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**VIA ELECTRONIC MAIL:**

noel.zamot@promesa.gov

Noel Zamot  
Revitalization Coordinator  
Financial Oversight and Management Board for Puerto Rico  
PO Box 192018  
San Juan, PR 00919-2018

**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.<sup>1</sup> 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].”<sup>2</sup>

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

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

<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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 **Cabo Rojo Solar Photovoltaic Energy System** proposed project.

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<sup>3</sup> 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.

<sup>4</sup> 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 proposed project consists of the installation of a solar array in Cabo Rojo, Puerto Rico.<sup>5</sup> While the sponsor states that “the negotiation of this project with PREPA was initiated in 2011,”<sup>6</sup> PREPA’s January 2, 2018 compliance filing for the Approved Modified IRP does not identify the project as having an existing PPOA or being considered as a renewable energy resource.<sup>7</sup>

The project was also not considered as part of the evaluation of the Approved Modified IRP as it is not included in the list of renewable energy resources considered in PREPA’s resource planning.<sup>8</sup> Accordingly, the Commission determines that the proposed project *will have* an adverse effect on the Approved Modified IRP because it consists of generation capacity in excess of the maximum capacity required for safe operation of the electric grid, as such capacity limit was identified in the Approved Modified IRP. Therefore, the project is **INELIGIBLE** for critical project designation at this time.

However, the Commission may reconsider its determination if the project sponsor provides sufficient information to satisfy the following requirements: (i) that the proposed project is a reasonable substitute for any other project specified in the Approved Modified IRP; and (ii) the proposed project is cost-effective. Cost-effectiveness may be demonstrated 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.

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<sup>5</sup> See Cabo Rojo Solar Application at p. 1 (“Project Description”). The application is inconsistent regarding whether the sponsor seeks approval for a 25 MW or a 50 MW project.

<sup>6</sup> *Id.* at p. 2 (“Project Description”).

<sup>7</sup> See PREPA’s Compliance Filing for Items due January 2, 2018, Case No. CEPR-AP-2015-0002, Attachment 1.

<sup>8</sup> *Id.* See, also, Updated Fuel IRP, April 25, 2016, Case No. CEPR-AP-2015-0002, p. 5-6.