COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY COMMMISSION

IN RE: REQUEST FOR CERTIFICATION SUNEDISON PUERTO RICO, LLC	**CASE NO.:** CEPR-CT-2016-0004 **SUBJECT:** Petition for confidential treatment of information.

RESOLUTION

On May 9, 2016 **SunEdison Puerto Rico, LLC** ("SunEdison") filed a Request for Certification of Electric Service Providers, as well as other required documents pursuant to Regulation No. 8701[1]. In its application SunEdison requested some documents and information to be kept confidential, pursuant to Section 6.15 of Act 57-2014[2] and Section 1.15 of Regulation No. 8701.

Act 57-2014 establishes that any person having the obligation to submit information to the Commission, can request privilege or confidential treatment to any information that the party submitting understands deserves such protection.[3] Specifically, Act 57-2014 requires the Commission to provide confidential treatment to the submitted information provided that "the Energy Commission, after the appropriate evaluation, believes such information should be protected"[4]. In which case the Commission "shall grant such protection in a manner that least affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted."[5]

Furthermore, Section 1.15 of Regulation No. 8543[6], establishes:

> If in compliance with the provisions of this Regulation or any of the Commission's orders, a person has the duty to disclose information to the Commission considered to be privileged, pursuant to the Rules of Evidence, said person shall identify the allegedly privilege information, request the Commission the protection of said information, and provide supportive arguments, in writing, for a claim of information of privileged nature. The Commission shall evaluate the petition and, if it understands the material

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[1] Regulation No. 8701, Amendment of Regulation 8618 on Certification, Annual Fees, and Operational Plans for Electric Service Providers in Puerto Rico.
[2] Puerto Rico Energy and Transformation and RELIEF Act, as amended.
[3] Section 6.15 of Act 57-2014, as amended.
[4] *Id.*
[5] *Id.*
[6] Regulation No. 8543, Regulation of Adjudicative, Notice of Compliance, Rate Review and Investigation Proceedings.

CEPR
COMISIÓN DE ENERGÍA DE PUERTO RICO
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merits protection, proceed according to what is set forth in Article 6.15 of Act. 57-2014, as amended.

SunEdison argues that the information for which they request confidentiality is of confidential and sensitive nature as it relates to SunEdison's business dealings and that its public dissemination may cause harm to SunEdison. Related to evaluating confidential business information, Act 80-2011[7] establishes that a "trade secret" is any information: "(a) [t]hat has a present or a potential independent financial value or that provides a business advantage, insofar as such information is not common knowledge or readily accessible through proper means by persons who could make a monetary profit from the use or disclosure of such information; and (b) [f]or which reasonable security measures have been taken, as circumstances dictate, to maintain its confidentiality."[8]

In specific, SunEdison requested that the information regarding gross revenues be classified as confidential. SunEdison argues that its financial information is of confidential nature and not publicly available, therefore its public dissemination will place it at a competitive disadvantage with respect to other market participants and cause it economic harm. They also argue that such information is protected under the accountant/client privilege codified in Puerto Rico's Rules of Evidence 504 and 513. SunEdison adds that the disclosure of such information, specifically to its competitors, may put SunEdison in a position of disadvantage.[9]

Also, even though it is not mentioned in its argument[10], SunEdison marked as confidential the contact information and credentials of the entity to be hired in case their system is contracted, pursuant to Section 2.02(A)(1)(d) of Regulation No.8701. SunEdison doesn't provide an argument to support its confidentiality claim.

After careful examination by the Commission of SunEdison's request for confidentiality of certain information filed pursuant to Regulation No. 8701, the Commission **PARTIALLY GRANTS** the company's petition. The Commission **GRANTS** confidentiality to the following documents:

1. Projection of the percent of the total demand that it intends to meet in Puerto Rico (Section 2.02 (A)(1)(a)).

2. Information regarding charges and rates, and the company efforts to orient clients and promote efficient electric energy consumption (Section 2.02 (A)(1)(b)).

3. Projection of capital investments for the next year after submission of the Report (Section 2.02(A)(1)(c)).

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[7] Industrial and Trade Secret Protection Act of Puerto Rico.
[8] Section 3 of Act 80-2011.
[9] *See* SunEdison letter dated August 12, 2015 Re: Confidential Information.
[10] *See* SunEdison letter dated May 9, 2016 Re: Confidential Information – SunEdison Puerto Rico, LLC.

CEPR
COMISION DE ENERGIA DE PUERTO RICO
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4. Amount of Installed Systems, Installed Capacity and Clients by Electric Service Region (Section 3.03(B)(2)(b)).

5. Information on the company's gross revenue (Section 4.02).

The Commission **DENIES** the confidentiality claim for the following information:

1. Contact Information and credentials of the entity to be hired in case that the system operation is contracted (Section 2.02 (A)(1)(d)).

As stated, SunEdison has failed to provide the Commission with sufficient arguments and information in which it bases its request to keep such information confidential. SunEdison did not meet the burden of proof to demonstrate to the Commission that the information for which it requests confidentiality has an independent value and that its publication may cause harm to the Company.

Any party affected by this determination may file a motion for reconsideration of this Resolution before the Commission. In its motion, that party shall explain in detail the bases supporting its motion and the remedy that, to its judgment, the Commission should have granted, pursuant to Section 11.01 of Regulation 8543, and the applicable provisions of Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedures Act. The affected party shall file its motion for reconsideration within the term of twenty (20) days from the date of the filing of this Resolution, by personal delivery to the Clerk of the Commission, located temporarily at the Telecommunications Regulatory Board in 500 Ave. Roberto H. Todd, San Juan PR 00907- 3941.

The Commission shall consider said motion within fifteen (15) days of its filing. Should the Commission reject it forthright or fail to act upon it within fifteen (15) days, the term to request review shall recommence from the date of notice of such denial, or from the expiration of the fifteen (15)-day term, as the case may be. If a determination is made in its consideration, the term to petition for review shall commence from the date a copy of the notice of the Commission resolution definitively resolving the motion to reconsider is filed in the record of the case. Such resolution shall be issued and filed in the record of the case within ninety (90) days after the motion to reconsider has been filed. If the Commission accepts the motion to reconsider but fails to take any action with respect to said motion within ninety (90) days of its filing, it shall lose jurisdiction on said motion and the term to file judicial review shall commence upon the expiration of said ninety (90)-day term, unless the Commission, for just cause and within those ninety (90) days, extends the term to resolve for a period that shall not exceed thirty (30) days.

In the alternative, any affected party "may file a petition for review before the Court of Appeals within a term of thirty (30) days from the date the copy of the notice of this Final Resolution was filed in the record of the [Commission] or from the applicable date of those provided in [Section 3.15 of Act No. 170, 3 L.P.R.A. § 2165], when the term to petition for judicial review has been interrupted by the timely filing of a motion to reconsider.

Be it hereby notified and published.

Agustín F. Carbó Lugo
President

Ángel R. Rivera de la Cruz
Associate Commissioner

José H. Román Morales
Associate Commissioner

CERTIFICATION

I hereby certify that the Puerto Rico Energy Commission has so agreed on September 28, 2016. I also certify that on this date a copy of the Resolution was notified by electronic mail sent to mmoiser@sunedison.com and cfl@mcvpr.com.

María Del Mar Cintrón Alvarado
Clerk

I certify that this is a true and exact copy of the Resolution issued by the Puerto Rico Energy Commission. I further certify that today, September ___, 2016, I have proceeded with the filling of this Resolution and I have sent a copy thereof to:

SunEdison Puerto Rico, LLC
Melanie Santiago Mosier
7550 Wisconsin Ave., 9th Floor
Bethesda, MD 20814

Carlos Fernández Lugo
PO Box 364225
San Juan, PR 00936-4225

For the record, I sign this in San Juan, Puerto Rico, today, September ____, 2016.

Jessica Fuster Rivera
Clerk of the Puerto Rico
Telecommunications Regulatory Board