

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



**TAMMY HOFFERT
PETITIONER**

v.

**PUERTO RICO ELECTRIC POWER
AUTHORITY
RESPONDENT**

CASE NO.: NEPR-QR-2018-0063

SUBJECT: Ruling on PREPA's Motion to Dismiss.

FINAL RESOLUTION AND ORDER

On September 11, 2018, the Petitioner, Tammy Hoffert filed a complaint before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") against the Puerto Rico Electric Power Authority ("PREPA"). The Petitioner alleged in her complaint that the meter provided by PREPA in her property was not functioning properly and as a result her electric bill did not reflect the actual power usage.¹ Also, the Petitioner mentioned that, as a result of hurricane Maria, the electric service has been intermittent, with outages lasting weeks on several occasions.²

On October 18, 2018, PREPA filed a document titled *Motion Requesting Dismissal* ("Motion to Dismiss"). Through its Motion to Dismiss, PREPA requested the Energy Bureau to dismiss Petitioner's complaint due to lack of jurisdiction. According to PREPA³, Petitioner did not follow the informal administrative procedure established in Article 6.27 of Act 57-2014⁴.

On January 9, 2019, the Energy Bureau held an Evidentiary Hearing to address PREPA's jurisdictional claim.

After reviewing the Petitioner's complaint and conducting an evidentiary hearing, it became apparent that even though the Petitioner claimed that the electric bills did not reflect

¹ Complaint, p. 1, September 11, 2018.

² *Id.* p. 2.

³ Motion to Dismiss, pp. 2 - 3, ¶¶ 6 - 8.

⁴ Known as *The Puerto Rico Energy Transformation and RELIEF Act*, as amended.

the actual electric consumption in her property, she failed to identify the specific bill or bills that were the subject of the complaint.⁵

Moreover, the Petitioner contends that she visited PREPA's regional office several times to complain about the service bills, and to request a new meter. However, she could not recall the specific dates she visited such offices nor provide a claim number.⁶

Finally, the Petitioner also claimed in her complaint that the meter in her property was malfunctioning.⁷ However, she did not produce any evidence to support her claim regarding the meter. Moreover, the Petitioner asserts in the complaint that two licensed electricians inspected the residence electrical system and could not identify any defects.⁸

Article 6.27 of Act 57-2014 states that "the client may object to or challenge any charges, erroneous calculation of the tariff, mathematical calculation or adjustment of the electrical service invoice, and request an investigation by PREPA or the certified energy company". Article 6.27 also states that before resorting to the Energy Bureau to request review of an electricity bill, every person shall exhaust, before PREPA or any certified electric power service company issuing the same, the informal administrative procedure established therein and the regulations adopted by the Bureau.

Also, regarding the powers delegated to the Bureau to review an agency's decision, Article 6.20 of Act 57-2014 establishes that the provisions of Act 38-2017,⁹ will regulate in a general manner the administrative procedures under Act 57-2014, when said Act does not provide specific provisions in this regard.

LPAU establishes that the adjudication is "the statement whereby an agency determines the rights, obligations or privileges that correspond to a party."¹⁰ The final decision or decision of an agency in an adjudicative procedure is defined as "any specific decision or action applied by an agency which adjudicated certain rights or obligations of one (1) or more persons, specifically, or that imposes administrative penalties or sanctions".¹¹ On the other hand, the Supreme Court of Puerto Rico has established that a final decision is that which disposes of the case before the agency and has adjudicative and

⁵ Evidentiary Hearing, January 9th, 2019, Min. 10:00-13:00.

⁶ *Id.*

⁷ See Complaint, p.1, September 11, 2018.

⁸ *Id.* p.2.

⁹ Known as the Uniform Administrative Procedures Act, as amended ("LPAU", for its Spanish acronym).

¹⁰ *Id.* Sec. 1.3(b).

¹¹ *Id.* Sec. 1.3(f).



dispositive effects on the parties [and] that it culminates in final form the administrative procedure with respect to all controversies.¹² Therefore, a final decision of PREPA on a "complaint" or a "request and investigation" of a client is a pronouncement of the public corporation that completely ends a controversy in relation to any right or obligation that corresponds to the client, on a matter that is under PREPA's jurisdiction.

According to LPAU, a final decision "shall state and explain the findings of fact separately, if these have not been waived, as well as the conclusions of law that support the adjudication, and the availability of the recourse of reconsideration or review, as the case may be."¹³ To that end, the final resolution "shall advise on the right to request reconsideration before the agency or to file a petition for review as a matter of law before the Court of Appeals. It shall also state which parties shall be notified of such petition for review and the terms thereof."¹⁴

Furthermore, Regulation 8863¹⁵, establishes in Section 2.02 that "[a]ll customers must exhaust before the Electric Service Company the Informal Administrative Procedure for objecting Electric Bills established in this Regulation prior to requesting a formal review of any objection from the Energy Bureau."

In the present case, the Petitioner could not provide any type of evidence to show that an informal claim was filed with PREPA.¹⁶ Similarly, PREPA did not find in its records any type of complaint filed by the Petitioner that would have initiated the administrative procedure required by Act 57-2014.¹⁷ Therefore, the Petitioner's complaint did not comply with the legal and regulatory requirements established in Act 57-2014. As such, the Energy Bureau lacks jurisdiction to address the Plaintiff's complaint since the appropriate administrative process required by law and regulation was not exhausted by the Petitioner.

For all of the above, PREPA's Motion to Dismiss is **GRANTED**.

Any party adversely affected by this Resolution may file a motion for reconsideration before the Bureau, pursuant to Section 11.01 of Regulation 8543 and the applicable provisions of Act 38-20178, 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 Resolution is notified and copy of such notice is filed by the Bureau's Clerk. Any motion for reconsideration must be filed at the Energy Bureau Clerk's Office,

¹² *Departamento de Educación v. Sindicato*, 168 DPR 527, 545(2006).

¹³ See Act 38-2017, Sec. 3.14

¹⁴ *Id.*

¹⁵ See *Regulation on the Procedure for Bill Review and Suspension of Electric Service Due to Failure to Pay*, December 1, 2016.

¹⁶ See Evidentiary Hearing, January 9, 2019, Petitioner's Testimony, Min. 10:00-13:00.

¹⁷ See Motion Requesting Dismissal, p. 2, October 18, 2018; Evidentiary Hearing, January 9, 2019, Darleen Fuentes (PREPA Customer Service Supervisor) Testimony, Mins. 13:00-13:20.

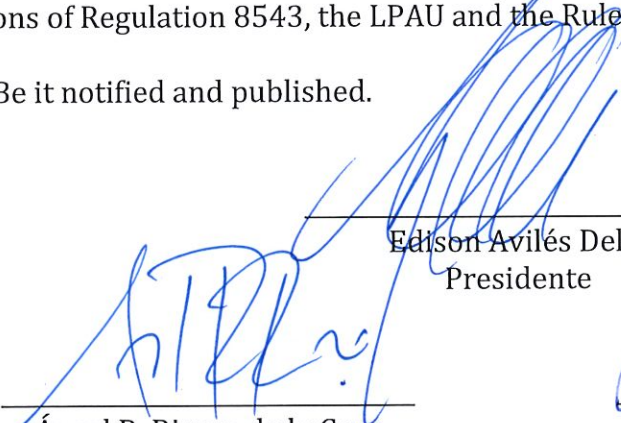


located at Suite 202 of the World Plaza Building, 268 Muñoz Rivera Ave., San Juan, PR 00918. Such motion for reconsideration can also be filed through the Energy Bureau's electronic filing system at <https://radicacion.energia.pr.gov>. Copy of the motion as filed must be sent by email to all the parties notified of this Resolution within the twenty (20) days established herein.

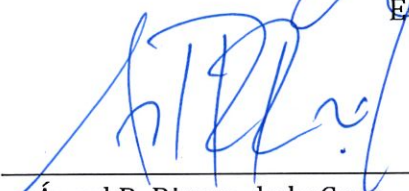
The Bureau shall have fifteen (15) days from the date in which such motion is filed to consider it. If the Bureau rejects it outright or fails to consider it within said period of fifteen (15) days, the term to seek judicial review shall begin on the date in which the Bureau notifies its rejection or the date in which said fifteen (15) days expire, whichever occurs first. If the Bureau considers the motion, the term to seek judicial review shall commence from the date a copy of the notice of the Bureau's resolution definitively resolving the motion for reconsideration is notified of the Bureau's resolution definitively resolving the motion for reconsideration is notified and copy of such notice is filed by the Bureau's Clerk. The Bureau shall have ninety (90) days from the date the motion for reconsideration is filed to issue a final determination. If the Bureau 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 Bureau, 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 Resolution was notified and copy of such notice was filed by the Bureau'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.



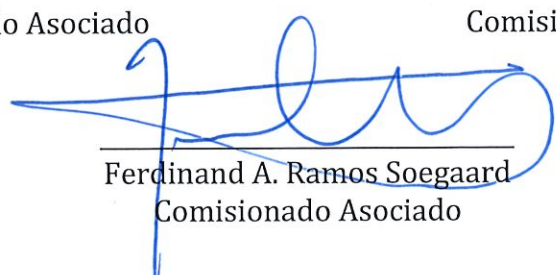
Edison Avilés Deliz
Presidente



Ángel R. Rivera de la Cruz
Comisionado Asociado



Lillian Mateo Santos
Comisionada Asociada



Ferdinand A. Ramos Soegaard
Comisionado Asociado



CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on May 20, 2019. I also certify that on May 21, 2019 a copy of this Final Resolution and Order regarding the Case No. NEPR-QR-2018-0063 was notified by electronic mail to the following: thoffert14@gmail.com and juphoff11076@aeep.com. I also certify that on the same date I have proceeded with the filing of this Final Resolution and Order and I have sent a true and exact copy to the following:

Puerto Rico Electric Power Authority

Lcdo. John Uphoff Figueroa
PO Box 363928
San Juan, PR 00936-3928

Tammy Hoffert

17 Reparto Bella Flores
Aguadilla, P.R. 00603

For the record, I sign this in San Juan, Puerto Rico, today May 21, 2019.

Wanda I. Cordero Morales
Clerk