

**GOVERNMENT OF PUERTO RICO
PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU**



IN RE: REQUEST FOR CERTIFICATION
SUNEDISON PUERTO RICO, LLC.

CASE NO.: CEPR-CT-2016-0014

SUBJECT: Order to Show Cause.

ORDER

I. Introduction and Procedural Background.

SunEdison Puerto Rico, LLC ("SunEdison") is the owner of a several solar photovoltaic generation projects with aggregate capacity of 3.3 MW ("Project"). SunEdison has a Power Purchase Agreement with a private client. On July 19, 2016, pursuant to the provisions of Regulation 8701,¹ the Puerto Rico Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") issued SunEdison's certification as an Electric Service Provider.²

II. Applicable Law and Analysis.

Act 57-2014³ requires all electric service companies⁴ to obtain a certification⁵ as such. Act 57-2014 also requires electric service companies to file certain information pursuant to the terms established by the Energy Bureau. With regards to the information that an electric service company has the duty to file before the Energy Bureau, Section 2.02 of Regulation 8701 includes the presentation of the Operational Report of the companies and establishes the frequency in which it must be filed. In specific, Section 2.02(A)(1) of Regulation 8701 establishes the following:

- A) Pursuant to the provisions of this Section, the following electric service companies must file before the [Energy Bureau] an Operational Report that includes the information required below:

¹ Amendment to Regulation No. 8618, on Certifications, Annual Fees and Operational Plans of Electric Service Companies in Puerto Rico, Regulation 8701, February 17, 2016.

² See Certification of Electric Service Provider, Case No. CEPR-CT-2016-0014, July 19, 2016.

³ Known as the Puerto Rico Energy Transformation and RELIEF Act, as amended.

⁴ See Section 1.3 (l) of Act 57-2014 defines the term "Electric Power Company" or "Electric Power Service Company" as follows: "Shall mean any natural or juridical person or entity engaged in the generation, billing, or resale of electric power. In the case of PREPA, it shall also include transmission and distribution."

⁵ See Section 6.3(o) of Act 57-2014. See also Section 1.3(h) of Act 57-2014 which defines the term "Certified" as follows: "Shall mean every electric power service company that has been evaluated and authorized by the Energy [Bureau]."



- 1) Persons who offer electric power generation services for sale in Puerto Rico through distributed generators that are interconnected to PREPA's power grid with an aggregate capacity of one megawatt (1 MW) or more, regardless of whether or not said distributed generators or the customers to whom the electric power is sold are participants of PREPA's Net Metering Program; or

Persons who generate electric power through the use of fossil fuels or renewable energy sources with an aggregate capacity that is equal to or less than one hundred megawatts (100 MW) for sale to PREPA or any other electric service company in accordance with a power purchase agreement.-

The Operational Report of the electric service companies identified in this Subsection (A)(1) shall include:

- a) A projection of the percentage of the total demand of electric power service the company proposes to satisfy in Puerto Rico. Where it is a company that offers electric power generation services through distributed generation for sale in Puerto Rico, the Report must also include the amount of installed systems and customers the company serves per electric service region in Puerto Rico, as these have been established by PREPA, as well as an estimate of the amount of new customers to whom the company will offer service during the year that follows the filing of the Operational Report;
- b) In cases where companies offer electric power generation services for sale in Puerto Rico by way of distributed generators, the Operational Report must:
 - 1) Specify (i) the charges and rates it charges customers who purchase electric power and (ii) what each of those charges and rates represents;
 - 2) Identify and explain all the efforts that the company is carrying out to (i) inform its customers of the benefits of conservation and efficiency in their electric power service consumption and (ii) foster the efficient consumption of electric power service on the part of its customers;
- c) A projection of the capital investments it will make within a one (1) year time horizon, including investments for the acquisition or use of equipment, technologies, systems, and facilities;



- d) In cases where all or part of the system's operation is to be contracted out to another entity, the company must provide the name, contact information, and credentials of the entity to be contracted; and
- e) Any other information required in the appropriate form provided by the [Energy Bureau].

The electric service companies identified in this Subsection (A)(1) **must file an Operational Report every year**, as provided in this Subsection and in Subsection (D) of this Section.⁶ (Emphasis Supplied).

With regards to the information that an electric service company has the duty to file before the Energy Bureau, Section 4.02 of Regulation 8701 establishes the requirement to inform the Energy Bureau their gross revenue. Specifically, Section 4.02(A) of Regulation 8701 establishes:

- B) All electric service companies operating in Puerto Rico before this Regulation entered into force must inform, along with their Personal Information filing under Section 2.01 of this Regulation, the gross revenue generated during the preceding fiscal year, as well as the latest compiled or audited financial statements, if any, as is applicable in accordance with Subsections (D) and (E) of this Section. **For the following fiscal years, electric service companies must inform their annual gross revenue within a period of sixty (60) days following the conclusion of their fiscal year.** (Emphasis supplied.)

The aforementioned section establishes the requirements for the presentation of audited or compiled financial statements, depending on the volume of business that the company has generated during the fiscal year in question. Specifically, paragraphs (D) and (E) of Section 4.02 establish the following:

- D) Where the gross revenue of an electric service company for a given fiscal year is **equal to or less than three million dollars (\$3,000,000.00)**, the gross revenue report must be signed by an authorized representative of the electric service company. The signature of the authorized representative shall constitute a sworn certification, under penalty of perjury, that said information is correct and complete. Furthermore, **the electric service company must file before the [Energy Bureau] its financial statements as compiled by a Certified Public Accountant**

⁶ Section 2.02(D) establishes: "The provisions of Subsection (A) regarding the frequency with which every class of electric service company must file their Operational Report notwithstanding, said Report must be submitted before the [Energy Bureau] on or before the month of March of the year it is to be filed. Similarly, the [Energy Bureau] may order any electric service company to submit all or part of the information required in the Operational Report at any time."

(CPA) authorized to practice said profession in Puerto Rico.



- E) Where the gross revenue of an electric service company for a given fiscal year **exceeds three million dollars (\$3,000,000.00)**, the gross revenue report must be signed by an authorized representative of the electric service company. The signature of the authorized representative shall constitute a sworn certification, under penalty of perjury, that said information is correct and complete. Similarly, **the company must file before the [Energy Bureau] a copy of the financial statements for the corresponding fiscal year as audited by a Certified Public Accountant (CPA) authorized to practice said profession in Puerto Rico.** Said audited financial statements must be filed with the [Energy Bureau] **within a period of one hundred and twenty (120) days, from the end date of the fiscal year that the Company generated the gross income in question.** (Emphasis supplied.)

Regarding the compliance mechanisms available to the Energy Bureau, Section 3.05 of Regulation 8701 empowers the Energy Bureau to, among other things, issue a cease and desist order, revoke and annul any decision, ruling or order issued in relation to the process of any Request for Certification, when an electric service company "... has failed to comply with its duty to provide or update the information required under Law 57-2014, as amended, or this Regulation."

On the other hand, the Energy Bureau has the power to impose penalties on electric service companies for violations of Act 57-2014, and the Energy Bureau's regulations and orders.⁷ Under Section 6.36 of Act 57-2014, the Energy Bureau has the power to impose these penalties:

(a) The [Energy Bureau] shall impose administrative fines for violations of this Act, or the regulations and orders issued thereunder, committed by any person or electric power company subject to its jurisdiction, of up to a maximum of twenty-five thousand dollars (\$25,000) per day. Said fines shall in no event exceed five percent (5%) of the gross sales, fifteen percent (15%) of the net income, or ten percent (10%) of the net worth of the sanctioned person or the electric power company. The greater of the aforementioned amounts corresponding to the most recent taxable year shall be the amount of the fine.

(b) If the person or certified electric power company commits a subsequent violation of this Act, the [Energy Bureau] may impose penalties of up to a maximum of twenty-five thousand dollars (\$25,000) per day. In such case and by unanimous determination of the [Energy Bureau], it may impose fines up to twice the limitations on the basis of sales, income or assets set

⁷ See Section 6.7(h) of Act 57-2014.

forth in subsection (a) of this Section and up to five hundred thousand dollars (\$500,000).



(c) Any claim or cause of action authorized by law filed by any person with legal standing shall not affect the powers granted under this Section to impose administrative sanctions.

(d) Any person who intentionally violates any provision of this Act, omits, disregards, or refuses to obey, observe, and comply with any rule or decision of the [Energy Bureau] shall be punished by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) at the discretion of the [Energy Bureau]. In the event of recurrence, the established penalty shall increase to a fine of not less than ten thousand dollars (\$10,000) nor greater than twenty thousand dollars (\$20,000), at the discretion of the [Energy Bureau].⁸

SunEdison was required to file its Operational Report on or before the month of March of this year. Furthermore, SunEdison was required to inform its gross revenue during Fiscal Year 2018 on or before March 1, 2019. According to the administrative file, SunEdison has not complied with the provisions of Regulation 8701 regarding the filing of its Operational Report nor the presentation of its gross revenues during Fiscal Year 2018 and its corresponding financial statements, as applicable.

III. Conclusion.

Based on SunEdison's noncompliance with the above requirements, SunEdison is **ORDERED** to, within ten (10) days from the date of notification of this Order, (i) file its Operational Report according to the provisions of Section 2.02(A)(1) of Regulation 8701; (ii) to submit its gross revenue report for the sales generated during Fiscal Year 2018 and its compiled financial statement, if applicable; and (iii) show cause why the Energy Bureau should not impose an administrative fine of five thousand dollars (\$5,000) for its failure to comply with the provisions of Act 57-2014 and Regulation 8701. Furthermore, non-compliance with Energy Bureau's orders and regulations may result in additional administrative fines.

Be it notified and published.

⁸ See Section 6.36 of Act 57-2014.



Edison Avilés Deliz
Chairman

Ángel R. Rivera de la Cruz
Associate Commissioner

Lillian Mateo Santos
Associate Commissioner

Ferdinand A. Ramos Soegaard
Associate Commissioner

CERTIFICATION

I hereby certify that the Puerto Rico Energy Commission has so agreed on May 6, 2019 and on this date a copy of the Order was notified by electronic mail sent to geoff.biddick@radiangen.com and cfl@mcvpr.com. I also certify that this is a true and exact copy of the Order issued by the Puerto Rico Energy Commission and I have proceeded with the filling of this Resolution and I have sent a copy thereof to:

SunEdison Puerto Rico, LLC

Geoff Biddick
1901 Harrison Street, Suite 1575
Oakland, CA 94612

McConnell Valdés

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

For the record, I sign this in San Juan, Puerto Rico, today, May 6, 2019

Wanda I. Cordero Morales
Interim Clerk