

PRIVILEGED AND CONFIDENTIAL

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

Ref. #	Section	Quanta/ATCO Consortium Question	P3 Response
1.	Section 1.1 – Definition of “Capital Improvement”	<p>The definition of Capital Improvement includes " any repair, replacement, improvement, removal and retirement, alteration and addition that (i) <u>constitutes a capital property unit in accordance with the T&D System’s capitalization policy</u>, consistently applied" – Please define the meaning of “capital property unit” and clarify what the “T&D system capitalization policy” is intended to refer to, and whether it is a policy Operator is supposed to develop and adopt as part of the O&M Services.</p>	<p>A “capital property unit” means a capitalizable expenditure that adds to or increases the value of Owner’s capital assets. The “T&D System capital policy” is intended to refer to the PREPA capitalization policy, adapted as needed and agreed to by Owner and Operator during the Front-End Transition Period. The PREPA capitalization policy, in summary, only capitalizes expenditures of \$1,200 or more if the item acquired is expected to be consumed over more than one year or the expenditure is expected to increase the useful life of a capital asset by more than one year. Anything under the \$1,200 threshold is expensed, regardless of the estimated useful life.</p>
2.	Section 1.1 – Definitions	<p>The defined term “Change in Regulatory Law” includes the undefined term “Commonwealth law” and several references to “the foregoing”, which are unclear. Please confirm whether you will accept the following revisions:</p> <p><u>“Change in Regulatory Law”</u> means any change, amendment or modification to any Commonwealth <u>Applicable Law</u> (and not, for the avoidance of doubt, the Applicable Law of any other jurisdiction) or any adoption of, or change to, any administrative or judicial interpretation (having the force of law) of any <u>Commonwealth Applicable Law</u> of the foregoing or any regulation or regulatory action under <u>any Commonwealth</u></p>	<p>Confirmed. The revisions provided to the definition of “Change in Regulatory Law” are acceptable.</p>

		Applicable Law the foregoing , in each case occurring on or after the Proposal Submission Date	
3.	Section 1.1 – Definition of “Prime Rate”	<p>The term Prime Rate makes reference to the rate published by the Wall Street Journal, but does not provide a mechanism if the Wall Street Journal ceases to publish a Prime Rate. The term Prime Rate is only used in the definition of Overdue Rate. If there is no Prime Rate, then the Overdue Rate will be the highest rate permitted by law. The term Overdue Rate is used in Section 20.7 of the OMA and Section 5.5 of the Guarantee. In both, it states that interest not paid when due shall bear interest at the Overdue Rate. This could pose a problem, as there is no highest rate permitted by law currently in Puerto Rico in the case of borrowers which are legal entities.</p> <p>Please confirm that the definition of Prime rate will be amended to include a reference to an alternative source if the Wall Street Journal ceases to publish a Prime Rate.</p>	Confirmed. The definition of Prime Rate will be amended to include an alternative source of the prime rate if it is no longer published in the Wall Street Journal.
4.	Section 2.2(b)(ix)	<p>In light of the provisions set out in Section 4.1(c) – it appears that any payments of the Front-End Transition Fees will be subject to receipt of the approval of the motion by the Title III Court.</p> <p>Please confirm (1) how the Owner intends to obtain approval to make the required deposit of 4.5 months of the estimated Front-End Transition Service Fee in the Front-End Transition Account under Sec. 2.2(b)(ix) (a condition to the Effective Date); (2) whether Operator will be able to withdraw funds from such account prior to the approval of the administrative expenses motion; and (3) whether Owner will be able to maintain 4.5 months of the</p>	We confirm that approval from the Title III Court is <u>not</u> required in order for (1) Owner to deposit and maintain 4.5 months of the estimated Front-End Transition Service Fee in the Front-End Transition Account or (2) Operator to withdraw funds from such account.

		estimated Front-End Transition Fee in the period prior to receipt of approval of the motion by the Title III Court.	
5.	Section 4.8(c)	<p>Section 4.8(c) of the OMA provides that the termination dates for failure of Service Commencement Dates Conditions set forth in Section 4.8(b) shall be "extended on a day-for-day basis for the period of any Force Majeure Event or Owner Fault". Section 14.5(c) provides that the parties have a termination right "in the event that a Force Majeure Event continues for a period in excess of eighteen (18) consecutive months and interferes with, delays or increases the costs of the O&M Services." No reference is made in Section 14.5(c) to the Front End Transition Period.</p> <p>Please confirm that Section 14.5(c) and the reference therein to O&M Services should be preceded by a reference to "the Front End Transition Services or".</p>	Confirmed. The reference to O&M Services in Section 14.5(c) should be preceded by a reference to "the Front-End Transition Services or".
6.	Section 5.9	<p>Section 5.9(a) and (c), as revised, states that certain costs may be submitted for Federal Funding with the mutual agreement of the Operator and Administrator. As we did not see any reference to any process for obtaining agreement on these costs other than the Budget process, we understand that reference to mutual agreement in these sections means where agreed to pursuant to the Budget process in Article 7.</p> <p>Please confirm.</p>	Confirmed. Certain costs may be submitted for Federal Funding pursuant to Section 5.9(a) and (c) with the mutual agreement of Operator and Administrator pursuant to the Budget process in Article 7.
7.	Sections 5.19, 5.20 and 6.1(x) and (xi)	In these sections, the word "estate" has been replaced with the phrase "real property right". The inclusion of the word "estate" was meant to capture both real and personal property rights, and in particular leasehold estates. Please	Confirmed. The references to real property right shall be interpreted as including leasehold estates.

		confirm our understanding the real property right references were meant to include leasehold estates and all references to "real property right" shall be interpreted as including "including leasehold estates".	
8.	Section 10.3	<p>Section 10.3 provides that if Operator receives any proceeds of insurance for any Losses relating to the O&M Services, the T&D System or any T&D System Site, Operator shall deposit such amounts into the applicable Service Account within five (5) days of receipt of such proceeds. If Owner receives any proceeds of insurance for any Losses relating to the O&M Services, the T&D System or any T&D System Site, Owner shall hold such amounts in trust, for the benefit of Operator, and Owner shall deposit such amounts into the applicable Service Account within five (5) days following the request of Operator. As funds to be drawn from the Service Accounts are based on the amounts set out in the Budget, there may be restrictions on the Operator to apply these funds to address the loss in question. We understand that this is likely not the intent and that any such funds once received should be available to the Operator to address the Loss incurred without the need to amend the applicable Budget first, otherwise there may be unnecessary delays and costs.</p> <p>Please confirm that this is the intent and that the OMA will be interpreted accordingly.</p>	In the event of a loss event, Owner will open an account into which it will deposit any insurance proceeds, and amounts in such account shall be used as necessary to repair the T&D System (either consistent with Prudent Utility Practice or pursuant to a remediation plan established by the Operator and reasonably approved by Administrator).
9.	Section 11.3	Section 11.3 provides in part that: "Operator shall pay when due all undisputed claims and demands of Subcontractors, mechanics, materialmen, laborers and others for any work performed on, or materials delivered for incorporation into any part of, the T&D System by or	Confirmed. Provided that such costs are T&D Pass-Through Expenditures (and not Disallowed Costs), Operator shall have no obligation to pay Subcontractors, mechanics, materialmen, laborers and other pursuant to Section 11.3 to the extent there

		<p>on behalf of Operator, and shall promptly discharge all mechanics', materialmen's and other construction Liens registered against the T&D System. All such costs (other than Disallowed Costs) shall be treated as T&D Pass-Through Expenditures.”</p> <p>Please confirm that Operator shall have no obligation to pay Subcontractor and the other referenced service providers, or pay for materials, or discharge the referenced liens, to the extent there are insufficient funds in the Accounts to make such payments, or Operator is otherwise unable to withdraw such funds for any reason.</p>	<p>are insufficient funds in the Service Accounts to make such payments.</p> <p>However, as noted in prior responses and as set forth in Section 11.1(a), the cost of any subcontract for services to be provided by ManagementCo from and after the Service Commencement Date will be paid by ManagementCo from the Fixed Fee and are the responsibility of ManagementCo (and will not be a T&D Pass-Through Expenditure).</p>
10.	Annex 1 – Scope of Services ((II)(A))	<p>Operator shall be responsible for all assets of the T&D System". This appears to potentially be a risk of loss transfer to Operator.</p> <p>We believe this is intended to read “Operator shall be responsible for managing and maintaining all assets of the T&D System". This appears to potentially be a risk of loss transfer to Operator.” <i>[emphasis added]</i>. If left as is would this not potentially affect the tax exempt status of T&D System? Please confirm.</p> <p>Please confirm.</p>	<p>Confirmed. Operator will be responsible for managing and maintaining all assets of the T&D System.</p>
11.	Annex X, 10	<p>Thank you for clarifying that payroll taxes paid by employees are T&D Pass-Through Expenditures. However, we do not understand why the payroll taxes paid by employers would not be T&D Pass-Through Expenditures as well. As per your prior guidance, the Service Fee is intended to cover ManagementCo's</p>	<p>Payroll taxes paid by employers will be T&D Pass-Through Expenditures.</p>

		<p>management, oversight and planning functions, not ServCo’s costs, of which this is one.</p> <p>Please explain further.</p>	
12.	Annex XI	<p>Annex XI states that “Operator shall purchase and maintain, <u>on Owner’s behalf</u>, the following insurance coverage . . .”. The last paragraph of Section I of Annex XI states that “Owner shall be listed as an additional insured on all aforementioned coverage . . .” Given that the insurance shall be purchased on behalf of Owner, and that risk of loss of the T&D System is not transferred to Operator and Operator is not the owner of the T&D System, we understand that Owner should be the primary insured, and Operator should be the additional insured.</p> <p>Please confirm.</p>	<p>Confirmed. With respect to Section I of Annex XI, Owner should be the primary insured and Operator should be the additional insured.</p>
13.	Definitive Proposal 1.10 (Letter of Credit). Section 4.1.10 of Addendum 6 to the RFP	<p>Section 4.1.10 of Addendum 6 to the RFP includes the following language:</p> <p>(i) <u>Renewal:</u> The Bid Security must be renewed periodically <u>for additional sixty day periods</u> through the last date that the O&M Agreement is executed by the Parties thereto and the conditions to execution have been satisfied. However the form of Letter of Credit attached as Definitive Proposal Form 1.10 states that “it shall be a condition to the Letter of Credit that it shall be deemed automatically extended, without amendment, <u>for successive periods of one year each</u> from its current or any future expirations dates...</p>	<p>(i) Confirmed. The Bid Security must be renewed periodically for additional sixty day periods.</p> <p>(ii) Confirmed. The Letter of Credit should have an expiration date that is one year from the Proposal Submission Deadline.</p> <p>(iii) The Authority should receive the original Letter of Credit by the next Business Day following the Proposal Submission Deadline.</p>

		<p>Please confirm that the letter of Credit should be renewed for 60 day periods as required in Section 4.1.10.</p> <p>(ii) <u>Expiration</u>: Section 4.1.10 provides that it shall stay in effect <u>through the last date that the O&M Agreement is executed by the parties thereto and the conditions to execution have been satisfied</u> (the “Effective Date”). However, the form of Letter of Credit attached as Definitive Proposal Form 1.10 provides for <u>a final expiration date to be inserted</u> (see paragraph 3 of the Letter of Credit).</p> <p>Please confirm the Letter of Credit should have a definitive expiration date and that one year from submission is an appropriate expiration date.</p> <p>(iii) <u>Delivery</u>: Section 4.1.10 requires that the Letter of Credit be (i) uploaded to the PowerAdvocate website on or before the Proposal Submission Deadline, and (ii) the original mailed to the Authority in Puerto Rico.</p> <p>Please confirm that the original Letter of Credit is not required to arrive in Puerto Rico by the Proposal Submission Deadline to be compliant and that this requirement is satisfied by uploading a copy of same to the PowerAdvocate website.</p>	
14.	Definitive Proposal Form 1.4	<p>Please confirm that there is a typo error in Form 1.4, 1. c. Form 1.4, Page 19, number 1 states: "Detailed description of the proposed approach to the O&M Services (Annex I</p>	<p>Confirmed. “Government, Procurement & Media Relations” should be “Government, Public & Media Relations.”</p>

		<p>(<i>Scope of Services</i>) of the O&M Agreement) including, at minimum, the following:...”.</p> <p>Item c. is "Government, Procurement & Media Relations". [<i>emphasis added</i>]. Later, item h. is “Supply Procurement”. Based on this and other context, it certainly seems like item c. should read, “Government, Public & Media Relations” [<i>emphasis added</i>].</p> <p>Please confirm.</p>	
15.	General – Priority of Payments	<p>Please confirm that all fees and other amounts payable to Operator (or paid by Operator and passed through to Owner) and all account pre- funding requirements under the OMA will be paid prior to debt service, either because it would constitute "Current Expenses" under PREPA's existing and future indebtedness secured by System Revenues or otherwise, and that any existing or future liens will be subordinated to such amounts payable or pre-funded.</p>	<p>Following PREPA’s emergence from the Title III process, the 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. While the Title III process is ongoing, Operator’s claims under the O&M Agreement will have administrative claim status in the Title III Case following the Title III Court’s approval of a motion seeking administrative expense treatment for any such claims.</p>
16.	General – Accounting	<p>If it so chooses, will Operator be able to utilize the PREPA e-suites system for accounting purposes for Genco, Gridco and Servco?</p>	<p>Yes, Operator will be able to utilize PREPA’s existing Oracle accounting system.</p>
17.	General – PREPANET	<p>The OMA is silent with respect to the operations of PREPA Networks after the OMA is executed. Please confirm that Operator will have no responsibility for managing PREPA Net (other than with respect to contracts between PREPA and PREPA Net, in its capacity as agent of PREPA).</p>	<p>Confirmed, Operator will have no responsibility for managing PREPA Networks, LLC (PREPA Net) other than responsibilities delineated in existing agreements between PREPA and PREPA Net (i.e. OTILA).</p>