



**COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY COMMISSION**

**MARC BEJARANO
PETITIONER**

vs.

**AUTORIDAD DE ENERGÍA ELÉCTRICA DE
PUERTO RICO
RESPONDENT**

CASE NO.: CEPR-RV-2017-0004

SUBJECT: Final Resolution and Order

FINAL RESOLUTION AND ORDER

I. Brief Procedural Background

On February 27, 2017, Marc Bejarano (“Petitioner” or “Mr. Bejarano”) filed a petition for bill review before the Puerto Energy Commission (“Commission”) pursuant to Article 6.27 of Act 57-2014¹ and Regulation 8863.² Mr. Bejarano’s petition relates to a past due charge included in a bill dated October 28, 2016 issued by the Puerto Rico Electric Power Authority (“PREPA”) to Ms. Wendy Carroll Parker.

On March 17, 2017, PREPA appeared before the Commission and requested an extension until April 10, 2017 to reply to Mr. Bejarano’s petition. The Commission granted PREPA’s request on March 20, 2017.

On April 4, 2017, Mr. Bejarano filed a Motion requesting that the hearing in this case be conducted in the English language. The Commission granted the Petitioner’s request on April 5, 2017, pursuant to Section 1.10 of Regulation 8543.³

On April 10, 2017, PREPA filed a motion requesting the dismissal of Mr. Bejarano’s petition.

On April 19, 2017, the Commission held a hearing to address: (1) whether it has jurisdiction to consider the dispute of the past due charges contested by the Petitioner; (2) whether there are grounds to consider the present case as a complaint rather than a petition for bill review, given PREPA having allegedly transferred the past due balance to the

¹ The Puerto Rico Energy Transformation and RELIEF Act, as amended.

² Regulation on the Procedure for Bill Review and Suspension of Electric Service due to Failure to Pay.

³ Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings

Petitioner's tenant's account; (3) the applicability of the provisions of Act 57-2014; (4) whether PREPA failed to comply with the bill review procedures or any other procedural matter in its handling of the Petitioner's case; and (5) any other subject deemed relevant by the Commission.⁴ Petitioner appeared *pro se*, while PREPA was represented by attorneys Rebecca Torres Ondina and Carlos Aquino Ramos and witness Darleene Fuentes Amador, Technical Advisor at PREPA's Customer Service Directorate.⁵

The Commission's Examining Officer filed a report on July 28, 2017, which includes proposed Findings of Facts and Conclusions of Law, as well as recommendations for the resolution of the instant proceeding. The Commission adopts the Examining Officer's proposed Findings of Facts and Conclusions of Law and incorporates them into this Final Resolution and Order as Exhibits A and B, respectively.

II. Relevant Facts and Applicable Law

As stated by the Examining Officer in his Report,

[t]his case presents three distinct, albeit interrelated, controversies: (i) whether PREPA erred in its denial to accept and [address] Mr. Bejarano's November 2, 2016 request for a review of the October 28, 2016 electric service bill; (ii) whether Mr. Bejarano has a valid, pending claim before PREPA contesting a \$2,363.12 outstanding charge included a certain January 16, 2016 bill, as alleged in his November 2, 2016 objection; and (iii) whether PREPA acted lawfully in transferring the outstanding balance on Mr. Bejarano's account to the account opened by Ms. Wendy Parker.

As the facts of this case show, while the genesis of Mr. Bejarano's petition can be traced back to events that occurred in 2012, the bill review procedure that resulted in Mr. Bejarano's February 27, 2017 petition before the Commission relates to a bill dated October 28, 2016 and the corresponding bill objection process initiated by Mr. Bejarano within PREPA on November 2, 2016. Because we conclude that PREPA failed to address Mr. Bejarano's November 2, 2016 objection pursuant to Act 33 of June 27, 1985, as amended, and Chapter XIII of PREPA's Regulation No. 7982,⁶ it is unnecessary for the Commission to address the remaining controversies at this point in time.

⁴ The hearing was held at 9:00 a.m., at the Commission's Hearing Room, located at the Seaborne Building, 8th Floor, 268 Muñoz Rivera Ave., San Juan, Puerto Rico.

⁵ The hearing was presided by the Commission Examining Officer Alejandro J. Figueroa Ramírez.

⁶ Regulation on the General Terms and Conditions for the Provisions of Electric Service, as amended. Since January 1, 2017, the bill review procedure is subject to the provisions of Section 6.27 of Act 57-2014 and Regulation 8863. However, at the time Mr. Bejarano's request was filed, and PREPA's customer service representatives denied Mr. Bejarano's objection, the provisions of Act 33 and PREPA Regulation 7982 were still in effect.

For clarity purposes, the Commission reproduces below the facts relevant to the Commission determinations made herein.

A. Relevant Facts

1. On November 2, 2016, Mr. Bejarano received a bill from PREPA dated October 28, 2016 which showed a previous balance of \$2,488.81 and past due charges of \$17.59.⁷

2. On that same day, Mr. Bejarano filed an online objection of the October 28, 2016 bill. Specifically, Mr. Bejarano stated:

[P]lease investigate the \$17.59 “Cargo por Atraso” on the invoice dated October 28, 2016. [I]nterest shouldn’t be charged for an amount in dispute. [I]’ve disputed the entire “\$2,363.12” that was put on this account as a “Balance Previo” on the January 16, 2016 bill and that dispute is still pending. [T]here is an open case with the Ombudsman Office.⁸

3. On November 21, 2016, Mr. Bejarano received an email from “gop”, a customer service representative from PREPA, stating that, “[t]o claim the charges “\$2,363.12” it is required you do it personally in the Commercial Office in San Juan” and that [the personnel at the Commercial Office] would also verify the late payment charges.”⁹

4. On December 16, 2016, Mr. Bejarano responded, via email to servicios@aepr.com, that it was not “convenient for him to go to the Commercial Office” and requested the initiation of the investigation of the \$17.59 charge pursuant to Act 33.¹⁰

5. On December 20, 2016, “avl”, a customer service representative from PREPA, emailed Mr. Bejarano stating the following:

We regret to inform you that the charges (sic) of \$17.59 cannot be disputed, the charge you wish to dispute have expired[,] the date to be disputed (sic) was before November 20, 2016.

⁷ See PREPA Motion to Dismiss, Attachment 3.

⁸ See Petition for Bill Review, Attachment 2. See, also, PREPA Hearing Exhibit 1.

⁹ See Petition for Bill Review, Attachment 2.

¹⁰ *Id.*

6. On January 5, 2016, Mr. Bejarano sent an email to servicios@aepr.com indicating that he filed his objection on November 2, 2016 and requested the issue to be “escalated to [PREPA’s] legal department.”¹¹

7. On January 6, 2017, “avl” sent an email to Mr. Bejarano stating that:

We regret to inform you that the late payment charges (sic) of \$17.59 cannot be disputed, our clients may only dispute current monthly charges.¹²

8. Later that same day, Mr. Bejarano responded via email by stating that he interpreted the prior email sent by PREPA’s representative as an “adverse finding on [Mr. Bejarano’s] Act 33 objection” and requested his case be reviewed by PREPA’s Executive Director, citing Article 3, Section 3(C) of Act 33.¹³

9. Mr. Bejarano and PREPA’s customer service representatives continued to exchange emails whereby Mr. Bejarano repeated his request for the objection to be “escalated to the legal department”, while PREPA’s representatives again stated that only “current charges” could be disputed.¹⁴

10. None of the communications sent by PREPA to Mr. Bejarano with regards to his objection of the October 28, 2016 bill advised him of the remedies available under Act 33 and Regulation 7982 should he not be satisfied with PREPA’s determination.¹⁵

11. PREPA’s witness, Ms. Fuentes Amador, testified that customers could file a valid Act 33 objection via the contact form in PREPA’s website.¹⁶

12. PREPA witness, Ms. Fuentes Amador, testified that Mr. Bejarano used the correct procedure to file his November 2, 2016 objection and that such objection had been correctly filed.¹⁷

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id. See, also*, PREPA Hearing Exhibit 1.

¹⁶ *See* Ms. Fuentes’ Testimony at 02:00:00.

¹⁷ *Id.* at 02:01:10.

13. PREPA witness, Ms. Fuentes Amador, testified that, regardless of the method of filing (in person, via mail or online) PREPA customer service representatives routinely evaluate each objection to determine whether accept or reject them.¹⁸

14. Such evaluation includes whether the charges being objected are “current” or “outstanding” and its purpose is to act as a filter.¹⁹

15. These representatives are authorized by PREPA to reject objections which they deem invalid.²⁰

16. PREPA’s witness, Ms. Fuentes Amador, testified that a past due charge (“Cargo por Atraso”) included on a bill is a “current charge” for purposes of determining whether it may be subject to an Act 33 objection.²¹

17. PREPA’s witness, Ms. Fuentes Amador, testified that PREPA should have accepted and addressed Mr. Bejarano’s November 2, 2016 objection.²²

B. Applicable Law

1. Legal Provisions Applicable to Mr. Bejarano’s November 2, 2016 Objection

Article 6.27 of Act 57-2014 sets forth the uniform bill review and objection procedure that shall be implemented by PREPA, as well as any other entity providing retail electric service in Puerto Rico. Article 8 of Act 152-2014 provides that said Article 6.27 of Act 57-2017 would enter into effect on the same date in which the regulation on bill review proceedings adopted by the Commission enters into effect. Regulation 8863, which was adopted by the Commission pursuant to the provisions of Section 6.27 of Act 57-2014, entered into effect December 31, 2016.

Prior to December 31, 2016, the procedure for reviewing customer billing objections was regulated by Act 33 and by Regulation 7982. Moreover, Section 1.04 of Regulation 8863 states that all formal and informal procedures initiated under the provisions of Act 33, prior to the effective date of Regulation 8863, shall continue their course before PREPA. The same section states that in these cases, PREPA’s final decisions shall be reviewable by the

¹⁸ *Id.* at 02:11:29.

¹⁹ *Id.*

²⁰ *Id.* at 02:12:40.

²¹ *Id.* at 02:25:53.

²² *Id.* at 02:37:50.

Commission. Since Mr. Bejarano filed his objection before PREPA on November 2, 2016, the legal provisions applicable to his objection are those of Act 33 and Regulation 7982.

2. Bill Objection Procedure Under Act 33 and Regulation 7982

Section 3, subsection (a), of Act 33 states that a customer has “twenty (20) days [after an invoice] to pay or raise objections and to request an investigation thereof before the designated official in the local office from which he/she receives the service.”²³ Said subsection further states that an “objection and [...] request for an investigation may be made by mail, telephone, and fax or through the Internet.”²⁴

Section XIII, Article A of Regulation 7982 contains a similar language, establishing that “[c]ustomers can object and request an investigation of any charge reflected for the first time on their bill no later than the due date indicated on said bill, which must be at least twenty (20) days after the date the bill was sent.” It further states that an “objection or request for investigation can be filed at any commercial or local office of the Authority, by phone at the Customer Service Center, or by mail, fax, or Internet to the address or telephone numbers provided by the Authority.”

PREPA is required to follow its own regulations.²⁵ Once an agency adopts a regulation setting the boundaries of its actions, it must abide by such regulation and the agency lacks the discretion to determine not to apply the regulatory provisions.²⁶ Section XIII of Regulation 7982, through which PREPA implemented the provisions of Act 33, defines and sets forth the procedure through which PREPA would accept, review and resolve any objection to a bill filed by an electric service customer.

Regulation 7982 establishes the following 4-tier process for PREPA’s review of billing objections:²⁷

1. Once an objection is filed, PREPA’s commercial office must conduct an investigation and notify, in writing, the result of such an investigation within sixty (60) days from the date the objection was filed.

²³ 27 L.P.R.A. §262b.

²⁴ *Id.*

²⁵ *Com. Vec. Pro-Mej., Inc. v. J.P.*, 147 D.P.R. 750, 764 (1999).

²⁶ *Id. See, also*, D. Fernández Quiñones, Derecho Administrativo y Ley de Procedimiento Administrativo Uniforme, 2da ed., Colombia, Ed. Forum-Legis, 2001, §3.3, pp. 124-125; *García Cabán v. U.P.R.*, 120 D.P.R. 167 (1987); *Díaz de Llovet v. Oficina del Gobernador*, 112 D.P.R. 747 (1982); *García Troncoso v. Adm. del Derecho al Trabajo*, 108 D.P.R. 53 (1978); *Hernández García v. J.R.T.*, 94 D.P.R. 22 (1967).

²⁷ *See* Regulation 7982, Section XIII, Article A, subsections 1 – 3.

2. If the customer is unsatisfied with the result, he/she may request review of the commercial office's determination before PREPA's regional office within ten (10) days from the date the result of the investigation is notified.

3. PREPA's regional office shall notify, in writing, its determination regarding the result of the investigation within twenty (20) days from the date the customer filed his/her request for review.

4. If the customer remains unsatisfied, he/she may request review and an administrative hearing before PREPA's Executive Director within ten (10) days from the date the regional office's determination was notified.

5. PREPA's Executive Director, or his/her authorized representative, must issue a determination with regards to the regional office's determination within twenty (20) days from the date the customer filed his/her request for review.

6. If the customer is unsatisfied with the Executive Director's determination, PREPA shall refer the customer's objection to an independent examining officer who shall hold an administrative hearing and issue a final determination.

The aforementioned procedure specifically directs PREPA's commercial office to, once an objection is filed, conduct an investigation and issue a determination in writing to the customer. Nowhere in Act 33 or Regulation 7982 is PREPA's commercial office authorized to conduct a preliminary, outside of Act 33, review of a customer's objection and to, based on the result of such review, determine whether to accept or reject an objection and whether to initiate the review procedure provided in Section XIII, Article A of Regulation 7982.

Accordingly, any determination made by PREPA's commercial office with regards to an objection filed pursuant to Act 33 and Regulation 7982, including whether the objection was filed on time or whether the charges being objected are "current" or "outstanding", is required to be made within the scope of Act 33 and Regulation 7982—that is, it must be made in writing, by the person appointed by PREPA as authorized representative and must recognize and inform the customer of his right to challenge or seek review of such determination.

C. Discussion and Analysis

1. *PREPA erred in refusing to accept Mr. Bejarano's objection and initiating an investigation under Act 33 and Regulation 7982*

On November 2, 2016, Mr. Bejarano filed an objection to an October 28, 2016 electric service bill using the online form provided in PREPA's website. Mr. Bejarano filed his objection within the 20-day period provided by Act 33 and Regulation 7982. Specifically, Mr. Bejarano sought review of a \$17.59 late payment charge ("Cargo por Atraso") which he

argued was unlawful because he had a pending claim for the outstanding charges identified in the bill which prevented PREPA from applying a late payment charge.²⁸

Under Regulation 7982, PREPA's commercial office was required to initiate an investigation regarding Mr. Bejarano's claims and notify Mr. Bejarano in writing the result of such investigation—i.e. whether the late payment charge (“Cargo por Atraso”) was correctly assessed and billed in Mr. Bejarano's October 28, 2016 bill. In addition, PREPA was required to inform Mr. Bejarano of his right to challenge or seek review of such determination.

In response to Mr. Bejarano's objection, PREPA stated that Mr. Bejarano's claim could not be addressed because the charges had “expired”.²⁹ Despite Mr. Bejarano's explicit request for review under Act 33 and Regulation 7982 of the initial determination regarding his objection, PREPA's representatives denied Mr. Bejarano's request and refused to initiate the review procedure provided in Regulation 7982. Moreover, PREPA's response did not include the procedure available to Mr. Bejarano to challenge or seek review of that determination.

Act 33 and Regulation 7982 provide that a customer may only object current charges—that is, charges which first appeared on the most recent electric service bill and for which the customer files an objection within twenty (20) days from the date such bill was received. In rejecting Mr. Bejarano's objection, PREPA maintained that Mr. Bejarano was attempting to contest outstanding charges, thus, Mr. Bejarano had no valid claim under Act 33 or Regulation 7982.

However, the evidence presented and the testimonies given by Mr. Bejarano and PREPA's witness, Ms. Fuentes Amador, show that Mr. Bejarano's objection was related to the late payment charge (“Cargo por Atraso”) listed in the “current charges” section of his October 28, 2016 bill; not to outstanding charges, as originally stated by PREPA in response to Mr. Bejarano's objection. PREPA's witness, Ms. Fuentes Amador, testified that a late payment charge (“Cargo por Atraso”) is a current charge which may be subject to an Act 33 and Regulation 7982 objection.³⁰ Ms. Fuentes Amador further testified that Mr. Bejarano's claim was correctly filed with PREPA and that PREPA should have accepted and initiated an investigation of Mr. Bejarano's objection.³¹

Therefore, the Commission finds that PREPA erred in determining that Mr. Bejarano's objection was related to outstanding charges, when, in fact, the evidence and testimonies show that Mr. Bejarano's objection was related to current charges. Consequently, Mr.

²⁸ See Relevant Fact 2.

²⁹ See Relevant Fact 5.

³⁰ See Relevant Fact 16.

³¹ See Relevant Fact 12 and 17.

Bejarano's objection is valid under Act 33 and Regulation 7982 and PREPA erred in refusing to accept it and initiate an investigation under Act 33 and Regulation 7982.

2. *PREPA failed to comply with Act 33 and Regulation 7982 in outright rejecting Mr. Bejarano's objection*

After filing his objection, Mr. Bejarano received several emails from PREPA representatives notifying Mr. Bejarano that "the charges (sic) of \$17.59 cannot be disputed" because customers could "only dispute current monthly charges."³² Although Mr. Bejarano expressly stated his dissatisfaction with the responses from PREPA's representatives with regards to the validity of his objection, and specifically requested a review of such response pursuant to Act 33, PREPA's representatives repeatedly dismissed Mr. Bejarano's requests and refused to initiate an investigation, as required by Act 33 and Regulation 7982.

PREPA's response to Mr. Bejarano's objection was made by an unspecified PREPA representative, described by PREPA's witness, Ms. Fuentes Amador, as a "filter", who makes an initial determination as to whether to accept or reject an objection.³³ In those cases in which the representative acting as a "filter" deemed an objection as invalid or deficient (i.e. because the customer attempted to object outstanding charges), the objection was rejected and considered to have never had the effect of activating any of the substantive or procedural safeguards provided by Act 33 and Regulation 7982. The result was that objections which this so-called "filter" deemed invalid or deficient were outright rejected without the customer having any opportunity to challenge or seek review of such determination. PREPA's witness, Ms. Fuentes Amador, testified that such a practice was "routine".³⁴

In Mr. Bejarano's case, the unnamed PREPA representative incorrectly concluded that the charge that Mr. Bejarano attempted to object was an outstanding charge, rather than a current charge and, therefore, determined to outright reject Mr. Bejarano's objection. As a result, PREPA did not conduct the investigation required by Act 33 and Regulation 7982, and denied Mr. Bejarano the right to challenge or seek review of such determination.

PREPA's practice of conducting a preliminary review of an objection prior to initiating a formal review and investigation is not supported by neither Act 33 nor Regulation 7982, and violates the rights granted to PREPA's customers under said legal and regulatory provisions. Through such practice, PREPA's "filter" had unrestricted and unchecked authority to make final, legally binding, determinations regarding the validity of a customer's objection.

The instant case is a clear example of the perils of such practice. PREPA's representatives incorrectly dismissed and rejected Mr. Bejarano's objection and denied Mr.

³² See Relevant Facts 3, 5, 7 and 9.

³³ See Relevant Facts 13, 14 and 15.

³⁴ See Relevant Fact 13.

Bejarano any opportunity to challenge the correctness of such action. While Mr. Bejarano's persistence eventually led him before the Commission, we may never know how many customers were incorrectly denied their right to file an objection and were left defenseless and powerless in their claims before PREPA. Furthermore, had PREPA granted Mr. Bejarano the opportunity to challenge the determination, the erroneous action of PREPA's "filter" may have been corrected, without the need for Commission intervention.

Section XIII, Article A, subsection 1 of Regulation 7982 specifically provides that "once an objection is filed, PREPA's commercial office must conduct an investigation." Said directive is clear and unequivocal: any objection filed was required to be reviewed and addressed pursuant to Act 33 and Regulation 7982. The Commission did not find any language in Act 33 or Regulation 7982 to suggest that only certain objections—those deemed valid by a PREPA representative—would be subject to the provisions of Act 33 and Regulation 7982.

In conducting a preliminary review, outside of the substantive and procedural guarantees afforded by Act 33 and Regulation 7982, PREPA departed from the procedure established by Regulation 7982. Accordingly, the Commission finds that PREPA's practice of conducting a preliminary review of billing objections is not supported by Act 33 or Regulation 7982. The Commission further finds that PREPA's outright denial of Mr. Bejarano's objection was arbitrary and capricious and exceeded the margins of its discretion under Act 33 and Regulation 7982.

III. Commission Determinations

As previously stated, the Commission finds that PREPA violated the provisions of Act 33 and Regulation 7982 by refusing to initiate an investigation with regard to Mr. Bejarano's November 2, 2016 online objection to the October 28, 2016 bill and (ii) erred in determining that Mr. Bejarano's November 2, 2016 objection was not a valid bill objection under Act 33 and Regulation 7982.

Accordingly, the Commission **ORDERS** PREPA to accept Mr. Bejarano's November 2, 2016 objection and conduct an investigation into Mr. Bejarano's claims. In addressing Mr. Bejarano's objection, PREPA shall follow the provisions of Act 33 and Regulation 7982 and shall grant Mr. Bejarano all procedural safeguards contemplated therein.

Any party adversely affected by this Final Resolution and Order may file a motion for reconsideration before the Commission, pursuant to Section 11.01 of Regulation 8543 and the applicable provisions of Act 38- 2017, known as the Uniform Administrative Procedure Act ("LPAU", for its Spanish acronym). Said motion must be filed within twenty (20) days from the date in which copy of this Final Resolution and Order is notified and copy of such notice is filed by the Commission's Clerk. Any motion for reconsideration must be filed at the Commission Clerk's Office, located at the Lobby of 268 Muñoz Rivera Ave., San Juan, PR 00918. Copy of the motion as filed must be sent by email to all the parties notified of this Final Resolution and Order within the twenty (20) days established herein.



The Commission shall have fifteen (15) days from the date in which such motion is filed to consider it. If the Commission rejects it outright or fails to consider it within said period of fifteen (15) days, the term to seek judicial review shall begin on the date in which the Commission notifies its rejection or the date in which said fifteen (15) days expire, whichever occurs first. If the Commission considers the motion, the term to seek judicial review shall commence from the date a copy of the notice of the Commission's resolution definitively resolving the motion for reconsideration is notified and copy of such notice is filed by the Commission's Clerk. The Commission shall have ninety (90) days from the date the motion for reconsideration is filed to issue a final determination. If the Commission considers the motion for reconsideration but fails to take any action with respect to such motion within ninety (90) days of its filing, it shall lose jurisdiction and the term to seek judicial review shall commence upon the expiration of said ninety (90) days, unless the Commission, for just cause and within said ninety (90) days, extends the term to resolve for a period that shall not exceed thirty (30) days.

In the alternative, any affected party may file a petition for review before the Court of Appeals within a term of thirty (30) days from the date a copy of the notice of this Final Resolution and Order was notified and copy of such notice was filed by the Commission's Clerk. Filing and notice of a petition for review before the Court of Appeals shall be made pursuant to the applicable provisions of Regulation 8543, the LPAU and the Rules of the Puerto Rico Court of Appeals.

Be it notified and published.


Ángel R. Rivera de la Cruz
Associate Commissioner


José H. Román Morales
Associate Commissioner
Interim Chairman

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Commission has so agreed on August 17, 2017 and on this date a copy of this Final Resolution and Order regarding Case No. CEPR-RV-2017-0004 was notified by electronic mail to the following: rebecca.torres@prepa.com and energía.pr.gov@beej.org. I also certify that on this date, I have proceeded with the filing of the Final Resolution and Order issued by the Puerto Rico Energy Commission and I have sent a true and exact copy to the following:

Autoridad de Energía Eléctrica de Puerto Rico
Lcda. Rebecca Torres Ondina
PO Box 363928
San Juan P.R. 00936-3928

Marc Bejarano
2885 Sanford Ave. SW # 16917
Grandville, MI 49418



For the record, I sign this in San Juan, Puerto Rico, today, August 17, 2017.

A handwritten signature in blue ink, which appears to read 'M. del Mar Cintrón Alvarado', is written over a horizontal line.

María del Mar Cintrón Alvarado
Clerk

Exhibit A – Findings of Facts

1. On July 2003, Marc Bejarano opened an account with PREPA for electric power service at a residence located on 1112 Ashford Avenue, San Juan (“Ashford Residence”). He began subletting said residence on October 2005. Mr. Bejarano did not live in Puerto Rico since 2005 and had sublet the residence to various tenants since then.³⁵
2. On May 2012, Mr. Bejarano began subletting the Ashford Residence to Gregory Snyder. As part of the sublease terms, Snyder would be responsible for paying the monthly electric bill, but the electric service account would remain registered in Bejarano’s name.³⁶
3. On November 15, 2012, Mr. Bejarano learned that Mr. Snyder had not made any payments for electric service since June 18, 2012, and that it had accrued an outstanding balance of \$1,637.83.³⁷
4. On the days that followed, Mr. Bejarano contacted PREPA representatives regarding the situation. Mr. Bejarano intended for PREPA to cut off power service in order to stop accruing further charges.³⁸
5. Mr. Bejarano made multiple informal attempts at reaching a settlement with PREPA with regards to the payment of a portion of the outstanding amounts.³⁹
6. On July 16, 2013, Mr. Bejarano made a payment of \$643.38, which he intended as a payment in full, and sent an email to PREPA notifying of such payment and of his intention to deem the past due charges to have been settled if PREPA did not object to the amount paid within thirty (30) days.⁴⁰

³⁵ See Petition for Bill Review, Attachment 1.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* See, also, Testimony of Mr. Bejarano at 00:43:44 and 1:11:27. We use the term “settlement” in the same form as used and intended by Mr. Bejarano; that is, to mean that Mr. Bejarano’s payment of a portion of the outstanding balance and PREPA’s acceptance of such payment, would constitute a payment in full of the outstanding debt, unless PREPA specifically stated otherwise.

⁴⁰ See Petition for Bill Review, Attachment 1. See, also, Testimony of Mr. Bejarano at 00:43:44 and 1:13:01.

7. PREPA did not respond to Mr. Bejarano's email regarding the settlement of the outstanding balance.⁴¹
8. PREPA applied the payment made by Mr. Bejarano to his then current outstanding balance and continued to bill Mr. Bejarano for the remaining balance.⁴²
9. PREPA's bill were mailed to a P.O. Box address owned by Mr. Bejarano, but to which Mr. Bejarano has occasional access to.⁴³
10. Mr. Bejarano knowingly and willingly ignored PREPA's bills.⁴⁴
11. The bills sent by PREPA to Mr. Bejarano contain a notice informing the customer of their right under Act 33 to object and seek review of the current charges included in a bill.⁴⁵
12. The bills sent by PREPA to Mr. Bejarano, as well as the language notifying Act 33 remedies in such bills, are in Spanish.⁴⁶
13. On January 2, 2015, PREPA sent a "Final Bill" ("Factura Final") to Mr. Bejarano. Such bill shows a balance of \$2,331.92, which has been outstanding for 28 months, and a past due charge ("Cargo por Atraso") of \$15.55 for a total bill amount of \$2,347.47.⁴⁷
14. Mr. Bejarano did not make any further efforts to address his outstanding balance with PREPA until April 2015 when he moved back to Puerto Rico.⁴⁸
15. On December 2015, Mr. Bejarano purchased a residence located at Cacique Street, Ocean Park, San Juan.⁴⁹

⁴¹ *Id.*

⁴² *See* Testimony of Mr. Bejarano at 01:13:59.

⁴³ *Id.* at 00:19:30 and 00:26:00

⁴⁴ *Id.* at 00:24:15, 00:26:00 and 1:11:10.

⁴⁵ *Id.* at 01:06:26.

⁴⁶ *See* PREPA Motion to Dismiss, Attachments 2 and 3.

⁴⁷ *Id.*, Attachment 1.

⁴⁸ *See* Testimony of Mr. Bejarano at 00:24:15.

⁴⁹ *See* PREPA Motion to Dismiss, Attachment 5.

16. Mr. Bejarano lived at the property with his then romantic partner, Ms. Wendy Parker.⁵⁰
17. On December 30, 2015, Ms. Parker opened an account with PREPA in her name for electric power service at the Cacique Street property.⁵¹
18. Mr. Bejarano was an authorized user on the account.⁵²
19. Ms. Wendy Parker opened the account in her name with the purpose of ensuring service would be provided to the Cacique Street property, given the outstanding balances on Mr. Bejarano’s account.⁵³
20. PREPA transferred Mr. Bejarano’s outstanding balance to Ms. Parker’s account and such amount first appeared as a “previous balance” (“Balance Previo”) in Ms. Parker’s January 16, 2016 bill. The “previous balance” amount was in the amount of \$2,363.12.⁵⁴
21. The amount identified as “previous balance” corresponds to the total amount allegedly owed by Mr. Bejarano, plus interests, minus the “settlement” payment previously made by Mr. Bejarano.⁵⁵
22. Mr. Bejarano did not seek the remedies provided by Act 33 to dispute the bill.⁵⁶
23. Mr. Bejarano sought assistance from the Ombudsman’s office on February 2, 2016. The Ombudsman’s office initiated an investigation procedure with PREPA in order to inquire about Mr. Bejarano’s situation.⁵⁷
24. The Ombudsman’s office closed the investigation on February 9, 2016.⁵⁸

⁵⁰ See Testimony of Mr. Bejarano at 01:59:35.

⁵¹ See Petition for Bill Review, Attachment 1.

⁵² See Testimony of Mr. Bejarano at 00:30:08.

⁵³ *Id.* at 00:30:17.

⁵⁴ *Id.*, Attachment 2.

⁵⁵ See Finding of Fact #6. *See, also*, Testimony of Mr. Bejarano at 01:13:59.

⁵⁶ See Testimony of Mr. Bejarano at 00:54:45.

⁵⁷ See PREPA Motion to Dismiss, Attachment 4.

⁵⁸ *Id.*, Attachment 8.

25. On March 10, 2016, Mr. Bejarano met with Ms. María de Lourdes Hernández Burgos to discuss his claim.⁵⁹
26. On May 5, 2016, Ms. María de Lourdes Hernández Burgos sent a letter to Mr. Bejarano notifying him that “the person who allegedly consumed the service, currently does not have an open account with PREPA” and, therefore, “the outstanding balance cannot be transferred to that person.” Ms. Hernández Burgos further concluded that, pursuant to Section XII, Article A of Regulation 7982, Mr. Bejarano is responsible for the outstanding balance on his account and the balance was correctly transferred to Ms. Parker’s account. Finally, Ms. Hernandez Burgos offered a payment plan to Mr. Bejarano.⁶⁰
27. On July 4, 2016, Mr. Bejarano met with Carmen Flores Torres, Director of Customer Service at PREPA.⁶¹
28. On July 24, 2016, Ms. Flores sent a letter to Mr. Bejarano concluding that the transfer of the outstanding balance to Ms. Parker’s account was lawful.⁶²
29. On October 24, 2016, Mr. Bejarano was informed by students at the University of Puerto Rico Legal Aid Clinic that he should follow the provisions of Act 33.⁶³
30. On November 2, 2016, Mr. Bejarano received a bill from PREPA (addressed to Ms. Parker) dated October 28, 2016 which showed a previous balance of \$2,488.81 and past due charges of \$17.59.⁶⁴
31. On that same day, Mr. Bejarano requested via internet a review of the October 28, 2016 bill. Specifically, Mr. Bejarano stated:

[P]lease investigate the \$17.59 “Cargo por Atraso” on the invoice dated October 28, 2016. [I]nterest shouldn’t be charged for an amount in dispute. [I]’ve disputed the entire “\$2,363.12” that was put on this account as a “Balance Previo” on the January 16, 2016 bill and that dispute is still pending. [T]here is an open case with the Ombudsman Office.⁶⁵

⁵⁹ See Petition for Bill Review, Attachment 1.

⁶⁰ See PREPA Motion to Dismiss, Attachment 12.

⁶¹ See Petition for Bill Review, Attachment 1.

⁶² See PREPA Motion to Dismiss, Attachment 12.

⁶³ See Petition for Bill Review, Attachment 1. *See, also*, Testimony of Mr. Bejarano at 00:54:45.

⁶⁴ See PREPA Motion to Dismiss, Attachment 3.

⁶⁵ See Petition for Bill Review, Attachment 2. *See, also*, PREPA Hearing Exhibit 1.

32. On November 21, 2016, Mr. Bejarano received an email from “gop”, a customer service representative from PREPA, stating that, “[t]o claim the charges “\$2,363.12” it is required you do it personally in the Commercial Office in San Juan” and that [the personnel at the Commercial Office] would also verify the late payment charges.”⁶⁶

33. On December 16, 2016, Mr. Bejarano responded, via email to servicios@aepr.com, that it was not “convenient for him to go to the Commercial Office and requested the initiation of the investigation of the \$17.56 charge pursuant to Act 33.”⁶⁷

34. On December 20, 2016, “avl”, a customer service representative from PREPA, emailed Mr. Bejarano stating the following:

We regret to inform you that the charges (sic) of \$17.59 cannot be disputed, the charge you wish to dispute have expired[,] the date to be disputed (sic) was before November 20, 2016.”⁶⁸

35. On January 5, 2016, Mr. Bejarano sent an email to servicios@aepr.com indicating that he filed his dispute on November 2, 2016 and requested the issue to be “escalated to [PREPA’s] legal department.”⁶⁹

36. On January 6, 2017, “avl” sent an email to Mr. Bejarano stating that:

We regret to inform you that the late payment charges (sic) of \$17.59 cannot be disputed, our clients may only dispute current monthly charges.”⁷⁰

37. Later that same day, Mr. Bejarano responded via email by stating that he interpreted the prior email sent by PREPA’s representative as an “adverse finding on [Mr. Bejarano’s] Act 33 objection” and requested his case be reviewed by PREPA’s Executive Director, citing Article 3, Section 3(C) of Act 33.”⁷¹

38. Mr. Bejarano and PREPA’s customer service representatives continued to exchange emails whereby Mr. Bejarano repeated his request for the issue to be “escalated to

⁶⁶ See Petition for Bill Review, Attachment 2.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

the legal department”, while PREPA’s representatives once again stated that only current charges could be disputed.⁷²

39. None of the communications sent by PREPA to Mr. Bejarano with regards to his objection of the October 28, 2016 bill advised Mr. Bejarano of the remedies available to him under Act 33 and Regulation 7982 should he not be satisfied with PREPA’s determination.⁷³
40. PREPA’s witness, Ms. Fuentes Amador, testified that customers could file a valid Act 33 objection via the contact form in PREPA’s website.⁷⁴
41. PREPA witness, Ms. Fuentes Amador, testified that Mr. Bejarano’s used the correct procedure to file his November 2, 2016 objection and that such objection was validly filed.⁷⁵
42. PREPA witness, Ms. Fuentes Amador, testified that, regardless of the method of filing (in person, via mail or through the internet) PREPA customer service representatives routinely evaluate each objection to determine whether accept or reject them.⁷⁶
43. Such evaluation includes whether the charges being objected are “current” or “outstanding” and its purpose is to act as a filter.⁷⁷
44. These representatives are authorized by PREPA to reject objections which they deem invalid.⁷⁸
45. PREPA’s witness, Ms. Fuentes Amador, testified that a past due charge (“Cargo por Atraso”) included on a bill is a “current charge” for purposes of determining whether it may be subject to an Act 33 objection.⁷⁹

⁷² *Id.*

⁷³ *Id.* See, also, PREPA Hearing Exhibit 1.

⁷⁴ See Ms. Fuentes’s Testimony at 02:00:00.

⁷⁵ *Id.* at 02:01:10.

⁷⁶ *Id.* at 02:11:29.

⁷⁷ *Id.*

⁷⁸ *Id.* at 02:12:40.

⁷⁹ *Id.* at 02:25:53.

46. PREPA's witness, Ms. Fuentes Amador, testified that PREPA should have accepted and addressed Mr. Bejarano's November 2, 2016 objection.⁸⁰

⁸⁰ *Id.* at 02:37:50.

Exhibit B – Conclusions of Law

1. As Mr. Bejarano filed his objection before Regulation 8863 entered into effect, the applicable legal provisions are those of Act 33 and Regulation 7982.
2. Section 3, subsection (a), of Act 33 states as follows:

After an invoice for the payment of rates, duties, leases and other charges billed for essential services, the subscriber shall have twenty (20) days to pay or raise objections and to request an investigation thereof before the designated official in the local office from which he/she receives the service, who shall be empowered to correct mistakes or overcharges. The objection and the request for an investigation may be made by mail, telephone, and fax or through the Internet, provided the same is submitted to the addresses and/or specific numbers supplied by the Electric Power Authority [...] for these purposes.⁸¹

3. Section XIII, Article A of Regulation 7982 states as follows:

Request for Investigation or Objection of Bill

Customers can object and request an investigation of any charge reflected for the first time on their bill no later than the due date indicated on said bill, which must be at least twenty (20) days after the date the bill was sent. The objection or request for investigation can be filed at any commercial or local office of the Authority, by phone at the Customer Service Center, or by mail, fax, or Internet to the address or telephone numbers provided by the Authority for this purpose. When the request is made in person or over the phone, customers must ask for the claim number as evidence. If the investigation of a charge is requested in time, the service cannot be suspended due to non-payment while the following administrative process for an objection is in progress. The objected amount is not deemed to be a debt until a final decision has been made pursuant to the provisions established in this section.⁸²

4. Under Act 33 and Regulation 7982, PREPA is required to allow customers to file billing objections via the internet.
5. Neither Act 33 nor Regulation 7982 grant PREPA the discretion to unilaterally refuse to accept an objection and conduct an investigation.

⁸¹ 27 L.P.R.A. §262b

⁸² Section XIII, Article A, Regulation 7982, as amended.

6. Any objection filed prior to Regulation 8863 entering into effect must be addressed by PREPA in accordance with the provisions of Act 33 and Regulation 7982.
7. Any determination made by PREPA with regards to an objection filed pursuant to Act 33 and Regulation 7982, including whether the objection was filed on time or whether the charges being objected are “current” or “outstanding”, must be made and notified pursuant to the procedure set forth in Section 3 of Act 33 and Article XIII of Regulation 7982.
8. Any determination made by a PREPA commercial office with regards to an objection filed pursuant to Act 33 and Regulation 7982, including whether the objection was filed on time or whether the charges being objected are “current” or “outstanding”, must be made in writing and must include a notice to the customer regarding their right under Act 33 and Regulation 7982 to seek review before the corresponding regional office, and the corresponding term to do so.
9. If a customer seeks review under Act 33 and Regulation 7982 before the regional office, the determination made by the regional office must be made in writing and must include a notice to the customer regarding their right to seek review before PREPA’s Executive Director, or his/her authorized representative, and the corresponding term to do so.
10. If a customer seeks review under Act 33 and Regulation 7982 before the Executive Director (or his/her authorized representative), PREPA must notify its decision in writing and must include a notice to the customers regarding their right to request to appointment of an Examining Officer.
11. A past due charge (“Cargo por Atraso”) is a current charge which could be objected through Act 33 and Regulation 7982.
12. Mr. Bejarano filed his objection to the October 28, 2016 bill on November 2, 2016, within the 20-day period provided by Act 33 and Regulation 7982. Mr. Bejarano’s objection was correctly filed.
13. In refusing to accept and initiate the bill objection to proceed, PREPA’s customer service representatives deprived Mr. Bejarano of his rights under Act 33 and Regulation 7982.