

**GOVERNMENT OF PUERTO RICO
PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU**

NEPR

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IN RE: REVIEW OF LUMA'S INITIAL
BUDGETS

CASE NO.: NEPR-MI-2021-0004

SUBJECT: Motion in Compliance with
Bench Order Entered During the October 18,
2022 Virtual Technical Conference

**MOTION IN COMPLIANCE WITH BENCH ORDER ENTERED DURING THE
OCTOBER 18, 2022 VIRTUAL TECHNICAL CONFERENCE**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority (PREPA), through its counsel of record, and respectfully submits and prays as follows:

1. After several procedural events and postponements, on August 25, 2022, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a *Resolution and Order* ("August 25 Order") amending the procedural calendar followed in the case of caption and scheduling a virtual technical conference that would be held on September 13, 2022 ("September 13 Technical Conference") and during which PREPA and LUMA Energy, LLC ("LUMA") were to discuss the proposed FY2023 Annual Budgets. PREPA is responsible for preparing and administering the Generation and HoldCo/PREPA¹ budgets.

2. PREPA and LUMA appeared at the September 13 Technical Conference. During the opening statement, the Energy Bureau excused PREPA since it determined that it would begin with questions directed only to LUMA. PREPA was ordered to return to the conference in the afternoon. PREPA complied with this order.

¹ HoldCo is not a separate entity or subsidiary. HoldCo refers to PREPA's future state after the completion of the reorganization and unbundling of certain functions, services, and activities.

3. However, in the afternoon, the Energy Bureau continued asking LUMA questions and did not ask questions to PREPA. The Bureau determined that the second day of hearings was needed to continue with its examination.

4. After several procedural events, per the *Resolution and Order* entered on September 20, 2022, the Energy Bureau informed that the continuation of the September 23 Technical Conference would take place on October 18, 2022 (“October 18 Technical Conference”).

5. Representatives of PREPA and LUMA appeared at the October 18 Technical Conference. PREPA was again excused until after the lunch break because the Energy Bureau determined that it would begin the hearing with questions to LUMA. PREPA returned in the afternoon. After PREPA returned, the Energy Bureau kept questioning LUMA. It was not until late in the afternoon that the Energy Bureau determined that it would begin with questions regarding the Generation and HoldCo/PREPA budgets.

6. PREPA had been preparing to present and answer questions regarding the Generation and HoldCo/PREPA for months. However, after many preparation efforts and appearances at conferences that were adjourned or continued without allowing PREPA to participate, during the October 18 Technical Conference, PREPA was only asked a few questions on very discrete and limited matters. At the end of the October 18 Virtual Technical Conference, the Energy Bureau entered several bench orders, some were directed to LUMA, and others referred to PREPA. Regarding PREPA, the Energy Bureau directed PREPA to provide additional information regarding two questions or topics:

- a. Is there a line item in the budget for LUMA to replenish certain emergency accounts?
- b. Permits to operate the Palo Seco MegaGens

7. PREPA herein submits the responses and provides information regarding both questions.

See Annex A-1 and A-2.

8. The last question to PREPA was regarding the difference between HoldCo, GridCo and HydroCo and their creation and differences. PREPA began its response, informing that PREPA had filed a detailed explanation regarding this topic on September 14, 2022, and the Energy Bureau had docketed under case no. CEPR-CT-2016-0018; *In Re: Solicitud de Certificación Autoridad de Energía Eléctrica de Puerto Rico*. (https://energia.pr.gov/numero_orden/cepr-ct-2016-0018/). PREPA continued to provide a high-level explanation of these entities, their roles and responsibilities. Even though the Energy Bureau did not enter an order to PREPA to respond to questions regarding this topic, PREPA herein provides a detailed description of each subsidiary and its characteristics. *See Annex A-3.*

WHEREFORE, it is respectfully requested that the Energy Bureau notes PREPA's compliance with the Bench Order entered during the October 18 Virtual Technical Conference and note the explanation provided by PREPA regarding the creation of several subsidiaries and what HoldCo is.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 1st day of November 2022.

s/ Katuska Bolaños-Lugo
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CERTIFICATE OF SERVICE

It is hereby certified that I have filed the foregoing with the Clerk of the Energy Bureau using the electronic filing system and also that I have served a copy to Margarita Mercado Echegaray, margarita.mercado@us.dlapiper.com.

In San Juan, Puerto Rico, this 1st day of November 2022.

s/ Katuska Bolaños-Lugo
Katuska Bolaños-Lugo

ANNEX A

A-1: Is there a line item in the budget for LUMA to replenish certain emergency accounts?

While PREPA does not have complete visibility into all of the detailed supporting expenses included in LUMA's FY 2023 budget, it is PREPA's understanding that the budget does not include amounts for emergency expenditures or emergency account funding/replenishment. As detailed in the T&D OMA, PREPA, on a monthly basis, shall replenish the various T&D service accounts to maintain certain defined funding levels.

The replenishment for certain T&D service accounts (*i.e.*, the Operating Account, Capital Account – Non-Federally Funded, Generation Expenditures - Purchased Power and Generation Expenditures – Fuel) includes expenses considered in the annual operating budget. Based on PREPA's knowledge of the LUMA budgets, replenishment for the other T&D service accounts (*i.e.*, Outage Event Reserve Account, Contingency Reserve Account and Capital Account – Federally Funded) are not specifically included as expenses in the annual operating budget, nor are these items specifically contemplated in PREPA's current rate structure. For these accounts, the funding/replenishment comes from PREPA's balance sheet operating cash or requires external funding.

The T&D service accounts were initially funded with \$750 million provided by the Commonwealth and \$122.6 million from PREPA's operating cash. The post-service commencement replenishment of the funds used from the Outage Event Reserve Account and the continued monthly funding of the Contingency Reserve Account have been funded by PREPA's balance sheet operating cash. PREPA has also funded the post-service commencement working capital deficit related to the Capital Account – Federally Funded (*i.e.*, PREPA funded the timing difference between the cash disbursements and the receipt of federal funds).

Minimum Working Capital	Months	Contract Reference
Fuel Account ¹	TBD	Section 7.5(e)(ii) (Generation Expenditures Accounts)
Purchased Power Account ¹	2.0	
LUMA Operating Account ²	4.5	Section 7.5(a)(i) (Operating Account)
Operator Service Fees ^{2,5}	4.5	
Capital (Rate Funded) Account ²	4.5	Section 7.5(c)(i) (Capital Account – Non-Federally Funded)
Capital (Federal Funds) Account ²	4.5	Section 7.5(b)(i) (Capital Account – Federally Funded)
Outage Event Reserve Account ³	N/A	Section 7.5(d)(i) (Outage Event Reserve Account)
Contingency Reserve Account ⁴	N/A	Section 7.5(f) (Contingency Reserve Account)

Notes:

1. The T&D OMA requires two months of budgeted expenses for Generation operating expenses, shared services and purchased power and leaves the Account funding "TBD" by the GridCo-GenCo PPOA and any fuel supply arrangement between GridCo and GenCo, as applicable.
2. The T&D OMA requires 4.5 months of working capital and allows for a reduction to 3 months if PREPA is assigned an Investment Grade Credit Rating.
3. Amount stated in the executed T&D OMA, \$30 million, as negotiated by the parties to the contract.
4. Based on the definition and requirement in executed T&D OMA. The Contingency Reserve Amount is the average anticipated T&D Pass-Through Expenditures for one and a half (1.5) months in the initial Contract Year. PREPA is obligated to fund this amount in equal parts over 24 months. Funding for this account is not provided for in the LUMA proposed budget.
5. Operator Service Fees are to be paid out of the Operating Account and are treated the same as Operating Expenses; the FY2023 FOMB certified budget for T&D Operator Service fees.

A-2: Status of the permits to operate the MobilePac Units (MegaGens)

On January 22, 2021, EPA issued a Notice of Violation and Opportunity to Confer (NOV) regarding the installation and operation of the Palo Seco MobilePac Units. PREPA and EPA subsequently conferred regarding the allegations in the NOV, and on November 10, 2021 (the "Effective Date"), PREPA and EPA entered into an Administrative Compliance Order on Consent (ACO) (CAA-02-2022-1001). The ACO authorizes the operation of the MobilePac Units upon completion of the commissioning of a water-injection system, provided that PREPA meets the conditions in the ACO and all applicable and relevant environmental laws and regulations.

Under the ACO, PREPA was required to submit various information per the compliance schedule outlined in the ACO. A high-level timeline of PREPA's submissions and other significant dates is provided below:

- On November 19, 2021, PREPA submitted its test protocol for conducting performance testing on the MobilePac Units.
- On December 10, 2021, PREPA submitted its proposed SO₂ emissions reduction plan to EPA.
- On December 10, 2021, PREPA submitted its petition for no additional operating limitations for formaldehyde in accordance with 40 C.F.R. § 63.6120(g).
- On February 8, 2022, PREPA submitted a revised test protocol incorporating EPA feedback on the prior version.
- On February 8, 2022, PREPA submitted a modified Permit to Construct application to the PR-DNER. PREPA subsequently responded to requests for information from PR-DNER regarding the modified Permit to Construct application. PREPA submitted its original Permit to Construct application to PR-DNER on January 14, 2020.
- On February 8, 2022, PREPA also submitted to EPA a Non-Applicability Analysis for Prevention of Significant Deterioration (PSD) / Nonattainment New Source Review (NNSR) permitting requirements.
- On April 7, 2022, PREPA submitted a revised test protocol incorporating EPA feedback on the prior version.
- On June 10, 2022, PREPA submitted an addendum to the revised test protocol incorporating EPA feedback.

- On June 15, 2022, EPA approved, with conditions, the revised test protocol submitted on April 7, 2022, and the addendum submitted on June 10, 2022.
- Between June 16 and July 16, 2022, the water-injection system for the MobilePac Units was commissioned.
- From July 16 to July 30, 2022, PREPA conducted performance tests on the MobilePac Units.
- Laboratory tests and emissions performance tests first report completed on August 29, 2022.
- On September 8, 2022, PREPA submitted the emissions performance test final report for the MobilePac Units. The performance test report shows results in compliance with the applicable emission limits.
- On September 19, 2022, PREPA requested that the EPA issue a no-action assurance for various Clean Air Act requirements, including for the MobilePacs, due to the emergency caused by Hurricane Fiona. PREPA subsequently submitted supplemental information in support of the request to the EPA.
- On October 5, 2022, EPA identified several pending items requiring supplemental information from PREPA related to the SO₂ emission reduction plan, the petition for no additional operating limitations for formaldehyde, and the test report. PREPA is collecting this supplemental information.
- On October 6, 2022, PREPA received EPA's Non-Applicability Determination regarding the MobilePac Units, in response to PREPA's request regarding PSD and NNSR permitting on February 8, 2022.
- On October 7, 2022, PREPA received an email from DNER requesting that PREPA update its Permit to Construct application documents to reflect EPA's October 6, 2022, Non-Applicability Determination.
- On October 7, 2022, EPA partially granted PREPA's no-action assurance request, in response to PREPA's letter of September 19, 2022.

The Permit to Construct has yet to be issued for the MobilePac Units. PREPA must still make certain updates to this application. Within 90 days of obtaining its Permit to Construct for the MobilePac Units, PREPA is required to modify its Title V permit to incorporate various provisions of the ACO. PREPA is currently working closely with its environmental consultants to complete all the actions required by the DNER and EPA for their issuance of the Permit to Construct and submitting the modification to its Title V permit, in compliance with the ACO.

By the ACO termination date, PREPA must certify that it is in full compliance with the ACO and the Clean Air Act as it relates to the MobilePac Units. The ACO terminates one year from the Effective Date.

Documents in support of this explanation are attached as **Annex A-2(a)**.

Annex A-2(a)

Submitted under seal

A-3: Explanation of new PREPA subsidiaries submitted for the evaluation and approval of the Energy Bureau on September 14, 2022, and an explanation of “HoldCo”

I. Introduction

PREPA is a public corporation and an instrumentality of the Government of Puerto Rico created by Act No. 83 of May 2, 1941.¹ PREPA was established to provide reliable electric energy service to contribute to a more sustainable future for the people of Puerto Rico, maximizing benefits and minimizing social, environmental, and economic impacts. Since then, the PREPA has been tasked with providing affordable, fair, reasonable, and nondiscriminatory costs that contribute to its consumers' general welfare.

Numerous events have recently struck Puerto Rico, and its economy, population, and infrastructure have been significantly affected. Undoubtedly, a few changed the course of the island's history. In 2015, the Government of Puerto Rico (“Government”) announced that Puerto Rico was facing insurmountable debt, described as “unpayable,” which exceeded \$70 billion and prompted it to call on the Federal Government for aid. In response, and per the powers granted by the U.S. Constitution, in 2016, U.S. Congress enacted the *Puerto Rico Oversight, Management, and Economic Stability Act* (PROMESA),² which in turn, created the Financial Oversight and Management Board for Puerto Rico (“Oversight Board” or FOMB). PROMESA conferred the Government and stakeholders with viable mechanisms to restructure Puerto Rico's and its instrumentalities debt. Also, the Government identified a need to transform Puerto Rico's energy sector, for which PREPA was obliged to face and address its over-a-decade-long financial and operational challenges head-on. On September 30, 2016, the FOMB designated PREPA as a “covered territorial instrumentality,” as per section 101(d) of PROMESA. Then, on June 29, 2017, the Oversight Board issued a restructuring certificate per sections 104(j) and 206 of PROMESA. Soon after, on July 2, 2017, the Oversight Board submitted a voluntary petition to adjust PREPA's debts PREPA per section 304(a) of PROMESA and initiated a financial restructuring case³ in accordance with Title III. The Title III case is pending before the United States District Court for the District of Puerto Rico.

However, in September 2017, the entire reorganization had to be set aside, and Puerto Rico was forced to address a new set of priorities. All efforts focused on the impact of hurricanes Irma and María, which caused unparalleled devastation to Puerto Rico. For the first time in history, an entire jurisdiction of the U.S. was left without power upon the ravaging devastation brought on by Hurricane María's landfall, which held the island hostage with its intense winds and rain, and ultimately gravely damaged PREPA's already outdated and debilitated electric power system. Inarguably, along with its passing,

¹ *Puerto Rico Electric Power Authority Act*, Act No. 83 of May 12, 1941, as amended (“Act-83-1941”) (22 LPRR §191-218).

² Pub. L. 114–187, title VII, § 701, June 30, 2016, 130 Stat. 610 (48 USC §§ 2101-2241).

³ *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, No. 17- 04780-LTS (DPR).

Hurricane María drastically altered the course of the Island's future. Such impact weighed heavily upon Puerto Rico's already burdened economy.

Aside from these events that served as a prelude to PREPA's transformation, Puerto Rico's legislature determined that to achieve a comprehensive transformation of Puerto Rico's energy sector and aid PREPA in overcoming its financial and operational challenges, a change in the instrumentality's historical roles and responsibilities was warranted. Consequently, the reassignment of such through multiple entities was imperative. In June 2018, the *Puerto Rico Electric Power System Transformation Act* ("Act 120-2018")⁴ was created to authorize and pave the legal framework required for the sale, disposition, or transfer of PREPA's assets, operations, functions, and services. Act 120-2018 enabled Act No. 29-2009, known as the *Public-Private Partnership Act, to the Authority*⁵ to carry out the transactions permitted by Act 120-2018. Additionally, in 2019, through the *Puerto Rico Energy Public Policy Act* ("Act 17-2019"),⁶ the Legislature of Puerto Rico declared that Puerto Rico's power system is essential to achieve the competitiveness and economic development of Puerto Rico and thus ordered its transformation and restructuring. Thus, Act 17-2019 provides for a concerted transition from the current vertically integrated PREPA structure to one in which the roles and responsibilities that have historically been concentrated within PREPA be reallocated across multiple entities.

The Oversight Board enabled a second vehicle to complete PREPA's transformation. Under PROMESA, the responsibilities of the Oversight Board encompass the process for the submission, approval, and certification of fiscal plans and budgets for Puerto Rico and its instrumentalities, including PREPA. In accordance with those vested powers, the Oversight Board has certified multiple fiscal plans for PREPA; the first was approved on April 28, 2017, and the most recent and operative was certified on June 28, 2022.

To what is relevant to this explanation, on June 27, 2019, the Oversight Board certified the 2019 Fiscal Plan for PREPA. The 2019 Fiscal Plan includes reorganizing PREPA and requires disarticulating its vertically integrated operations into GenCo and GridCo. GenCo, a wholly owned subsidiary of PREPA, would hold the generation assets and carry out the responsibilities of producing electricity to be exported to the transmission system, which in turn, together with the distribution system, would be transformed into a second subsidiary identified as GridCo.

Following the legislative mandate and the Oversight Board's policy of disintegrating PREPA's roles, the Puerto Rico Public-Private Partnerships Authority (P3A) issues a

⁴ *Puerto Rico Electric Power System Transformation Act*, Act. No. 120 of June 21, 2018, (22 L.P.R.A. §§ 111-1125), as amended.

⁵ *Public-Private Partnership Authority Act*, Act No. 29 of June 8, 2009, as amended ("Act 29-2009").

⁶ *Puerto Rico Energy Public Policy Act*, Act. No. 17 of April 11, 2019, 22 L.P.R.A. §§ 1141-1141f, as amended ("Act 17-2019").

request for proposals (RFP) to identify one or more proponents to transfer responsibilities for the operation and maintenance of PREPA's transmission and distribution system ("T&D") to a private operator. LUMA Energy, LLC was selected as the operator. On June 22, 2020, PREPA, P3A, LUMA Energy, LLC, and LUMA Energy ServCo., LLC entered into the *Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement* and the *Puerto Rico Transmission and Distribution System Supplemental Terms Agreement* (the "T&D OMA"), a contract by which PREPA assigned LUMA the responsibility to operate and maintain PREPA's T&D System and delegated on P3A the responsibility of administering and overseeing compliance with its terms and conditions. In the OMA, the Parties agreed to reorganize PREPA into two subsidiaries, GenCo and Gridco.

The OMA provided that the Parties were to complete a series of tasks and documentation before the Service Commencement Date (SCD). Amongst these tasks was the approval of the corresponding Government entities of a final plan for the unbundling of PREPA into GenCo and GridCo and the approval of a power and purchase operating agreement between GridCo and GenCo. T&D OMA at sec. 4.5(q). Although the Parties were diligent in their efforts since the effective date of the OMA, the completion of such documents was only achieved after the date that the Parties had agreed to set as the conditions precedent to the SCD, which was June 1st, 2021. In response, on June 1, 2021, the Parties executed the *Limited Waiver*, by which they expressly manifested that the Parties had accepted that the lack of such documentation did not hinder LUMA from delivering the services according to the OMA and that the Parties would move forward with June 1, 2021, as the ISCD (ISCD). In this regard, LUMA would be able to commence implementing its emergency response plan for the T&D System in preparation for the 2021 Atlantic hurricane season. Among the conditions waived was the completion of a final plan for reorganizing PREPA into GenCo and GridCo. See *Limited Waiver* at p. 2, sec. 1(d).

II. Applicable law, policies, and regulations

A. The Puerto Rico Electric Power System Transformation Act

On June 20, 2018, the *Puerto Rico Electric Power System Transformation Act* was enacted. With its approval, Puerto Rico established the legal authority and mechanisms to enable the sale, disposition and/or transfer of the T&D System and generation assets, operations, functions and services through public-private partnerships.

Section 4 of Act 120-2018 established the applicability of Act No. 29-2009, which regulates the establishment of public-private partnerships in Puerto Rico, to PREPA transactions to take advantage of its strict transparency and flexibility processes as a basis for conducting negotiations that would lead to a financially feasible electric power system focused on the welfare of consumers. Act 29-2009 modified the existing regulatory structure and established a working group to design a new regulatory framework and energy public policy for a private sector-based energy system. Section 5 of Act 120-2018 set P3A as the sole Government entity to be responsible for the following:

- (1) implementing the public policy on PREPA Transactions conducted in accordance with this Act;
- (2) determining the Functions, Services, or Facilities for which such Partnerships shall be established, subject to the priorities, objectives, and principles established in the energy policy and the regulatory framework to be developed pursuant to Section 9 of this Act; and
- (3) determining which PREPA Assets related to electric power generation shall be sold or transferred through Sales Contracts. If the Authority [P3A] determines that a Partnership shall not be established for a Function, Service, Facility, or other PREPA Asset, said PREPA may develop Function, Service, Facility, or PREPA Asset as provided by Act No. 83 or any other applicable law and it shall not be considered a PREPA Transaction.

According to Act 120-2018, a PREPA Transaction is defined as “any and all transactions pursuant to which PREPA or the Government of Puerto Rico enters into one or more Partnerships with respect to any function, service or facility of PREPA or a Sale Agreement of the assets of PREPA related to energy generation that is carried out pursuant to the provisions of Act 29-2009.”

B. The Puerto Rico Energy Public Policy Act

On April 11, 2019, the Governor signed the Puerto Rico Energy Public Policy Act to establish, among other things, the regulatory framework for Puerto Rico's energy sector and the Authority's transformation. Considering the importance of Puerto Rico's power system in the economic development of the island and its competitiveness in capital markets, it establishes a regulatory framework to attract private investment and ensure independent, professional oversight of the energy market participants. As a spearhead, it ordered the transformation and restructuring of the Authority. Moreover, Act 17-2019 specifically prohibits PREPA from continuing to operate as a vertical monopoly, mandating the unbundling of the T&D System and generation operations into separate and distinct entities.

Section 1.8. of Act 17-2019 also directs PREPA to:

- (i) execute one or various partnership contracts, through which it shall transfer the transmission and distribution functions, the sale of electric power, the operation of the Energy Control Center, and all those activities related to such functions and
- (ii) to transfer the operating, administrative, and/or maintenance functions in connection with PREPA's legacy power generation assets.

Consistent with such an energy policy, after P3A conducted an RFP process to select one or more private operators for the T&D System, on June 22, 2020, PREPA, P3A and

LUMA signed the T&D OMA by which PREPA transferred day-to-day roles and responsibilities over the operation of the T&D system to LUMA and the administrative function of overseeing compliance with the T&D OMA to P3A. On June 1, 2021, the transition to LUMA of the responsibility for the management, operation, maintenance, repairs, restoration, and replacement of the T&D System took place.

Under the T&D OMA, PREPA must create GridCo, a subsidiary that will hold the assets and responsibilities of the T&D System and GenCo, a subsidiary that will hold the thermal generation plants and fuel contracts and the assets and personnel related to it ("Legacy Thermal Generation Assets").

C. Certified fiscal plans

Since the enactment of PROMESA, PREPA has been subject to the supervision of the Oversight Board. The Oversight Board generates certified fiscal plans for PREPA to serve as a roadmap of the estimated revenues and expenses and to outline the strategy for the utility to complete the operational and financial reorganization of the PREPA and the successful completion of the transformation of Puerto Rico's energy sector.

On June 29, 2020, the Oversight Board certified PREPA's 2020 Fiscal Plan ("2020 Fiscal Plan"). The 2020 Fiscal Plan required PREPA's vertically integrated operations to be "disaggregated into Generation and T&D utility functions – GenCo and GridCo, respectively." 2020 Fiscal Plan at p. 53. The 2020 Fiscal Plan also provided that the transformation of the energy sector required, among other things: (i) the improvement of existing PREPA operations and transfer of responsibilities for the operation and maintenance of its T&D System to a qualified, professional, and experienced private operator; and (ii) improvement of PREPA generation operations and transfer of the responsibilities for the operation and maintenance of PREPA's existing generation assets to one or more qualified, professional, and experienced private operators. *Id.* at p. 27. This is consistent with the objective of Act 120-2018 and Act 17-2019.

Additionally, on May 27, 2021, the Oversight Board certified PREPA's 2021 Fiscal Plan ("2021 Fiscal Plan"). The 2021 Fiscal Plan provides and emphasizes that PREPA must modify its roles and responsibilities and reallocate these through multiple entities to transform Puerto Rico's energy system truly. 2021 Fiscal Plan at p. 45. The 2021 Fiscal Plan further establishes that PREPA must complete its operational and financial reorganization by distributing its responsibilities and assets in different subsidiaries. *Id.* at p. 111.

On June 28, 2022, the Oversight Board certified PREPA's 2022 Fiscal Plan (the "2022 Fiscal Plan"). The 2022 PREPA Fiscal Plan is the most current and operative fiscal plan. It reiterates that as required by Act 17-2019 and as outlined in PREPA's 2020 and 2021 fiscal plans, PREPA's transformation must proceed with the unbundling of the electric system from a vertically integrated monopoly structure into one in which roles and responsibilities are reallocated across multiple entities and are operated by different parties. Per the 2022 Fiscal Plan, the focus in the coming months shall be to; (i) create

PREPA GenCo, PREPA GridCo, PREPA HydroCo, and PREPA PropertyCo; and (ii) assign separate PREPA's assets, roles, and responsibilities to each of the subsidiaries. 2021 Fiscal Plan at p .46, ¶ 1.

Lastly, the 2022 Fiscal Plan expresses that PREPA's existing day-to-day roles and responsibilities will be limited to those strictly necessary to ensure compliance with federally funded capital investment requirements, short- and long-term financing, financial disclosure, and auditing requirements, recordkeeping, and other obligations established by federal and Commonwealth laws.

III. PREPA reorganization

PREPA's Enabling Act⁷ established PREPA as a government instrumentality subject to its governing board's control. Act 83-1941 states explicitly that the powers of the Authority shall be exercised, and its general policy and strategic management shall be determined by its Governing Board.

Following the mandate of Act 120-2018 and Act 17-2019 and several fiscal plans approved by the Oversight Board, P3A opened a competitive procurement process to award an operation and maintenance agreement of PREPA's T&D System to one or more private operators. After completing the competitive process, the T&D OMA was awarded to LUMA. One of the covenants that the Parties entered when the T&D OMA was signed was to complete the reorganization of PREPA into GenCo and GridCo and the effectiveness of the GridCo-GenCo PPOA. T&D OMA at Sec. 4.5(q). These two (2) events were part of a series of documentation and tasks that had to be completed before SCD. Although the Parties were diligent in their efforts since the effective date of the OMA, the completion of such documents was not achieved before the date that the Parties had agreed to set as the SCD, which was June 1st, 2021.

In response, on June 1, 2021, the Parties executed the *Limited Waiver*, by which they expressly manifested that the Parties had accepted that the lack of such documentation did not hinder LUMA from delivering the services according to the OMA and that the Parties would move forward with June 1, 2021, as the ISCD, rather than SCD. In this regard, LUMA would be able to commence implementing its emergency response plan for the T&D System in preparation for the 2021 Atlantic hurricane season. Among the conditions waived was the completion of a final plan for reorganizing PREPA into GenCo and GridCo and the completion and approval of the GridCo-GenCo PPOA. Limited Waiver at p. 2, Sec. 1(d). The Parties further agreed to work actively to ensure that the conditions required before the SCD would be satisfied.

⁷ Act 83-1941.

Therefore, in compliance with the agreements outlined in Act 17-2019, PREPA's fiscal plans, the T&D OMA and the Limited Waiver, the Parties continued working diligently to complete the PREPA Reorganization.

D. Creation of three (3) new subsidiaries

In compliance with the mandates outlined in Act 17-2019, and the agreements outlined in the T&D OMA, PREPA has completed the initial process to create three (3) new subsidiaries: PREPA GenCo, LLC, PREPA HydroCo, LLC and PREPA PropertyCo, LLC. Each subsidiary is further described below.

i. PREPA GenCo, LLC

On December 15, 2021, by its vested powers under Act 83-1941, as reflected in *Resolution 4939 Approval for the Creation of the PREPA GenCo, LLC subsidiary* ("Resolution 4939"), the PREPA Governing Board approved the legal documents to formalize the organization of PREPA GenCo, LLC ("GenCo").

GenCo is proposed as the legal entity that will own and operate (or delegate the operation of) the PREPA's Legacy Thermal Generation Assets. PREPA will contribute specific capital to GenCo, including, among others, the thermal generation assets, employees, vehicles, software, and contracts. Any assets used in connection with the T&D System *and* the Legacy Thermal Generation Assets shall remain under PREPA and will not be transferred to GenCo unless PREPA and GenCo determine after its creation that any such assets shall be transferred through a written instrument executed by PREPA and GenCo.

ii. PREPA HydroCo, LLC

On December 15, 2021, by its vested powers under Act 83-1941, as reflected in *Resolution 4940 Approval for the Creation of the PREPA HydroCo, LLC Subsidiary* ("Resolution 4940"), the PREPA Governing Board approved the legal documents to formalize the organization of PREPA HydroCo, LLC ("HydroCo").

HydroCo is proposed as the legal entity that will own and operate (or delegate the operation of) hydroelectric and irrigation assets, employees, vehicles, software, and contracts and assets related to it ("Hydropower Assets"). PREPA will contribute specific capital to HydroCo, including the Hydropower Assets. Any assets used in connection with the T&D System and the Hydropower Assets shall remain under PREPA and will not be transferred to HydroCo unless PREPA and HydroCo determine after its creation that any such assets shall be transferred through a written instrument executed by PREPA and HydroCo.

iii. PREPA PropertyCo, LLC

On December 15, 2021, under its vested powers under Act 83-1941, as reflected in *Resolution 4941 Approval for the Creation of the PREPA PropertyCo, LLC Subsidiary* ("Resolution 4941"), the PREPA Governing Board approved the legal documents to formalize the organization of PREPA PropertyCo, LLC.

PropertyCo is proposed as the legal entity that will own and operate (or delegate the operation of) the PREPA assets not related to the T&D System, the Legacy Thermal Generation Assets or the Hydropower Assets. The sole member of PropertyCo will be PREPA. PREPA will contribute certain capital to PropertyCo, including, among others, assets not related to T&D System, the Legacy Thermal Generation Assets or the Hydropower Assets.

E. The creation of GridCo is postponed

What is commonly referred to as GridCo is PREPA's transmission and distribution system and associated operations, customer experience, system operations and planning and administrative functions, now operated by LUMA. Subject to the Oversight Board's approval, the process to create GridCo will commence after the District Court approves a plan of adjustment of debts for PREPA. PREPA will then establish GridCo as the entity that encompasses only those T&D System functions and responsibilities transferred to LUMA. Any remaining PREPA operations will be allocated to PREPA or the other remaining subsidiaries.

F. "Holdco" is not a subsidiary of PREPA

There are "HoldCo" references in PREPA's budgets and fiscal plans. However, there is no separate entity called HoldCo, and there is no plan or obligation to create a separate subsidiary called HoldCo. On July 21, 2010, PREPA created a subsidiary called PREPA Holdings, LLC, which is not what PREPA signifies when mentioning HoldCo.

Reference to HoldCo should be considered as a reference to all assets and responsibilities that are not already within one of the existing subsidiaries, proposed subsidiaries, or the T&D System, which is what LUMA administers and will be moved to the GridCo subsidiary over time.

References to HoldCo should be considered as PREPA's future state after the reorganization is completed. Thus, as of the date of the submission of this response, there is no HoldCo subsidiary and no plan to create a HoldCo subsidiary.

III. Submission to the Energy Bureau

Section 5(u)(i) of Act 83-1941 expressly asserts that PREPA must obtain prior approval of the Energy Bureau to create, whether in Puerto Rico or a different jurisdiction, or contract with companies, partnerships, or subsidiary corporations, whether for profit or nonprofit, affiliated or associated, to, among others:

separate or divide into one or more subsidiaries the [PREPA]'s generation, transmission, and distribution functions and (ii) participate in Private-Public Partnerships [(hereinafter "P3A")] in accordance with Act No. 29-2009, as amended, and Act No. 120-2018, as amended.

Therefore, PREPA, in compliance with the applicable laws, on September 14, 2022, submitted to the Energy Bureau all the documentation relevant to the creation of GenCo, HydroCo and PropertyCo ("Petition"). On September 15, 2022, the Energy Bureau docketed the petition under case no. CEPR-CT-2016-0018, *In Re: Solicitud de Certificación Autoridad de Energía Eléctrica de Puerto Rico*.⁸ However, for reasons unknown to PREPA, the Energy Bureau has not uploaded the public version of the Petition filed by PREPA to its website. Neither has PREPA been served with any resolution or order regarding the Petition.

⁸ https://energia.pr.gov/numero_orden/cepr-ct-2016-0018/