



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

**MARC BEJARANO  
PETITIONER**

v.

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

**CASE NO.: CEPR-RV-2017-0004**

**SUBJECT:** Resolution to Motion to find in  
Petitioner's favor.

**RESOLUTION**

On February 27, 2017, the Petitioner, Marc Bejarano filed a Petition for Bill Review with the Puerto Rico Energy Commission ("Commission"), against the Puerto Rico Electric Power Authority ("PREPA"). Subsequently, on August 17, 2017, the Commission issued a "Final Resolution and Order" ("Final Resolution") in the instant case. Through the Final Resolution, the Commission ordered PREPA to consider the Petitioner's November 2, 2016 objection and conduct an investigation regarding Petitioner's claims. Since Regulation 8863<sup>1</sup> was not in effect at the time of the Petitioner's objection filing with PREPA, the Commission ordered PREPA to follow the provisions of Act 33<sup>2</sup> and Regulation 7982, granting the petitioner all procedural safeguards contemplated therein.<sup>3</sup>

On February 27, 2018, the Petitioner filed a "Motion to Find in Petitioner's Favor" informing the Commission that PREPA had failed to comply with the Commission's "Final Resolution and Order" and was therefore in breach of such order. Consequently, the Petitioner requested that the Commission rule in his favor and order PREPA to reverse the January 2016 transfer of \$2,363.12 to account 5020841882<sup>4</sup>, credit the account for all interest accrued and completely forgive any claimed debt.<sup>5</sup> On April 4, 2018, PREPA filed a "Motion in Compliance of Order" opposing the Petitioner's request. PREPA alleged that it had just cause to extend the term to comply with the Commission's order based on the devastating effects that hurricane Irma and Maria had on the operation of the public

<sup>1</sup> Regulation on the Procedure for Bill Review and Suspension of Electric Service due to Failure to Pay.

<sup>2</sup> Act 33 of June 27, 1985, Act to Establish the Minimum Procedural Requirements for the Suspension of Essential Public Services, as amended.

<sup>3</sup> Final Resolution and Order, p. 10, August 17, 2017.

<sup>4</sup> According to the Petitioner, this transfer was related to a debt PREPA claimed the Petitioner had with the instrumentality.

<sup>5</sup> Motion to Find in Petitioner's Favor, February 27, 2018.

corporation.<sup>6</sup> PREPA also expressed that answered the Petitioner's objection on March 13, 2018, in compliance with Act 33.<sup>7</sup>

As already stated in the Commission's "Final Resolution and Order", the procedures for reviewing customer billing objections prior to December 31, 2016 are regulated by Act 33. Section 3, subsection (b) of the Act states that "the instrumentality must conclude its investigation and informed it's the result to the customer within the sixty (60) days of the original objection, and in those cases, which might require the instrumentality additional time, if they so determined, it must be done in accordance with Act 170 of 1988."<sup>8</sup>

PREPA ascertains that it is operating in a state of emergency since the passing of Hurricane Irma on September 6, 2017.<sup>9</sup> As such, PREPA contends that there is just cause to extend the sixty-day term to resolve Petitioner's objections. In support to its argument, PREPA expressed that the terms established in Act 33 are directive and can be extended when there is just cause for the delay.<sup>10</sup>

The Supreme Court of Puerto Rico has ruled that, in general, the terms provided to a finder of fact to resolve a matter under his consideration are deem directive.<sup>11</sup> This means that breach of such term is not consider fatal, as it must rely on the compliance of the applicable procedural rules and in the sense of duty of the finder of fact.<sup>12</sup> The exception to the rule is if a lawmaker wishes for a term be fatal or jurisdictional, then he or she must expressly state so in the text of the law.<sup>13</sup>

A jurisdictional term is one that cannot be extended. In other words, a jurisdictional term is not subject to interruption or late fulfillment.<sup>14</sup> In order to determine whether a term is jurisdictional, the finder of fact is called upon to carry out a statutory interpretation, with the ultimate goal of finding the real intention of the lawmaker regarding the applicable term.<sup>15</sup> Due to the serious consequences that carry the determination as to whether a term

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<sup>6</sup> Motion in Compliance of Order, pp. 3 - 4, ¶¶ 12 - 14, April 4, 2018.

<sup>7</sup> *Id.*, p. 4, ¶ 15.

<sup>8</sup> Final Resolution and Order, p. 5, August 17, 2017.

<sup>9</sup> Motion in Compliance of Order, p. 3.

<sup>10</sup> *Id.*

<sup>11</sup> Pueblo v. Mojica Cruz, 115 D.P.R. 569, 574-575 (1984).

<sup>12</sup> Rafael Hernandez Colon, *Derecho Procesal Civil* 1801, 5<sup>a</sup> ed., San Juan, LexisNexis, 2010, p. 198. *See also* Mojica Cruz, *op. Cit.*

<sup>13</sup> *Id.*

<sup>14</sup> Cruz Parrilla v. Dept. de la Vivienda, 184 D.P.R. 393, 403 (2012).

<sup>15</sup> *Id.*




is jurisdictional, the Court has established that it must be clear from the legislative record the intention of the lawmakers as to the fatal characteristic of the term.<sup>16</sup> When the language in an act or a law is clear and creates no doubt as to the purpose, then its own text is the best expression as to the legislative intent.<sup>17</sup>

The instant case differs from cases arising under Act 57-2014<sup>18</sup>. Article 6.27(a)(3) of Act 57-2014 states that PREPA “shall conclude the investigation or administrative procedure, issue the corresponding resolution, and notify the results to the customer within sixty (60) days counted from the date on which the investigation or adjudication process began.” Moreover, Article 6.27(a)(3) also states that if PREPA “fails to issue the referred to resolution or to notify the same to the customer, the dispute shall be adjudicated in favor of the customer.” Therefore, lawmakers imposed a specific and concrete consequence in Act 57-2014 when PREPA fails to resolve a case within the specified term. In contrast, the text of Act 33 explicitly allows the instrumentality to determine whether it would need additional time to conclude the investigation.

Contrary to the sixty-day term PREPA has to resolve an objection under Article 6.27 of Act 57-2014, the sixty-day term established in Act 33 for PREPA to resolve Petitioner’s objection is not jurisdictional. As a consequence, PREPA could extend the terms in Act 33 if there is just cause for such action.

In its Motion in Compliance of Order, PREPA argued that due to the devastation of Hurricanes Irma and Maria, it has been operating in a state of emergency. For this reason, PREPA argues there is just cause to extend the terms established by Act 33 to resolve the Petitioner’s objection. We agree. PREPA demonstrated that there is just cause to extend the sixty-day term established in Act 33 to resolve the Petitioner’s objection. Moreover, according to PREPA, it issued a resolution on the matter on March 13, 2018. Therefore, the Petitioner should follow the procedure established in Regulation 7982 if he wishes to continue the objection process.

For all of the above, the Petitioner’s “Motion to Find in Petitioner’s Favor” is **DENIED**.



Any party adversely affected by this Resolution may file a motion for reconsideration before the Commission, pursuant to Section 11.01 of Regulation 8543 and the applicable provisions of Act 30-2017, as amended, known as the Uniform Administrative Procedure Act for the Government of Puerto Rico (“LPAU”, for its Spanish acronym). Said motion must be filed within twenty (20) days from the date in which copy of this Resolution is notified and such notice is filed in the case docket by the Commission’s Clerk. Any motion for reconsideration must be filed at the Commission Clerk’s Office, located at the Lobby of 268

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> The Puerto Rico Energy Transformation and RELIEF Act, as amended.

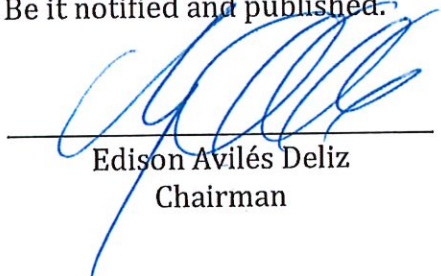


Muñoz Rivera Ave., San Juan, PR 00918. Copy of the motion as filed must be sent by email to all the parties notified of this Resolution within the twenty (20) days established herein.

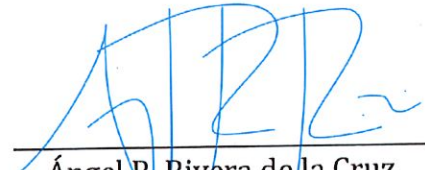
The Commission shall have fifteen (15) days from the date in which such motion is filed to consider it. If the Commission rejects it forthright or fails to consider it within said period of fifteen (15) days, the term to seek judicial review shall begin on the date in which the Commission notifies its 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 Clerk. The Commission shall have ninety (90) days from the date the motion for reconsideration was 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) day term, unless the Commission, for just cause and within those 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 Resolution 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.



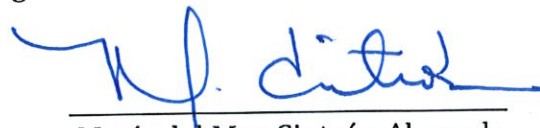
Edison Avilés Deliz  
Chairman



Ángel R. Rivera de la Cruz  
Associate Commissioner

### CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Commission has so agreed on July 31, 2018 and on this date a copy of this Final Resolution regarding Case No. CEPR-RV-2017-0004 was notified by electronic mail to the following: rebecca.torres@prepa.com and energia.pr.gov@beej.org.



María del Mar Cintrón Alvarado  
Clerk




Certify that on July 31, 2018, I have proceeded with the filing of the Resolution 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, July 31, 2018.

  
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María del Mar Cintrón Alvarado  
Clerk