

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

**MARC BEJARANO
PETITIONER**

vs.

**PUERTO RICO ELECTRIC POWER
AUTHORITY
RESPONDENT**

CASE NO.: NEPR-RV-2019-0197

ASUNTO: Resolution and Order of Formal
Revision Summary Process.

FINAL RESOLUTION AND ORDER

I. Introduction and Procedural Background:

On September 26, 2019, Petitioner, Marc Bejarano, filed a petition for bill review (“Bill Review”) before the Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau”), against the Puerto Rico Electric Power Authority (“PREPA”), under Article 6.27 of Act 57-2014¹ and Regulation No. 8863 (“Regulation 8863”).²

The Petition relates to past due charges in a bill dated April 17, 2019. The bill is for \$3,293.19 and indicated that the account had a “previous balance” of \$3,185.90 and the Petitioner objects to \$2,707.04 (“Objected Amount”) from the previous balance in this bill.³ To the Bill Review Petitioner attached copies of the following documents: (a) bill dated March 20, 2019; (b) bill dated April 17, 2019; (c) objection email as to \$2,707.04 past due charges, dated May 3, 2019, and sent to servicios@prepa.com;⁴ (d) email from PREPA, dated May 14, 2009, stating: “[...] In order to object the invoice, you must do it through our web page www.aeepr.com. Once you enter your account, on the right select the option ‘Objetar Factura’. You will receive a message with the confirmation of the claim and the case number. [...]”;⁵ (e) email to PREPA, dated May 15, 2019, stating: “hello, PREPA neglected to respond to my request: ‘All Electric Service Companies shall establish at least three (3) distinct means through which their Customers may notify their objections and/or requests for investigation of their Bills.’ please provide these to me.”;⁶ (f) email from PREPA, dated May 22, 2009,

¹ 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 See Part C of *Revisión Formal de Facturas de Servicio Eléctrico Form* filled and filed by Petitioner on September 26, 2019.

⁴ Ibid., Attachment 3.

⁵ Ibid., Attachment 4.

⁶ Ibid., Attachment 5.



stating: “[...] In order to object the invoice, you must do it through our web page www.aeepr.com. Once you enter your account, on the right select the option ‘Objetar Factura’. You will receive a message with the confirmation of the claim and the case number. [...]”;⁷ (g) screenshot of bill objection dated May 20, 2019; (h) PREPA’s initial decision, dated August 6, 2019; (i) Petitioner’s revision request, dated August 8, 2019; and (j) PREPA’s final decision .

Under Section 3.03 of Regulation No. 8543,⁸ on October 16, 2019, the Energy Bureau’s clerk issued a *Citation*, setting the Administrative Hearing for November 1, 2019, at 10:00 a.m. Thereafter, on October 29, 2019, Petitioner moved to request that the proceedings be conducted in the English language.

On October 31, 2019, PREPA filed a document titled *Motion Requesting Dismissal*, arguing that Petitioner is barred by *res judicata* from filing this case in as much as Petitioner seeks a remedy already denied in a previous case before the Energy Bureau, then known as Energy Commission, to wit: Case No. CEPR-RV-2017-0004. PREPA alleges and argues that, while Petitioner claims that Case No. CEPR-RV-2017-0004 is still pending, the Energy Bureau notified its *Final Resolution and Order* on August 17, 2017,⁹ and Petitioner did not seek reconsideration or file a petition for review before the Court of Appeals.¹⁰ Therefore, such *Final Resolution and Orden* is final.¹¹ PREPA also contends that the Finding of Facts in such *Final Resolution and Orden* are deemed proven and constitute *res judicata*;¹² that the facts and legal grounds in both cases are the same;¹³ and, therefore, the present case should be dismissed. With said *Motion*, PREPA filed a copy of the Final Resolution and Orden notified in a Case No. CEPR-RV-2017-0004.

On November 1, 2019, the Energy Bureau held a hearing, in English. Petitioner appeared *pro se*, while PREPA was represented by attorney Rebecca Torres Ondina. During the hearing, since Petitioner had not had time to respond to PREPA’s *Motion Requesting Dismissal* and to ascertain whether the Energy Bureau has jurisdiction to consider this case, Petitioner was granted time to file its response to PREPA’s request for dismissal.

On November 8, 2019, Petitioner filed a document titled *Motion in Opposition to Respondent’s Motion Requesting Dismissal*. In the same, Petitioner contends that, under the

⁷ Ibid., Attachment 6.

⁸ *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*, December 18, 2014.

⁹ See *Motion Requesting Dismissal*, ¶3.

¹⁰ Ibid., ¶5.

¹¹ Ibid.

¹² Ibid., ¶8.

¹³ Ibid., ¶14.



Energy Bureau's Electronic Filing System, such case's status as "Active";¹⁴ and that in March of 2019 PREPA filed a *Motion in Compliance of Order and Requesting Final Closing of the Case* in Case No. CEPR-RV-2017-0004, which has yet to be ruled upon.¹⁵ With his *Motion in Opposition*, Petitioner filed copies of these documents: (a) screenshot of one page from the Energy Bureau's Electronic Filing System, titled "Case Details: CEPR-RV-2017-0004", that shows such case as "Active";¹⁶ (b) *Motion in Compliance of Orden and Requesting Final Closing of the Case* allegedly¹⁷ filed in Case No. CEPR-RV-2017-0004;¹⁸ and (c) bill dated April 17, 2019.¹⁹

On November 25, 2019, PREPA filed a document titled *Motion Response to Opposition by Plaintiff*, where PREPA asserts that in Case No. CEPR-RV-2017-0004 the Energy Bureau "only ordered PREPA to accept Mr. Bejarano's November 2, 2016 objection regarding the amount of \$17.59 'cargos por atraso', which PREPA complied with";²⁰ that "[n]o other orders or remedies regarding other petitions or bill disputes were conceded against PREPA;"²¹ the Objected Amount is not currently in dispute in Case No. CEPR-RV-2017-0004;²² and reiterates the arguments regarding *res judicata* argued in PREPA'S motion requesting dismissal.

II. Applicable Law and Analysis:

Section 1204 of Puerto Rico Civil Code of 1930, 31 L.P.R.A. §3343,²³ applicable to this controversy, provides:

Presumptions established by law may be destroyed by proof to the contrary, except where it is prohibited.

Only a judgment obtained in a suit for revision shall be effective against the presumption of the truth of the *res adjudicata*.

¹⁴ See *Motion in Opposition to Respondent's Motion Requesting Dismissal*, ¶3.

¹⁵ *Ibid.*, ¶¶4 & 5.

¹⁶ *Ibid.*, Attachment 1.

¹⁷ The copy of *Motion in Compliance of Orden and Requesting Final Closing of the Case* attached to Petitioner's *Motion in Opposition to Respondent's Motion Requesting Dismissal* is not stamped by the Energy Bureau.

¹⁸ *Motion in Opposition to Respondent's Motion Requesting Dismissal*, Op. Cit., Attachment 2.

¹⁹ *Ibid.*, Attachment 3.

²⁰ See *Motion Response to Opposition by Plaintiff*, ¶1.

²¹ *Ibid.*

²² *Ibid.*, ¶5.

²³ Civil Code in force at the time of the events in the instant case.



In order that the presumption of the res adjudicata may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes, and persons of the litigants, and their capacity as such.

[...]

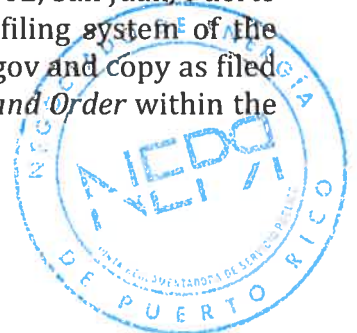
It is understood there is identity of persons whenever the litigants of the second suit are legal representatives of those who litigated in the preceding suit, or when they are jointly bound with them or by the relations established by the indivisibility of prestation's among those having a right to demand them, or the obligation to satisfy the same. (Emphasis added)

In the instant case, Petitioner acknowledges that the Objected Amount in this case, filed in regards with his objection of a bill dated April 17, 2019, are not April 17, 2019 bill's current charges, but past due charges disputed in Case No. CEPR-RV-2017-0004, in which a *Final Resolution and Order* was issued and notified to the Parties on August 17, 2017. Whether or not such previous case is still "Active", a final decision regarding the disputed amount was notified to the Parties, who were duly advised of their right to request reconsideration or file a petition for review before the Court of Appeals. They did not. Therefore, the *Final Resolution and Order* on August 17, 2017 in Case No. CEPR-RV-2017-0004 is final and irrevocable. Since there is "perfect identity between the things, causes, and persons of the litigants, and their capacity as such" between Case No. CEPR-RV-2017-0004 and this case, Petitioner was barred from filing a claim already litigated and adjudicated in a former case.

III. Conclusion

For all these reasons, the Energy Bureau **GRANTS** PREPA's *Motion Requesting Dismissal*. Therefore, the Energy Bureau **DISMISSES** the instant case, regarding the formal bill revision, without prejudice, and Orders the Clerk to close and file the case.

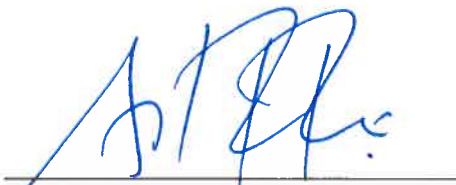
Any party adversely affected by this *Final Resolution and Order* may move for reconsideration before the Energy Bureau, under Section 11.01 of Regulation 8543 and the provisions of Act 38- 2017, known as the Uniform Administrative Procedure Act ("LPAU", for its Spanish acronym). Said motion must be 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 Energy Bureau Clerk. Any motion for reconsideration must be filed at the Energy Bureau Clerk's Office, at the Lobby of 268 Muñoz Rivera Ave., Plaza Level, Ste. 202, San Juan, Puerto Rico 00918. The motion can also be submitted using the electronic filing system of the Energy Bureau at the following address <https://radicacion.energia/pr.gov> and copy as filed must be sent by mail to all the parties notified of this *Final Resolution and Order* within the period established.



The Energy Bureau shall have fifteen (15) days from the date in which such motion is filed to consider it. If the Energy Bureau rejects it outright or fails to consider it within the period of fifteen (15) days, the term to seek judicial review shall begin on the date in which the Energy Bureau notifies its rejection or the date in which said fifteen (15) days expire, whichever occurs first. If the Energy Bureau considers the motion, the term to seek judicial review shall commence from the date a copy of the notice of the Energy Bureau's resolution definitively resolving the motion for reconsideration is notified and copy of such notice is filed by the Energy Bureau's Clerk. The Energy Bureau shall have ninety (90) days from the date the motion for reconsideration is filed to issue a final determination. If the Energy Bureau considers the motion for reconsideration but takes no action regarding 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 the ninety (90) days, unless the Energy Bureau, for just cause and within the ninety (90) days, extends the term to resolve for a period that shall not exceed thirty additional (30) days.

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 Energy Bureau's Clerk. Filing and notice of a petition for review before the Court of Appeals shall be made under the provisions of Section 11.03 of Regulation 8543, the LPAU and the Rules of the Puerto Rico Court of Appeals.

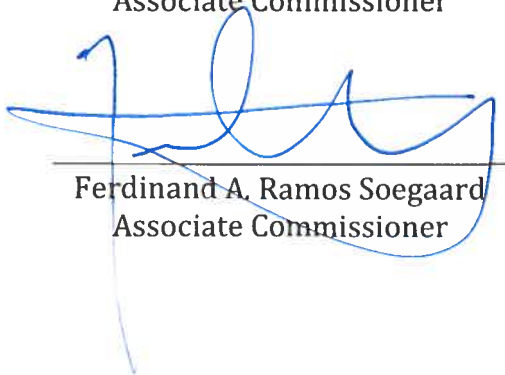
Be it notified and published.



Ángel R. Rivera de la Cruz
Associate Commissioner



Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



Sylvia B. Ugarte Araujo
Associate Commissioner



CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on September 1st, 2021. President Edison Avilés Deliz did not intervene. I also certify that on September 3, 2021 I have proceeded with the filing of the Final Resolution and Order in relation to Case No. NEPR-RV-2019-0197 and it was notified by electronic mail to: rgonzalez@diazvaz.law; and beej@beej.org; and by regular mail to:

Puerto Rico Electric Power Authority
Díaz & Vázquez Law Firm, PSC
Lic. Rafael E. González Ramos
P.O. Box 11689
San Juan, P.R. 00922-1689

Marc Bejarano
2885 Sanford Ave. SW 16917
Grandville, MI 49418-1342

For the record, I sign this in San Juan, Puerto Rico, today September 3, 2021.



Sonia Seda Gaztambide
Clerk

