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VIA ELECTRONIC MAIL:

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COMMISSION RECOMMENDATIONS AND DETERMINATIONS ON THE FAJARDO MUNICIPAL LANDFILL, LATERAL EXPANSION CRITICAL PROJECT PROPOSAL, 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 a certain proposed energy project 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 June 27, 2018, the Commission received written communication from the Fiscal Oversight and Management Board for Puerto Rico ("FOMB") requesting the evaluation of the **Fajardo Municipal Landfill, Lateral Expansion** Project, which is seeking critical project designation.

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 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

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

² PROMESA Section 501.

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, such project must be consistent with the 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 The Approved Modified IRP consists of two sections: the Action Plan and 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 **Fajardo Municipal Landfill, Lateral Expansion** proposed project.

The proposed project consists of the lateral expansion of the Fajardo Municipal Landfill,

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 *See* Final Resolution and Order on the First Integrated Resource Plan of the Puerto Rico Electric Power Authority, Case No. CEPR-AP-2015-0002, September 26, 2016, ¶ 305. 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.

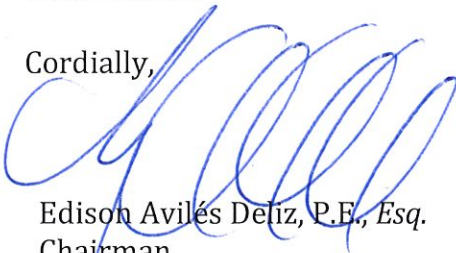
which serves as the principal municipal and commercial disposal site for the north-eastern region of Puerto Rico. The site currently has an installed capacity of 4 MW for Gas-to-Energy operation, pursuant to a standing Power Purchase and Operating Agreement ("PPOA") with PREPA, Contract Number 2013-P00044. However, the facility generates only 1.9 MW of its 4MW capacity. The purpose of the lateral expansion project is to provide additional waste into the system in order to reach full capacity. The Fajardo Municipal Landfill project, with an installed capacity of 4 MW, was considered 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. Therefore, the proposed project is **ELIGIBLE** for critical project designation, provided that it will not exceed its 4 MW capacity. The project sponsor is a Certified Electric Service Company, pursuant to the Commission's Regulation 8701,⁶ to provide the service of energy generation through renewable energy sources with an aggregate capacity of less than 5 MW.⁷ If the lateral expansion project results in the project sponsor exceeding its certified aggregated capacity, the sponsor shall review and update its current certification prior to commencing expanded operations.

This evaluation and determination was performed pursuant to Section 503 of PROMESA for the specific purpose of determining the effect that the proposed project has on the Approved Modified IRP. The effect on any claim filed under Title III of PROMESA related to the proposed project is beyond the scope of Section 503 of PROMESA, therefore it was not considered as part of this evaluation and determination.

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

Cordially,



Edison Avilés Deliz, P.E., Esq.
Chairman



Ángel R. Rivera de la Cruz, P.E., Esq.
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 Landfill Gas Project #24 with Contract Number 2013-P00044 as a Renewable Project Considered in the IRP.

⁶ Amendment to Regulation No. 8618, on Certification, Annual Fees and Operational Plans for Electric Service Companies in Puerto Rico.

⁷ Certification No. CEPR-CT-2016-0021 for Landfill Gas Technologies of Fajardo, LLC. The certification includes two (2) project sites, located in the Fajardo municipality and in the Toa Baja municipality, with an aggregated capacity of no more than 5 MW.