

**P3A T&D TRANSFORMATION –
CLARIFICATIONS TO QUANTA/ATCO PROPOSAL**

	Topic	Clarification/Question
Form 1.2 – Executive Summary		
1.	Operator Damage Cap (pg.19)	Is the Operator Damage Cap of \$10mm an annual amount?
Form 1.3 – Confirmation of Acceptance of O&M Agreement		
2.	Mobilization Payment Period	Regarding the Front-End Transition Service Fixed Fee, the description at the start of Comment E describes it as a “lump sum mobilization payment”, however the edits to Section 4.6(b) seem to indicate that this Fixed Fee will be paid in monthly installments over 12 months. Please confirm proposed payment period. Please also see question 7.
3.	Owner’s Failure to Achieve Service Commencement Date Conditions <i>(Quanta/ATCO Issue A)</i>	Please explain why Quanta/ATCO proposed that the Operator Termination Fee be payable by Owner in the event that Operator terminates the O&M Agreement for Owner’s failure to achieve the Owner Service Commencement Date Conditions. The Operator Termination Fee (which Quanta/ATCO bid at \$ \$220 million throughout the Term and \$110 million in the final year of fifteenth Contract Year) is the amount that is payable in the event of certain Owner Events of Default that lead to termination of the O&M Agreement after the Service Commencement Date once Operator has taken over operation of the T&D System. The Authority would expect that Operator’s damages would be significantly less if the O&M Agreement is terminated prior to the Service Commencement Date (e.g., Operator’s cost of demobilization plus cost of submitting a bid) and would think that a fraction of the Operator Termination Fee would be more appropriate and proportionate.
4.	Cap on Operator Gross Negligence and Willful Misconduct <i>(Quanta/ATCO Issue B)</i>	Quanta/ATCO’s response to the RFP indicates that there should be a cap on gross negligence and willful misconduct, which cap will be “ <i>equal to or higher than the cap applicable to other types of liability.</i> ” It is unclear what is meant by this language. Please advise whether the intent is for the cap on gross negligence and willful misconduct to be the aggregate of (i) the cap for liquidated damages for the failure to achieve the Service Commencement Date by the Target Service Commencement Date (i.e., \$769,000 per week and \$40 million in the aggregate, as bid by Quanta/ATCO) <i>plus</i> (ii) the cap for damages in connection with a termination for an Operator Event of Default (i.e., \$10 million, as bid by Quanta/ATCO) <i>plus</i> (iii) the cap for Operator’s liability to Owner Indemnitees under Article 18 (i.e., \$36.67 million per Contract Year and \$110 million during the Term, as bid by Quanta/ATCO). If not, please explain.

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5.	Caps on Operator’s Liability <i>(Quanta/ATCO Issue C)</i>	Please confirm Quanta/ATCO’s intent with respect to the proposed amendments to Section 14.6(d)(i). Please note that the Authority’s response to the Quanta/ATCO Additional Clarifications (Fifth Submission) Distributed November 19, 2019, Ref. #1 (i) indicated that the cap in Section 14.6(d)(i) relates <i>only</i> to damages in connection with an <i>early termination of the O&M Agreement due to an Operator Event of Default</i> and (ii) further specified that the O&M Agreement contemplates two additional and separate caps: (A) the one for liquidated damages for the failure to achieve the Service Commencement Date by the Target Service Commencement Date and (B) the one for Operator indemnification obligations under Section 18.3(a).
6.	Cap on Guarantee <i>(Quanta/ATCO Issue D)</i>	Please confirm that if the Guarantee is to be capped, it should be capped at the aggregate amount of (i) the cap for liquidated damages for the failure to achieve the Service Commencement Date by the Target Service Commencement Date (i.e., \$769,231 per week and \$40 million in the aggregate, as bid by Quanta/ATCO) <i>plus</i> (ii) the cap for damages in connection with a termination for an Operator Event of Default (i.e., \$10 million, as bid by Quanta/ATCO) <i>plus</i> (iii) the cap for Operator’s liability to Owner Indemnitees under Article 18 (i.e., \$36.67 million per Contract Year and \$110 million during the Term, as bid by Quanta/ATCO) <i>plus</i> (iv) the cap for liability arising from Operator’s gross negligence or willful misconduct (i.e., an amount equal to or higher than the cap applicable to the other types of liability under the O&M agreement, as bid by Quanta/ATCO).
7.	Front-End Transition Service Fee <i>(Quanta/ATCO Issue E)</i>	<p>Please confirm that, under Quanta/ATCO’s proposed structure change to the Front-End Transition Service Fee, the profit will be paid in monthly installments over 12 months as referenced in the proposed language (e.g., “<i>a fixed fee in the amount of US\$[•] (the “Front End Transition Service Fixed Fee”) (payable in installments of equal to one-twelfth (1/12) of the Front End Transition Service Fixed Fee ...</i>”), notwithstanding the description of such fee as a “lump sum” payment).</p> <p>In addition, please confirm that if there is a termination of the O&M Agreement and the Front-End Transition Service Fee has not been fully amortized, then Operator would only receive the amount accrued through the date of termination.</p>
8.	T&D Pass Through Expenditures <i>(Quanta/ATCO Issue F)</i>	<p>Please provide proposed mechanics to be added to the O&M Agreement to address the mechanics for covering in how amount incurred over Budget will be paid. The Authority would expect the Contingency Reserve Account to be used for payment of any such amounts incurred over Budget.</p> <p>In addition, we understand that Quanta/ATCO proposes for Operator to enter into a support services subcontract with its respective Parent Company to provide technical and subject matter expertise and support on an as needed basis for the scope of services by ServCo. Please clarify how specifying the costs of all Subcontractors in paragraph 2 of Annex X – T&D Pass-Through Expenditures will better enable Operator to provide an efficient and cost-</p>

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		<p>effective means of access to the industry expertise and auxiliary resources of Quanta/ATCO’s Parent Companies and their respective Affiliates.</p> <p>In addition, please confirm how Operator intends to ensure that any services provided by Quanta/ATCO and its affiliate companies with respect to responsibilities of ManagementCo under the O&M Agreement (e.g., capital planning) and covered by the Service Fee will not be charged as or considered T&D Pass-Through Expenditures.</p> <p>In the proposed change in paragraph 2, Subcontractor costs appear to already be included in the fourth line down. Please clarify.</p>
9.	<p>Confirmation from the Puerto Rico Treasury Department <i>(Quanta/ATCO Issue G)</i></p>	<p>We understand that Quanta/ATCO’s Definitive Proposal is based on the understanding that it will obtain a confirmation from the Puerto Rico Treasury Department concerning the application of Act 29 with respect to the treatment of certain taxes. An advanced draft of the Administrative Determination that the Puerto Rico Department of Treasury intends to issue to entities entering into Operation and Maintenance Partnership Contract under Act 29 or Act 120 (e.g., the O&M Agreement), which reflects the position of the Puerto Rico Department of Treasury, was provided to Qualified Respondents via PowerAdvocate. Please confirm whether Quanta/ATCO has any questions or comments with respect to such draft Administrative Determination.</p>
10.	<p>Clarifications to O&M Agreement <i>(Quanta/ATCO Issue H)</i></p>	<p>With respect to any of the Authority’s clarifications in the responses to Quanta/ATCO’s requests for clarifications regarding the O&M Agreement that were not included in the O&M Agreement, the Authority would propose to include “for the avoidance of doubt” sentences in the O&M Agreement clarifying each such item.</p>
Form 1.4 – Approach to O&M Services		
11.	<p>Emergency Response</p>	<p>With reference to LUMA Energy’s response to 1.4.1.j, please provide more detail on how emergency response will be managed during the Front-End Transition Plan.</p>
12.	<p>Parent Company Resources</p>	<p>In LUMA’s response to 1.4.1.j.2, it proposes that the joint venture parent company resources would be made available for emergency response. Please provide additional detail as to how LUMA envisions this would work and if these same resources (a) are part of mutual aid agreements and (b) would be required to be released by other utilities prior to being made available.</p>
Form 1.5 – Front-End Transition		

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13.	Full-Time Equivalent Employees	Are translators part of the 210 Full-Time Equivalents (“FTE”) referenced in the Front-End Transition Plan?
14.	Full-Time Equivalent Employees	Are the 100 FTEs that are to be internal employees available? Appears cost is in proposal, are these now direct LUMA employees?
15.	Full-Time Equivalent Employees	Are the 100 PREPA FTEs that are to be utilized available? Their rate in the proposal is quoted at the mainland rates, should those be reduced?
16.	FTE Staffing Levels	The Front-End Transition Plan in Section 1.5.1.c includes approximately 210 individuals split evenly between subcontractors and Quanta/ATCO employees. How will the subcontractors be managed? Explain how supervision, oversight and spending authority will be managed in a way that will not lead to exceeding the Front-End Transition Plan budget estimate?
17.	FTE Hours	Please provide indicative FTE hours per major Front-End Transition Plan category of work.
18.	Customer Service	With reference to 1.5.4.e, please provide more detail on how customer service will be managed during the Front-End Transition Plan.
19.	Emergency Response	With reference to 1.5.9.A.2, please provide more detail on how emergency response will be managed during the Front-End Transition Plan.
20.	Business Manuals	Please provide more detail on how the Operations Manual and the Business Continuity/Disaster Recovery Plans will be updated.
Form 1.6 – Operator Recruitment and Staffing		
21.	Management Staffing Levels (pg. 9, Figure 1)	How many FTEs will be employed at the ManagementCo entity?
22.	Management Budget	Please provide cost of management team at ServCo, as found in Figure 1: Organization Chart.
23.	PREPA Employee	With reference to 1.6.2.c, please elaborate on the process for screening, staffing and integrating PREPA employees

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	Integration	in to the LUMA organization.
24.	Existing Employee Training	For the 85 - 90% of PREPA staff that is planned on being retained, what is the plan if work force does not meet qualifications? Is there additional training or certification included in budget? How will existing PREPA employees be trained or certified?
25.	Training Facility	How is the Northwest Lineman College (“NLC”) to be funded? Is its cost included in the proposal? Will it be considered a pass-through cost or a ManagementCo expense? If NLC does not move forward, how does that impact overall plan?
26.	Procurement	Does LUMA anticipate a role for the P3 Authority in procurement processes where Quanta is one of the bidding contractors?
27.	Baseline Budget Adjustments	Please clarify the proposed methodology behind the “baseline budget adjustments” referenced in Section 1.7.1.3.
Form 1.8 – Operational and Finance		
28.	Damage Cap (pg. 3 / Section 3)	Please confirm that the weekly damage cap would begin after three months of grace period per the contract.
29.	Operator Liability (pg. 3 / Section 5)	Are the amounts of “Operator’s Liabilities per Contract Year” and the cap on “All Losses During Term” swapped? E.g. the cap on Liabilities per year is intended to be \$36.67mm and the overall cap is \$110mm (e.g. three times the annual cap)?
30.	ManagementCo Expenses (pg. 6)	Has the Consortium identified the third parties they intend to use for the ManagementCo?
31.	ManagementCo Expenses (pg. 6)	For the Front-End Transition Service Fixed Fee of \$60mm, it is noted there is a proposed reduction in the annual Fixed Fee during the first four years of the contract - does section 2.0 already include these reductions or would they reduce the amounts shown?

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32.	Inflation Index Clarification (pg. 7)	<p>Please confirm that the CPI index being proposed to use for the adjustment factor is the one in the contract (“Consumer Price Index—All Urban Consumers—U.S. All Items Less Food and Energy (CUUR0000SA0L1E)” published by the Bureau of Labor Statistics of the United States Department of Labor”)</p> <p>Please confirm that the CPI Factor is consistent with the manner described in the contract: “CPI Value for the calendar year immediately prior to the date of any adjustment divided by (ii) the CPI Value for the calendar year two (2) years prior to the date of such adjustment.”</p>
33.	Back-End Transition Fee and Termination Payments	<p>Please explain how the following amounts proposed by Quanta/ATCO were derived and why such amounts are appropriate: (i) the Back-End Transition Service Fee, (ii) the Operator Termination Fee and (iii) the Owner Termination Fee.</p>