

MEMORANDUM OF UNDERSTANDING
AMONG
THE U.S. DEPARTMENT OF ENERGY,
THE U.S. DEPARTMENT OF HOMELAND SECURITY,
THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND
THE GOVERNMENT OF PUERTO RICO

**COLLABORATION FOR THE RECOVERY AND RESILIENCE OF
PUERTO RICO'S ENERGY SECTOR**

I. PURPOSE

THIS MEMORANDUM OF UNDERSTANDING (MOU) is by and among the U.S. Department of Energy (DOE), the U.S. Department of Homeland Security (DHS), the U.S. Department of Housing and Urban Development (HUD), and the Government of Puerto Rico (collectively referred to as the “Parties” and individually as a “Party”) to engage together in the pursuit of a resilient, sustainable, and equitable energy grid for the citizens of Puerto Rico. The Parties acknowledge that federally funded disaster recovery efforts need to occur in the context of long-term energy objectives to design resilient and sustainable systems that lessen the adverse consequences of future disaster events while addressing clean energy goals. This MOU is intended to provide a framework for collaboration to ensure that Puerto Rico has the capabilities, tools, and resources needed to capitalize on the opportunity to *build back better*.

II. BACKGROUND

In September 2017, Hurricanes Irma and Maria caused most of the transmission and distribution system in Puerto Rico to collapse, leading to one of the longest blackouts in U.S. history and leaving residents in some parts of the territory without electricity for almost a year. Communications, water and wastewater, transportation, healthcare, and critical manufacturing sectors similarly experienced severe disruptions, in most cases caused by electricity infrastructure damage or exacerbated by the underlying instability of the grid.

While the hurricanes caused unimaginable devastation on the island, part of the unprecedented Federal response was the authorization of historical amounts of Federal recovery funding specifically earmarked for the energy sector, totaling over \$12 billion from both the Federal Emergency Management Agency (FEMA) and HUD. As such, the Federal government has an interest in supporting Puerto Rico’s use of grant funding in a manner that complies with Puerto Rico’s energy laws and public policy as well as Federal grant requirements.

The Puerto Rico Energy Public Policy Act of 2019 (Act 17-2019) establishes a renewable energy target of 100% by 2050 and requires the government-owned utility to aggressively reduce the use of fossil fuels, minimize greenhouse gas emissions, and support initiatives in Puerto Rico that focus on mitigation, adaptation, and resilience. These statutory goals for the energy sector align with the priorities of the President’s recently issued Executive Orders (EO) related to resilience to

climate change, including EO 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, and EO 14008, Tackling the Climate Crisis at Home and Abroad.

III. ROLES AND RESPONSIBILITIES

The Parties hereby accept the following roles and responsibilities to meet the goals of this MOU to the extent practical and authorized by law to:

A. All Parties

- 1) Strengthen and broaden positive collaboration that already exists between the Parties, such as the Energy Technical Coordination Team co-led by DHS/FEMA and DOE, to accelerate and mobilize use of Federal grants funds and related investments in the energy sector;
- 2) Share project proposals and scope of work information early in the formulation process and through the Energy Technical Coordination Team to inform cross-agency/department compliance opportunities;
- 3) Leverage subject matter expertise and capabilities across agencies to identify near- and mid-term opportunities to ensure that near-term recovery efforts are aligned with and/or can enable long-term clean energy objectives;
- 4) Designate Points of Contact (POCs) for undertaking activities in concert and for consultation regarding activities relevant to the MOU undertaken individually;
- 5) Coordinate compliance review activities under the National Environmental Policy Act, National Historic Preservation Act, and other environmental laws, regulations, and Executive Orders to streamline compliance review measures and leverage the Unified Federal Review process and as memorialized in alignment with the *Memorandum of Understanding for the Unified Federal Review Process at Hurricane Irma (FEMA-4336-DR-PR) and Hurricane Maria (FEMA-4339-DR-PR)*; and
- 6) Support and promote communications and awareness campaigns to inform consumers, businesses, and major stakeholders both in Puerto Rico and nationally of the goals and benefits of this Partnership.

B. DHS

- 1) Continue working with the Government of Puerto Rico to maximize the flexibility of funding, including the ability to pursue renewable energy resources, developing plans that address long-term risks, and promote resilience;
- 2) Ensure all DHS/FEMA recovery activities, are technically feasible, cost reasonable, and aligned with local law and regulation;
- 3) Identify and leverage resources across Federal recovery partner agencies, including the existing Intragovernmental Reimbursable Work Agreement (IRWA), dated March 31,

2020, between DHS/FEMA and DOE to provide technical assistance on energy matters;
and

- 4) Collaborate with the Government of Puerto Rico on a public engagement plan to enhance transparency and address public concerns as specific project proposals are developed.

C. HUD

- 1) Continue working with the Government of Puerto Rico, in particular the Puerto Rico Department of Housing (PRDOH), to maximize the flexibility of Federal funding, as necessary to enhance or improve electrical power systems and support long-term recovery and mitigation of risk from natural disasters, including the ability of Puerto Rico to pursue the development and implementation of renewable energy resources and to develop plans that address long-term risks and promote resilience;
- 2) Support Puerto Rico's efforts to ensure that all HUD-funded Community Development Block Grants for Disaster Recovery and Mitigation (CDBG-DR and CDBG-MIT, respectively) recovery activities are technically feasible, cost reasonable, and comply with local laws and regulations and the Federal requirements of the applicable *Federal Register* notices that govern the use of grant funds, including CDBG-DR funds allocated to Puerto Rico with the goal of achieving a reliable, resilient, stable, and cost-effective electrical service. HUD affirms its commitment to monitor and enforce requirements that ensure that CDBG-DR investments and expenditures benefit low- and moderate-income persons and vulnerable populations throughout Puerto Rico;
- 3) Intends to provide technical assistance when appropriations permit to PRDOH and subrecipients on the requirements of CDBG-DR and CDBG-MIT funds for electrical grid projects and in the completion of the proposed resilient and sustainable energy related activities in their HUD-approved Action Plans for CDBG-DR and CDBG-MIT as amended, including, but not limited to the Community Energy and Water Resilience Installation Program; and
- 4) Collaborate with the Government of Puerto Rico, DOE, DHS/FEMA, and PRDOH on a public engagement plan, beyond the HUD-required citizen participation process, to enhance transparency, build trust, and address public concerns as specific project proposals are developed.

D. DOE

- 1) Serve as a trusted, unbiased coordinator and assist in convening the stakeholders that may help achieve the purpose of the MOU;
- 2) Through its IRWA with DHS/FEMA dated March 31, 2020, leverage its network of National Laboratories with advanced planning and modeling capabilities to support and augment planning and operational activities as well as capacity building for public entities in Puerto Rico;

- 3) Through its IRWA with DHS/FEMA dated March 31, 2020, direct the National Laboratories to perform and deliver a comprehensive study titled PR100: Puerto Rico Grid Resilience and Transition to 100% Renewable Energy to evaluate scenarios and pathways to meet Puerto Rico’s renewable energy targets in a way that achieves both short-term recovery goals and long-term energy resilience; and
- 4) Scope and execute technical assistance projects closely with Puerto Rico public entities to ensure that timing and products align and inform short-term decision making and long-term planning processes;
- 5) Identify and communicate data and information needed from Puerto Rico public entities—and its contractors, when applicable—to further the purpose of the MOU and technical assistance activities being requested.

E. The Government of Puerto Rico

- 1) Develop the technical, workforce, and institutional resources necessary to realize the purpose of the MOU;
- 2) Identify, coordinate, and maintain collaborative working relationships with key local stakeholders, the academic community, private sector, and public officials for implementation of the MOU;
- 3) Identify and lead processes required to fulfill the purpose of the MOU, including drafting and implementing policies necessary to demonstrate and foster the leadership contemplated by the MOU;
- 4) Communicate to DHS/FEMA, HUD, and DOE any requests for technical assistance related to supporting federal investments in Puerto Rico’s grid recovery to maximize resilience and clean energy goals;
- 5) Direct Puerto Rico public entities, in particular the Puerto Rico Electric Power Authority (PREPA) and LUMA Energy (LUMA) as its agent per the Transmission and Distribution System Operation and Maintenance Agreement, to contribute data, information, and subject matter expertise required to perform requested technical assistance activities, subject to appropriate data use agreements described in Section V; and
- 6) The Puerto Rico Public-Private-Partnerships Authority (P3A), a public corporation created by the Public-Private Partnership Act of 2009 (Act 29-2009), is a critical stakeholder for the Government of Puerto Rico and will reasonably cooperate with the Parties, as necessary, in accordance with the rights delegated unto it by virtue of Act 120.

IV. AUTHORITIES

The authorities that shall govern this partnership include, but are not limited to:

A. DHS

- 1) Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 503 and 504 (2002), codified as amended at 6 U.S.C. §§ 313 and 314.
- 2) The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. §§ 5121-5207, and, in particular, section 402 of that Act, 42 U.S.C. §§ 5170a, General Federal Assistance.

B. DOE

- 1) Section 309 of the Homeland Security Act of 2002, Public Law 107–296 (6 U.S.C. § 189).
- 2) Section 646 of the Department of Energy Organization Act, Public Law 95–91, as amended (42 U.S.C. § 7256).

C. HUD

- 1) Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.), subsequent appropriations acts making available CDBG-DR assistance, and the following appropriations acts—Public Laws 116–20, 115–123, 115–56.

D. Government of Puerto Rico

- 1) The Puerto Rico Energy Public Policy Act of 2019, Act 17-2019.
- 2) The Puerto Rico Electric Power System Transformation Act, Act 120-2018, as amended.

V. DATA SHARING AND INTELLECTUAL PROPERTY

The Parties recognize that any data that may be used in this collaboration may be subject to existing binding agreements, either with individuals and/or with third parties. The Parties intend to provide any information necessary to evaluate appropriate use and sharing of all data provided in furtherance of this collaboration. If necessary, any Party providing data intends to assist in obtaining any permissions required by existing data sharing agreements, negotiating any additional binding data sharing agreements, and putting into place any binding confidentiality agreements between the Parties or between any Party and a third party. Further, if deemed necessary by the Parties, the Parties intend to put into place additional binding agreements related to restrictions on data use or disclosure, liability provisions, and intellectual property management plans. Intellectual property is expected to be owned by the Party whose researcher contributes to the inventorship of an invention or authorship of a copyrightable work. Any joint ownership possibilities are also expected to be addressed in separate binding agreements if such situations arise. Publications and release of information associated with joint activities carried out under this MOU are expected to

appropriately recognize each Party and will be coordinated between Parties in advance of the release.

VI. OTHER PROVISIONS

- A. Nothing in this Agreement is intended to conflict with current law or regulation or the directives of the Parties. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.
- B. Nothing in this Agreement is intended to restrict the authority of any Party to act as provided by statute or regulation.
- C. Nothing in this Agreement shall be interpreted as affording DHS/FEMA, DOE, HUD, or the Government of Puerto Rico any role in the content or programming decisions of either DHS/FEMA, DOE, HUD or the Government of Puerto Rico, respectively.
- D. Any information shared under this Agreement will comply with the Privacy Act of 1974, as amended (5 U.S.C. § 552a) (“Privacy Act”), and to the extent required and allowable, the Freedom of Information Act, as amended (5 U.S.C. § 552) (“FOIA”), and any other applicable statute, Executive Order, or regulation pertaining to information disclosure.
- E. The use of Federal facilities, supplies and services undertaken under this Agreement will be in compliance with regulations promulgated by DHS/FEMA under the Stafford Act guaranteeing non-discrimination. (See 44 C.F.R. § 206.11.).
- F. This Agreement is between DHS/FEMA, DOE, HUD, and the Government of Puerto Rico and does not confer or create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by any third person or entity (public or private) against the United States, its agencies its officers, or any person.
- G. This Agreement creates neither a partnership nor a joint venture, and no Party has the authority to bind the other. This agreement is not intended to be enforceable in any court of law or dispute resolution forum.
- H. The Parties will use or display each other’s name, emblem, or trademarks only in the case of particular projects and only with the prior written consent of the other party. The Department of Homeland Security (“DHS”) seal is protected by 18 U.S.C. §§ 506, 701, and 1017, among other laws, and use of the seal is controlled by the DHS Office of Public Affairs through DHS Management Directive No. 0030 (MD 0030). Written permission is required to use the DHS seal. Use of the Department of Energy seal is governed by 10 CFR Part 1002. Written permission is required to use the DOE seal.
- I. This Agreement is not a fiscal or funds obligation document. It does not obligate funds, personnel, services, or other resources. Any services, equipment or personnel provided to the Parties to accomplish the goals anticipated under this agreement are done so without

expectation of reimbursement or the payment of fees related to the provision of such services, equipment, or personnel.

- J. Each Party to the MOU will bear its own expenses in connection with the preparation, negotiation, and execution of the MOU. No Party shall be liable to any other Party for such expenses.
- K. This MOU is intended to operate in furtherance of, and consistent with, any existing MOUs or binding agreements between the Parties.

VII. EFFECTIVE DATE

This MOU may be signed in counterparts, each of which may be considered an original but all of which taken together constitute one and the same agreement after the Effective Date regardless of the date on which any Party signs in counterpart. The MOU is effective on the date of the final signature and will remain in effect until it is terminated by mutual agreement of the Parties, or by any Party providing sixty (60) days written notice to the other Parties. After the Effective Date, any amendments to this MOU may be made with the written consent of all of the Parties. Any such amendments shall be incorporated into this MOU in an appendix and made a unitary part of the MOU as of the date of execution of the amendment.

For the U.S. Department of Homeland Security:

By: _____

Printed Name: _____

Title: _____

Date: _____

For the U.S. Department of Energy:

By: _____

Printed Name: _____

Title: _____

Date: _____

For the U.S. Department of Housing and Urban Development:

By: _____

Printed Name: _____

Title: _____

Date: _____

For the Government of Puerto Rico:

By: _____

Printed Name: _____

Title: _____

Date: _____

ATTACHMENT I – POINTS OF CONTACT

Each Party provides the following designated point of contact for receiving information related to this MOU:

For the U.S. Department of Homeland Security:

Name: José Baquero

Title: Federal Disaster Recovery Coordinator, PR and USVI

Email: jose.baquero@fema.dhs.gov

For the U.S. Department of Energy:

Name: Marisol Bonnet

Title: Recovery Coordinator for PR, Office of Electricity

Email: marisol.bonnet@hq.doe.gov

For the U.S. Department of Housing and Urban Development:

Name: Laura I. Rivera Carrion

Title: Coordinating Officer for Disaster Recovery, Caribbean Region Disaster Recovery & Special Issues Division

Email: laura.i.rivera-carrion@hud.gov

For the Government of Puerto Rico:

Name: Isaías Sánchez Báez

Title: General Counsel, Executive Office of the Governor of PR

Email: isbaez@fortaleza.pr.gov