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VIA ELECTRONIC MAIL:
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COMMISSION RECOMMENDATIONS AND DETERMINATIONS ON CRITICAL PROJECT PROPOSALS, PURSUANT TO SECTION 503 OF PROMESA

Dear Mr. Zamot:

The Puerto Rico Energy Commission (“Commission”) hereby provides its recommendations and determinations regarding the eligibility of certain proposed energy projects to receive critical project designation pursuant to Section 503 of PROMESA.¹ Under PROMESA, a critical project has access to an Expedited Permitting Process, which consists of the “alternate procedures, conditions and terms mirroring those established under [Act 76-2000].”²

On March 26, 2018, the Commission received written communication from the Fiscal Oversight and Management Board for Puerto Rico (“FOMB”) requesting the evaluation of five energy-related projects seeking critical project designation. These are: (i) Blue Beetle III PV Solar Plant; (ii) Carraizo Dam, Hydroelectric Generation Rehabilitation; (iii) Cabo Rojo Solar Photovoltaic Energy System; (iv) Vega Serena Solar Plant; and (v) M Solar Generating, LLC.

Section 503 of PROMESA describes the process by which the FOMB assesses “critical projects.” Section 503(b)(1) requires the FOMB’s Revitalization Coordinator to develop a “Critical Project Report within 60 days of the project submission.” Section 503(b)(1)(D) establishes:

In the case of an Energy Project that will connect with the Puerto Rico Electric Power Authority’s transmission or distribution facilities, [the

¹ Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), Public Law No. 114-187.

² PROMESA Section 501.

Critical Project Report shall include] a recommendation by the Energy Commission of Puerto Rico, if the Energy Commission determines such Energy Project will affect an approved Integrated Resource Plan, as defined under Puerto Rico Act 57-2014. If the Energy Commission determines the Energy Project will adversely affect an approved Integrated Resource Plan, then the Energy Commission shall provide the reasons for such determination and the Energy Project shall be ineligible for Critical Project designation, provided that such determination must be made during the 60- day timeframe for the development of the Critical Project Report."

The referenced statute requires the Commission to make two findings: first, whether the project "affects" an approved Integrated Resource Plan and, second, whether it will "adversely affect" an approved Integrated Resource Plan ("IRP"). For the Commission to determine a project has no adverse effect on an IRP, it must be consistent with such IRP by: (i) being specified in an approved IRP; (ii) being a reasonable substitute for a project specified in an approved IRP; or (iii) satisfying a legitimate need, as determined by the Commission, regardless of whether such need is identified in an existing approved IRP. Furthermore, to avoid a determination of adverse effect, projects not specified in an approved IRP must also demonstrate cost-effectiveness, which may be achieved by demonstrating having been selected through a competitive bidding process or that its costs are no greater than necessary to satisfy the project's stated purpose.

Consistent with Section 503 of PROMESA, the Commission based its assessment of the aforementioned proposed energy projects on the existing Puerto Rico Electric Power Authority's ("PREPA") Approved Modified IRP.³ Such Approved Modified IRP consists of two sections, first, the Action Plan, and second, the Resource Planning Information. The Modified Action Plan consists of specific directives to PREPA. It details the specific actions PREPA shall take over the next five fiscal years. The Resource Planning Information, on the other hand, specified the information and data related to PREPA's system and resource options which informed the development of the Modified Action Plan.⁴ Together, these sections form the substantive basis for the resource planning determinations made as part of the Approved Modified IRP and serve as the benchmarks against which proposed energy projects are evaluated.

Accordingly, the Commission hereby submits its evaluation of the **Blue Beetle III PV Solar Plant** proposed project.

³ The Commission issued its final approval to PREPA's Modified IRP on February 10, 2017. *See* Resolution on the Verified Motion for Reconsideration of the Puerto Rico Electric Power Authority, February 10, 2017, Case No. CEPR-AP-2015-0002.

⁴ The Commission determined that the information provided as part of the Updated Fuel IRP, presented on April 25, 2016 would serve as the Resource Planning Information of the Approved Modified IRP.

The Blue Beetle project consists of a proposed 20 MW solar facility located in Arecibo, Puerto Rico. The proposed project has a Power Purchase and Operating Agreement (“PPOA”) with PREPA, Contract Number 2012-P00037, signed on October 31, 2011. The Blue Beetle project was contemplated in the analysis and development of the Approved Modified IRP.⁵

Given the proposed project is contemplated as a resource planning action identified in the Approved Modified IRP, the Commission finds the project *will not* have an effect on the Approved Modified IRP and is, therefore, **ELIGIBLE** for critical project designation.

The aforementioned determination is subject to such project’s scope or costs not being subject to substantial modifications which would otherwise increase it’s expected energy output or capacity or the costs associated to the purchase by PREPA of the energy produced.

The Commission’s determination is further conditioned on the PPOA with PREPA to continue being legally enforceable and valid.⁶ The project sponsor must provide evidence of having a legally valid and enforceable PPOA with PREPA. In the case Blue Beetle’s PPOA with PREPA expires (or has already expired), the Commission may still determine that the project is eligible for critical project designation if it shows, to Commission satisfaction, it is cost-effective, by providing information in support of the reasonableness of the project’s capital and operating costs, including information related to costs of capital inputs, a description of any competitive bidding process in which the project has participated, and cost information for comparable projects.

Should you have any questions or comments, you may contact us at your earliest convenience.

Cordially,



José H. Román Morales
Associate Commissioner
Interim Chairman



Ángel R. Rivera de la Cruz
Associate Commissioner

c. Omar Cuadrado, Esq.

⁵ See Updated Fuel IRP, April 25, 2016, Case No. CEPR-AP-2015-0002, p. 5-6. Table 5-6 of the report identifies PV Project #3 with Contract Number 2012-P00037 as a Renewable Project Considered in the IRP.

⁶ From the documents provided by the project sponsor along with its application it does not appear that the PPOA between PREPA and Blue Beetle is currently in effect. A letter from PREPA to Blue Beetle dated April 16, 2015 suggests certain contractual due dates were extended, at the latest, until December 5, 2016. The PPOA Amendment (provided by Blue Beetle to PREPA on May 18, 2015) does not appear to have been signed by PREPA. A version of such Amendment signed by both PREPA and Blue Beetle is available at PREPA’s website. It is unclear whether the PPOA has been further amended or whether it is currently in effect.