



GOVERNMENT OF PUERTO RICO
CENTRAL OFFICE FOR RECOVERY,
RECONSTRUCTION AND RESILIENCY

October 4, 2021

BY EMAIL

Honorable Raúl M. Grijalva
Chair
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Written Statement from the Central Office for Recovery, Reconstruction and Resiliency of the Government of Puerto Rico (COR3) in relation to the Full Committee Oversight Hearing to be held on October 6, 2021, titled “PREPA Post Implementation of the LUMA Transmission and Distribution Contract”

Dear Chairman Grijalva and members of Congress,

I. INTRODUCTION

This country is no stranger to natural disaster chaos, having directly experienced massive storms such as Hurricane Katrina in 2005, Hurricane Sandy in 2012, and most recently Hurricane Ida during the summer of 2021, all of which impacted several jurisdictions in the contiguous United States. In Puerto Rico, the devastation caused by Hurricane Irma,¹ and even more so, Hurricane Maria,² both only a couple of weeks apart in September 2017, paved the way for a historic obligation of federal funds from the Public Assistance (PA) program of the Federal Emergency Management Agency (FEMA), currently set at over \$24 billion,³ and approximately \$9.5 billion of that amount is destined for reconstruction works related to the Puerto Rico Electric Power Authority (PREPA).⁴

The extent of federal aid being distributed to Puerto Rico, both during the emergency period after the impact of Hurricane Maria, and for purposes of permanent reconstruction work, is as historic as the destruction that preceded it, and just as the amount of PA program funding for Puerto Rico as a jurisdiction is the largest in the history of FEMA, so is PREPA's individual subrecipient obligation of funds for

¹ The major disaster declaration for Hurricane Irma is identified as FEMA-DR-4336-PR.

² The major disaster declaration for Hurricane Maria is identified as FEMA-DR-4339-PR.

³ The PA program is authorized by Sections 406 (traditional) and 428 (alternate procedures) of the Stafford Act, 42 U.S.C. §§5172 and 5189f. PREPA PA projects are covered under Section 428 as per FEMA requirements.

⁴ See Appendix I. The federal cost share for Hurricane Maria permanent work obligations under the FEMA PA program, including the PREPA obligation, is set at 90%, and the corresponding non-federal cost share is set at 10%. The total PREPA PA obligation, including federal and non-federal share amounts, is set at \$10.5 billion. As will be discussed later on, the non-federal share for Hurricane Maria PA projects shall also be covered by federal funding.

permanent work. We expect this amount to increase as hazard mitigation measures under the PA program are incorporated into PREPA reconstruction projects.

In addition to the abovementioned and yet to be seen hazard mitigation funding under the PA program, we expect a significant amount of funds from FEMA's Hazard Mitigation Grant Program (HMGP) total allocation of \$3 billion in federal funding for mitigation measures related to Hurricane Maria,⁵ of which about \$1 billion are expected to be assigned for PREPA mitigation works, including energy generation initiatives. It should be noted that while the PA program is focused on attending to damages caused by a disaster, HMGP funding is used to provide protection to undamaged parts of a facility or to prevent or reduce damages caused by future disasters.

II. THE NEED TO CREATE COR3 TO MANAGE THE RECOVERY PROCESS

To manage this enormous sum of federal moneys and ensure not only adequate project execution, but full transparency, accountability and compliance with applicable laws and regulations, the Government of Puerto Rico created the Central Office for Recovery, Reconstruction and Resiliency (COR3),⁶ which in turn acts as Recipient of FEMA PA and HMGP moneys. Furthermore, COR3 Executive Director also serves as the Governor's Authorized Representative for purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (Stafford Act).⁷ Accordingly, COR3 has a prominent role in the recovery process, along with FEMA and each subrecipient, including municipalities, certain private non-profit entities, and state agencies and public corporations and instrumentalities, such as PREPA. After the occurrence of a major disaster and subsequent Presidential declaration, FEMA awards PA and/or HMGP funds to COR3 as Recipient, while COR3 enters into subaward agreements with subrecipients and serves as pass-through entity to provide funding to carry out part of the PA or HMGP activities. As Recipient, COR3 is responsible for providing technical assistance and ensuring that subrecipient activities are carried out in full compliance with FEMA and other federal, state, and local requirements. On the other hand, subrecipients are responsible for actual procurement and project execution pursuant to applicable federal, state and local regulations, which in most cases mandate a full and open competitive process.

After its inception, and as required by the federal government, COR3 contracted experienced disaster recovery professional firms to ensure that it had all necessary resources to manage a very complex recovery process, considering the magnitude of the damages caused by Hurricane Maria. These firms assisted with the development of a long list of policies and procedures that govern all of COR3's processes related to FEMA awards, known as the COR3 Disaster Recovery Federal Fund Management Guide, which is divided into fourteen chapters and covers everything related to the

⁵ HMGP is authorized by Section 404 of the Stafford Act, 42 U.S.C. §5170c. Cost-share requirements for HMGP consists of a 75% federal share and a 25% non-federal cost share. For Hurricane Maria, HMGP non-federal cost share requirements will be covered by federal funding, as further explained below.

⁶ COR3 was created by Executive Order No. 2017-065, as subsequently amended, as a division of the Puerto Rico Public-Private Partnerships Authority (P3A).

⁷ Pub. L. No. 100-707, 102 Stat.4689.

PA process, from initial inspections, damage assessments, and project formulation and obligation, to reimbursement processes, compliance, fraud prevention and subrecipient monitoring procedures, appeals and arbitrations, and the project closeout process. Notably, Chapter 7 of the Guide specifically covers the disbursement process between COR3 and subrecipients under the PA program, which was recently revisited to ensure a more streamlined and effective reimbursement review and validation process, while still complying with a 100% validation requirement as exclusively required by FEMA for Puerto Rico disaster recovery activities, which we further explain below. These policies and procedures were also required by the federal government for purposes of eventually transferring related FEMA processes to COR3.

Regarding disbursements, after Puerto Rico received a major disaster declaration for Hurricane María, FEMA implemented a manual drawdown process for eligible PA projects that restricted COR3 from exercising the responsibilities normally authorized for Recipients under the Stafford Act and the governing regulations.⁸ This was highly unusual and is only authorized by the applicable regulation if a Recipient is formally declared as high risk by FEMA, which was not the case of Puerto Rico. The manual drawdown process, referred to as the “270 process,” required a detailed review by FEMA of the documents provided in support of a request for reimbursement (“RFR”) prior to disbursing funds to a subrecipient. During the manual drawdown process, FEMA’s validation review prior to reimbursement, entailed performing a 100% completeness review and a 20% compliance review prior to the approval of any disbursement. Even though FEMA was not conducting a 100% validation (completeness and compliance review), in order to eliminate the 270 process, which had proven to be lengthy and failed to address the cash flow needs of the subrecipients, FEMA required Puerto Rico to implement a reimbursement process which required the performance of a 100% validation review (100% completeness and 100% compliance review) prior to any reimbursement. However, FEMA and COR3 came to an agreement that for low risk subrecipients Puerto Rico would be able to perform a 100% completeness review and expedite disbursement of no more than 75% of the RFR and then perform a 100% compliance review prior to reimbursing the remaining 25% of the RFR. This requirement was formalized in what was referred to as the 270 Agreement or 2019 Agreement, which became effective on April 1, 2019. Prior to this date, all reimbursements were reviewed and disbursed directly by FEMA.

As such, on April 1, 2019, Puerto Rico began performing the aforementioned review for low risk subrecipients. However, prior to disbursing any funds to high risk subrecipients, COR3 would have to perform a 100% validation review (100% completeness and 100% compliance review) prior to the disbursement of any funds. Nonetheless, on July 1, 2021, COR3 implemented a revised reimbursement policy wherein the completeness and compliance review are combined to be performed simultaneously, thereby considerably reducing the review time and therefore the rate in which funds are disbursed. Although this process still requires the performance of a 100% validation review prior to any disbursement, combining the completeness and compliance review has made the process much more efficient. Furthermore, we note that FEMA recently informed that the 2019 Agreement would be left without effect,

⁸ See 44 C.F.R. Part 206 and 2 C.F.R. Part 200.

thus granting a related petition from the Government of Puerto Rico requesting the same treatment as other U.S. jurisdictions and allowing for additional revisions to speed up COR3's reimbursement process and accelerate the reconstruction process.

For purposes of adequately tracking compliance with applicable policies, laws and regulations, FEMA implemented the Validate As You Go ("VAYGo") pilot program to test PA and certain other disaster grant expenditures for Hurricanes Harvey, Irma, and Maria in response to appropriations act provisions and Office of Management and Budget guidance that agencies implement additional measures to identify and address improper payments for disaster programs expending more than \$10 million in any one fiscal year. As part of VAYGo, FEMA reviews project documentation for a sample of funds as they are drawn down by recipients and conducts testing to verify whether the project funding was appropriately expended by the subrecipient. One goal of VAYGo is to identify potential problems earlier, allowing FEMA and recipients—including PA recipients—to correct or mitigate issues earlier in the process instead of waiting until grant closeout. As informed by the FEMA, the primary goal of VAYGo is to test for ineligible costs, which can serve as a gateway for the agency to be on notice of issues of fraud, waste, or abuse in the PA program. FEMA's improper-payments-testing methodology tests payments from FEMA to PA recipients and recipients to subrecipients. VAYGo, however, looks to see whether the subrecipient properly expended funds. For FEMA's VAYGo team to successfully report a Recipient's expenditure of Federal funding has been proper, all documentation associated with the expended amount must be available for review by the VAYGO team.

In 2019, FEMA implemented the VAYGo program in Puerto Rico. To date, we have participated in two (2) VAYGo reviews for fiscal years 2018 and 2019 and have taken significant strides with subrecipients to validate most of the sampled disbursements. It should be noted that VAYGo audits for fiscal year 2019 mostly correspond to disbursements done directly by FEMA (as per the manual drawdown process that was previously discussed), while the entirety of the 2020 VAYGo process and any future audit will take into account that COR3 manages the reimbursement process. FEMA has informed that it intends for the VAYGo process to occur on a quarterly basis.

In response to Presidentially declared disasters, Congress may appropriate additional funding for the Community Development Block Grant (CDBG) Program as Disaster Recovery grants to rebuild the affected areas and provide crucial seed money to start the recovery process. Since CDBG Disaster Recovery (CDBG-DR) assistance may fund a broad range of recovery activities, the U.S. Department of Housing and Urban Development (HUD) can help communities and neighborhoods that otherwise might not recover due to limited resources. In Puerto Rico, the Department of Housing is the Recipient of these funds. As related to FEMA PA and HMGP funding for Hurricane Maria, it is very important to point out that non-federal cost share requirements under both programs, that is, the out-of-pocket money that the state and/or subrecipient must provide to receive federal assistance, will be covered by CDBG-DR or CDBG-MIT funds that had been previously allocated by Congress, also because of Hurricane Maria, as allowed by HUD.

III. LUMA AS AGENT OF PREPA FOR DISASTER RECOVERY PURPOSES

The reconstruction process of an already ailing and fragile PREPA electric power infrastructure, exacerbated by a government-wide bankruptcy process under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act of 2016 (PROMESA),⁹ including PREPA, and a profound financial and economic crisis and, of course, the impact of devastating natural disasters, encompasses building back a better and more resilient Puerto Rico by making use of existing FEMA policies and procedures and the enactment of the Bipartisan Budget Act of 2018 (BBA).¹⁰ As the federal government is well aware, four (4) years after these disastrous hurricanes, these conditions not only still exist but have been further aggravated by the passing of two (2) additional Presidentially-declared major disasters, the 2020 seismic activity that impacted the southern region of Puerto Rico,¹¹ including important PREPA generation assets in the area where most of our island's energy generation takes place, and the global pandemic, health crisis and consequential economic issues caused by COVID-19.¹²

The above-mentioned numbers and the unsurmountable federal support received by our island are certainly significant, but the execution of reconstruction works that will benefit the over 3 million American citizens living in Puerto Rico are not without challenges that are also significant in nature. One of these challenges -although a positive one in terms of what the island needs for its short, medium and long-term recovery and sustainability of its energy infrastructure- is the public-private partnership (P3) transaction for the Operation and Maintenance (O&M) of PREPA's Transmission and Distribution (T&D) assets and other customer-centric services between the Government of Puerto Rico,¹³ through the Puerto Rico Public Private-Partnerships Authority (P3A), PREPA, and a consortium of two well-known and reputable companies who are experts in the energy sector, known as LUMA Energy LLC.¹⁴ Although more details of the O&M transaction, including its robust procurement process, and how it affects the daily operations of PREPA and its long list of residential and commercial customers, will be shared by P3A's Executive Director for the benefit of this Committee, it is important to mention that for matters covered in the qualified O&M agreement -which includes managing a capital improvement plan and budget funded with disaster recovery moneys- and before FEMA and COR3, LUMA acts as an agent, on behalf of PREPA.

The fact that LUMA is an agent of PREPA for disaster recovery purposes is a novelty and has required for everyone involved in the reconstruction process to familiarize with the basic terms of the O&M transaction, even before LUMA took over as PREPA's T&D operations on June 1, 2021. The qualified O&M agreement, where PREPA's T&D

⁹ 130 Stat. 549, 48 U.S.C. §2101 *et seq.*

¹⁰ Pub. L. No. 115-123, 132 Stat. 64.

¹¹ The major disaster declaration for the 2020 earthquakes identified as FEMA-DR-4473-PR.

¹² The major disaster declaration for COVID-19 is identified as FEMA-DR-4493-PR.

¹³ We note that a separate competitive process is currently being conducted by P3A for a similar transaction concerning PREPA's energy generation assets and operation.

¹⁴ LUMA is a joint venture between U.S. based Quanta Services, Inc., and ATCO Ltd., which is based in Canada. In addition, and Innovative Emergency Management, Inc. (IEM), an expert in disaster recovery, serves as LUMA contractor for such purposes and appeared as part of the consortium during the competitive process for the T&D O&M contract.

and other assets remain their own, is something that was consulted with FEMA and carefully carved as part of the P3 procurement and contracting process inasmuch they had to remain as PREPA assets for purposes of receiving the above-mentioned disaster recovery funding. Thus, even now, PREPA remains the applicant and subrecipient of FEMA funds before said federal entity and COR3.

Among other conditions precedent prior to formally commencing operations on such date, LUMA had to prepare a procurement manual for all purchases to be made by LUMA as agent of PREPA, including those to be made with federal funds, which in turn had to be approved by P3A and COR3, and consequently acknowledged by the PREPA Board of Directors. Although not a party to the O&M agreement, FEMA and the Office of the Inspector General of the Department of Homeland Security also reviewed the procurement manual for consistency with federal procurement standards. After June 1, 2021, and LUMA having formally entered the playing field as agent of PREPA, the private consortium is now responsible for planning and executing recovery and reconstruction projects on behalf of PREPA as subrecipient, and LUMA's Manual will govern the procurement processes for FEMA-funded projects carried out by LUMA in accordance with its responsibilities as operator of the T&D system under the O&M agreement. A crucial part of the procurement manual effectively attends to any actual or potential conflict of interest when a LUMA affiliate company participates in any procurement process. In these cases, procurement must be done externally, and P3A and COR3 intervene to make sure guidelines are followed and potential organizational conflicts of interest are avoided.

IV. STATUS OF LUMA/PREPA RECOVERY PROJECTS

At this point, we are immersed on what is known as the post-award process, which requires individual project obligation before moving forward with actual construction work. In order to comply with FEMA policies for PA projects obligated under what is known as the FEMA Accelerated Award Strategy (FAASt), LUMA and PREPA filed a joint 90-day Workplan which covers project execution for such period, and the workplan must be updated and filed every 90 days before FEMA and COR3.¹⁵ In addition, to comply with FAASt project guidelines, LUMA, PREPA, COR3 and FEMA hold weekly and monthly meetings at all levels of their respective organizations, for purposes of ensuring alignment, identifying and resolving issues, and overall speeding the recovery of our energy system.¹⁶ Furthermore, the government parties are constantly involved in productive discussions with LUMA executives and other state entities as part of the Steering Committee created by Governor Pedro R. Pierluisi under Executive Order No. 2021-012 to ensure the successful implementation of the O&M agreement and transition of T&D, customer support and other services from PREPA to LUMA. Also, relevant state entities, including COR3, P3A and PREPA, continuously hold meetings with Governor Pierluisi regarding reconstruction works,

¹⁵ In addition, and although not required by FEMA nor COR3, PREPA presented a 10-year Infrastructure Plan, which was last updated as of June 2021. We further note that although IEM is a COR3 contractor for HMGP projects, we use a separate contractor for matters related to PREPA as to avoid any potential or actual conflict of interest.

¹⁶ As to the recurrence of the meetings, we note that on July 29, 2021, COR3 sent a letter to FEMA leadership suggesting rethinking the schedule to promote more efficient discussions and avoid work interruption and discussing other concerns regarding the FAASt post-obligation process.

and with other members of the cabinet and the Office of the Governor, as part of the Reconstruction Council created by the Governor under Executive Order No. 2021-011.

As would have been the case even if LUMA were not in the equation, at COR3 we are fully focused on project obligation and execution. However, LUMA and their T&D expertise, along with disaster recovery in-house and contractor support, are poised to smooth the edges of an incredibly complex and long-term project. Although the FAASt \$10.5 billion obligation for PREPA occurred on September 24, 2020,¹⁷ the reality is that it only represents a fixed PREPA reconstruction work budget for said amount based on an innovative statistical sampling method. Currently, only funds for architecture and engineering design services (A&E) are authorized to be utilized, for purposes of submitting a Scope of Work (SOW) for FEMA review and approval. Notably, the aforementioned amount does not consider what could potentially be millions of dollars in additional funding for hazard mitigation measures as allowed by the PA program under the Stafford Act, and such measures will be part of each project SOW to be developed. Accordingly, we are currently working with FEMA, PREPA and LUMA to address preconstruction disbursements, hazard mitigation evaluation and budget allocation for PREPA projects under FAASt, and several other issues surrounding the FAASt post-award process and what is known as the FEMA Post-Fixed Cost Estimate Obligation Course of Action Guide, which hinder program and project execution, such as meeting necessity and recurrence, concerns regarding evaluation and compliance with Environmental and Historic Preservation (EHP) (which involves various federal agencies), subrecipient identification of all locally adopted construction codes and standards and/or FEMA-approved industry standards instead of allowing design firms to provide said information, A&E reimbursement processes, and flooding zone code requirements in light of the fixed budget.

The fourth and latest iteration of the 90-day Workplan was submitted by LUMA and PREPA on September 23, 2021. While PREPA is still in charge of recovery projects in the Generation and Dams, Hydro, and Irrigation asset categories, LUMA is responsible for projects in the Transmission, Distribution, Substations, IT/Telecom, Buildings, and Environmental asset categories (T&D Projects). Firms that will provide A&E have already been procured and selected, and LUMA and PREPA are working on the SOWs to be submitted for COR3 and FEMA review, a process that has been continuously emphasized by COR3 and FEMA leadership in order to move forward with projects.

Furthermore, at this stage another key player, known as the Puerto Rico Energy Bureau (PREB), our state (and PREPA's) regulator for all energy-related matters, is deeply involved in the reconstruction process inasmuch prior approval of every single project in the pipeline must be approved by the regulator to ensure consistency with applicable laws and regulations, most notably the Integrated Resource Plan (IRP) and its clean and renewable energy targets, prior to formally submitting each project to COR3 and FEMA for obligation.¹⁸ Certainly, prior PREB approval is also relevant for HMGP projects. As such, careful coordination must take place between LUMA, PREPA,

¹⁷ Project Worksheet No. 6099 under FEMA-DR-4339-PR.

¹⁸ PREB approves projects via resolutions & orders that are publicly available on the internet.

COR3 and the PREB to ensure that projects are compliant from an IRP and regulatory perspective and expeditiously approved.

As of today, the PREB has approved 112 projects, for an amount of over \$8 billion, while 9 other projects representing an amount of \$100 million are currently submitted and remain under PREB evaluation.¹⁹ On the other hand, there is currently another batch of 45 projects that will be soon submitted by LUMA/PREPA to the PREB, totaling \$800 million. In addition, there are several projects in A&E development, including 15 T&D projects, and another 18 T&D projects are projected to kick-off development in mid-October; 2 water asset projects; and 2 generation projects. While most the damages caused by Hurricane Maria were to the T&D system –including buildings, posts, substations, transmission lines, and other assets– which is in turn represented in the distribution of the \$10.5 billion FAAsT obligation for permanent work, there are also several projects to be funded under FEMA PA and HMGP programs that will impact generation assets. Furthermore, yet to be completed project formulation and obligations related to the 2020 earthquakes disaster and the damages caused to the important PREPA generation plant known as Costa Sur are sure to positively impact the generation-side of PREPA’s operations.

Specifically, as to projects to be funded under the HMGP, we are currently working with PREPA, FEMA and the PREB to develop two generation projects (San Juan area Generation and Simple Cycle Turbines) that had already been approved by FEMA but are still facing some regulatory concerns, and other projects such as seismic retrofit for and Early Warning System for PREPA-owned dams, as well as a number of alternate project submissions in the pipeline. In relation to the foregoing, the U.S. Department of Energy is currently conducting a technical study for purposes of assisting Puerto Rico’s clean and renewable energy efforts, with a focus on resiliency and hurricane preparedness, which will help align HMGP projects with federal and state regulations. The current deadline to submit HMGP proposals related to Hurricane Maria is October 31, 2021, but the Government of Puerto Rico requested a time extension to allow for the DOE study to be completed and taken into account for energy related HMGP projects and to ensure that available funding is maximized.

V. NEXT STEPS FOR THE PREPA RECOVERY PROCESS

Our mission at COR3, as Recipient of FEMA PA and HMGP funds and our inherent responsibility over compliance and transparency of the federal funds flowing to subrecipients, is to provide all required technical assistance to LUMA and PREPA in furtherance of the obligation and execution of their recovery and reconstruction projects, which will allow for a better, more resilient Puerto Rico, a stable energy system, and the opportunity to lower dependency on fossil fuels, reduce costs and create better economic opportunities for our citizens, all of which are goals that we are confident are shared by FEMA, this Congress, and the rest of the federal government.

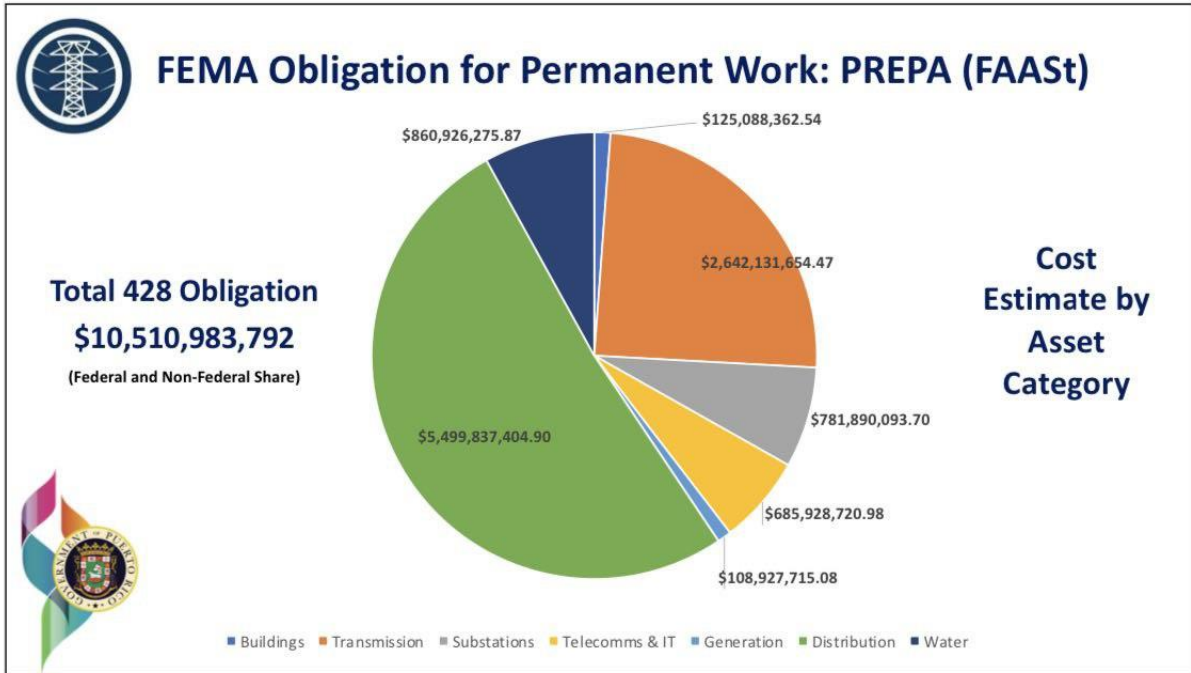
¹⁹ See Appendix 2.

Current projections show that procurement and a number of impactful projects should begin during 2022. Moving forward, we expect to continue improving disbursement processes and collaborating with all relevant parties and other federal agencies to build back a better, more resilient Puerto Rico critical energy infrastructure. As authorized by the BBA, we expect LUMA and PREPA to use available FEMA tools such as Improved, Alternate and Consolidated Projects, which will allow LUMA and PREPA to maximize available PA funding and invest in projects that are forward-looking and which effectively mitigate any future disasters, are more efficient and environmentally and climate change conscious, and allow for long-term economic growth and job creation.

On behalf of the entire COR3 team, we thank Congress and the U.S. Government for their continued support towards a better life for everyone in Puerto Rico.

Sincerely,

Manuel A. Laboy Rivera, PE, MBA
COR3 Executive Director
Governor's Authorized Representative



Appendix 2

