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COMMISSION RECOMMENDATIONS AND DETERMINATIONS ON THE VEGA BAJA SOLAR 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 April 27, 2018, the Commission received written communication from the Fiscal Oversight and Management Board for Puerto Rico ("FOMB") requesting the evaluation of the **Vega Baja Solar 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 project 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.


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.

Accordingly, the Commission hereby submits its evaluation of the proposed **Vega Baja Solar Project**.


The Vega Baja Solar Farm project consists of a 15 MW solar and battery storage facility located near Naguabo, Puerto Rico. The proposed project has a PPOA with PREPA, Contract Number 2013-P00050, signed on December 13, 2011, and amended on October 10, 2012.⁵ The Vega Baja Solar project was considered in the analysis and development of the Approved Modified IRP.⁶

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.

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.⁷ Therefore, the aforementioned determination is conditioned to the parties of the contract pursuing its renegotiation, and to the project's scope not being subject to substantial modifications that would otherwise increase its expected energy output or capacity, or the costs associated to the produced energy to be purchase by PREPA.

The Commission's determination is further conditioned on the PPOA with PREPA to continue being legally enforceable and valid. The project sponsor must provide evidence of having a legally valid and enforceable PPOA with PREPA. In the case Vega Baja Solar Farm'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.

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 analysis of the effect on any claim filed under


⁵ The December 13, 2011 agreement was a Master PPOA between PREPA and Fonroche Energy America, Inc. On September 17, 2012, Fonroche Energy America, Inc. assigned the rights title and interest for 15MW of the Master PPOA to Vega Baja Solar Project, LLC.

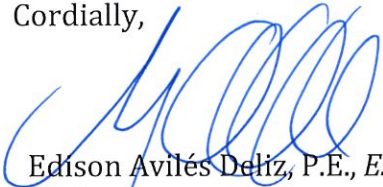
⁶ See Updated Fuel IRP, April 25, 2016, Case No. CEPR-AP-2015-0002, p. 5-6. Table 5-6 of the report identifies PV Project #12 with Contract Number 2013-P00050 as a Renewable Project Considered in the IRP.

⁷ 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.

Title III of PROMESA, or any other Title III proceeding, 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.