

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

IN RE: REQUEST FOR CERTIFICATION
VIRTUAL PEAKER, INC.

CASE NO: NEPR-CT-2024-0001

SUBJECT: Request for Certification as
Electric Service Company and Demand
Response Aggregator.

RESOLUTION AND ORDER

I. Introduction

On March 27, 2024, The Puerto Rico Energy Bureau of the Puerto Rico Service Regulatory Board (“Energy Bureau”) issued a Resolution and Order (“March 27 Resolution”) determining that the forms submitted by Virtual Peaker were incomplete and that, within fifteen (15) days from the notification and date of the Resolution, it shall review and correct the deficiencies noted in Part II of the Resolution regarding the information or documents required in the following forms:

- 1. Section 2.01(A) and Section 2.03(A) of Regulation 8701¹ - *Personal Information Electric Power Companies* (“Personal Information Form”)²
- 2. Section 3.03(A) of Regulation 8701 - *Request for Certification Electric Power Companies* (“Request for Certification Form”)³
- 3. Section 2.02(B) of Regulation 9246⁴ - *Request for Certification Electric Power Companies* (“Request for Certification Form”)⁵

On April 29, 2024, Virtual Peaker filed before the Energy Bureau the following documents (“April 29 Documents”):

- 1. Delaware State Business Entity Certificate⁶.
- 2. IRS Form W-9, Request for Taxpayer Identification Number and Certification⁷.
- 3. Certificate of Authorization to do Business in Puerto Rico⁸.
- 4. Payment Confirmation for Certificate of Authorization to do Business in Puerto Rico⁹.
- 5. Certificate of Authorization to do Business of a Foreign Corporation¹⁰.

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 25, 2020 (“Regulation 9182”).

² Form NEPR-B01.

³ Form NEPR-B04.

⁴ Regulation for Demand Response. December 21, 2020.

⁵ Form NEPR-B04.

⁶ Issued on April 18, 2024, by the Secretary of State of Delaware State.

⁷ Issued on September 26, 2022, by the Internal Revenue Service of the U.S. Department of Treasury.

⁸ Issued on April 29, 2024, by the Puerto Rico Department of State.

⁹ Issued on April 29, 2024, by the Puerto Rico Department of State.

¹⁰ Issued on April 29, 2024, by the Puerto Rico Department of State.



6. Independent Accountant's Review Report.¹¹
7. Confidential document that includes:

- a. Submittal Checklist
- b. Statement of Resources
- c. Types of DR Resources and DR Program
- d. Privacy and Data Security Policy
- e. Participating Terms and Conditions
- f. Appendix A: Resume

II. Analysis of April 29 Documents

- A. Energy Bureau request for compliance with Section 2.01(A) and Section 2.03(A) of Regulation 8701 - Personal Information Form.*

To demonstrate the corporative existence and the authority to operate in Puerto Rico, the March 27 Resolution required the following:

- (i) a copy of its *Certificate of Incorporation and Registration*, (ii) a *Certificate of Good Standing* issued by the Puerto Rico State Department, (iii) a *Certificate of authorization to do business in Puerto Rico* issued by the Puerto Rico State Department (in case it was a foreign entity), and (iv) Evidence of the payment fee of one hundred dollars (\$100) for filing its Personal Information¹².

To fulfill the requirement of Certificate of Incorporation and Registration, Virtual Peaker submitted with the April 29 Documents a Business Entity Certificate from the State of Delaware, state where it is incorporated, with the date of incorporation, corporate existence, and good standing in Delaware dated April 18, 2024.

To certify its capacity to operate in Puerto Rico, Virtual Peaker submitted i) *Certificate of Authorization to do Business in Puerto Rico*, and ii) its *Certificate of Authorization to do Business of a Foreign Corporation*.

Virtual Peaker must submit to the Energy Bureau a *Certificate of Good Standing* from the Puerto Rico Department of State under Section 2.01(A) of Regulation 8701.

Virtual Peaker **DID NOT** Comply with all the requirements of Section 2.01(A) of Regulation 8701.

Virtual Peaker **SHALL FILE** a *Certificate of Good Standing* issued by the Puerto Rico Department of State.

In the April 29 Motion, Virtual Peakers **DID NOT** include the evidence of the payment fee for filing the Personal Information as required by Section 2.03(A)(1) of Regulation 8701.

Virtual Peaker **SHALL FILE** the evidence of the payment fee for filing the Personal Information.

The Energy Bureau **DETERMINES** that Virtual Peaker **DID NOT COMPLY** with the March 27 Resolution.

- B. Energy Bureau request for compliance with Section 3.03(A) of Regulation 8701 - Request for Certification Form*

To demonstrate the financial resources to carry out the project in Puerto Rico, the March 27 Resolution ordered Virtual Peaker to comply with Section 3.03(A)(3) of Regulation 8701.



¹¹ Issued on September 27, 2023, by MCM CPA & Advisors LLP.

¹² As required by Section 2.01(A) and Section 2.03(A) of Regulation 8701.




"A certified statement from a certified public accountant (CPA) authorized to practice in Puerto Rico that confirms that the electric service company has sufficient financial resources to operate and provide the services it intends to offer, to be able to replace any existing asset, and to make any investment it intends to carry out during a period of one (1) year from the date of issuance of the Certification."

The April 29 Documents included document titled *Independent Accountant's Review Report*. Such document doesn't comply with the March 27 Resolution for the following reasons:


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- a. The document is not signed by any person.
 - b. The document doesn't make any reference to the energy project of Virtual Peaker in Puerto Rico.
 - c. The document doesn't include the information requested: "that the electric service company has sufficient financial resources to operate and provide the services it intends to offer, to be able to replace any existing asset, and to make any investment it intends to carry out during a period of one (1) year from the date of issuance of the Certification".
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Virtual Peaker **DID NOT COMPLY** with Section 3.03(A)(3) of Regulation 8701.

Virtual Peaker **SHALL FILE** the certification as required by Section 3.03(A)(3) of Regulation 8701.



To demonstrate the human resources to carry out the project in Puerto Rico, the March 27 Resolution required compliance with Section 3(A)(4) of Regulation 8701:



"A statement as to the fact that the company has the necessary human resources (technical, professional, and administrative) to operate and provide the services it intends to offer in Puerto Rico. The company must also list in detail the technical and professional qualifications of said personnel, as well as the profile of those it intends to recruit in order to show their expertise and competency to operate and provide the services the company intends to offer in Puerto Rico."

In the April 29 Confidential Document, Virtual Peaker included a *Statement of Resources*¹³ with the following introduction:

"Virtual Peaker has the necessary human resources to manage, aggregate, and control batteries. Virtual Peaker has a fully staffed implementation, Technical Services, and Account Management team. Brief descriptions are included in Table I and associated resumes are attached in Appendix A."

The Energy Bureau **TAKES NOTICE** of the data presented by Virtual Peaker for the Request for Certification Form.

C. *Energy Bureau request for compliance with Section 2.02(B) of Regulation 9246 - Request for Certification Form*

Virtual Peaker requests to be certified by the Energy Bureau as an electric service company and demand response aggregator. In the March 27 Resolution, the Energy Bureau requested the filing of the following information in compliance of Section 2.02(B) of Regulation 9246:

- a. Describe the type of DR resources it seeks to develop and aggregate.
- b. Identify the DR program or program offered by PREPA [LUMA or its Successor] it is intended to use on behalf of customers.
- c. Provide the privacy and data security policy required by Section 6.01 of this Regulation.

¹³ April 29 Confidential Documents, page 4.



- d. If the DR Aggregator intends to serve residential or small commercial customers, provide the standard form letter or electronic communication and agreement to be submitted to each customer explaining the terms and conditions of participating in the DR service as required by Section 2.03 of this Regulation.

The Energy Bureau **TAKES NOTE** of the information filed by Virtual Peaker in the April 29 Confidential Document and **DEEMS** Virtual Peakers in compliance with Section 2.02(B) of Regulation 9246.

III. Confidential Designation

Virtual Pickers did not request confidential treatment about the motions, forms, annexes, and information filed before the Energy Bureau. Notwithstanding, the April 29 Documents included a document listing the Forms submitted to the Energy Bureau, annexes, certifications, and related information. This document was marked as "Confidential".

To obtain confidential treatment in its forms, documents, and information, under Section 6.15 of Act 57-2014¹⁴ and Section 1.15 of Regulation 8701, Virtual Peaker must meet requirements established in the *In Re: Policy on Management of Confidential Information in Procedures Before the Commission*, CEPR-MI-2016-0009, August 31, 2016, Resolution. Section A (6) of the Resolution requires the following document submission:

"The Producing Party must simultaneously file a "redacted" or "public" version and an "un-redacted" or "confidential" version of any document containing Confidential Information. The filing of any document containing Confidential Information will not be deemed complete until the Producing Party files both versions of the document. The Producing Party must notify all the parties a copy of the "redacted" or "public" version of said document."

Act 57-2014 establishes that any person having the obligation to submit information to the Energy Bureau may request that any information it is considered privileged or confidential be treated in such fashion.¹⁵ Specifically, Act 57-2014 requires the Energy Bureau to treat as confidential the information submitted provided that "after the appropriate evaluation, believes such information should be protected".¹⁶ 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".¹⁷

IV. Conclusion

The Energy Bureau **DETERMINES** the Request for Certification filed by Virtual Peaker is incomplete.

The Energy Bureau **GRANTS** Virtual Peaker **fifteen (15) days**, from the notification date of this Resolution and Order, to provide the information missing and address the findings discussed in Part II of the Resolution and Order.

Virtual Peakers **SHALL FILE**: (i) *Certificate of Good Standing* from the Puerto Rico Department of State, (ii) evidence of the payment fee for filing the Personal Information Form, (iii) certificate statement from a certified public accountant (CPA) authorized to practice in Puerto Rico confirming the information as requested in Section 3.03(A)(3) of Regulation 8701, and (iv) file any confidential request with its allegation to move the Energy

¹⁴ Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

¹⁵ Section 6.15 of Act 57-2014, Rules of Confidentiality.

¹⁶ *Id.* At (a).

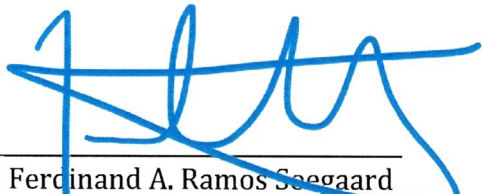
¹⁷ *Id.*

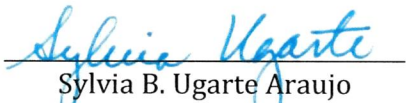



Bureau to grant confidential treatment to any documents and include a redacted version of such documents.

Be it notified and published.


Lillian Mateo Santos
Associate Commissioner


Ferdinand A. Ramos Seegaard
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 May 29, 2024. Chairman Edison Avilés Deliz did not intervene. I also certify that on May 29, 2024 a copy of this Resolution and Order was notified by electronic mail to jquigley@virtual-peaker.com, and 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, on May 29, 2024.


Sonia Seda Gaztambide
Clerk

