUMA

In June of 2020, 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, FOMB, the Puerto Rico Energy Bureau (PREB), and the Governor of Puerto Rico. On June 1, 2021, LUMA took control of Puerto Rico's electrical grid.⁶

The LUMA energy contract has been a political issue with opposition from many partisan,⁷ labor, academic, and NGO sectors.⁸ Beginning in January 2021, the new Puerto Rico legislature, with the majority of its members opposing the contract, attempted to cancel the contract or postpone its effect, but failed due to the veto of the governor, who was still a supporter.⁹ Whatever public support existed initially has been eroded by the power outage situation over the summer.¹⁰

LUMA Energy

LUMA, a joint venture between Houston-based Quanta Energy and Calgary-based ATCO/Canadian Utilities Ltd., is a power company responsible for power distribution and transmission in the Commonwealth of Puerto Rico. Their scope of work is defined by the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement with the PREPA and the Puerto Rico Public-Private Partnership Authority (P3).¹¹ This agreement governs LUMA's role and responsibilities with respect to transmission and distribution operations and the services LUMA provides to electric customers in Puerto Rico. LUMA is not allowed to own or operate any of the electric power generation plants which provide electricity to customers of Puerto Rico. LUMA is also subject to ongoing regulatory oversight by the PREB.

⁴ https://www.theweeklyjournal.com/business/prepa-s-rsa-hearing-still-on-hold/article_bab9e2d8-318a-11ea-a1dd-2fa8fd05bb1c.html.

⁵ <https://www.p3.pr.gov/wp-content/uploads/2020/07/govpr-selects-luma-energy-ope-trans-electric-power-transmi-dist-sis.pdf>.

⁶ <https://www.nbcnews.com/news/latino/puerto-rico-private-company-takes-power-utility-service-rcna1091>.

⁷ https://www.theweeklyjournal.com/politics/l-garo-dalmau-would-cancel-contract-with-luma-energy/article_3c5ca040-f8ec-11ea-a2da-b7cfab428ed1.html.

⁸ https://www.theweeklyjournal.com/online_features/multiple-sectors-join-protests-against-luma/article_e67a784e-c223-11eb-9991-2b97ae45d62d.html.

⁹ <https://www.bondbuyer.com/news/puerto-rico-governor-vetoes-delay-to-electrical-privatization>.

¹⁰ https://www.theweeklyjournal.com/business/ieefa-report-on-luma-s-first-two-months-of-operations/article_9a53ac76-050b-11ec-9012-4b9ea9fdd8e9.html.

¹¹ The Puerto Rico Public-Private Partnership Authority (P3) is a government-owned corporation of Puerto Rico created to regulate public-private partnerships.

Central Office of Recovery, Reconstruction and Resiliency (COR3)

In December 2017, Governor Rosselló established the Central Office of Recovery, Reconstruction and Resiliency (COR3) to manage post-disaster reconstruction after Hurricane Maria, the worst and deadliest hurricane to hit Puerto Rico, struck in September of that year. COR3 works with the Governor's office on developing plans to support Puerto Rico's recovery and reconstruction.¹² The recovery plan includes modernizing the territory's electric grid.¹³

Renewable Mandates

PREPA, relies heavily on diesel and residual oil fuels for electricity generation. Most of Puerto Rico's energy is generated by power plants in the south and transmitted north to the major populations in the San Juan metropolitan area as well as to the rest of the island.¹⁴

PREPA's 2019¹⁵ Integrated Resource Plan (IRP),¹⁶ calls for a complete remake of the island's energy grid with greater emphasis placed on the use of renewables.¹⁷ The goals set forth by the IRP are in line with mandates found in the Puerto Rico Energy Public Policy Act, Act 17-2019, passed by Puerto Rico's legislature. The Puerto Rico Energy Policy requires PREPA to obtain 40 percent of its electricity from renewable resources by 2025, 60 percent by 2040, and 100 percent by 2050. Additionally, coal-fired generation must be phased out by 2028. 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 3 percent.¹⁸

Various NGO and environmental sectors and some political leaders have sought to tie federal funding for Puerto Rico's post-hurricane recovery to imposing the requirement that it be directed primarily or exclusively to achieving the renewables portfolio.¹⁹

Puerto Rico Energy Bureau (PREB)

The PREB, formerly Puerto Rico Energy Commission, was created in 2014 by the Puerto Rico Legislative Assembly through Act 57-2014, as a regulatory body independent from PREPA and from any private generator or utility operator. Through this and various

¹² Transformation and Innovation in the Wake of Devastation. <https://recovery.pr/documents/pr-transformation-innovation-plan-congressional-submission-080818.pdf>

¹³ *Id.*

¹⁴ Puerto Rico Territory Energy Profile. <https://www.eia.gov/state/print.php?sid=RQ>.

¹⁵ The plan projects within a 20-year window (2019-2038).

¹⁶ An IRP is a utility plan for meeting forecasted annual peak and energy demand, plus some established reserve margin, through a combination of supply-side and demand-side resources over a specified future period. See "Best Practices in Eclectic Utility Integrated Resource Planning; Examples of State Regulations and Recent Utility Plans" available at <https://www.raonline.org/wp-content/uploads/2016/05/rapsynapse-wilsonbiewald-bestpracticesinirp-2013-jun-21.pdf>

¹⁷ See "Puerto Rico Integrated Resource Plan 2018-2019." available at <http://energiampr.gov/wp-content/uploads/2019/01/Motion-CEPR-AP-2018-0001-2.pdf>

¹⁸ Puerto Rico Territory Energy Profile. <https://www.eia.gov/state/print.php?sid=RQ>

¹⁹ <https://earthjustice.org/blog/2021-july/puerto-rico-needs-solar-energy-not-fossil-fuels>.

succeeding legislation it is tasked with reviewing and approving electricity service rates and charges and with oversight of compliance with the Puerto Rico Energy Policy.

Unionized Workers

On June 14, 2021, LUMA Energy announced that Unión Insular de Trabajadores Industriales y Construcciones Eléctricas (UITICE), a legacy union from PREPA, reached majority status and would be recognized as the exclusive collective bargaining representative for LUMA employees.²⁰ Before LUMA took control of the Puerto Rico's electrical transmission and distribution, another organization, the Unión de Trabajadores de Industria Eléctrica y Riego (UTIER) was PREPA's largest workers' union. UTIER took a hard line rejecting the privatization and any participation in the LUMA operation. In protest to the PREPA-LUMA deal, on April 5, 2021, UTIER decreed a 24-hour strike against PREPA.²¹ LUMA has also discussed agreements with the International Brotherhood of Electrical Workers (IBEW) for covering their contractors and subcontractors, which have been questioned by the island business sector as to whether this would force local electrical contractors to unionize or wage-match their own labor forces in order to do work for LUMA.

Previous Attempts to Rebuild the Power Grid

For a more in depth review of PREPA's previous attempts regarding the rebuilding of Puerto Rico's electric grid, please see the April 2019 memo found [HERE](#).

²⁰ <https://lumapr.com/news/authorized-statement-regarding-uitice-union-reaching-majority-status/?lang=en>

²¹ PREPA Governing Board Approved LUMA Contract After 43-Minute Meeting.

https://www.theweeklyjournal.com/politics/prepa-governing-board-approved-luma-contract-after-43-minute-meeting/article_b4399670-7deb-11eb-a4ee-f37571d32c44.html