

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



ZOILA RIVERA BETANCOURT
PLAINTIFF

v.

SUNNOVA ENERGY CORPORATION
DEFENDANT

CASE NO.: NEPR-QR-2021-0001

SUBJECT: Request for Dismissal.

RESOLUTION AND ORDER

I. Introduction

On December 30, 2020, the complainant, Zoila Rivera Betancourt, filed a complaint against Sunnova Energy Corporation ("Sunnova") before the Puerto Rico Energy Bureau ("Energy Bureau") in accordance with the provisions of Regulation No. 8543 on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures. In essence, the complainant argues that the photovoltaic panel system installed by Sunnova on her property does not produce the energy expected and that Sunnova has not provided the adequate maintenance to keep the system functioning properly. For those reasons, the complainant is requesting that Sunnova repairs the system installed in her property so that it produces the energy expected.

On January 28, 2021, Sunnova appeared through its legal representation and filed a *Motion for Dismissal*. Sunnova argues, in short, that the dismissal of the complaint proceeds because the Power Purchase Agreement ("PPA") agreed by the parties regarding the photovoltaic panel system in controversy contains a provision that obliges said parties to resolve disputes arising from the contract through a compulsory arbitration procedure. By virtue of said argument, Sunnova argues that the Energy Bureau lacks jurisdiction to resolve the claim.

On March 11, 2021, the complainant filed a motion to oppose Sunnova's request for dismissal. The complainant argues that Sunnova has not met the terms of the PPA regarding the maintenance of the equipment installed, which she argues resulted in low production and a substantial increase in the cost of energy. The complainant adds that she has complied with the contract until she was left with no other option but to seek the Energy Bureau's legal recourse to help protect her interests.

Upon examining the respective arguments of the parties regarding the request for dismissal presented by Sunnova, as well as the files on record, we proceed to resolve the controversy.

II. Jurisdiction of the Energy Bureau

Section 6.4 (b) of Act 57-2014¹ states that the Energy Bureau shall have general jurisdiction over the following matters:

- (1) The Energy Commission shall have regulatory, investigative and adjudicative jurisdiction over PREPA and any other certified electric power company providing services within the Commonwealth of Puerto Rico.
- (2) Any natural or juridical person that violates the provisions of this Act in connection with energy-related matters or the regulations of the Commission, including any natural or juridical person or entity exercising control over electric power services to commit said violations.
- (3) Any natural or juridical person whose actions affect the provision of electric power services, including any person or entity exercising control over such services to affect the provision thereof.
- (4) Any natural or juridical person that carries out any activity for which a certification, authorization or permit issued by the Commission is needed.
- (5) Any natural or juridical person whose actions or omissions are in prejudice to the activities, resources or interests over which the Commission has regulatory, investigative, adjudicative, or oversight powers, including any person exercising control over electric power services in such a manner as to cause said prejudice.

Also relevant to the matters here discussed, Section 6.3 of Act 57-2014 states that the Energy Bureau has the authority to “[e]stablish and implement regulations and the necessary regulatory actions to guarantee the capacity, reliability, safety, efficiency, and reasonability of electricity rates of Puerto Rico”; “[o]versee the quality and reliability of the electric power services provided by PREPA and any other electric power company certified in Puerto Rico”; “[t]ake any necessary action, in conjunction with the Environmental Quality Board and other regulatory agencies, to regularly evaluate, oversee, and ensure that every certified electric power company complies with Federal and Commonwealth environmental regulations, and with any applicable Federal law”; “[f]ile recourses, issue orders, and seek and grant any legal remedies that may be necessary to enforce the provisions of this Act, as well as its rules, regulations, orders, and determinations”; and “[t]o direct that all actions shall be taken in compliance with the provisions of this Act, the regulations of the

¹ Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended (“Act 57-2014”).



Commission, or any other legal provision whose interpretation and compliance is under the jurisdiction of the Commission”.

In the matter before us, the Energy Bureau has jurisdiction over Sunnova because it is a certified electric service company², and because the Energy Bureau has authority in controversies regarding the regulation and enforcement of the public policy concerning electricity services in Puerto Rico. However, Sunnova maintains that the complaint should be dismissed before our consideration because the PPA in dispute contains a provision that obliges the parties to resolve controversies arising from the contract through compulsory arbitration. By virtue of this argument, they contend that the Energy Bureau lacks jurisdiction to resolve the claim.

After examining Sunnova’s arguments and using as a precedent the FINAL REPORT: IN RE: INVESTIGATION ON SUNNOVA ENERGY CORPORATION, CEPR-IN-2016-0001, issued by the Energy Bureau on February 15, 2020, our interpretation is that the Bureau does have jurisdiction to resolve the dispute before us.

On the aforementioned “FINAL REPORT”, the Energy Bureau determined that the arbitration clause contained in a PPA cannot have the purpose of circumventing the jurisdiction that Act 57-2014 confers on the Bureau to attend to customer claims [from a certified electric service company], as this would clearly be contrary to the law and public order. Moreover, the report discusses that the language of the arbitration clause cannot lead the client to conclude that the only means they have to settle their disputes with the certified electric service company is arbitration.

Regarding the arbitration clause that Sunnova includes in its PPA, which provides that the client has to “SUBMIT ALL DISPUTES OR DISPUTES TO ARBITRATION,” the Energy Bureau determined that “[t]he effect of said language is that all controversies must be submitted to arbitration, without giving the client the option of going to the Bureau to settle disputes”. The Bureau explained how said language can be interpreted as overstepping the provisions contained in Section 6.4 of Act 57-2014, and the public policy of Act 38-2017.³ In other words, the interpretation of the Bureau is that the language of the arbitration clause included in Sunnova’s PPA could be contrary to the law and public order, since it seeks to evade the jurisdiction of the Bureau. It is also mentioned in the report that it is reasonable to conclude that the language of such a clause is not legal and consequently may not be enforceable against Sunnova customers.

As stated before, Section 6.3 of Act 57-2014 establishes that the Energy Bureau has the duty to oversee the quality and reliability of the electricity service provided by certified energy companies in Puerto Rico. Likewise, it confers authority to the Bureau to file recourses, issue orders, and seek and grant any legal remedies that may be necessary to enforce the provisions of Act 57-2014, including ordering the cessation of activities or acts in violation of the provisions of the law that are within the jurisdiction of the Bureau. Otherwise, Section 6.4 (b) of Act 57-2014 confers general jurisdiction to the Bureau over

² Sunnova is certified as an electric service company under docket number CEPR-CT-2016-0002.

³ Known as the *Puerto Rico’s Administrative Procedures Act*.



"any natural or legal person that carries out any activity for which a certification, authorization or endorsement is necessary".

Therefore, taking into consideration the aforementioned precedent, as well as the powers granted to the Energy Bureau by Act 57-2014, our conclusion is that the Bureau has general jurisdiction over the complaint, specifically regarding the public policy concerning electricity services in Puerto Rico that the Bureau is obliged to enforce by virtue of said law. In particular, the Bureau must resolve the complainant's allegation that Sunnova has breached the clauses of the PPA subscribed by the parties.

III. Conclusion

In accordance with the above discussed legal conclusions, the *Motion for Dismissal* filed by Sunnova on January 28, 2021 is **DENIED**. Sunnova is **GRANTED** a term of twenty (20) days, counted from the date of notification of this *Resolution and Order*, to submit their response to the compliant.

Be it notified and published.



William A. Navas García
Examining Officer

CERTIFICATION:

I hereby certify that the Hearing Examiner William Navas García has so agreed on March 16, 2021. I also certify that on this date a copy of this Order regarding the Case No. NEPR-QR-2021-0001 was notified by electronic mail to: zoilariverabetancourt@gmail.com, ivc@mcvpr.com y gnr@mcvpr.com. I have proceeded with the filing of this Order issued by the Puerto Rico Energy Bureau.

For the record I sign this in San Juan, Puerto Rico, today March 16, 2021.



Sonia Seda Gaztambide
Secretaria