

## **Queremos Sol (We Want Sun):**

### **New Governance for Environmental and Energy Sustainability**

The magnitude and relevance of the actions and decisions that must be taken by the public sector in Puerto Rico in order to have a sustainable, just, efficient and affordable electrical system that is capable of meeting the challenge of climate change, require new structures and processes. The traditional structures and models have failed: the politicized Puerto Rico Electric Power Authority of the past, the current LUMA-PREPA partnership, and the Puerto Rico Energy Bureau. The capture of public entities by private interests, partisanship, corruption, refusal of accountability, lack of transparency and capacity, the insistence on privatization, the narrative against workers, and the intervention of predatory private interests have destroyed a public entity that once was an object of pride and considered a model to follow. Energy is a right and an essential public service and, therefore, both the technical transformation and the transformation of governance should incorporate the highest standards that define democracy and the common good. The transformation of the electrical system should also contribute to increasing our capacity to adapt to climate change.

In this document, we propose a new governance structure for the electrical system under public ownership. Only the public model offers the opportunity to put the public welfare as the top priority, rather than private profit. The new structure eradicates the politicization that had previously weakened and ultimately destroyed PREPA.

#### **I. Experience**

Based on studying other jurisdictions that have effectively advanced energy transitions, such as Costa Rica, Uruguay and Hawaii, among others, we highlight several important elements for success

- National plan: the existence of a legal framework and strategic plan that harmonizes environmental, energy and economic themes.
- Participation: inclusive, multi-level, vertical and horizontal public participation.
- Transparency: data is shared with all stakeholders, and there are regular progress reports.
- Policies supporting the plan: Subsidies and incentives are used strategically to advance the necessary changes.

- Employment: Special attention is paid to the generation and loss of employment during the transition.
- Education: Sustainability education includes specific content for different sectors and groups.

With the capture of PREPA by partisanship, the fossil fuel industry, power plant manufacturers, financial interests and consultants, we have seen:

- Politization of PREPA and the Energy Bureau: The political control over the boards of directors and executives is one of the principal causes of inefficiency and fiscal irresponsibility.
- Laws and more laws: More than 25 laws have been passed dealing with energy issues. It is not possible administer effectively these laws and their amendments.
- No supervision of PREPA: Converted into a war chest for the party in government, neither the governor nor the legislature demanded accountability.
- Education is protection: The best form of consumer protection is education, but education has been absent from energy public policy in Puerto Rico.

## II. The LUMA Contract

- Service has worsened under LUMA
  - The average length of outages is longer than when PREPA managed the system (218 minutes in Fiscal Year 2022 versus 145 minutes in Fiscal Year 2021).
  - Transmission line problems have provoked damage and outages of power plants.
- LUMA is not transparent, and the government does not provide adequate oversight.
  - LUMA has refused to provide information about its operations and outage data to the Public-Private Partnership Authority, the entity that oversees the contract. The P3 Authority has not demanded accountability.
  - The Legislature had to go to court to be able to receive basic information on LUMA's workforce.
- The contract has increased costs
  - The government had to transfer \$750 from its general budget to reserve accounts to comply with the contract. This money could have been invested in education, public health, or other necessities.
  - LUMA exceeded its operational budget by 20% during the transition year and 10% in its first three quarters of operation.

- LUMA has the power to subcontract its affiliate and parent companies with federal funds allocated for reconstruction, meaning that the economic benefit of these funds would flow out of Puerto Rico.
- Many of LUMA's problems stem from its decision to not respect the labor rights of ex-PREPA employees.
  - LUMA did not contract the vast majority of PREPA's workforce, resulting in (1) losing hundreds of years of accumulated experience with Puerto Rico's electrical system, and (2) increasing labor costs by having to train new employees and bring employees from off-island. LUMA still has fewer employees than budgeted.

### **III. Termination of LUMA contract & immediate transition**

According to the Supplemental Agreement that LUMA is currently operating under, the LUMA contract expires at the end of November if no restructuring agreement is reached for the PREPA legacy debt, unless the P3 Authority asks for an extension and both LUMA and PREPA agree. The contract provides the following steps upon termination:

- PREPA would have to pay a termination fee of \$115 million;
- The P3 Authority would select the successor entity;
- The P3 Authority would determine the date (within the next 12 months) in which LUMA would stop operating the system;
- LUMA would return its equipment and deliver all necessary documents and reports to the P3 Authority;
- LUMA would turn over all of its contracts to the P3 Authority, and the P3 Authority would determine whether to terminate them or transfer them to PREPA;
- This transition period would not last longer than 1 months and LUMA would continue to receive payment for its activities during this period.

The transition process for PREPA to be able to take over the operation of the transmission and distribution system and reintegrate the thousands of workers who were displaced to other government agencies because of the LUMA contract should begin immediately.

This process of transition should be led by an Independent Energy Transition Committee (CITE by its Spanish acronym) with community, environmental, and private sector representation, as well as electrical engineering expertise from the University of Puerto Rico Mayaguez. This could be done via law, executive order, or administrative action. The members should be selected via a participative process of within those

sectors. All members should have knowledge of energy issues. This committee would represent the first step in the transformation to a new governance model for a public corporation in charge of the electricity sector. It would be the CITE's responsibility to evaluate the information presented during the transition process and present short-term recommendations for their adoption. The recommendations should be aligned with the new governance principles (see below) to begin the effective operation of a new public corporation that offers reliable, affordable, just and democratic service that is based in energy efficiency, distributed renewable energy, storage and other alternatives to centralized fossil fuel generation.

#### **IV. Elements and guidelines for an energy sector that meets the demands of the 21st century**

For a corporation to be truly public, it needs to be able to explicitly insert the public interest into its management, objectives and operations.

- Participation
  - Establish a public energy and climate planning process, including the development of an Integrated Resource Plan, beginning with citizen assemblies that delineate objectives and define priorities in terms of energy and climate change.
  - The mechanisms of participation should include spaces of co-design, collaboration and consultation, as well the direct involvement of different sectors in the composition of boards and committees dealing with energy issues.
  - Integrate public sector energy workers and communities impacted by the electrical system operations in the definition and review of strategies and work plans with the goal of improving effectiveness, safety and service.
  - Information is fundamental for effective public participation.
  - Require participation of power plant operators in Local Emergency Planning Committees and the reactivation of these committees so that communities impacted by the plants have representation.
- Transparency
  - Create a publicly accessible repository of data on the energy system and its operations.
  - Generate a participative process of co-design to define the data that should be compiled and published.

- Create an online portal that offers useful and timely information with educational channels directed at consumers, researchers, the private sector and students.
- Establish open, accessible, and merit-based processes for recruitment and hiring.
- Inclusion
  - Undertake actions to learn and understand the perspectives of all sectors of society, particularly minority groups that have been traditionally excluded from the existing, limited consultative mechanisms.
  - Review the composition of governing boards and other entities to ensure that the interests of diverse groups and sectors of society are represented. The majority of members of these boards should not be nominated by the governor.
- Justice
  - The energy governance should be based on equity and the recognition of the significant inequalities of Puerto Rico.
  - Prioritize attention to customer service, the deployment of distributed renewable energy and the improvements needed for the most vulnerable populations and those that have most suffered environmental injustice. Federal funding should be spent in accord with these priorities.
  - Prioritize clean-up and restitution for those environmental justice communities that have been disproportionately impacted by the fossil fuel industry.
  - Ensure adequate employment protections for the safety and welfare of workers. Ensure continued training in new methods and technologies.
- Sustainability
  - Attend to the demands of climate change with urgency, ensuring compliance with renewable energy objectives through the adoption of energy efficiency measures and the deployment of rooftop solar and storage systems.
  - Retire fossil fuel-based electricity generation.
  - Protect agricultural and ecologically-valuable lands.
  - Recognize that Puerto Rico has the potential to meet all of its energy demand with rooftop solar systems and storage, and that it is not necessary to impact land nor develop new interconnection infrastructure for utility-scale renewable energy.
  - Limit large-scale renewable energy projects to closed landfills, contaminated lands and commercial parking areas.
  - Ensure a just, reasonable, and stable rate.

## V. Functions of the new energy governance structure

- *Regulation* of social, economic and environmental impacts.
- *Citizen training* in the social, economic and environmental impacts of energy.
- *Oversight* of compliance with approved laws and regulations, including compiling and publishing relevant data.
- *Social inclusion* through the co-design of plans, collaboration, and broad public participation.
- *Adjudication* of controversies among individual and corporate clients and the government entities that are involved in energy governance.
- *General direction* of energy and environmental policies by the Executive Branch.
- *Development of institutional capacity* invested in deepening skills and knowledge of workers and limiting contract labor.
- *Provision of services* –
  - Promoting and adopting energy efficiency and conservation.
  - Deployment of distributed renewable energy and guarantee of energy efficiency, reliable service and affordable costs.
  - Reduction of fossil fuel use in transportation.
  - Reduction of environmental pollution and climate change.
- *Investigation and innovation* on the social, economic and environmental impacts of energy.
- *Representation and defense* of consumer rights.

## VI. Governance structure

- Adopt a new democratic public governance aimed at achieving a just, reliable, affordable and safe electrical service that promotes the best public interest while adopting measures to adapt to climate change.
  - It would be responsible for implementing plans, and operating and maintaining the generation, transmission and distribution systems to meet current and future demand.
  - It would be responsible for identifying and implementing measures and strategies for conservation and energy efficiency to reduce and manage demand.
  - Additionally, it would be the entity in charge of promoting the integration (and maintenance) of rooftop solar and storage to reach renewable energy goals, while also establishing and implementing a plan for the retirement of fossil fuel-based generation.

- It would promote a just transition for workers of the centralized system, training and integrating them into the operation of distributed renewable energy.
- It would administer the interaction of distributed generation and microgrids, and promote the optimization of the existing hydroelectric system.
- It would reduce as much as possible contracts with external law firms and consultants, training and retaining the necessary personnel to carry out these functions in the public interest.
- It would promote transparency and accountability by making public relevant electrical system information in a timely manner.
- It would adopt public education as a key pillar of its operations.
- It would have a Governing Board mainly comprised of representatives of different sectors, not chosen by the governor. The governor would only nominate two ex officio members. The rest would represent and be chosen by the following sectors: (4) communities impacted by electric infrastructure and environmental groups (selected via the Citizen Advisory Board, see below), (1) workers, (1) private sector, and (1) academia. The Governing Board would designate the executive director. All members of the Board would possess qualifications and experience directly related to energy and the environment. Referendums or citizen consultations would be required before taking certain decisions including, for example, signing contracts with a duration of more than 5 years.
- This governance structure would ensure that the electrical system would maintain its independence from the government in power and that there would be direct and democratic public participation in the most important decisions on the future of the system.
- Create a Citizen Advisory Board for Sustainability and Energy and Environmental Security as a step towards decentralizing the governance of the system:
  - This Board would be responsible for ensuring that citizen interests are represented in the governance structure, and promoting public education on environmental, energy efficiency, renewable energy, climate change and other issues.
  - It would carry out a broad process to evaluate the new energy governance structure and could make recommendations to ensure a reliable, affordable and just service, based in energy efficiency and distributed renewable energy.

- The Board could propose policies for the sustainability and energy security of the island or specific regions. It would analyze proposed policies and present testimony and reports in the necessary forums.
- It would develop education campaigns related to energy and environmental issues in communities, schools, for-profit and non-profit organizations.
- It would ensure that strategies of co-design, collaboration and broad public participation are integrated into the planning, implementation and evaluation processes of the new public corporation and the Energy Bureau.
- The Board would consist of 11 members, 7 selected by citizens of the current PREPA regions. The other 4 would represent: (1) small and mid-sized businesses, (1) academic, and (2) non-profit organizations with expertise in energy and environmental issues. The regional representatives would be directly elected by consumers in each region and cannot occupy another political post. The Independent Office of Consumer Protection would be in charge of coordinating this election and certifying the results. The representative of academia would be selected by the president of the UPR after opening a public process and evaluating with the university community the candidates' credentials. The representative of small and mid-sized businesses would be selected via election of the members of organizations represent them. The representatives of non-profit organizations would be selected via direct vote of the membership of all organizations related to renewable energy, climate change and the environment. The Board would select, through majority vote, the four representatives who would be members of the Governing Board of the CERSE and the two that would represent communities impacted by electrical infrastructure on the Energy Bureau.
- Review the structure and objectives of the Energy Bureau so that it functions as an autonomous entity responsible for co-creating (with the public), administering and overseeing the regulations and planning needed to achieve a democratic and sustainable electrical system based on distributed renewable energy.
  - It would establish the applicable policies for the production, transmission and distribution of energy that guarantees sufficient capacity and reasonable rates, taking into account the public's ability to pay.



- It would ensure compliance with the adoption of distributed renewable energy conducive to meeting renewable energy goals.
- It would create a data repository that would be updated monthly with a live “dashboard of relevant information, available through an online platform that would offer useful and timely information, with educational channels directed at consumers, researchers and students. This portal would also contain information on the Integrated Resource Plan, offering mechanisms for those who want to submit proposals to improve it. All proposals should be publicly available. The data to be made available should be defined through periodic consultations to ensure public access to necessary information.
- In coordination with the Citizen Advisory Board for Sustainability and Energy and Environmental Security, it would ensure that collaboration and co-design are incorporated into the development of the Integrated Resource Plan and other planning and implementation documents.
- It would attend to cases and controversies related to compliance with the policies laid out in the Plan, and with other Bureau policies.
- It would establish metrics for reliability and efficiency.
- It would incorporate the knowledge developed in public and private universities across the island, as well as communities impacted by power plants and electric infrastructure and organizations that work on energy and environmental issues. It would promote the study of scientific and technical advances in renewable energy to adopt new standards for meeting energy sustainability through distributed renewable energy.
- It would coordinate with the Citizen Advisory Board for Sustainability and Energy and Environmental Security on education of citizens, businesses and institutions.
- The Energy Bureau would include 7 commissioners, 2 of whom would be nominated by the governor with the advice and consent of the Senate. Their term would consist of the rest of the governor’s term. If the governor is re-elected, he/she could re-appoint the same commissioners or others. The other 5 commissioners would include: 2 representatives of communities impacted by power plants; one representative of the manufacturing industry; one representative of a non-partisan organization representing mayors; and 1 representative of energy and environmental non-profit organizations. The community representatives would be selected by the Citizen Advisory Board for Sustainability and Energy and Environmental Security among their

seven regional representatives. In the case of the representative of non-profit organizations, interest organizations would present their credentials to the governor, who would publish this information at least 15 days in advance of making a selection. All commissioners would be knowledgeable and experienced in energy and environmental issues.

One of the most important changes recommended in the depoliticization of boards and leadership. While these entities continued to be controlled by the government in power, it is unlikely that depoliticization will be achieved, even with new structures. We have also seen that the inefficiency of public corporations is not solved by privatization and that privatization jeopardizes the public interest. The proposed structure creates the conditions to adopt a national plan, such as Queremos Sol, that sets forth an environmental and energy transformation that transcends changes in government administrations. The laws that would create the new structures recommended here should contain a new vision of governance, and regulations should create a new culture of inclusion, decentralization, citizen participation and transparency.