

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

IN RE: REQUEST FOR CERTIFICATION
SUNNOVA ENERGY CORPORATION.

CASE NO.: CEPR-CT-2016-0002

SUBJECT: Gross Revenue, Financial
Statements and Annual Operational
Reports.

RESOLUTION AND ORDER

I. Procedural Background

On February 25, 2022, Sunnova Energy Corporation ("Sunnova Energy") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *Request for Extension to Inform Gross Revenues* ("February 25 Request").

On March 31, 2022, Sunnova Energy filed before the Energy Bureau the following documents: i) *2022 Operational Report* (NEPR-B03) and ii) *2022 Operational Report Annexes*, (collectively "March 31 Confidential Documents"). On the same day, Sunnova Energy filed a document titled *Motion to Request Confidential Treatment of 2022 Operational Report and to Request Remedies* ("March 31 Confidential Request").

On May 24, 2022, the Energy Bureau issued a Resolution ("May 24 Resolution") granting Sunnova Energy: (i) extension of time requested to file its gross revenue report and (ii) confidential designation and treatment to the March 31 Confidential Documents, pursuant to Article 6.15 of Act No. 57-2014¹. The May 24 Resolution also ordered Sunnova Energy to submit evidence of the electronic payment corresponding to the fees for presenting their Operational Report, within five (5) days from the date of being issued the May 24 Resolution.

On May 25, 2022, Sunnova Energy filed before the Energy Bureau a document titled *Second Request for Extension to Inform 2021 Gross Revenues* ("May 25 Request") in which it requested an additional 10-day extension, until June 6, 2022, alleging it would need a few days to finish the carving out of Puerto Rico revenues.²

On June 2, 2022, Sunnova Energy filed a document titled *Motion in Compliance with Section 4.02 of Regulation 8701 and to Request Confidential Treatment of 2021 Financial Information* ("June 2 Motion") and attached its Gross Revenue and Financial Statements Form (NEPR-B05) that contains a document entitled *Sunnova Puerto Rico Operations - Special Purpose Combined Carve-out Financial Statements and Supplemental Information - December 31, 2021* ("Financial Documents 2021"). Sunnova Energy requested that the Financial Documents 2021 be granted confidential treatment pursuant to Section 6.15 of Act 57-2014, and Section 1.15 of Regulation 8701³. Sunnova Energy argues that the information for which they request protection is of confidential nature and the disclosure of said information will place Sunnova Energy at a competitive disadvantage with respect to other market participants and cause it economic harm.⁴

¹ Known as the *Puerto Rico Energy and Transformation and RELIEF Act*, as amended.

² The Energy Bureau has not expressed its determination regarding the May 25 Request. On July 14, 2022, Sunnova Energy complied with the requirement therefore the May 25 Request is moot.

³ *Amendment to Regulation No. 8618 on Certification, Annual Fees, and Operational Plans for Electric Services Companies in Puerto Rico*, February 17, 2016 ("Regulation 8701").

⁴ June 2 Motion, p. 5, ¶7.



On June 13, 2022, Sunnova Energy filed a document titled *Motion in Compliance with Resolution and Order Dated May 24, 2022* ("June 13 Motion"), in which attached evidence of the electronic payment of the \$800.00 fee to file its operational report ("Payment Confirmation"). Sunnova Energy request that the Payment Confirmation be granted confidential treatment pursuant to Section 6.15 of Act No. 57 of May 17, 2014, and Section 1.15 of Regulation 8701. Sunnova Energy argues that the Payment Confirmation contains sensitive banking information of Sunnova Energy and/or its legal representatives, which they prefer to be not available to the public.⁵

On July 14, 2022, Sunnova Energy filed a document titled *Motion to Deposit Annual Fee Amounts and to Request Confidential Treatment of Information* ("July 14 Motion"), in which Sunnova Energy makes reference to Section 6.16 of Act 57- 2014 and to Section 4.03(a) of Regulation 8701 to the fact that the electric service companies were originally required to pay an annual fee of 0.25% of its gross revenues generated during each fiscal year.⁶ Sunnova Energy states that section 6.16 of Act 57-2014 was amended to reflect that commencing fiscal year 2019-2020 the regulatory charge would be prorated based on its gross revenue per natural year between the Puerto Rico Electric Power Authority ("PREPA") and the electric service companies in amounts totaling twenty million (\$20,000,000.00) dollars. Sunnova Energy states that this formula was adopted by the Energy Bureau in Section 4.03(A) of Regulation 9182.^{7,8}

In its July 14 Motion Sunnova Energy includes an Attachment 1, which contains an estimate of its calculated regulatory fees and a check reflecting such estimate ("Attachment 1"). Sunnova Energy also requests that the July 14 Motion with the Attachment 1 ("July 14 Confidential Documents") be granted confidential treatment pursuant to Section 6.15 of Act 57-2014 and Section 1.15 of Regulation 8701. Sunnova Energy argues that the July 14 Confidential Documents contains financial information that is sensitive, and its disclosure would place Sunnova Energy at a competitive disadvantage with respect to other market participants, especially other electric service companies certified in Puerto Rico, and cause it economic harm.⁹

II. Analysis

A. Regulated Services

Act 57-2014 requires that every Electric Service Company obtain a certification to provide services in Puerto Rico, in addition to presenting specific information in accordance with the requirements established by the Energy Bureau. Regulation 8701 establishes the requirements that any electric service company must comply with, to provide electric services in Puerto Rico.

Section 4.02 of Regulation 9182 specifies the electric service companies' duty to report their gross revenues. Specifically, Section 4.02(A) establishes:

"Every Electric Service Company under operations in Puerto Rico before the effective date of this Regulation must report, along with its Personal Report, pursuant to

⁵ June 13 Motion, p.2, ¶4.

⁶ July 14 Motion, p. 1, ¶2.

⁷ *Amendment of Regulation 8701 about Certifications, Annual Fees and Operational Plans for the Electric Service Company in Puerto Rico*, June 24, 2020 ("Regulation 9182"). Sunnova Energy mistakenly refers to Regulation 9182 as Regulation 8703.

⁸ July 14 Motion, p. 2, ¶3.

⁹ July 14 Motion, p. 4, ¶9.



Section 2.01 of this Regulation, their Annual Gross Revenues received during each Natural Year, also their Financial Statements, compiled or audited, if any, as applicable under subsections (E) and (F)¹⁰ of this Section. For subsequent periods, each Electric Service Company must report their Annual Gross Revenues within sixty (60) days after the closing of the Natural Year”.

Section 4.02(C) and (D) of Regulation 9182 establishes respectively:

“If any Electric Service Company owns one (1) or more subsidiaries that provides any service as defined in Section 1.08(A)(5)(c)¹¹ of this Regulation, the parent Electric Service Company must identify in their Annual Gross Revenues report, the portion of their revenues corresponding to the revenues generated by each of the subsidiaries. The parent Electric Service Company is responsible for the total payment of the corresponding regulatory fee, based on the aggregate of its gross revenues and their subsidiaries.

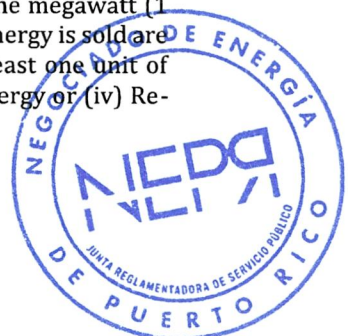
Notwithstanding with the establishment of the previous paragraph, if the subsidiaries companies file before the Energy Bureau their respectively individual Annual Gross Revenues reports, the parent Electric Service Company, when filing before the Energy Bureau their Annual Gross Revenues, can deduct the Annual Gross Revenues of those subsidiaries’ companies. In such instance, the Annual Gross Revenue to be filed by the parent Electric Service Company should be its gross revenue after deducting the corresponding Annual Gross Revenue for the subsidiaries Electric Service Companies that had filed their Annual Gross Revenue before the Energy Bureau”.

Section 4.03 of Regulation 9182 establishes the formula to be utilized to calculate the yearly budget of the Energy Bureau which is \$20,000,000 to be paid by the electric service companies in a prorated formula to be established by the Energy Bureau. This formula is applied from year 2020 forward. Before year 2020, the formula was based on 0.25% of the revenue of the electric services companies. Therefore, Sunnova Energy is required to pay before year 2020 0.25% of its revenues for years 2014-2019. For years 2020 onward Sunnova Energy is required to pay the prorated amount based on the revenues of all the certified electric service companies.

Upon reviewing the Gross Revenue and Financial Statements Form (NEPR-B05) and the document entitled *Sunnova Puerto Rico Operations: Special Purpose Combined Carve-out Financial Statements and Supplemental Information as of December 31, 2021* (“Financial Statement”), filed with the June 2 Motion, the Energy Bureau determines that Sunnova Energy is required to inform the revenue of all of its conglomerated subsidiaries that provide electric services. Therefore, Sunnova Energy must explain which of the gross revenues correspond to providing electrical services as defined in Regulation 8701 and as amended by Regulation 9182.

¹⁰ Section 4.02(F) establishes that if the Annual Gross Revenues of an Electric Service Company during a Natural Year exceed three million (\$3,000,000.00) dollars, the Annual Gross Revenues Report must be signed by an authorized representative of the Electric Service Company. The signature of the authorized representative constitutes a sworn statement, under penalty of perjury, that such information is correct and complete. Likewise, the company must file before the Energy Bureau copy of the Financial Statements corresponding to the Fiscal Year, audited by an Authorized Public Accountant, authorized to practice its profession in Puerto Rico or in any jurisdiction of the United States of America. Such Audited Financial Statements must be filed before the Energy Bureau with one hundred and twenty (120) days from the date of the Electrical Service Company’s Fiscal Year ending. This paragraph’s disposition does not apply to any successor of the PR Electric Power Authority.

¹¹ Section 1.08(A)(5)(c) classifies the definition of an Electric Service Company to any natural or juridical person, that provide any of the following services: (i) Generation of energy for selling it in Puerto Rico by means of distributed generators interconnected to the PREPA’s grid with an aggregate capacity of one megawatt (1 MW) or more, independently that such distributed generators or the customers to whom the energy is sold are or not participating of the PREPA’s Net Metering Program, (ii) Storage of energy, when at least one unit of storage has the nominal capacity of one megawatt (1 MW) or more, (iii) Billing of electric energy or (iv) Re-selling of electric energy.



The July 14 Motion includes as Attachment 1 a table prepared by Sunnova Energy estimating the regulatory fees for years 2014, 2015, 2016, 2017, 2018, 2019, 2020 and 2021. Sunnova states that it has estimated the regulatory fee based on 0.25% for all the years, including 2020 and 2021 and the included estimated payment is to be credited to their regulatory fee and that any difference calculated by the Energy Bureau, shall be promptly attended. The July 14 Motion did not include documentation to support the estimated values in Attachment 1, therefore Sunnova Energy is required to present such documentation for the Energy Bureau to calculate the regulatory charge applicable to Sunnova Energy.

The Energy Bureau accepts the amount provided to be credited to Sunnova Energy regulatory fee, but this in no manner shall be interpreted as an acceptance of the Energy Bureau of the actual regulatory fee that applies to Sunnova Energy. The Energy Bureau maintains its jurisdiction to request to Sunnova Energy all the information deemed necessary.

B. Request for Confidential Designation

Act No. 57-2014 establishes that any person having the duty to submit information to the Energy Bureau, may request that any information deemed privileged or confidential be treated in such fashion¹². Specifically, Act 57-2014 requires from the Energy Bureau to treat as confidential the information submitted provided that "after the appropriate evaluation, believes such information should be protected"¹³. In such case, "the Energy Bureau 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"¹⁴.

Section 1.15 of Regulation 8543 establishes:

If in compliance with the provisions of this Regulation of any of the [Energy Bureau's] orders, a person has the duty to disclose information to the Energy Bureau considered to be privileged, pursuant to the Rules of Evidence, said person shall identify the allegedly privilege information, request the [Energy Bureau] the protection of said information, and provide supportive arguments, in writing, for a claim of information of privileged nature. The [Energy Bureau] shall evaluate the petition and, if it understands the material merits protection, proceed according to what is set forth in Article 6.15 of Act 57-2014, as amended.

Upon examining Sunnova Energy arguments, pursuant to the provisions of Article 6.15 of Act 57-2014 the Energy Bureau **GRANTS** confidential designation and treatment to the following documents: i) Payment Confirmation; and ii) July 14 Confidential Documents. The Energy Bureau **ORDERS** Sunnova to show cause within five (5) days of the notification of this Resolution and Order on why the energy Bureau should not DENY the request for confidential treatment to the Financial Documents 2021 since such Financial Documents 2021 is publicly available at Puerto Rico Department of State.

III. Conclusion

The Energy Bureau **ORDERS** Sunnova Energy to: i) submit a certification, within **three (3) days** of the notification of this Resolution and Order, of the amount that corresponds to the gross revenues presented in the Financial Documents 2021 for **electrical services** of

¹² Section 6.15 of Act 57-2014.

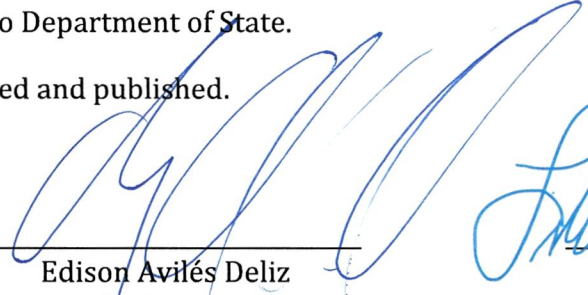
¹³ *Id.* at Subsection (a).

¹⁴ *Id.*



Sunnova Energy and its conglomerate of subsidiaries as required in Article 4 of Regulation 9182; ii) submit within **twenty (20) days** of the notification of this Resolution and Order, a detailed explanation with supporting documents to sustain the gross revenue calculated for the electrical services provided as defined in Regulation 8701 and as amended by Regulation 9182 and is utilized by Sunnova Energy to estimate the regulatory fee as presented in Attachment A of the July 14 Motion for the years 2014 up to year 2020; and iii) to show cause within **five (5) days** of the notification of this Resolution and Order stating the reasons why the Energy Bureau should not DENY the request for confidential treatment to the Financial Documents 2021 since such Financial Documents 2021 are publicly available at Puerto Rico Department of State.

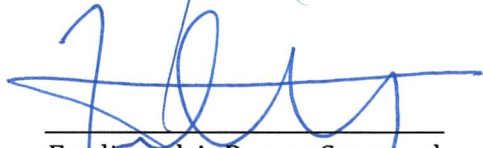
Be it notified and published.



Edison Avilés Deliz
Chairman



Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



Sylvia B. Ugarte Araujo
Associate Commissioner

CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau agreed on December 14, 2022. Also certify that on December 14, 2022 I have proceeded with the filing of this Resolution and was notified by email to: tax@sunnova.com, ivc@mcvpr.com, cfl@mcvpr.com. Likewise, I certify that today I have sent, via regular mail a true and exact copy of the same to:

JEFF CLARK
SUNNOVA ENERGY CORPORATION
PO BOX 56229
HOUSTON, TX 77256-6229

For the record, signed in San Juan, Puerto Rico, today December 14, 2022.



Sonia Seda Gaztambide
Clerk

