PRIVILEGED AND CONFIDENTIAL

P3 Responses to Quanta/ATCO Additional Clarifications (Fourth Submission)

Ref. #	Section	Quanta/ATCO Consortium Question	P3 Response
1.	Section 4.5 and Section 4.8 – Service Commencement Date Conditions	Re Sections 4.5 and 4.8 dealing with Service Commencement Date Conditions – same appear to have an issue as to what occurs if the conditions in Section 4.5(c) – (q) are not satisfied. Section 4.8(b)(i) and (ii) deal with each parties ability to terminate if the Service Commencement Date Conditions Precedent specific to the party fulfilling its obligations are not satisfied. Section 4.8(iii) appears to be the one that is to deal with the situation where any of the other mutual conditions precedent are not satisfied but it appears to erroneously refer to ManagementCo Service Commencement Date Conditions rather than "…any of the Service Commencement Date Conditions (other than those noted in S. 4.8(b)(i) and (ii)…" It would appear that Section 4.8(b)(iii) should read as follows: *Each of Administrator and ManagementCo shall have the right to terminate this Agreement upon not less than thirty (30) days' prior written notice to Operator or Administrator (with copy to PREB), respectively, if any of the* ~~***ManagementCo***~~ *Service Commencement Date Conditions (other than those referred to in Sections 4.8(b)(i) or (ii)) are not satisfied or otherwise waived by each of Administrator and Operator* ~~*or waived by Administrator*~~ *by the date that is nine (9) months following the Target Service Commencement Date or such later date as Administrator and ManagementCo may agree.* Failing this there is no provision dealing with termination to the extent the conditions in Section 4.5(c) – (q) are not satisfied, which contradicts the lead in language in Section 4.5 that provides neither party will have any obligation to proceed with their respective obligations after the Service Commencement Date until these conditions are satisfied or waived. Please confirm.	Confirmed. Section 4.8(b)(iii) should read as suggested.

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2.	Section 4.2(l) – ManagementCo Responsibilities – Shared Services Agreement	With regard to Section 4.2(l) which was added in the latest draft of the O&M Agreement – same provides that the "…Parties shall mutually develop and negotiate in good faith a shared services agreement …" yet this obligation only arises in Section 4.2 which relates to ManagementCo's obligations. Please confirm that this same provision was intended to be included in Section 4.3 – as a new Section 4.3(l) – so as to be consistent with the intent expressed in the language noted above.	Section 4.2(l) should be deleted and included in Section 4.5 as a condition precedent to the Service Commencement Date.
3.	Sections 14 and Section 18 – Operator Damage Cap and Limitations of Liability	We note the addition of the caps on damages payable by each of Operator and Owner in Section 14.6(d)(i) and (ii). We understand that the intention of these provisions is that they be read in addition to the limitations of liability set out in Article 18. Therefore, please confirm that: a. Owner's obligation to indemnify Operator under Article 18 will not be subject to any cap, notwithstanding the new cap on damages in Section 14.6(d)(ii), which cap only applies in the event Operator elects to terminate the O&M Agreement as a result of a breach by Owner of the O&M Agreement, and even then only vis a vis Operator's claim for loss of bargain arising therefrom, but which does not otherwise limit the other indemnities provided by Owner to Operator under Article 18. As an example, if Owner has an obligation to indemnify Operator for a Pre-Existing Environmental Condition pursuant to Section 18.2(a)(viii), the limitation in Section 14.6(d)(ii) would not apply to a claim by Operator against Owner pursuant to Section 18.2(a)(viii); b. The limitation on damages payable by Operator specified in Section 14.6(d)(i) and Annex XIV relates to Operator's liability arising from its breach of the Agreement, and such limitation in no way amends the limits on Operator's liability to Owner Indemnitees in Section 18.3(a); and c. Operator's liability for any reason, including a breach of the Agreement or otherwise, will in no event exceed the amounts in Section 18.3(a)	a. Confirmed. Owner's obligation to indemnify Operator under Article 18 will not be subject to any cap. b. The cap specified in Section 14.6(d)(i) relates to damages in connection with a termination for an Operator Event of Default. This cap is separate and apart from the cap under Section 18.3(a) which relates to liability for indemnification under Article 18. c. To further clarify, the O&M Agreement contains three separate caps on amounts payable by Operator to Owner: (i) pursuant to Section 4.8(a), a cap on the amount of Delay Liquidated Damages; (ii) pursuant to Section 14.6(d)(i), a cap on damages in connection with a termination for an Operator Event of Default and (iii) pursuant to Section 18.3(a), a cap on Operator's liability to Owner Indemnitees under Article 18.

Ref. #	Section	Quanta/ATCO Consortium Question	P3 Response
		(subject to the exclusion in 18.3(b) regarding gross negligence and willful misconduct), and Operator's liability amounts that arise whether by breach of the Agreement or otherwise will be counted to determine if either of the amounts noted in Section 14.6(d)(i) (and Annex XIV) or Section 18.3(a) have been reached, with the lower of such amounts acting as Operator's overall cap under the Agreement for all such liabilities.	
4.	*General - Regulatory*	It is our understanding that the intent of the performance-based incentives and penalty provisions in Section 6.25B of Act No. 17-2019, is to incentivize electric power service companies to strictly comply with PREB orders. The Performance Metrics discussed throughout the O & M Agreement, and set forth in Annex VIII of the Agreement, evaluate an entity's performance and are used to determine the financial reward or penalty an electric power service company will receive for meeting or failing to meet the specified targets associated with the metric. Section 6.25B of Act No. 17-2019 requires PREB to promulgate regulations on or before December 31, 2019, on Performance-Based Incentives and Penalty Provisions. On August 26, 2019, in Case No. NEPR-MI-2019-0014, PREB issued a Resolution on the Notice of Proposed Regulation and Request for Comments on its proposed regulation on performance incentive mechanisms. The proposed Regulation for Performance Incentive Mechanisms will establish the metrics reporting requirements for all certified electric power companies and outlines the process on how to establish metrics, targets and financial incentives. Comments were submitted on September 25, 2019. PREB has not yet issued the Final Regulation. It appears, then, that the Performance-Based Incentives and Penalty Provisions will apply to Operator in addition to the Performance Metrics set forth in the O&M Agreement. Can you agree if this is your understanding as well?	The Authority has reached out to PREB with respect to the Performance-Based Incentives and Penalty Provisions and will be supplementing this response when we received PREB's feedback about the foregoing.

Ref. #	Section	Quanta/ATCO Consortium Question	P3 Response
		Has PREPA provided any comments to PREB on these regulations? Would PREPA be willing to provide a request to PREB that it modify its regulation to address this point – for example by stating in the regulations that "unless PREB otherwise orders, the metrics and penalties in the Regulations apply" and then add a requirement in the OMA that receipt of such an order in favor of PREPA and Operator that the performance metrics and incentive regime in the OMA prevails over the regulations will be a Services Commencement Date Condition? OR If both regimes apply – provide in the O&M Agreement that any penalties paid to PREB under its regimes will be pass-through costs. Please advise.	
5.	*General - Regulatory*	As you are aware, pursuant to Section 8(f) of Act No. 120-2018, a contractor has the power to collect any duties, rents, and rates and any other type of fees for any service or function it provides, or for the construction, repair, improvement, and use of the facilities or PREPA's assets pursuant to the terms of the contract. However, PREB still retains jurisdiction under Act No. 83 of 1941, as amended, "**or any pertinent special laws, to revise and approve any modification to such duties, rents, and rates and any other types of fees**." (*Emphasis added*.) Moreover, Section 8(f) requires the contractor and PREPA to "meet the requirements imposed on PREPA or any other Electric Service Company (as defined in Act No. 57-2014…)." This appears to give the PREB the power to revise the Fixed Fee and Incentive Fee under the agreement. We note that subparagraph (iii) of the Change in Regulatory Law addresses a situation where there is "*any regulatory action under the foregoing (i.e. the Commonwealth law) [item in brackets added for clarification]* ...that "(iii) .. subjects Operator …. to…substantive regulation by PREB in a manner that materially and	We understand that the purpose of Section 8(f) of Act 120 was for the parties to be able to establish in the Partnership Agreement the rates (or a mechanism to adjust the rates) charged to consumers, not the fees paid to Operator. However, even if Section 8(f) of Act 120 is interpreted to also apply to fees payable to Operator, it does not authorize PREB to unilaterally modify the Fixed Fee or the Incentive Fee. Rather, such section requires that, if the parties were to amend the O&M Agreement to modify the Fixed Fee or the Incentive Fee, any such amendment be submitted to PREB for its prior review and approval.

Ref. #	Section	Quanta/ATCO Consortium Question	P3 Response
		adversely affects Operator's ability to perform its obligations under this Agreement …". We confirm our understanding that this wording would capture a circumstance where there was a change to the Fixed Fee of Incentive Fee made by PREB that was not otherwise agreed to by Operator. Please confirm that this is consistent with your interpretation as well.	
6.	*General – Priority of Payments*	In your Nov. 11 response to our third request for clarifications, item 15, you state that after PREPA's emergence from the Title III process, debt service payments will "come off the top of System Revenues (as provided in the Servicing Contract) and the remaining amount of System Revenues will be used to fund the Service Accounts or otherwise returned to PREPA." Can you please provide additional detail on this response? We were under the impression that the refinanced debt would be paid from proceeds of the Transition Charge. We have also discussed at our meetings that there will most likely be a securitization of revenues, and are aware from the OMA that Operator will need to be party to a Servicing Contract, which we will not have the benefit of seeing before execution of the OMA. Which debts will be paid from general System Revenues (as opposed to the Transition Charge) before Operator is paid, and do you have a sense of sizing of the expected debt service payments?	Confirmed. The current restructuring support agreement provides for bondholders to exchange their existing bonds for new bonds to be issued by a securitization entity. The repayment of such new bonds will be secured through the imposition of a Transition Charge, which will be implemented in rate increases and added to the amount billed to T&D Customers. Additionally, the restructuring support agreement provides for additional indebtedness that can be used to fund, among other things, the service account reserves which would be secured by a separate charge from the Transition Charge and/or taxes or other fees on Puerto Rico electricity. Aside from the securitization debt referred to above, there is not expected to be additional indebtedness upon exit of Title III. Regarding the Service Contract, Operator will be party to the Servicing Contract, pursuant to which Operator, acting as Servicer, will service, administer and collect the Transition Charges. As previously indicated, the Servicing Contract will be negotiated during the Front-End Transition

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			Period and will have to be reasonably acceptable to Operator.
7.	*RFP – Confirmation of Acceptance of O&M Agreement*	In your Nov. 8 response to our second request for clarifications, item 1, your response did not answer the last question we posed. Please refer to the below, which clarifies our request, and please confirm. Please confirm that if a Qualified Respondent submits a proposal that contains a limited number of material comments, and such comments are negotiated between the Qualified Respondent and the Authority but the resolution of such comments is not satisfactory to the Qualified Respondent and the Qualified Respondent withdraws or otherwise does not proceed to execute the OMA, such Qualified Respondent's Bid Security will be returned forthwith, even if the proposal of another party is not selected.	Confirmed.
8.	*RFP – Definitive Proposal Form 1.10 Bid Security*	In the Form of Letter of Credit, the third paragraph states, *Notwithstanding anything to the contrary contained herein, it shall be a condition to this Letter of Credit that it shall be deemed automatically extended, without amendment, for successive periods of one (1) year each from its current or any future expiration dates, but in any event not beyond [insert date] which shall be the final expiration date of this Letter of Credit, unless, at least sixty (60) days prior to the then current expiration date of this Letter of Credit,* ***Beneficiary notifies [Name of Applicant]*** *in writing by certified mail, return receipt requested, at the address provided above (or at such other address as* ***[Name of Applicant]*** *may specify by written notice to* ***Beneficiary****), that this Letter of Credit will not be extended beyond the current expiration date hereof [emphasis added]* Based on the terms of automatic renewal, notice provisions, and discussions with our bank, we believe it should read as follows. *Notwithstanding anything to the contrary contained herein, it shall be a condition to this Letter of Credit that it shall be deemed automatically*	Given that the beneficiary should be able to draw on the letter of credit until an outside date that could be a date that is after the 120 days from the Bid Submission Deadline, the third paragraph of the Form of Letter of Credit should only address circumstances in which the issuing bank is not extending the LOC prior to the definitive expiration date, notwithstanding the automatic renewal provisions discussed in the RFP. The Form Letter of Credit will be adjusted to that effect.

Ref. #	Section	Quanta/ATCO Consortium Question	P3 Response
		extended, without amendment, for successive periods of one (1) year each from its current or any future expiration dates, but in any event not beyond [insert date] which shall be the final expiration date of this Letter of Credit, unless, at least sixty (60) days prior to the then current expiration date of this Letter of Credit, ***[Name of Applicant] notifies Beneficiary*** *in writing by certified mail, return receipt requested, at the address provided above (or at such other address as* ***Beneficiary*** *may specify by written notice to* ***[Name of Applicant]****), that this Letter of Credit will not be extended beyond the current expiration date hereof* Please confirm.	
9.	*Section 2.2(b)(ix)*	In your Nov. 11 response to our third request for clarifications, item 4, you state that approval of the Title III Court is not required for Owner to deposit and maintain 4.5 months of the anticipated Front-End Transition Service Fee in the Front-End Transition Account or for Operator to withdraw funds from such account. Please explain the basis for this position. Is there an existing law or order permitting this?	We note that pursuant to Section 4.6 of the O&M Agreement, Owner will draw funds from the Front-End Transition Service Account to pay Operator the Front-End Transition Service Fee (rather than Operator withdrawing funds from such account). There is no existing Title III Court order or law specifically addressing with these matters. However, as you can confirm with your counsel, under Title III of PROMESA (and under Chapter 9 of the US Bankruptcy Code) municipal debtors are given very wide latitude to conduct their business and operate in the ordinary course without prior court approval. In our view, setting up an escrow account and paying a service provider for services to be rendered during the proceeding (all of which will be disclosed in the proceedings) would fall within this type of permitted conduct.