

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79256 / November 7, 2016

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3822 / November 7, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17670

In the Matter of

**POWERSECURE
INTERNATIONAL, INC.,**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against PowerSecure International, Inc. (“PowerSecure” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. This is a case of financial reporting, books and records, and internal control violations by PowerSecure related to its segment reporting. From 2012 to 2014, PowerSecure failed to accurately identify and report its segments as required by Generally Accepted Accounting Principles ("GAAP"). Segment disclosures help users of financial statements better understand the public entity's performance, better assess its prospects for future net cash flows, and make more informed judgments about the public entity as a whole.

2. In Accounting Standards Codification Topic 280, *Segment Reporting* ("ASC 280"), the method for determining an entity's operating segments is referred to as the management approach. The management approach is based on the way management organizes its business components to make operating decisions and assess performance. Consequently, the segments are evident from the structure of the company's internal organization. By not properly applying the management approach articulated in ASC 280, PowerSecure failed to disclose segment level financial results at a sufficiently disaggregated level of the organization.

3. After discussions with the Commission staff, in its Form 10-K for the year ended December 31, 2015, PowerSecure outlined errors in prior period disclosures and revised its segment reporting disclosure to reflect information for the years ended 2012 to 2014 on a basis consistent with its 2015 reportable segments. In its 2015 filing, PowerSecure also concluded that its disclosure controls and procedures for that three year period were not effective due to a material weakness in its internal control over financial reporting that it identified in 2015 related to its misapplication of GAAP related to segment reporting.

Respondent

4. PowerSecure is a Delaware corporation headquartered in Wake Forest, North Carolina that provides energy management and conservation solutions to electric utilities and their commercial, institutional, and industrial customers. During the relevant period, PowerSecure's securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act and were listed on public exchanges. PowerSecure's common stock traded on NASDAQ until August 2013 when PowerSecure moved its listing to the New York Stock Exchange (Ticker: POWR). On May 9, 2016, Atlanta-based energy company Southern Company acquired PowerSecure and it became Southern Company's wholly owned subsidiary. PowerSecure's common stock ceased to trade on the NYSE immediately before the merger completion. Southern Company trades on the NYSE under the ticker symbol SO.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Factual Findings and Conclusions

PowerSecure Disclosed its Segment Reporting was Incorrect from 2012-2014

5. On March 14, 2016, PowerSecure filed its Form 10-K for the year ended December 31, 2015. In that filing, PowerSecure outlined prior period errors arising from a misapplication of GAAP and revised its segment reporting disclosure to reflect information for the years ended 2012 to 2014 on a basis consistent with its 2015 reportable segments. For that three year period, the segment disclosure in PowerSecure's Forms 10-K and Forms 10-Q had not been in compliance with ASC 280.

ASC 280 Provides Authoritative Guidance on Segment Reporting Requirements

6. ASC 280 is the authoritative standard under U.S. GAAP for segment reporting. As stated in ASC 280-10-10-1, the objective of providing disclosures about segments is to provide information about the different types of business activities in which a public entity engages and the different economic environments in which it operates in order to help users of financial statements better understand the public entity's performance, better assess its prospects for future net cash flows, and make more informed judgments about the public entity as a whole.

7. Whether a particular component of a public entity is an operating segment turns on the manner in which management makes operating decisions and assesses performance. ASC 280-10-05-3 refers to this as the "management approach" and ASC 280-10-50-1 defines an operating segment as a component of a public entity that has all of the following characteristics:

- a. It engages in business activities from which it may earn revenues and incur expenses.
- b. Its operating results are regularly reviewed by the Chief Operating Decision Maker ("CODM") to make decisions about resources to be allocated to the segment and assess its performance.
- c. Its discrete financial information is available.

8. As explained in ASC 280, the term CODM refers not to a specific title within the organization but rather to the function of allocating resources to and assessing performance of the segments of a public entity. Further, an operating segment generally has a segment manager, who is directly accountable to and maintains regular contact with the CODM to discuss operating activities, financial results, forecasts, or plans for the segment. In instances where the CODM uses more than one set of operating segment information, other factors can be used to determine a public entity's operating segments, including the nature of the business activities of each component, the existence of management responsible for them, and information provided to the board of directors.

9. Per paragraphs 50-10 to 50-12 of ASC 280-10, a public entity must disclose information about each reportable segment. A reportable segment consists of each separate operating segment that it identifies or that results from aggregating two or more of those segments in accordance with specified aggregation criteria. However, an entity need not aggregate similar segments and it may present segments that fall below the quantitative thresholds.

PowerSecure's Historical Segment Reporting

10. PowerSecure disclosed two reportable segments from 2007 to 2012: (1) Utility & Energy Technologies and (2) Energy Services.² The businesses in the Energy Services segment were divested in 2011, but PowerSecure continued to report it as a stand-alone segment for an additional year. From Q1 2013 to Q1 2014, PowerSecure disclosed only one reportable business segment: the Utility & Energy Technologies segment. Starting in Q2 2014, PowerSecure disclosed three reportable segments that had previously been reported on a combined basis within the Utility & Energy Technologies segment. These three new segments had been described in PowerSecure's Form 10-K disclosures, dating back to 2007, as primary product/service lines within the Utility & Energy Technologies segment and were: (1) Distributed Generation, (2) Utility Infrastructure, and (3) Energy Efficiency. In 2015, PowerSecure began reporting a fourth segment: Solar Energy.

PowerSecure Should Have Reported More than One Segment from 2012 to First Quarter 2014

11. From 2012 to the first quarter of 2014, PowerSecure incorrectly presented its continuing operations as one reportable segment³ when it should have identified and reported multiple segments. During this period, PowerSecure erroneously determined it only had one operating segment, because it incorrectly concluded: (1) that there was no discrete financial information available below the Utility & Energy Technologies level and (2) that the CODM did not regularly review operating results below this level to assess performance and make resource allocations.

12. PowerSecure misapplied ASC 280 in claiming the discrete financial information criterion was not met since certain operating expenses were not allocated amongst its business units with precision below gross profit. However, to meet this criterion, a business component need only have a measure of profit or loss available and gross profit is sufficient for this purpose. Additionally, ASC 280 contains no provisions regarding the level of precision at which costs are allocated within a company.

² The Utility and Energy Technologies segment was referred to as PowerSecure in 2007 and Energy & Smart Grid Solutions from 2008 to 2010. The Energy Services segment was referred to as Natural Gas Measurement Services ("Southern Flow") in 2007 and as Oil and Gas Services in 2012.

³ All of PowerSecure's continuing operations from 2012 forward were in its Utility and Energy Technologies business. The Oil and Gas Services segment only represented residual activity in connection with PowerSecure's 2011 disposal of its WaterSecure operations.

13. PowerSecure also misapplied ASC 280 by concluding that its CODM – who was determined to be the Chief Executive Officer (“CEO”) - did not regularly review operating results below the consolidated level to make decisions about resource allocations and to assess performance. This was inconsistent with the way in which the CEO regularly received, reviewed, and reported on the results of the business and how the company was structured. On a monthly basis, the CEO received financial results that reflected a measure of profitability on a more disaggregated level than the consolidated entity. Further, on a quarterly basis, the CEO met with each business unit leader⁴ to discuss operational issues, sales forecasts, and financial performance. In 2012 and 2013, some of the business unit leaders had business unit level budgets and forecasts and received incentive compensation based, at least in part, upon the results of their business unit. Moreover, each quarter, the board of directors received discrete financial information below the consolidated level, which was presented by the Chief Financial Officer (“CFO”), along with commentary provided by the CEO.

Division of Corporation Finance Comments on PowerSecure’s Segment Reporting during 2013 and PowerSecure Incurs an Unexpected First Quarter 2014 Loss

14. During the 2012 Form 10-K review process, the Commission’s Division of Corporation Finance (“Corporation Finance”) questioned PowerSecure’s segment reporting disclosures. In response to Corporation Finance’s comments, PowerSecure maintained it had been correct in reporting only one segment in 2012. PowerSecure focused its responses as to whether its three primary product/service lines (Distributed Generation, Utility Infrastructure, and Energy Efficiency) should be considered operating segments, without addressing whether any other business components met the definition of an operating segment under GAAP.

15. On May 7, 2014, PowerSecure unexpectedly reported a first quarter 2014 loss of \$(4.3) million or \$(0.19) per share loss compared to analyst estimates of earnings of \$0.02 per share. The Company disclosed its gross profit margin declined from 30.6% in the first quarter 2013 to 20.9% in first quarter 2014 primarily due to “inefficiencies in the Utility Services group,” which was a business unit within the Utility Infrastructure product/service line.

16. Because PowerSecure only reported one segment in 2012 through the first quarter of 2014, investors did not have the benefit of reviewing profitability metrics for its various business units and service lines. That information was available internally to PowerSecure’s management and to its board of directors.

⁴ While PowerSecure did not have a leader, other than the CEO, for each of what it characterized as its three primary product/service lines in 2012-2014, the Company did have leaders of several business units within those product/service lines.

PowerSecure Changes its Segment Reporting in the Second Quarter of 2014 but Fails to Appropriately Identify its Operating and Reportable Segments

17. In its second quarter 2014 Form 10-Q, issued on August 6, 2014, PowerSecure changed its segment reporting disclosure to include three segments: (1) Distributed Generation, (2) Utility Infrastructure, and (3) Energy Efficiency. In revising its reporting segments, PowerSecure indicated in its filing that its CODM had begun reviewing results and allocating resources among these three strategic business groupings and had started budgeting using these business segments. There did not, however, appear to be any substantive changes in the reports regularly received and reviewed by PowerSecure's CEO. Similarly, there was no substantive change to the information provided to business unit leaders or PowerSecure's board of directors.

18. Even though PowerSecure changed its segment reporting disclosure in the second quarter of 2014 to disclose three operating segments, its disclosure still was not in accordance with GAAP. PowerSecure failed to contemporaneously identify which of its business units met the ASC 280 definition of an operating segment, which should have resulted in the identification of seven - rather than three - operating segments in 2014: Distributed Generation, Utility Services, PowerServices/Utility Engineering, Encari, Energy Efficiency Services, LED Lighting, and Solar.

19. ASC 280 permits operating segments to be aggregated into a single reportable segment if aggregation is consistent with the objective and basic principles of the standard, if the segments have similar economic characteristics, and if the segments are similar in terms of the nature of their products/services, production process, customer type, distribution methods, and regulatory environment. Even though PowerSecure did not contemporaneously conclude upon its ability to aggregate segments in 2014, in its revised segment presentation in the 2015 Form 10-K, it concluded that certain of its operating segments met the criteria for aggregation under ASC 280, resulting in four reportable segments: Distributed Generation, Utility Infrastructure, Energy Efficiency, and Solar.

20. As a result of PowerSecure's misapplication of ASC 280 in the second quarter of 2014, its segment disclosure was not in accordance with GAAP.

Failure to Properly Identify Reporting Units for Purposes of Goodwill Impairment Testing

21. The failure to properly identify its operating segments was a contributing factor that led PowerSecure to erroneously identify fewer reporting units for purposes of testing for goodwill impairment than required in ASC Topic 350, *Intangibles – Goodwill and Other* ("ASC 350"). Per ASC 350-20-35-34, a component of an operating segment is a reporting unit if the component constitutes a business for which discrete financial information is available, and segment management regularly reviews the operating results of that component. An operating segment shall be deemed to be a reporting unit if all of its components are similar, if none of its components is a reporting unit, or if it comprises only a single component.

22. Under GAAP, at a minimum, each of PowerSecure's operating segments should have been considered a reporting unit. Contrary to GAAP, PowerSecure failed to identify the proper reporting units in 2012 through 2014. As a result, goodwill impairment was tested at a higher level in the organization than required by ASC 350, which could have resulted in PowerSecure's failure to recognize a goodwill impairment loss.

PowerSecure's Insufficient Internal Accounting Controls

23. In each of PowerSecure's Forms 10-K for the years ended December 31, 2012 through 2014, PowerSecure disclosed management's conclusion that it had both effective disclosure controls and procedures and effective internal control over financial reporting. As subsequently disclosed in PowerSecure's Form 10-K for the year ended December 31, 2015, management reassessed its disclosure controls and procedures for that three year period and concluded they were not effective due to a material weakness in its internal control over financial reporting that it identified in 2015 related to its misapplication of GAAP related to segment reporting. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. PowerSecure concluded that it remediated its material weakness in 2015.

24. During 2012, 2013, and 2014, PowerSecure failed to properly interpret and apply GAAP requirements in ASC 280 and paragraphs 35-33 through 35-46 of ASC 350-20. PowerSecure lacked sufficient internal accounting controls to adequately monitor its compliance with the segment reporting requirements under GAAP. PowerSecure did not have a segment reporting policy, and there was limited documentation of its application of the segment reporting requirements. In Q2 2014, when PowerSecure revised its segment disclosure to include the results of three segments, a memo was drafted to document the change in segment reporting. However, the analysis and the memo failed to adequately assess the segment reporting requirements and also lacked clarity with regard to specific conclusions reached in the application of ASC 280. Additionally, PowerSecure failed to properly apply the provisions of ASC 350 that dealt with the identification of reporting units for purposes of goodwill impairment testing. In PowerSecure's documentation of its annual goodwill impairment testing, it did not sufficiently address and document its identification of reporting units.

Violations

25. As a result of the conduct described above, PowerSecure violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13, and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act file with the Commission information, documents, and annual and quarterly reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.

26. As a result of the conduct described above, PowerSecure violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

27. As a result of the conduct described above, PowerSecure violated Section 13(b)(2)(B) of the Exchange Act which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent PowerSecure's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent PowerSecure cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 13a-1, 13a-13, and 12b-20 thereunder.

B. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$470,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying PowerSecure as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stephanie Avakian, Deputy Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary