



To: House Committee on Natural Resources Republican Members
From: Republican Committee Staff; Ken Degenfelder
(Ken.Degenfelder@mail.house.gov) and Jocelyn Broman
(Jocelyn.Broman@mail.house.gov)
Date: September 26, 2022
Subject: Full Committee Oversight Hearing on “*Puerto Rico’s Post-Disaster Reconstruction and Power Grid Development.*”

The Committee on Natural Resources will hold a Full Committee hybrid oversight hearing entitled “*Puerto Rico’s Post-Disaster Reconstruction and Power Grid Development,*” on **Friday, September 30, 2022, at 9:30 a.m. EDT in Longworth 1324** and online via Cisco WebEx.

Republican Members are encouraged to take advantage of the opportunity to participate in person from the hearing room.

Member offices are requested to notify Jocelyn Broman (Jocelyn.Broman@mail.house.gov) by 4:30 p.m. on Thursday September 29, if their Member intends to participate in person in the hearing room or remotely 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) should any technical difficulties arise.

I. KEY MESSAGES

- While the Financial Oversight and Management Board (FOMB), established pursuant *Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA)*,¹ has worked to resolve the government of Puerto Rico’s financial issues, the island and its residents have faced several recent natural disasters, including Hurricane Fiona which made landfall on September 18, 2022.
- Puerto Rico’s original electrical utility, the Puerto Rico Electric Power Authority (PREPA), has been challenged for decades by an aging electrical system and issues of financial mismanagement, and it has been a political flashpoint within the larger issue of the island’s debt crisis.
- PREPA is still in the process of finalizing its debt restructuring, as well as implementing structural and operational improvements intended to help the public corporation be more sustainable and efficient. The FOMB, PREPA, and the utility’s debtors did not reach a

¹ 48 U.S.C. 2101 et seq.

mediated settlement and are preparing to go through litigation to resolve the utility's \$9 billion debt.

- Privatization of PREPA took a significant step forward in 2021 when LUMA Energy, a private consortium, took control of electrical power transmission and distribution (T&D) on June 1, 2021, under a 15-year contract.
- Over the past year, there has been broad dissatisfaction and protests against LUMA related to many power outages, which have been significant in both frequency and duration, rising electricity rates, and a perceived lack of customer service. However, placing sole blame for the island's energy woes on LUMA ignores PREPA's current role as the generator of electricity, the legacy issues of PREPA's mismanagement of finances, and past underinvestment in infrastructure in the system as a whole.
- The Federal Emergency Management Agency (FEMA) has also been slow to obligate and expend the approximately \$9.4 billion Congress authorized for recovery projects in Puerto Rico for hurricanes, earthquakes, and COVID-19 mitigation over the last five years.
- The recent impact of Hurricane Fiona has only worsened the lag in rebuilding the electrical system to a satisfactory standard of resiliency, and applied more social and political pressure on PREPA and LUMA to deliver results.

II. WITNESSES

- **Ms. Vanessa de Mari-Monserrate**, Chairwoman, Puerto Rico Builders Association, San Juan, PR [*Republican Witness*]
- **The Hon. Honorable Pedro Pierluisi**, Governor of Puerto Rico, San Juan, PR
- **Mr. Josué Colón**, Executive Director, Puerto Rico Electric Power Authority (PREPA), San Juan, PR
- **Mr. Edison Avilés-Deliz**, Chair, Puerto Rico Energy Bureau (PREB), San Juan, PR
- **Mr. Manuel Laboy**, Executive Director, Central Office of Recovery, Reconstruction and Resiliency (COR3), Guaynabo, PR
- **Dr. Shay Bahramirad**, Senior Vice President of Engineering, Asset Management, and Capital Programs, LUMA Energy Corporation, San Juan, PR
- **Ms. Ruth Santiago**, Attorney & Environmental Policy Expert
- **Ms. Ingrid Vila Biaggi**, President, CAMBIO

III. BACKGROUND

Puerto Rico's Public Debt Restructuring and PROMESA

The U.S. territory of Puerto Rico has long been plagued with recurring debt issues.² An aging population, high costs of social programs, and government pension obligations have made matters worse.³ By 2016, Puerto Rico had amassed roughly \$72 billion in bonded debt, \$55 billion in unfunded pension liabilities, and had effectively lost access to the capital markets.⁴ In June 2016, Puerto Rico suspended payments on its general obligation debt when *Puerto Rico Oversight, Management, and Economic Stability Act* (PROMESA) was signed into law.⁵

Debt restructuring is still ongoing with several public corporations' bonded debt, including PREPA. Since PROMESA was signed into law, the Financial Oversight and Management Board (FOMB) has overseen one of the largest restructurings of public debt in U.S. history. According to the FOMB, as of July 31, 2022, approximately 90 percent of the covered entities' debt has been restructured.⁶ In February 2019, a federal judge confirmed a plan of adjustment for bonds issued by the sales-and-use tax-backed funding authority, known as COFINA,⁷ reducing the value of all COFINA bonds by \$6 billion and debt service payments by 32 percent.⁸ In January 2022, a federal judge confirmed a plan of adjustment for General Obligation bonds, reducing the central government's debt from \$34 billion to \$7.4 billion.⁹

The FOMB has worked with the territorial government of Puerto Rico and its instrumentalities to create and certify fiscal plans that provide parameters for healthy fiscal policy and aim to prevent another debt crisis. In the most recent Certified Fiscal Plan for the Commonwealth of Puerto Rico, the FOMB included provisions focusing on renewing investment in Puerto Rico, including civil service reforms and structural

² For further information on this history see "The Long Build-Up to Puerto Rico's Debt Crisis" section in CRS report, "Puerto Rico's Public Debts: Accumulation and Restructuring" at <https://www.crs.gov/reports/pdf/R46788>

³ The Hill. "Puerto Rico governor signs bill to halve territory's debt" Oct. 27, 2021.

<https://thehill.com/policy/finance/578723-puerto-rico-governor-signs-bill-to-halve-territorys-debt>.

⁴ CRS, "Puerto Rico's Public Debts: Accumulation and Restructuring" p.1, 12. May 2, 2022.

<https://www.crs.gov/reports/pdf/R46788> (hereinafter CRS, "Puerto Rico's Public Debts"). See also, Wall Street Journal. "Puerto Rico Released from Bankruptcy as Economic Problems Persist" Jan. 18, 2022.

https://www.wsj.com/articles/puerto-rico-released-from-bankruptcy-as-economic-problems-persist-11642537090?mod=article_inline

⁵ Reuters. "Puerto Rico authorized debt payment suspension; Obama signs rescue bill" Jun. 30, 2016.

<https://www.reuters.com/article/us-puertorico-debt-idUSKCN0ZG09Y>

⁶ Financial Oversight and Management Board for Puerto Rico, "FY2022 Annual Report" July 31, 2022, p. 116, available at: https://drive.google.com/file/d/1e7TdoBoBI5rnHk8BGIWDGCVqNMPPhn_5X/view (hereinafter, "FOMB FY2022 Annual Report").

⁷ Memorandum Opinion and Order Approving Settlement between Commonwealth of Puerto Rico and Puerto Rico Sales Tax Financing Corporation, U.S. District Court for the District of Puerto Rico, Case 17-03283, February 4, 2019, <https://cases.primeclerk.com/puertorico/Home-DownloadPDF?id1=OTAzMDUx&id2=0>.

⁸ FOMB FY2022 Annual Report, p. 120.

⁹ FOMB FY2022 Annual Report, p. 118. For a further detailed discussion of restructured debt including COFINA bonds, and General Obligation Bonds, see CRS, "Puerto Rico's Public Debts" p. 17-33.

<https://www.crs.gov/reports/pdf/R46788>.

reforms to the labor system, energy system, and business climate on the island.¹⁰ These reforms need to be implemented by the Puerto Rico legislature, which has not always agreed with the FOMB on what is the best way to encourage economic growth in Puerto Rico.¹¹ In the FOMB's 2022 Annual Report, the Board noted that the Puerto Rican government has "struggled with implementing reforms and reporting on this implementation in a timely manner" causing progress to be "inconsistent and incomplete" with many reforms either delayed or not occurring.¹² This also has implications for disaster recovery since many of the Federal Emergency Management Agency's (FEMA) programs require receipts. For example, Puerto Rico's central government or its instrumentalities, must spend money on recovery projects before they can be reimbursed by FEMA.

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.¹³ PREPA is directed by a governing board comprised of nine members. As a government-controlled entity, the impression of many was that leadership posts at PREPA were coveted patronage jobs, believed to be held by individuals who were unqualified to hold these positions, contributing to the inefficiency of operations. For decades, PREPA was plagued by mismanagement, inefficiency, political cronyism, and a lack of transparency.¹⁴ The utility has a record of unacceptable rates of electricity theft, failure to collect accounts, including from government and municipal users, and a history of continually foregoing critical maintenance of the island's electrical infrastructure.

As an initial step in correcting these deficiencies, on May 27, 2014, Puerto Rico Act 54-2014 created what is now the Puerto Rico Energy Bureau (PREB) as an external regulatory entity to oversee policy compliance and rate adjustments. On February 16, 2016, the Puerto Rico legislature passed, and the Governor of Puerto Rico signed into law the *PREPA Revitalization Act (Act 4-2016)*. As a condition of *Act 4-2016*, 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 García Padilla appointed these new members in November 2016 with the goal of establishing an independent, non-partisan Governing Board with

¹⁰ FOMB FY2022 Annual Report, p. 43-44.

¹¹ Andrew Scurria and Ian Talley, "Puerto Rico FOMB Director Jaresko to Resign After Landmark Debt Deal" *Wall Street Journal* Feb. 3, 2022. <https://www.wsj.com/articles/puerto-rico-boards-director-to-resign-after-landmark-debt-deal-11643904378>

¹² FOMB FY2022 Annual Report, p. 54.

https://drive.google.com/file/d/1e7TdoBoBI5rnHk8BGIWDGCVqNMPHn_5X/view

¹³ GAO-21-264. Puerto Rico Recovery. <https://www.gao.gov/assets/gao-21-264.pdf>; "About PREPA – History" <https://aeepr.com/en-us/QuienesSomos/Pages/History.aspx>.

¹⁴ Oversight Hearing: "Exploring Energy Challenges and Opportunities Facing Puerto Rico." http://naturalresources.house.gov/uploadedfiles/emr_hearing_memo_1_12_16.pdf

the relevant experience and industry expertise necessary to make 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*, made changes in the management of PREPA, with the view towards divesting generation, transmission and distribution assets and establishing new regulatory structures, opening the Puerto Rico market to competition. These laws also establish an energy policy setting a goal of 100% renewable sources after 2050 and entrust the PREB with overseeing compliance by the energy sector entities. The Department of Energy and FEMA are conducting the PR100 Study to seek to determine what would be the best way toward the island's renewable energy goal.¹⁵

PREPA's Bonded Debt Restructuring

PREPA is currently restructuring its \$9 billion bonded debt. This restructuring is one of the largest remaining after the COFINA and General Obligation debt was restructured in 2019 and 2022, respectively. PREPA has been negotiating with bondholders since 2014 on reducing its debt obligations.¹⁶

In March 2022, Governor Pierluisi cancelled a 2019 restructuring deal for PREPA's debt because of lack of support from Puerto Rican elected officials.¹⁷ The FOMB also supported cancelling the deal because of the lack of support and changes in the economic realities facing the island between 2019 and 2022.¹⁸ The lack of support centered on the required rate increases that would be used to pay back the debt, which are politically unpopular. After the restructuring deal was cancelled, the District Court overseeing Puerto Rico debt cases ordered mediation negotiations between PREPA, the FOMB, and bondholders. This has been unsuccessful, and plans are being made to litigate the bankruptcy.¹⁹

¹⁵ Department of Energy, Grid Deployment Office, "Puerto Rico Grid Resilience and Transitions to 100% Renewable Energy Study (PR100)" available at: <https://www.energy.gov/gdo/puerto-rico-grid-resilience-and-transitions-100-renewable-energy-study-pr100>.

¹⁶ Michelle Kaske, "Puerto Rico Power Utility Takes More Time to Reach Debt Deal" *Bloomberg*. Aug. 15, 2022. <https://www.bloomberg.com/news/articles/2022-08-15/puerto-rico-power-utility-takes-more-time-to-reach-debt-deal>

¹⁷ Robert Walton, "Puerto Rico emerges from bankruptcy, but its electric utility is still struggling with \$9B in debt" *Utility Dive*. Mar. 16, 2022. <https://www.utilitydive.com/news/puerto-rico-emerges-from-bankruptcy-but-its-electric-utility-is-still-stru/620451/>.

¹⁸ FOMB "Statement" Mar. 8, 2022. <https://drive.google.com/file/d/1TQqI5kZTVeHX0BEmRLa6GSFShVSnEgG9/view>

¹⁹ Michelle Kaske, "Puerto Rico's Bankrupt Power Utility Heads Toward Litigation After Debt Talks End" *Bloomberg*. Sept. 19, 2022. <https://www.bloomberg.com/news/articles/2022-09-19/puerto-rico-power-utility-inches-toward-litigation-to-cut-debt>.

Public Private Partnership and LUMA

In June 2020, LUMA Energy LLC (LUMA) was awarded the contract to operate PREPA's electricity transmission and distribution (T&D) system.²⁰ The selection process lasted 18 months and required approval from the Public-Private Partnership Authority (P3), PREPA's Governing Board, FOMB, the PREB, and the Governor of Puerto Rico. On June 1, 2021, LUMA took control of Puerto Rico's electrical grid.²¹

LUMA, a joint venture between Houston-based Quanta Energy and Calgary-based ATCO/Canadian Utilities Ltd., is now responsible for power T&D in Puerto Rico. LUMA's scope of work is defined by the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement with PREPA and P3.²² 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.

The LUMA energy contract has been a political issue with opposition from many partisan, labor, academic, and non-profit sectors.^{23 24} Rate increases, continuing power outages that are significant in frequency and duration, and perceived lack of customer service have also eroded support for LUMA on the island.²⁵ Recent rate increases can be attributable to the increase of fuel prices, supply chain issues, and that PREPA is unable to negotiate long term contracts for fuel while they are in bankruptcy proceedings. Because PREPA is still solely responsible for electricity generation on the island, there is little LUMA can influence with respect to rate increases coming from fuel price increases.

Beginning in January 2021, the new Puerto Rico legislature, with the majority of members opposing the contract, attempted to cancel LUMA's contract or postpone its

²⁰ Puerto Rico Public-Private Partnership Authority, Press Release, "Government of Puerto Rico Selects LUMA Energy to Operate and Transform Electric Power Transmission and Distribution System" Jun. 22, 2020. <https://www.p3.pr.gov/wp-content/uploads/2020/07/govpr-selects-luma-energy-ope-trans-electric-power-transmission-dist-sis.pdf>.

²¹ "In Puerto Rico, private company takes over power utility service." *Associated Press* Jun. 2, 2021.

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

²² The Puerto Rico Public-Private Partnership Authority (P3) is a government-owned corporation of Puerto Rico created to regulate public-private partnerships.

²³ Stephanie Gómez Álvarez, "Lúgaro, Dalmau Would Cancel Contract with LUMA Energy" *The Weekly Journal*. Sept. 17, 2020. https://www.theweeklyjournal.com/politics/1-garo-dalmau-would-cancel-contract-with-luma-energy/article_3c5ca040-f8ec-11ea-a2da-b7cfab428ed1.html.

²⁴ Nelson Reyes Faria, "Multiple Sectors Join Protests Against LUMA" *The Weekly Journal*. May 31, 2021. https://www.theweeklyjournal.com/online_features/multiple-sectors-join-protests-against-luma/article_e67a784e-c223-11eb-9991-2b97ae45d62d.html.

²⁵ Alejandra O'Connell-Domenech "Why are some Puerto Ricans demanding the island cancel its contract with power company LUMA Energy" *The Hill*. Sept. 10, 2022. <https://thehill.com/changing-america/sustainability/energy/3636534-why-are-some-puerto-ricans-demanding-the-island-cancel-its-contract-with-power-company-luma-energy/>

effect, but failed due to the veto of the governor.²⁶ Over the summer, continuing blackouts spurred protests against LUMA.²⁷ Governor Pedro Pierluisi criticized LUMA in August, saying “I am not satisfied with the performance of LUMA.”²⁸ Renewed calls to cancel LUMA’s 15-year contract highlighted a provision in the contract between LUMA and Puerto Rico that would allow LUMA to request the cancellation of the contract after the supplementary contract expires on November 30, 2022, if PREPA has not finished restructuring their bonded debt or an agreement has not been reached.²⁹

LUMA and its parent company, Quanta Services, have acknowledged that improvements are needed to reduce the frequency and duration of service interruptions, with a new initiative to meet that goal.³⁰ Quanta Services also acknowledged that better communication from LUMA to its Puerto Rican customers is needed. Work towards that goal is ongoing.

Puerto Rico has an aging electrical system that is reliant on costly imported fuel to generate electricity.³¹ The system has not been adequately maintained and was devastated by Hurricane Maria.³² All of these factors contribute to PREPA and LUMA’s problems in generating and distributing electricity across the island. Heaping blame on LUMA ignores PREPA’s role in the generation of electricity and the legacy issues of PREPA’s mismanagement of finances and underinvestment in infrastructure.

Natural Disasters Complicate Restructuring and Recovery

While the FOMB and the territorial government of Puerto Rico have been working on the island’s financial issues, Puerto Rico has faced several natural disasters that have slowed the pace of restructuring the island’s debts and general recovery, including both its economic recovery and recovery from the natural disasters.

²⁶ Robert Slavin, “Puerto Rico governor vetoes delay to electric privatization” *The Bond Buyer* May 5, 2021. <https://www.bondbuyer.com/news/puerto-rico-governor-vetoes-delay-to-electrical-privatization>.

²⁷ Alejandra O’Connell-Domenech “Why are some Puerto Ricans demanding the island cancel its contract with power company LUMA Energy?” (above)

²⁸ “Puerto Rico governor publicly criticizes private company over power outages” *Associated Press*. Aug. 18, 2022. <https://www.nbcnews.com/news/latino/puerto-rico-governor-publicly-criticizes-private-company-power-outages-rcna43786>

²⁹ “Fontanes said LUMA Energy contract could end in November if PREPA remains in bankruptcy” *The San Juan Daily Star*. Sept. 6, 2022. <https://www.sanjuandailystar.com/post/fontanes-said-luma-energy-contract-could-end-in-november-if-prepa-remains-in-bankruptcy>

³⁰ Carlos Noguerras, “Puerto Rico’s power utility unveils new initiative to overhaul current services” *Al Día*. Aug. 25, 2022. <https://aldianews.com/en/politics/policy/new-limited-luma-initiative>

³¹ Puerto Rico imports all its petroleum and 2 sectors (transportation and electricity power) use approximately 90% of it. Puerto Rico Territory Energy Profile, *U.S. Energy Information Administration*. <https://www.eia.gov/state/print.php?sid=RQ>

³² Madeline Rosenberg, “Puerto Rico’s Electric Grid is On-Again, Off-Again” *The American Prospect*. Aug. 19, 2022. <https://prospect.org/environment/puerto-ricos-electric-grid-is-on-again-off-again/> and Sergio M. Marxuach, “The Short Memory of the Masters of Disaster.” *The Center for a New Economy* (CNE) Oct. 20, 2021. <https://grupocne.org/2021/10/20/the-short-memory-of-the-masters-of-disaster/>

Two major hurricanes in September 2017 passed directly over Puerto Rico, leaving massive damage in their wake. Five years after Hurricane Maria, much of the recovery is still ongoing.³³ A series of major earthquakes in early 2020, and shutdowns related to COVID-19 have further delayed recovery and compounded issues.

On September 18, 2022, Tropical Storm Fiona strengthened into a category 1 hurricane as it made landfall on the southern part of Puerto Rico.³⁴ As the center of the storm crossed the southwest corner of the island, it brought 85 mph winds and heavy rainfall to the island—up to 32 inches slightly north of the city of Ponce.³⁵ The effects of winds and rain on key electric transmission and distribution lines caused the electrical grid to go down and generation to go offline as a safeguard, with all 3.2 million residents losing power. On September 18, 2022, President Biden approved an emergency declaration for the island.³⁶ On September 22, 2022, the President approved a major disaster declaration in response to Hurricane Fiona.³⁷

Hurricane Fiona taxed Puerto Rico’s fragile electrical grid, which had been patched, but never fully repaired or upgraded following Hurricane Maria in 2017. Flooding has devastated vast areas of the island, with National Guard Brig. Gen. Narciso Cruz saying: “There were communities that flooded in the storm that didn’t flood under Maria...I’ve never seen anything like this.”³⁸ Hurricane Fiona also has affected water infrastructure, leaving around half a million people in Puerto Rico without water, because many water stations need electricity to operate.³⁹ LUMA said that work to return power to customers is affected by severe flooding, impassable roads, deteriorating equipment, downed electrical lines, and even several substations underwater and inaccessible.⁴⁰ As of September 26 2022, approximately 618,414 customers were still without power island-wide.⁴¹ LUMA stated they had restored power for 821,227 customers as of 9:50a.m. EDT on September 26, 2022.

³³ Gland Gamboa, “Lin-Manuel Miranda, others seek Puerto Rico silver lining” *ABC News* Sept. 14, 2022. <https://abcnews.go.com/Business/wireStory/lin-manuel-miranda-see-puerto-rico-silver-lining-89882181>

³⁴ Matthew Cappucci, et. al. “All of Puerto Rico without power as Hurricane Fiona slams island.” *Washington Post*. Sept. 18, 2022. <https://www.washingtonpost.com/climate-environment/2022/09/18/fiona-puerto-rico-hurricane-outages/>

³⁵ Lauren Tierney and Laris Karklis, “How Fiona was a different kind of storm than Maria” *Washington Post*. Sept. 21, 2022. <https://www.washingtonpost.com/weather/2022/09/21/how-fiona-maria-compare-wind-rain/>

³⁶ FEMA, “President Joseph R. Biden, Jr. Approves Emergency Declaration for Puerto Rico” Sept. 18, 2022. <https://www.fema.gov/press-release/20220918/president-joseph-r-biden-jr-approves-emergency-declaration-puerto-rico>.

³⁷ FEMA, “President Joseph R. Biden, Jr. Approves Major Disaster Declaration for Puerto Rico” Sept. 22, 2022. <https://www.fema.gov/press-release/20220921/president-joseph-r-biden-jr-approves-major-disaster-declaration-puerto-rico>.

³⁸ Associated Press, “Hurricane Fiona wallops Turks and Caicos; Puerto Rico stunned.” *E&E News*. Sept. 20, 2022. <https://subscriber.politicopro.com/article/eenews/2022/09/20/hurricane-fiona-wallops-turks-and-caicos-puerto-rico-stunned-00057714>

³⁹ Dánica Coto, “Puerto Ricans desperate for water after Fiona’s rampage,” *Associated Press*. Sept. 21, 2022. <https://apnews.com/article/floods-storms-hurricanes-bermuda-puerto-rico-e4066589502b4b2a0a441308216c7ed4>

⁴⁰ *Id.*

⁴¹ PowerOutage.us “Puerto Rico” <https://poweroutage.us/area/state/puerto%20rico>

FEMA Response to Natural Disasters and Issues with Spending Federal Monies

According to Puerto Rico’s Central Office for Recovery, Reconstruction, and Resiliency (COR3), which was established after Hurricane Maria to manage post-disaster reconstruction, \$67.7 billion in federal funds has been obligated to Puerto Rico to assist with recovery from Hurricanes Irma and Maria, the 2019-2020 earthquakes, and COVID-19.⁴² Only \$24.4 billion—less than half—of those funds have been actually dispersed to recipients.⁴³

Given the extraordinary level of infrastructure damage and Puerto Rico’s financial position, alternate procedures were added to the Hurricane Maria presidential disaster declaration.⁴⁴ These procedures were considered the best option for the territories because it provides more flexibility to rebuild facilities to meet current needs and build in mitigation through a fixed-cost estimate for projects.⁴⁵ Under alternative procedures, a fixed-cost estimate must be agreed upon by the recipient and FEMA before work begins, and if the actual cost of the project exceeds the fixed cost, then the recipient is responsible for that overage.⁴⁶ In 2018, Congress authorized FEMA to restore disaster damaged facilities or systems providing critical services to industry standards without regard for pre-disaster conditions.⁴⁷ However, FEMA and COR3 have disagreed on how to implement these authorizations, resulting in delays and confusion.⁴⁸

Financial and liquidity restraints have persistently hampered natural disaster recovery in Puerto Rico.⁴⁹ For example, FEMA Public Assistance is a reimbursement-based program, which requires that applicants request reimbursement for funds the recipient spends. This is a challenge in Puerto Rico, where the territory’s agencies, municipalities, and nonprofits do not have financial reserves and access to initial capital to launch projects.⁵⁰

FEMA has made changes to address challenges and expedite obligations in the Public Assistance program, which improved obligation and expenditure of funds for recovery projects. However, there is still a lot of funding that could be used to modernize the electric grid that has not been expended due to the challenges of ongoing natural disasters and liquidity issues.

⁴² COR 3, “Financial Summary” <https://recovery.pr.gov/en/financial-analysis/financial-summary>

⁴³ Id.

⁴⁴ GAO. “FEMA Made Progress in Approving Projects, But Should Identify and Assess Risks to the Recovery,” GAO-21-264. May 2021, available at: <https://www.gao.gov/assets/gao-21-264.pdf>. (hereinafter “GAO-21-264”).

⁴⁵ *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, P.L. 93-288, as amended; GAO-21-264.

⁴⁶ GAO-21-264.

⁴⁷ FEMA. *Implementing Section 20601 of the 2018 Bipartisan Budget Act through the Public Assistance Program*. September 2018. Available at: https://www.fema.gov/sites/default/files/2020-05/Section_20601_BBA_FP-104-009-5.pdf.

⁴⁸ GAO-21-264 & GAO, “Puerto Rico Disaster Recovery: FEMA Actions Needed to Strengthen Project Cost Estimation and Awareness of Program Guidance,” GAO 20-221. February 20, available at: <https://www.gao.gov/assets/710/704282.pdf>.

⁴⁹ GAO-21-264 & NPR, “How Puerto Rico’s Debt Created A Perfect Storm Before The Storm.” May 2, 2018. Available at: <https://www.npr.org/2018/05/02/607032585/howpuerto-ricos-debt-created-a-perfect-storm-before-the-storm>.

⁵⁰ GAO-21-264. Puerto Rico Recovery. <https://www.gao.gov/assets/gao-21-264.pdf>

In 2020, FEMA obligated \$9.4 billion to PREPA for long term permanent reconstruction of the power system under the FEMA Accelerated Awards Strategy (FAASt). FAASt allows recipients to use sample information to extrapolate costs and develop a fixed-cost estimate for permanent work projects.⁵¹ Disbursement of this obligation relies on the implementation of an Action Plan by the Puerto Rico energy sector players (PREPA, LUMA, PREB). The program is still in the early stages and actual submission of projects did not pick up speed until spring of 2022. This program has faced bureaucratic and political hurdles and public pushback as visions conflict about the means and ends for rebuilding.

⁵¹ Id.