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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 **M Solar Generating, LLC** 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.

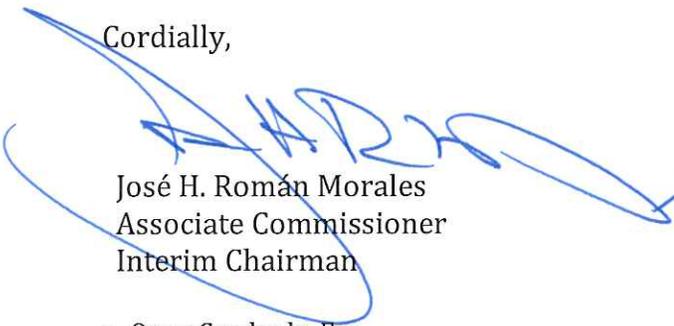
M Solar Generating, LLC proposes to install a 50 MW solar facility at Vega Baja, Puerto Rico. The project is the subject of a signed a PPOA between the sponsor and PREPA. This agreement was signed in 2012 for 25 years.⁵ The sponsor states that a negotiated settlement with PREPA requires construction to begin by the end of April, 2018.⁶

The Commission identified that the project was not considered in the individual projects selected for the analysis and development of the IRP.⁷ However, it was determined that for PREPA to comply with the RPS requirement it would need to incorporate more renewable energy besides the projects that were considered.⁸ PREPA also stated that in addition to the projects considered in the IRP, it had additional capacity contracted, which includes the proposed project, having a signed PPOA since 2012. The Commission finds that this Project *will not* adversely affect the Approved Modified IRP, therefore, **ELIGIBLE** for critical project designation.

As part of its January 2, 2018 Compliance Filing, PREPA identified the project as one of the proposed renewable energy projects whose PPOA had not been renegotiated.⁹ Therefore, the aforementioned determination is subject to the parties of the contract pursuing its renegotiation.

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 M Solar Application (“Timeline”).

⁶ *Id.*

⁷ From the projects listed on Table 5-6 of the Updated Fuel IRP, as Considered Renewable Projects, M Solar Generating, LLC project with Contract Number 2012-P00142 is not listed as such.

⁸ For PREPA to comply with the RPS target of 20% of renewable energy penetration by 2035, as required by Act 82-2010, it was required to incorporate 215 MW of renewable energy, apart from the 1,056 MW from the individual projects selected for consideration. See Updated Fuel IRP at p. 5-4.

⁹ See Final Resolution and Order on the First Integrated Resource Plan of the Puerto Rico Electric Power Authority, September 26, 2016, Case No. CEPR-AP-2015-0002, ¶ 299. The Commission instructed PREPA to conduct an audit of its existing renewable energy contracts which were not yet operational, and pursue the renegotiation or exit of those contracts which are not cost-effective and those which are not likely to reach completion.