

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

IN RE: REQUEST FOR CERTIFICATION
SUNRUN, INC.

CASE NO.: NEPR-CT-2019-0002

SUBJECT: Notice of Appearance and Partial
Compliance with the September 26 Order.

RESOLUTION AND ORDER

I. Introduction and Procedural Background

On September 26, 2023, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("September 26 Order") in which it orders SUNRUN, INC. ("SUNRUN") to, within five (5) days from the notification date, (i) file a copy of its audited financial statements for the fiscal year ending on December 31, 2022, certified by an Authorized Public Accountant (CPA) authorized to practice such profession in Puerto Rico, or in any jurisdiction of the United States of America; (ii) file a copy of the Form 10k; and (iii) show cause why the Energy Bureau should not impose an administrative fine of five hundred dollars (\$500) for its failure to comply with Act 57-2014¹ and Regulation 8701².

On July 19, 2023, attorney Ignacio J. Vidal Cerra filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *Motion to Withdrawal as Legal Counsel* ("July 19 Motion") to: (i) inform that his last day of employment, at the law firm McConnell Valdés, LLC was July 19, 2023, (ii) request his withdrawal as counsel for SUNRUN, and (ii) inform that previous mentioned law firm will continue to represent SUNRUN, in the above-captioned matter.

On October 2, 2023, SUNRUN filed a *Notice of Appearance* ("October 2 Notice") to (i) notify that attorney André J. Palerm Colón is SUNRUN's new legal counsel for this case; and (ii) request all motions, papers, pleadings, and orders be served upon him at the address provided.³

Also, on October 2, 2023, SUNRUN filed a document titled *Showing of Cause in Compliance with Resolution and Order dated September 26, 2023, and Request for Extension* ("October 2 Motion"), including the following attachments:

- (i) Attachment 1 - *Solicitud de Prórroga para Rendir la Planilla de Contribución de Ingresos, Departamento de Hacienda, Gobierno de Puerto Rico* ("Form SC 2644"); and
- (ii) Attachment 2 - *Form 10k, United States Securities and Exchange Commission* ("Form 10k")

On the same date, October 2, 2023, SUNRUN filed another document titled *Amend Request for Showing of Cause in Compliance with Resolution and Order dated September 26, 2023 and Request for Extension* ("October 2 Amend Request") including the following attachments:

- (i) Attachment 1- *Solicitud de Prórroga para Rendir la Planilla de Contribución sobre Ingresos, Departamento de Hacienda, Gobierno de Puerto Rico* ("Form SC 2644")

¹ Known as the *Transformation and Energetic RELIEF Act of Puerto Rico*, as amended ("Act 57-2014")

² *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").

³ October 2 Notice of Appearance, p.1, ¶1.



In its October 2 Amend Request, SUNRUN (i) indicates that the Form SC 2644 included in the Attachment 1 of the October 2 Motion was incorrect; (ii) requests the Energy Bureau to remove the incorrect Form SC 2644 and replace it with the revised Form SC 2644 included as attachment. Form SC 2644 is a requirement of the Puerto Rico Department of Treasury and not a requirement of the Energy Bureau.

SUNRUN requests Confidential Treatment for the information contained in (i) the October 2 Motion, (ii) the October 2 Amend Request, and (iii) all the corresponding attachments. SUNRUN alleges that such information is of sensitive nature, it is not available to the public, and disclosure of such information would place SUNRUN at a competitive disadvantage and cause it economic harm.⁴

II. Applicable Law and Analysis

Act 57-2014 requires all electric service companies⁵ to obtain a certification⁶ and to file certain information under the terms established by the Energy Bureau.

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 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 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 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).

⁴ See October 2 Motion, pp. 3-4, and October 2 Amend Request, pp. 2-3.

⁵ 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."

⁶ 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]."

⁷ See Section 6.7(h) of Act 57-2014.



- (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 imposed.⁸

A. Gross Revenue and Financial Statements

Section 4.02 of Regulation 8701, as amended, establishes the requirements for an electric service company to inform the Energy Bureau of their gross revenue and to file a copy of its financial statements. Specifically, Section 4.02(A) and (F) of the Regulation establishes the followings:

- A) 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 Annual Gross Revenue generated during each Natural Year, as well as the latest compiled or audited financial statements, if any, as applies in accordance with Subsections (E) and (F) of this Section. For the following periods, electric service companies must inform their Annual Gross Revenue within a period of sixty (60) days following the conclusion each Natural Year.
- B) ...
- C) ...
- D) ...
- E) ...
- F) When the Annual Gross Revenue of an Electric Power Company during a Calendar Year exceeds three million dollars (\$3,000,000.00), the gross revenue report must be signed by the Authorized Representative of the Electric Power Company. The signature of the authorized representative shall constitute a certificate under oath, under penalty of perjury, that such information is correct and complete. Likewise, the company must submit to the Energy Bureau a copy of the financial statements corresponding to the Fiscal Year, **audited** by an Authorized Public Accountant (CPA) authorized to practice said profession in Puerto Rico, or in any jurisdiction of the United States of America. **Such audited financial statements shall be submitted to the Energy Bureau within a term of one hundred and twenty (120) days, counted from the date on which the Electric Power Company's Fiscal Year ends.** The provisions of this paragraph shall apply to any successor to the Puerto Rico Electric Power Authority. (Emphasis Supplied)

⁸ See Section 6.36 of Act 57-2014.



In the October 2 Motion, SUNRUN indicates, among other things, (i) the audit of its financial statements for the fiscal year 2022 is *still ongoing*⁹; (ii) it *has commissioned an external firm [...] to formally prepare its FY2022 financial disclosure*¹⁰. In the October 2 Motion, SUNRUN also mentions and describes its request to the Puerto Rico Department of Treasury regarding its income tax return, and the approval of such request.

In the October 2 Motion, SUNRUN requests the Energy Bureau to (i) to grant an extension until December 15, 2023 to submit its audited financial statements for the fiscal year 2022; (ii) to waive the proposed administrative fine of five hundred dollars (\$500).

Under the above-mentioned Law and Regulations, SUNRUN is required to file its audited financial statements on or before April 30 of each year. The due date to file the audit financial statements for the fiscal year 2022 of SUNRUN was April 30, 2023.¹¹ Now, five months after the expiration date, SUNRUN is requesting a time extension to file its audited financial statements.

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Upon review of all the documents, arguments and allegations filed by SUNRUN, the Energy Bureau **DETERMINES** that SUNRUN did not show cause for its noncompliance and FOUND that there are no grounds to waive the proposed administrative fine of five hundred dollars (\$500). The Energy Bureau **IMPOSES** SUNRUN an administrative fine of five hundred dollars (\$500) for its delay with the filing of its audited financial statements and its failure to comply with the requirements of Act 57-2014 and Regulation 8701.

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The Energy Bureau **ORDERS** SUNRUN to file its audited financial statements for the fiscal year 2022 **on or before December 15, 2023**.

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B. Personal Information Update

Section 2.01(D) of Regulation 8701 establishes the following:

Should there be any change in the information that an electric service company has submitted to the Energy Commission pursuant to this Section, said electric service company must alert the Commission of the referred change and submit the updated information within a period of ten (10) days following the occurrence of the change.

Section 2.03(A)(1)(a) of Regulation 8701 establishes the following:

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

- 1) Personal Information of the electric service company: one hundred dollars (\$100.00).
 - a) Update of Personal Information of the electric service company: fifty dollars (\$50.00).

The Energy Bureau **TAKES NOTICE** of the information presented in the July 19 Motion and **GRANTS** the withdrawal of attorney Ignacio J. Vidal Cerra as legal counsel for SUNRUN.

In the October 2 Notice, SUNRUN notifies, among other things, the name and email address of the new counsel for this case, and requests all motions, papers, pleadings, and orders be served upon him at the above-mentioned addresses. The Energy Bureau **TAKES NOTICE** of the information presented in the October 2 Notice of Appearance and **DETERMINES** SUNRUN **shall** review and update its Personal Information Form (Form NEPR-B01) or add

⁹ October 2 Motion, p.1, ¶2.

¹⁰ *Id.*

¹¹ September 26 Order, p. 3.



another Complementary Sheet (Form NEPR-Z01)¹² to include the name and the contact data of the new counsel.

The Energy Bureau **ORDERS** SUNRUN to (i) file an Updated Personal Information Form (Form NEPR-B01) or file another Complementary Sheet (Form NEPR-Z01) to add the contact data for the new counsel (name, phone number, email address, etc.) and to eliminate the names and contact data for the previous counsels, if necessary; and (ii) file evidence of the payment fee of fifty dollars (\$50) for the update of its Personal Information.

III. Request for Confidential Designation

As part of the October 2 Motion and October 2 Amend Request, SUNRUN requested that certain documents and information be treated as confidential, under Section 6.15 of Act 57-2014 and Section 1.15 of Regulation 8701. Specifically, SUNRUN requested the information contained in the following documents to be deemed confidential: (i) *Showing of Cause in Compliance with Resolution and Order dated September 26, 2023 and Request for Extension* ("October 2 Motion"); (ii) *Amend Request for Showing of Cause in Compliance with Resolution and Order dated September 26, 2023 and Request for Extension* ("October 2 Amend Request"), and (iii) all the corresponding attachments. (collectively, "Confidential Documents")

Act No. 57-2014 establishes that any person having the obligation to submit information to the Energy Bureau, may request that any information that it is deemed privileged or confidential be treated in such fashion¹³. 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"¹⁴. 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"¹⁵.

IV. Conclusion

After the review of all the documents filed with the above-mentioned Motions, the Energy Bureau **DETERMINES** SUNRUN partially complied with the September 26 Order as stated in part II.A of this Resolution and Order.

The Energy Bureau **GRANTS** confidential designation and treatment to the Confidential Documents, under Article 6.15 of Act 57-2014 and Section 1.15 of Regulation 8701.

The Energy Bureau **IMPOSES** SUNRUN an administrative fine of five hundred dollars (\$500) for its noncompliance with the requirements of Regulation 8701.

The Energy Bureau **ORDERS** SUNRUN to, **within five (5) days** from the notification date of this Resolution and Order, (i) file an Updated Personal Information Form (Form NEPR-B01) or file another Complementary Sheet (Form NEPR-Z01) to add the contact data for the new counsel (name, phone number, email address, etc.) and to eliminate the names and contact data for the previous counsels, if necessary; (ii) file evidence of the payment fee of fifty dollars (\$50) for the update of its Personal Information; and (iii) pay an administrative fine of five hundred dollars (\$500) at the Energy Bureau Clerk Office.

The Energy Bureau **ORDERS** SUNRUN to file its audited financial statements for the fiscal year 2022 **on or before December 15, 2023**.

¹² According to the administrative record, on June 1, 2021, Sunrun updated its Personal Information for the last time. At that time, SUNRUN filed: (i) a Form NEPR-B01, plus (ii) a Complementary Sheet (Form NEPR-Z01) to include, among other things, the name and contact data of its counsel, and authorizing him to receive notifications from the Energy Bureau.

¹³ Section 6.15 of Act 57-2014, *Rules of Confidentiality*.

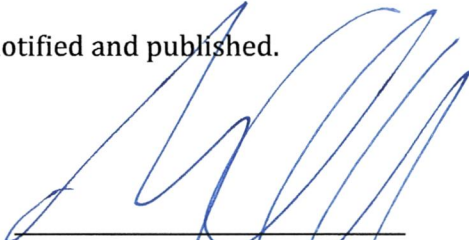
¹⁴ *Id.* at (a).

¹⁵ *Id.*



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

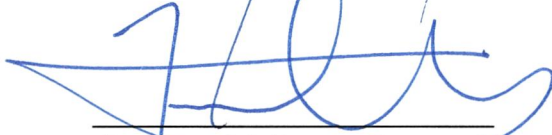
Be it notified and published.



Edison Avilés Deliz
Chairman



Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner




Antonio Torres Miranda
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau agreed on October 13, 2023. Commissioner Sylvia B. Ugarte Araujo did not intervene. I also certify that on October 13, 2023 a copy of this Resolution and Order was notified by electronic mail to the following: becca.smith@sunrun.com; cfl@mcvpr.com; apc@mcvpr.com. I also certify that today, October 13, 2023, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today October 13, 2023.



Sonia Seda Gaztambide
Clerk

