

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

IN RE: REQUEST FOR CERTIFICATION
SAN FERMIN SOLAR FARM, LLC.

CASE NO.: CEPR-CT-2016-0012

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

RESOLUTION AND ORDER

I. Introduction

On April 28, 2023, SAN FERMIN SOLAR FARM, LLC ("SAN FERMIN") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *Extension Request for 2022 Audited Financial Statements* ("April 28 Request").

On May 5, 2023, the Energy Bureau issued an Order to Show Cause ("May 5 Order"), in which it ordered SAN FERMIN, within five (5) days, from its notification, to (i) file its annual operational report pursuant to the provisions of Section 2.02 of Regulation 8701¹, as amended; and (ii) show cause why the Energy Bureau should not impose an administrative fine of five hundred dollars (\$500) for its failure to comply with Act 57-2014² and Regulation 8701.

On May 8, 2023, SAN FERMIN filed a document titled *San Fermin Solar Farm Response to Order - Operational Report 2022* ("May 8 Letter"), with the following attachments:

- 1) *Operational Report Electric Power Companies* (Form NEPR-B03)
- 2) *Complementary Sheet* (Form NEPR-Z01)

Through the May 8 Letter, SAN FERMIN presented a justification why the Energy Bureau should not impose an administrative fine of five hundred dollars (\$500) for its failure to comply with Act 57-2014 and Regulation 8701, indicating, among other things, that there was a change of administration and that they now have implemented internal controls utilizing an electronic compliance calendar to ensure future reporting deadlines are not missed.

On May 11, 2023, SAN FERMIN filed a document titled *Audited Financial Statements 2022* certified by a Certified Public Accountant (CPA) authorized to practice such profession in Puerto Rico, or in any jurisdiction of the United States of America, as required by Section 4.02(F) of Regulation 8701.

The Energy Bureau did not address the April 28 Request because SAN FERMIN finally filed its Audited Financial Statements for the fiscal year 2022. The April 28 Request turned *moot*.



¹ Amendment to Regulation No. 8618, on Certifications, Annual Fees and Operational Plans of Electric Service Providers in Puerto Rico, February 17, 2016 ("Regulation 8701"), as amended by Regulation No. 9182, Amendment to Regulation No. 8701, on Certifications, Annual Fees and Operational Plans of Electric Service Providers in Puerto Rico, June 24, 2020 ("Regulation 9182").

² Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

II. Applicable Law and Analysis

Act 57-2014 requires all electric service companies³ to obtain a certification⁴ and to file certain information under the terms established by the Energy Bureau.

Section 2.02 of Regulation 8701 establishes the requirement for an electric service company to file to the Energy Bureau their operational reports. Specifically, Section 2.02(E) of Regulation 8701 establishes the followings:

- E) Electric service companies **shall refer** their Operational Report to the CEPPPO⁵ for review and comments before submitting it to the Energy Commission. In submitting their Operational Reports before the Commission, electric service companies shall indicate whether they referred to the CEPPPO for review and comments. (Emphasis supplied.)

Section 2.03 of Regulation 8701, as amended, establishes the followings:

- A) All electric service companies **shall pay** the Energy Commission **the fees**, established below upon submission of the following forms, documents, or information: (Emphasis supplied).

[...]

- 2) Operational Report:

- a) Companies identified in Subsections (A)(1), (A)(3), and (A)(4) of Section 2.02 of this Regulation: **eight hundred dollars (\$800.00)**; (Emphasis supplied).

Section 3.05 of Regulation 8701 empowers the Energy Bureau to 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."

The Energy Bureau has the power to impose penalties on electric service companies for violations of Act 57-2014, its regulations, and orders⁶. 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.

³ Section 1.3(I) 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, energy cooperative, engaged in the provision of generation services, transmissions and distribution services, billing, wheeling, grid services, energy storage, resale of electric power as well as any other electric power service as defined by the Bureau. The Electric Power Authority or its successor as well as any Contractor under a Partnership or Sales Contract executed in relation to PREPA Transaction conducted by virtue of Act No. 120-2018 shall be deemed Electric Power Service Companies for Purposes of this Act."

⁴ See Section 6.13 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]."

⁵ Now known as, the Public Energy Policy Program (PEPP) of the Department of Economics Development and Commerce.

⁶ See Section 6.7(h) of Act 57-2014.



Said fines shall never 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 cases 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 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 commit a misdemeanor and upon conviction shall be punished by imprisonment for a term not to exceed six (6) months, or 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 more than twenty thousand dollars (\$20,000), at the discretion of the Energy Bureau.
- (e) The Energy Bureau may resort to the pertinent forums to seek any remedy, including account garnishment, to ensure compliance with the penalties imposed⁷.

A. Compliance with May 5 Order

In its May 8 Letter, SAN FERMIN attached the Operational Report Electric Power Companies (Form NEPR-B03) and presented justification why the Energy Bureau should not impose an administrative fine. The Energy Bureau **DETERMINES** SAN FERMIN **complies** with the May 5 Order. The Energy Bureau **REMITTS** SAN FERMIN for the administrative fine of five hundred dollars (\$500) for its failure to meet the requirements of Regulation 8701 and Act 57-2014.

B. Operational Report

Section 2.03 (A)(2)(a) requires Electrical Services Companies to pay a filing fee presenting their Operational Report. According to the Administrative Record, SAN FERMIN filed its annual Operational Report as required by the May 5 Order but **did not present evidence** of the payment fee of eight hundred dollars (\$800) for the filing of the report.

Section 2.02(E) requires Electrical Service Companies to refer their Operational Report to the EPPP for review and comments before submitting it to the Energy Commission. SAN FERMIN **did not refer** its Operational Report to the PEPP. SAN FERMIN **did not comply** with Sections 2.02(E) and 2.03(A)(2)(a) of Regulation 8701.

C. Audited Financial Statements

Section 4.02(F) requires Electrical Services Companies to must submit to the Energy Bureau a copy of the financial statements corresponding to the Fiscal Year, audited by a Certified Public Accountant (CPA) authorized to practice said profession in Puerto Rico, or in any jurisdiction of the United States of America. The Energy Bureau has evaluated the

⁷ See Section 6.36 of Act 57-2014.



information presented by SAN FERMIN. The Energy Bureau **DETERMINES** SAN FERMIN met the requirements of Sections 4.02(F) of Regulation 8701.

III. Conclusion

The Energy Bureau **DETERMINES** SAN FERMIN complied with the May 5 Order and **REMIT**s the administrative fine of five hundred dollars (\$500.00).

The Energy Bureau **ORDERS** SAN FERMIN, **within five (5) days**, from the notification of this Resolution and Order, to (i) refer its Operational Report to the PEPP; and (ii) present evidence of the payment fee of eight hundred dollars (\$800.00) for the annual filing of the Operational Report.

The Energy Bureau **WARNS** SAN FERMIN that non-compliance with Energy Bureau’s orders and regulations may carry the imposition additional administrative fines.

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




Antonio Torres Miranda
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on June 14, 2023. I also certify that June 14, 2023 a copy of this Resolution and Order was notified by electronic mail to rbullock@camstex.com and I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today June 14, 2023.



Sonia Seda Gaztambide
Clerk

