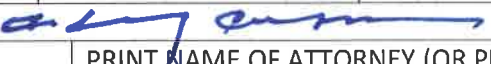


DPR MODIFIED PROMESA B1040 (FORM 1040) (05/17)

<b>PROMESA COVER SHEET</b> (Instructions on Reverse)		<b>CASE NUMBER</b> (Court Use Only)	
<b>PLAINTIFFS (DEBTOR, if Title III Petition; ISSUER, if Title VI Application)</b> PV Properties, Inc.		<b>DEFENDANTS</b> The Financial Oversight and Management Board for Puerto Rico, as representative of the Puerto Rico Electric Power Authority	
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.) Charles A. Cuprill Hernández, Esq. 356 Fortaleza Street (2nd Floor) San Juan, PR 00901 (787)977-0515		<b>ATTORNEYS</b> (If Known) Ann M. Ashton, Esq. Herman D. Bauer, Esq. Katuska Bolaños, Esq. David D. Cleary, Esq.	
<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Trustee <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Other		<b>PARTY</b> (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> Creditor <input type="checkbox"/> Trustee <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Other	
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Declaratory relief pursuant to 28 U.S.C. § § 2201 and 2202 providing that under Puerto Rico's Act 17-2019, Puerto Rico Electric Power Authority is obligated to acquire Plaintiff's Renewable Energy Certificates ("REC") and to pay for those REC's generated by Plaintiff after the filing of PREPA's Title III petition, as an administrative expense.			
<b>NATURE OF SUIT</b>			
<input type="checkbox"/> PROMESA Title III Petition <input type="checkbox"/> PROMESA Title VI Application for Approval of Modifications <input type="checkbox"/> Other Federal Question <input checked="" type="checkbox"/> Adversary Proceeding <input type="checkbox"/> Demand \$ _____			
<i>If Adversary Proceeding is checked, number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc., below:</i>			
<b>FRBP 7001(1) – Recovery of Money/Property</b> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property – other		<b>FRBP 7001(7) – Injunctive Relief</b> <input type="checkbox"/> 71-Injunctive relief - imposition of stay <input type="checkbox"/> 72-Injunctive relief - other	
<b>FRBP 7001(2) - Validity, Priority or Extent of Lien</b> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property		<b>FRBP 7001(8) Subordination of Claim or Interest</b> <input type="checkbox"/> 81-Subordination of claim or interest	
<b>FRBP 7001(5) – Revocation of Confirmation</b> <input type="checkbox"/> 51-Revocation of confirmation		<b>FRBP 7001(9) Declaratory Judgment</b> <input checked="" type="checkbox"/> 91-Declaratory judgment	
		<b>FRBP 7001(10) Determination of Removed Action</b> <input type="checkbox"/> 01-Determination of removed claim or cause	
		<b>Other</b> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<b>TITLE III CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES</b>			
NAME OF DEBTOR Puerto Rico Electric Power Authority		CASE NO. 17-04780	
DISTRICT IN WHICH CASE IS PENDING Puerto Rico		DIVISION OFFICE	NAME OF JUDGE Laura T. Swain

DPR MODIFIED PROMESA B1040 (FORM 1040) (05/17)

RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH CASE IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE December 29, 2020	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Charles A. Cuprill Hernández	

THIS FORM IS TO BE USED EXCLUSIVELY FOR FILINGS RELATING TO THE PUERTO RICO OVERSIGHT MANAGEMENT AND ECONOMIC STABILITY ACT (PROMESA). FOR ADMINISTRATION PURPOSES ONLY, THE PUBLIC DOCKETS FOR PROMESA PROCEEDINGS UNDER TITLE III AND ADVERSARY PROCEEDINGS WILL BE MAINTAINED ON THE CASE MANAGEMENT/ELECTRONIC CASE FILING (CM/ECF) SYSTEM OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF PUERTO RICO. THESE CASES ARE UNDER THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO.

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT  
BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER AUTHORITY,

Debtor

PROMESA

Title III

No. 17-04780-LTS

PV PROPERTIES, INC.

Plaintiffs,

PUERTO RICO ELECTRIC POWER AUTHORITY, THE  
FINANCIAL OVERSIGHT AND MANAGEMENT  
BOARD FOR PUERTO RICO AND NATALIE JARESKO

Defendants

Adversary Proceeding

No. 20-\_\_\_\_\_

**ADVERSARY COMPLAINT**

Plaintiff PV Properties, Inc. (“PV Properties”) for its Adversary Complaint against defendants Puerto Rico Electric Power Authority (“PREPA”), the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), and Natalie A. Jaresko (collectively the “Defendants”), alleges as follows:

**NATURE OF ADVERSARY PROCEEDING**

1. PV Properties is one of the companies of the Windmar Group, also composed among others by Windmar Renewable Energy, Inc., Coto Laurel Solar Farm, Inc., Windmar PV Energy, Inc., which have designed and constructed over forty megawatts (40MW) of solar energy sources throughout Puerto Rico, including Vieques and Culebra.

2. PV Properties is the owner of electric power generating systems distributed within the Windmar Group. This electric power production generates Renewable Energy Certificates (“REC”) which must be acquired by PREPA pursuant to Act Number 82 of July 19, 2010, 12 L.P.R.A. § 8121 et. seq. Nevertheless in violation of the mandates of Act 82-2010 and PV Properties’ portfolio of mandatory renewable energy, after the filing by the Oversight Board of PREPA Title III proceedings on July 2, 2017, depriving PV Properties of the economic and financial value that each REC represents as an asset and incentive to promote the development of renewable energy in Puerto Rico.

### **THE PARTIES**

3. PV Properties is a Puerto Rico for profit corporation organized and existing under the laws of the Commonwealth with its principal place of business in San Juan, Puerto Rico.

4. Defendant PREPA is a public corporation of the Commonwealth of Puerto Rico (the “Commonwealth”) created by Law Number 83 of May 2, 1941, as amended, 22 L.P.R.A. § 191 et. seq.

5. Defendant the Oversight Board was created under Section 2121 (b)(1) of Puerto Rico Oversight, Management and Economic Stability Act (“PROMESA”) 42 U.S.C. § 2101 et. seq. as an “entity within the Commonwealth government”. Id. § 2121(c)(1).

6. Defendant Natalie A. Jaresko is the Executive Director of the Oversight Board and in that capacity is empowered to authorize the acquisition of Plaintiff’s RECs by PREPA. Ms. Jaresko and any successor to her is being sued in their official capacity.

### **JURISDICTION, VENUE AND STANDING**

7. This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. §1331 because this action arises under PROMESA. In addition, this Court has jurisdiction over

the Complaint under Section 106(a) of PROMESA, which grants jurisdiction thereto over “any action against the Oversight Board, and any action otherwise arising under PROMESA, in whole or in part. 48 U.S.C. § 2126(a). Further, this Court has jurisdiction over the Complaint under Section 306(a) of PROMESA, which grants the Court original and exclusive jurisdiction of all cases under Title III of PROMESA and original jurisdiction of all civil proceedings arising thereunder or arising in or related to cases under Title III of PROMESA. Id. § 2166(a)(2).

8. This Court has personal jurisdiction over all of Defendants pursuant to Section 306(c) of PROMESA. 48 U.S.C. § 2166(c).

9. PV Properties seeks a declaration and related relief in this case of an actual controversy pursuant to 28 U.S.C. §§ 2201 and 2202. An actual and justiciable controversy has arisen and exists between the parties with respect to the issues and claims alleged herein.

10. This is an adversary proceeding pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure and Section 301 of PROMESA, which provides that “[t]he Federal Rules of Bankruptcy Procedure shall apply to a case under [Title III of PROMESA] and to all civil proceedings arising in or related to cases under [Title III of PROMESA]”. 48 U.S.C. § 2170; Fed R. Bankr. P. 7001.

11. The provisions of 11 U.S.C. 362 (a) applicable to pre-petition actions against PREPA by Section 301 Of PROMESA, are not applicable to this case, inasmuch as PV Properties’ Complaint relates to RECS arising after the filing of PREPA’s Title III case.

12. Venue is proper in this District under Section 307 of PROMESA. 48 U.S.C. § 2167.

### **FACTS**

13. The facts set forth above in the nature of an Adversary Proceeding are incorporated herein as if literally transcribed.

14. PV Properties is one of the electric power companies that forms part of the Windmar Group with certification number CEPR-CT-2016-0005 issued thereto by PREPA.

15. The Windmar Group is the largest renewable energy operation in Puerto Rico and has been at the forefront for the development of the renewable energy industry in the island, first in exploring and measuring Puerto Rico's potential to generate WIND power electricity at a commercial level and; the first to have completed a project at the level of public services and to provide electricity from photovoltaic system to PREPA, covering in excess of 2,500 residences by generating 24,000,000 KW per year through distributed generators.

16. PV Properties photovoltaic electric power distributed by PREPA generates 24,000 RECs per year, which are recorded and serialized in the North American Renewable Registry pursuant to Law No. 82, with a value of over \$840,000.00 on the basis of \$35.00 for each REC.

17. PREPA is the only provider of retail electric power in Puerto Rico. Therefore, compliance with the mandatory percentage of renewable energy established by the Portfolio of Renewable Energy is PREPA's responsibility.

18. Pursuant to information provided by PREPA to the Energy Commission of the Commonwealth of Puerto Rico ("ECPR")<sup>1</sup> the production of energy from petroleum, a highly pollutant source, not only has not been reduced, but has dramatically increased from 55.05 in 2015 to 61.77 in 2016.

19. As revealed by PREPA, the progress of the generation of electricity by renewable sources is miniscule and insubstantial consisting of 0.14% in 2015 and 2% in 2016.

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<sup>1</sup> The regulatory agency for Puerto Rico's power sector then with jurisdiction over PREPA and the predecessor of Puerto Rico Energy Bureau ("PREB").

20. Without any explanation, PREPA, has opted not to acquire the RECs made available thereto by PV Properties, which will assist PREPA in complying with Act Number 82-2010 as to its obligation regarding its Renewable Energy Portfolio.

21. On March 3, 2017 PV Properties filed an administrative complaint with PREB's predecessor, the predecessor of Puerto Rico Energy Bureau (the "PREB") Case No. EPR2017-0901 requesting an order directed to PREPA for it to acquire PV Properties' RECs as PREPA is bound to do under Act Number 82-2010 (the "Administrative Proceeding").

22. In the Administrative Proceeding PV Properties sought a determination that PREPA was violating the Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico (the "Renewable Energy Act") by failing to purchase the REC's offered thereby. PV Properties also sought an order directing PREPA to purchase the REC's offered at the price specified thereby.

23. The Renewable Energy Act requires electricity suppliers to comply with the Renewable Portfolio Standard (the "RPS") which mandates that a specified percentage of the supplier's energy comes from renewable sources

24. On July 12, 2017 PREPA filed a notice with the PREC stating that the Administrative Proceeding was subject to the automatic stay, which was rejected by the PREC on the grounds that it fell within the "police and regulatory powers exception of 11 U.S.C. § 362 (b) (4)".

25. On October 4, 2017 PV Properties filed its first motion for relief from stay (the "2017 Motion") requesting that the Court adopt the PREC's conclusion regarding Section 362 (b) (4) or, in the alternative, grant relief from the automatic stay for cause.

26. In denying the motion for relief from stay, the Court concluded that the Administrative Proceeding didn't meet the standards of the exception to the automatic stay of Section 362 (b) (4) because its ultimate aim was to impose financial obligations on PREPA in

favor of PV Properties and because the public policy issues addressed by the Administrative Proceeding do not implicate “ongoing debtor conduct which could seriously threaten the public safety and welfare” and in applying the relevant factors from *In re Sonnox Indus. Inc.*, the Court also concluded that cause did not exist to provide relief from the automatic stay.

27. While denying relief from stay, the Court recognized that “it is clear, that under these circumstances, the instant case involves a controversy related to [PREPA’s] alleged non-compliance with energy public policy”.

28. On May 31, 2019 PV Properties filed a renewed motion for relief from stay pursuant to 11 U.S.C. 362 § (b) (4) and 362 (d) (1) (the “Renewed Motion”) (**Docket No. 7179**) in Case No. 17-03283-LTS stating:

PV Properties files this Renewed Motion for .... Relief from Automatic Stay seeking automatic stay relief in Case No. CEPR-QR-2017-001, pursuant Paragraph III.Q of the Second Amended Notice, Case Management and Administrative Procedures, entered on August 17<sup>th</sup>, 2017, Docket 1065-1 (17-03283-LTS), for the following two limited proposes:

a. Obtaining a Public Policy Determination from the Puerto Rico Energy Commission, now the Puerto Rico Energy Bureau that the REC’s do apply to distributed energy produced by consumers under net metering program with PREPA.

b. To protect the REC’s claimed by Movant from losing 100% of its value, as per article 211 d of Law 82 of 2010, which limits REC’s value to two years, which will occur in the year 2019.

Movant is not requesting at this time the remanding of the economic claim which might accrue to PV Properties. Such economic claim will be litigated in the Federal Court Bankruptcy proceedings.

29. In the Renewed Motion PV Properties submitted what follows in support thereof.

30. On April 11, 2019, Governor Ricardo Roselló signed Act 17-2019, 22 L.P.R.A. § 1141 et. seq., the new Law on Energy Public Policy of Puerto Rico, which specifically states:



(f) To establish demand response, demand-side management, and energy efficiency programs and strategies that take into account short-, medium-, and long-term goals and incentivize customers to become more energy efficient, with a focus that results in a reduction in costs and energy consumption, as well as greater stability and reliability;

...

8) Distributed Energy, Energy Storage, and Technology Integration. (a) To ensure the integration of renewable energy into the Electrical System in a safe and reliable manner and at a reasonable cost, as well as identify the appropriate technologies and sites, such as closed sanitary landfills and previously contaminated lands, that shall make such integration feasible in accordance with the best interests of Puerto Rico; and ensure the improvements necessary to achieve the metrics of the Renewable Portfolio Standard pursuant to Act No. 82-2010 are made;

...

“Section 1.- Mandate. The Electric Power Authority, its successor, or the transmission and distribution network Contractor are hereby directed and authorized to establish and maintain a net metering program allowing the interconnection to the electric power grid in order to allow electricity feedback for customers who have installed a solar electric equipment, windmill, or any other renewable energy source capable of producing electric power using a meter that registers the flow of energy in two directions, in accordance with the applicable provisions of the federal legislation and regulations, such as the Energy Policy Act, Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, as amended, and the Standards for Electric Utilities, Pub. L. 95-617, Title I, Sec. 111, Nov. 9, 1978, 92 Stat. 3121, as amended, among others, and the regulations to be adopted thereunder...

...

8) ‘Renewable Energy Certificate or REC’.- means a personal property that constitutes a tradeable and negotiable asset or commodity that may be purchased, sold, assigned, and transferred between persons for any lawful purpose, which is integrally and inseparably equal to one (1) megawatt-hour (mwh) of electricity generated from a sustainable renewable energy source or alternative renewable energy source in Puerto Rico (issued and registered pursuant to this Act) and, in turn, represents all environmental and social attributes, as defined in this Act.

...

14) ‘Distributed Renewable Energy’.- Means sustainable renewable energy or alternative renewable energy supplying electric power to an electric power service company or generated for self-consumption or for sale to third-parties. Community solar projects are considered distributed renewable energy at the residential level and their maximum capacity shall be determined by the Puerto Rico Energy Bureau with the advice of the Electric

Power Authority or the transmission and distribution network Contractor, as applicable.

...

29) 'Prosumer'.- Shall mean any users or customers of the Electrical System who have the capacity to generate electric power for self-consumption that, in turn, have the capacity to supply any energy surplus through the electric power grid.

...

(e) For purposes of attesting compliance with this Section, the amount of distributed renewable energy generated by prosumers shall be measured and there shall be access to the Registry of Renewable Energy Certificates in accordance with the provisions of this Act, the Puerto Rico Energy Public Policy Act, and the regulations adopted by the Energy Bureau for such purposes.

...

"Section 2.10.- Renewable Portfolio Standard Compliance. (a) Any retail electricity supplier shall comply with the Renewable Portfolio Standard herein created, upon filing with the Bureau any of the following or combination thereof: (i) A REC issued and registered in the renewables registry in favor of the retail electricity supplier for each megawatt-hour (MWh) of electric power generated from sustainable renewable energy sources or alternative renewable energy sources in Puerto Rico, and/or (ii) In the case of a retail electricity supplier, that quantifies the electricity generated by or purchased from distributed renewable energy producers located in Puerto Rico through a net metering program, and whenever it is not feasible to obtain RECs that represent such electricity, a report evidencing that the retail electricity supplier has complied with the Renewable Portfolio Standard through the purchase of renewable energy together with all environmental and social attributes related to the production of such energy, pursuant to subsection (e) of this Section."

31. On June 28, 2019, the Court denied the Renewed Motion for relief from stay since the relief sought therein was materially similar as the relief sought in the 2017 Motion. In so doing, the Court held that whether the adoption of Act 17-2019 would resolve the merits of the Administrative Proceeding in PV Properties' favor was not pertinent to either the applicability of Section 362 (b) (4) or to whether cause existed to provide relief from the automatic stay under Section 362 (d) (1), the issues brought by PV Properties to its consideration by the Renewed Motion.

32. Nevertheless, under the Act 17-2019 the substantive issue of the applicability of the REC's to be distributed to PV Properties as to net metered individual consumer and acquired by PREPA has been categorically established, which clashes PREPA's position of not acquiring PV Properties' REC's applicable to distributed net metered consumers.

### **RELIEF DEMANDED**

WHEREFORE, it is respectfully requested that considering the existing controversy between PV Properties and PREPA as to if PREPA is obligated to purchase PV Properties REC's judgment under 28 U.S.C. § § 2201 and 222 be entered declaring that pursuant to Act 17-2019 PREPA is obligated to acquire PV Properties REC's and to pay for those REC's generated by PV Properties after the filing of PREPA Title III petition, as an administrative expense under 11 U.S.C. § 507 (a) (2).

San Juan, Puerto Rico this 29<sup>th</sup> day of December 2020.

<b><u>s/Fernando E. Agrait</u></b> USDC-PR 127212 701 Avenida Ponce de León Edificio Centro de Seguros Oficina 414 San Juan, Puerto Rico 00907 Tel. 787-725-3390/3391 Fax: 787-724-0353 E-mail: <a href="mailto:agraitfe@agraitlawpr.com">agraitfe@agraitlawpr.com</a>	<b><u>s/Charles A. Cuprill-Hernandez</u></b> USDC-PR 114312 Charles A. Cuprill, P.S.C., Law Offices 356 Fortaleza Street - Second Floor San Juan, PR 00901 Tel.: 787-977-0515 Fax: 787-977-0518 E-mail: <a href="mailto:ccuprill@cuprill.com">ccuprill@cuprill.com</a>
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