

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

MARC BEJARANO  
**PETITIONER**

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

v.

**SUBJECT:** Final Resolution and Order.

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

**FINAL RESOLUTION AND ORDER**

**I. Introduction and Procedural Background**

On February 27, 2017, the Petitioner, Mr. Marc Bejarano filed a document titled *Petition for Bill Review* ("Petition") before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") against the Puerto Rico Electric Power Authority ("PREPA"). The Petition relates to a past due charge included in a bill dated October 28, 2016, issued by PREPA. As stated on the Petitioner's online objection filed before PREPA on November 2, 2016, the only amount contested was a late payment charge of \$17.59. Specifically, the Petitioner 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 Ombudsman Office.<sup>1</sup>

That same day, the Energy Bureau issued the Summons in compliance with Section 3.03 of Regulation 8543.<sup>2</sup>

After several procedural incidents, on April 10, 2017, PREPA filed a document titled *Motion Requesting Dismissal*. PREPA argued the Petitioner's claim could not be addressed because the charges had expired. PREPA maintained the Petitioner was attempting to contest outstanding charges, rather than a current charge and, therefore, had no valid claim under Act 33 of June 27, 1985, as amended, ("Act 33") and Chapter XIII of PREPA's Regulation 7982.<sup>3</sup>

On April 19, 2017, the Energy Bureau held a hearing to address: (1) whether it had jurisdiction to consider the dispute of the past due charges contested by the Petitioner; (2) whether there were 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 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 Energy Bureau.<sup>4</sup>

<sup>1</sup> See Petition for Bill Review, Attachment 2.

<sup>2</sup> Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Proceedings ("Regulation 8543").

<sup>3</sup> Regulation on the General Terms and Conditions for the Provisions of Electric Service, as amended ("Regulation 7982").



During the hearing, the Energy Bureau heard testimony from Mr. Bejarano and Ms. Darleen Fuentes Amador, Technical Advisor at PREPA's Customer Service Directorate. Furthermore, the Energy Bureau admitted as evidence a log of emails presented by PREPA as Exhibit 1.

On August 17, 2017, the Energy Bureau issued a Final Resolution and Order ("Final Resolution of August 17, 2017") in the instant case. The Energy Bureau concluded that a past due charge ("Cargo por Atraso") is a current charge which could be objected through Act 33 and Regulation 7982.<sup>4</sup> Furthermore, the Energy Bureau determined the Petitioner filed his objection within the twenty (20) day period provided by said regulations. Consequently, the Energy Bureau ordered PREPA to consider the Petitioner's November 2, 2016 objection and conduct an investigation regarding the Petitioner's claims following the provisions of Act 33 and Regulation 7982.

On February 27, 2018, the Petitioner filed a document titled *Motion to Find in Petitioner's Favor* ("February 27 Motion"), through which he informed the Energy Bureau that PREPA had failed to comply with the Energy Bureau's Final Resolution of August 17, 2017 and was therefore in breach of such order. Thus, the Petitioner requested the Energy Bureau rule in his favor and order PREPA to reverse the transfer of claimed debt of \$2,363.12 to account number 5020841882 in January of 2016, credit the account for all interest accrued, and completely forgive any claimed debt.

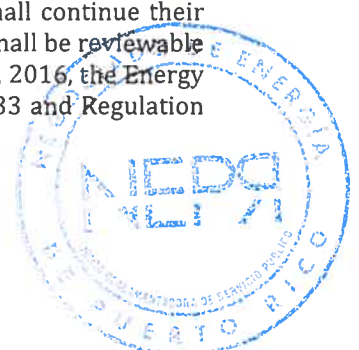
On March 1, 2018, the Energy Bureau ordered PREPA to show cause as to why the Energy Bureau should not find PREPA to be in violation of the Energy Bureau's Final Resolution of August 17, 2017 and impose the applicable administrative fines and penalties.

On April 4, 2018, PREPA filed a document titled *Motion in Compliance of Order*. PREPA asserted that the balance of \$2,363.12 previously under Petitioner's account and transferred to Ms. Parker account on the January 16, 2016 bill, could not be disputed as the Petitioner did not seek the remedies provided by Act 33 to object said charges. Regarding the Petitioner's claim that PREPA was in breach of the Energy Bureau's Final Resolution and Order, PREPA argued that there was just cause to extend the term to comply with the Energy Bureau's directive based on the devastating effects that hurricane Irma and Maria had on the operation of the public corporation. Furthermore, PREPA informed the Energy Bureau that on March 13, 2018 it had issued a determination regarding the Petitioner's bill objection pertaining the late payment charges in the amount of \$17.59 and therefore requested the Energy Bureau to deny the February 27 Motion.

On July 31, 2018, the Energy Bureau denied the February 27 Motion. The Energy Bureau determined that the sixty (60) day term established in Act 33 for PREPA to resolve the Petitioner's objection was not jurisdictional. As a consequence, PREPA could extend the terms in Act 33 if there was just cause for such action. The Energy Bureau further determined that there was just cause to extend the terms established by Act 33 to resolve the Petitioner's objection since, at that time, PREPA had been operating in a state of emergency due to the devastation of Hurricanes Irma and Maria.

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<sup>4</sup> As established in the Final Resolution and Order, since January 1, 2017, the bill review procedure is subject to the provisions of Section 6.27 of Act 57-2014 and Regulation on the Procedure for Bill Review and Suspension of Electric Service Due to Failure to Pay ("Regulation 8863"). However, at the time Mr. Bejarano's request was filed, the provisions of Act 33 and Regulation 7982 were still in effect. 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 57-2014 would enter into effect on the same date in which the regulation on bill review proceedings adopted by the Energy Bureau enters into effect. Regulation 8863, which was adopted by the Energy Bureau 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 Energy Bureau. Since Mr. Bejarano filed his objection before PREPA on November 2, 2016, the Energy Bureau determined the legal provisions applicable to his objection were those under Act 33 and Regulation 7982.



On November 15, 2018, the Petitioner filed a document titled *Second Motion to Find in Petitioner's Favor* ("November 15 Motion"). In the November 15 Motion, the Petitioner argued that PREPA had not issued a determination regarding a request for reconsideration he submitted as part of the aforementioned bill objection procedure and therefore requested the Energy Bureau to order PREPA to respond to said request. Specifically, the Petitioner stated as follows:

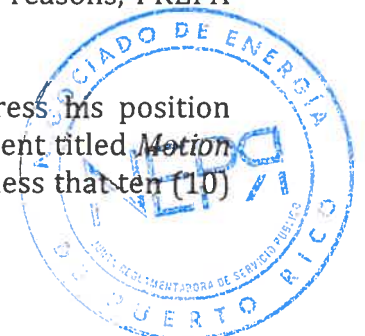
1. On March 28, 2018, I learned that PREPA had attempted to notify Wendy Parker (not myself, the one who filed Act 33 objection) by standard US Mail (not by phone, as I'd explicitly requested multiple times) on March 15, 2018 (judging by the postmark on the envelope addressed to her) about the adverse decision they had taken after their supposed investigation into my billing issue that I'd requested on November 2, 2016.
  2. On March 29, 2018, I filled out the form at <http://www.aeepr.com/Contactenos/contactenosnew.asp> to let PREPA know that I had opted to request a revision of their decision, but their systems failed and I received an error message. That same day, I emailed [SERVICIOS@aeepr.com](mailto:SERVICIOS@aeepr.com) in their own thread that they had started about this dispute letting them know about the error message I had received and asking them to call me with their response.
  3. On April 16, 2018, I learned that PREPA had emailed me a response dated April 11, 2018 telling me "You must request consideration via mail to the same address from the letter the Commercial Office sent you." That same day, I sent a letter via US Postal Service Certified Mail with tracking number 70161970000112915398 to the return address on the envelope of the letter postmarked March 15, 2018 that had been addressed to Wendy Parker.
  4. The US Postal Services online systems state that my letter was delivered to PREPA on April 18, 2018.
  5. As of November 15, 2018, I have yet to receive a response to my request.
- ...

Additionally, the Petitioner requested the Energy Bureau to order PREPA to reverse the transfer of the claimed debt of \$2,363.12 to account number 5020841882 in January of 2016, credit the account for all interest accrued, and completely forgive any claimed debt.

On February 22, 2019, the Energy Bureau ordered PREPA to show cause as to why it had not adjudicated the Petitioner's request for reconsideration within the applicable term, as established by Act 33.

On March 5, 2019, PREPA filed a document titled *Motion in Compliance of Order and Requesting Final Closing of the Case* ("March 5 Motion"). In the March 5 Motion, PREPA argued that the Petitioner did not file a timely request for reconsideration concerning the late payment charges in the amount of \$17.59. According to PREPA, the Petitioner was notified of the decision regarding the \$17.59 bill objection on March 15, 2018, as shown in the postmark. Therefore, PREPA maintained that Mr. Bejarano had until March 25, 2018 to request reconsideration. Considering that the Petitioner's first attempt to request reconsideration took place on March 29, 2018, and in the absence of just cause or excuse, PREPA requested the Energy Bureau deny the Petitioner's claim. PREPA also stated that the \$2,363.12 claim could not progress since the Energy Bureau had ruled that the Petitioner did not seek the remedies provided by Act 33 to dispute said bill. For such reasons, PREPA requested the Energy Bureau to order the final closing of the present case.

On March 15, 2019, the Energy Bureau ordered the Petitioner to express his position regarding the March 5 Motion. On April 3, 2019, Petitioner filed a document titled *Motion for Extension to File Response* through which he requested a period of no less than ten (10)





days to comply with the March 15, 2019 Order in the instant case. The Petitioner alleged that he had requested the assistance of the Independent Consumer Protection Office (“ICPO”).

On April 4, 2019, PREPA filed a document titled *Motion in Opposition of Extension of Time*, through which it argued there was a total absence of just cause in this case to request a time extension. PREPA contended that the Petitioner was currently representing himself and that attorneys from the ICPO office had not yet assumed his legal representation. For that reason, PREPA maintained that the responsibility of complying with the Energy Bureau’s orders fell exclusively on the Petitioner, in which case any delay attributed to a third party not involved in the case did not constitute just cause to provide for an extension of time.

On April 11, 2019, the Petitioner filed a document titled *Petitioner’s Position Regarding PREPA’s Motion in Compliance of Order and Requesting Final Closing of the Case* (“April 11, 2019 Motion”), through which he argued the postmark date should not be deemed the date of delivery.

On June 25, 2019, the Energy Bureau determined the Petitioner did not show just cause for the petitioned time extension and therefore denied his request.

## II. Relevant Facts

On November 2, 2016, the Petitioner filed an objection to the October 28, 2016 electric service bill using the online form provided in PREPA’s website. **The Petitioner only sought review of a \$17.59 late payment charge.** After the Final Resolution of August 17, 2017, PREPA initiated the investigation regarding the \$17.59 late payment charge objection.

On March 15, 2018, as evidenced on the postmark of the envelope, PREPA notified account holder Ms. Wendy Carroll Parker, written notice of the result of its investigation at the mailing address on record.<sup>5</sup> On March 17, 2018, the Petitioner received an automated email notification from the United States Postal Service, through which he was able to digitally preview a grayscale image of the exterior address side of the incoming letter containing PREPA’s determination postmarked March 15, 2018.<sup>6</sup> The notice indicated said letter would be arriving soon to his mailbox.<sup>7</sup>

On March 28, 2018, the Petitioner learned that PREPA had attempted to notify account holder Ms. Wendy Carroll Parker its ruling.<sup>8</sup> On March 29, 2018, the Petitioner made his first attempt to file a request for reconsideration before PREPA regarding the \$17.59 bill objection using PREPA’s website.<sup>9</sup> PREPA’s online system generated a failed message response.<sup>10</sup> As a result, the Petitioner emailed PREPA regarding the error message.<sup>11</sup>

On April 16, 2018, PREPA sent an email to the Petitioner with a response dated April 11, 2018, through which it explained all requests for reconsideration shall be remitted via mail to the same address shown on the letter PREPA notified the result of the investigation. On

<sup>5</sup> See Second Motion to Find in Petitioner’s Favor; Petitioner’s Position Regarding PREPA’s Motion in Compliance of Order and Requesting Final Closing of the Case.

<sup>6</sup> See Petitioner’s Position Regarding PREPA’s Motion in Compliance of Order and Requesting Final Closing of the Case.

<sup>7</sup> *Id.*

<sup>8</sup> See Second Motion to Find in Petitioner’s Favor; Petitioner’s Position Regarding PREPA’s Motion in Compliance of Order and Requesting Final Closing of the Case.

<sup>9</sup> *Id.*

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

<sup>11</sup> *Id.*



that same day, the Petitioner requested reconsideration before PREPA through certified mail.<sup>12</sup>

On April 18, 2018, said request for reconsideration was delivered to PREPA.<sup>13</sup> PREPA did not issue a final decision regarding the Petitioner's request for reconsideration.<sup>14</sup>

Through the November 15 Motion, the Petitioner requested the Energy Bureau order PREPA to issue or give notice of its final decision regarding his request for reconsideration. Additionally, he requested the Energy Bureau to reverse the transfer of claimed debt of \$2,363.12, credit the account for all interest accrued, and completely forgive any claimed debt.

### III. Applicable Law and Analysis

#### 1. Legal Provisions Applicable to Petitioner's November 2, 2016 Objection

As stated by the Energy Bureau in the Final Resolution of August 17, 2017, the facts of the case show the bill review procedure that resulted in Mr. Bejarano's February 27, 2017 petition before the Energy Bureau relates to a bill dated October 28, 2016 and the corresponding bill objection process initiated by Mr. Bejarano before PREPA on November 2, 2016.

As stated before, Regulation 8863, which was adopted by the Energy Bureau 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 or informal procedures initiated under the provisions of Act 33, prior to the effective date of Regulation 8863, shall continue their course before PREPA, since they are protected under the Uniform Administrative Procedure Act. Notwithstanding the above, PREPA's final decisions with respect to the procedures initiated under Act 33 shall be reviewable by the Energy Bureau, in accordance with the provisions of Regulation 8863.

Since the Petitioner 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 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 process for PREPA's review of billing objections:<sup>15</sup>

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.
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**. 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.

<sup>12</sup> *Id.*

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

<sup>14</sup> *Id.*

<sup>15</sup> See Regulation 7982, Section XIII, Article A, subsections 1 – 3. Emphasis provided.



3. 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. 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. 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.

### 3. Jurisdiction

The term jurisdiction has been defined by the Puerto Rico Supreme Court as "the power or authority of a court to resolve cases or controversies."<sup>16</sup> To that end, "[t]he adjudicative forum is called upon to look after its own jurisdiction and refrain from assuming it where the law does not grant it, since any action in the absence of jurisdiction would be null."<sup>17</sup> Moreover, "[i]n the administrative sphere, as in the judicial forum, there is no discretion to assume jurisdiction where there is none."<sup>18</sup>

In relation to the statutory and regulatory terms that the parties have to abide by in a certain process, the Puerto Rico Supreme Court has established a difference between those that are jurisdictional, that is, those terms whose non-compliance prevents judicial review since they deprive the adjudicative forum of jurisdiction, and those that are considered non-jurisdictional, which can be extended.<sup>19</sup> As for jurisdictional terms, these are non-extendable and are not subject to interruption or late compliance.<sup>20</sup> Therefore, "once a term of a jurisdictional nature elapses, the court or agency loses jurisdiction to hear the matter before it."<sup>21</sup>

Because of the consequences of a jurisdictional term, the Puerto Rico Supreme Court has established that "the legislator's intention to impose that characteristic on the term must emerge clearly."<sup>22</sup> In other words, 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>23</sup> As such, when the language in an law is clear and creates no doubt as to its purpose, then its own text is the best expression as to the legislative intent.<sup>24</sup> Therefore, in order to determine whether a term is jurisdictional in nature, one must "perform an exercise of statutory interpretation to find the legislator's clear expression as to the nature of the term."<sup>25</sup> However, if ambiguity is found in the text, the ultimate goal is to ensure the legislative purpose or intent.<sup>26</sup>

On the other hand, "as a general rule, all terms that the rules do not expressly declare to be non-extendable may be extended by the court."<sup>27</sup> However, the Puerto Rico Supreme Court

<sup>16</sup> *Gearheart v. Haskell*, 87 DPR 57, 61 (1963).

<sup>17</sup> *Asoc. Punta las Marías v. ARPe*, 170 DPR 253, 263 (2007).

<sup>18</sup> *Martínez v. Junta de Planificación*, 109 DPR 839, 842 (1980).

<sup>19</sup> *Soto Pino v. Uno Radio Group*, 189 DPR 84, 92 (2013).

<sup>20</sup> *Cruz Parilla v. Dpto. de la Vivienda*, 184 DPR 393, 403 (2012).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* pp. 403 – 404.

<sup>23</sup> *Pueblo v. Mojica Cruz*, 115 DPR 569, 574 – 575 (1984).

<sup>24</sup> *Cruz Parilla v. Dpto. de la Vivienda*, *supra*, pp. 403 – 404.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*





has established that “the appellate forum does not have the discretion to extend such terms automatically.”<sup>28</sup> In order for such terms to be extended, “the party requesting the extension, or acting out of term, is required to show just cause for which it cannot comply with the term set forth.”<sup>29</sup> Moreover, “[t]he party acting late must record the specific circumstances that merit recognition as just cause for extending a non-jurisdictional term.”<sup>30</sup>

Similarly, “[t]he proof of just cause is made with concrete and particular explanations, duly evidenced, that allow the court to conclude that there was a reasonable excuse for the delay.”<sup>31</sup> Therefore, “[t]he vagueness and stereotypical excuses do not meet the requirement of just cause.”<sup>32</sup> Accordingly, in order for a party to be exempted from the requirement to faithfully observe a non-jurisdictional term, two conditions must be present: “(1) that there is indeed just cause for delay; (2) the party must demonstrate in detail to the court the reasonable grounds it has for delay; that is, that the interested party adequately proves the just cause in question.”<sup>33</sup> In the absence of either of these two conditions, there is no discretion to extend non-jurisdictional terms.<sup>34</sup>

4. *Res judicata*

The doctrine of *res judicata* provides that once a final judgment has been entered on the merits of a case, the case is definitely settled between the parties, barring them from relitigating the same claim, or any other claim arising from the same transaction or series of transactions and that could have been, but were not, raised in an earlier suit.<sup>35</sup>

5. *Discussion*

A. *The Petitioner’s objection regarding the outstanding balance of \$2,363.12*

The Petitioner’s objection regarding the outstanding balance of \$2,363.12, previously under Mr. Bejarano’s account and transferred to Ms. Parker’s account on the January 16, 2016 bill, is barred by *res judicata*. Said claim has already been litigated and adjudicated through the Final Resolution of August 17, 2017. The Energy Bureau’s final judgement expressly declared that Mr. Bejarano’s November 2, 2016 bill objection before PREPA, only contended and sought review of the \$17.59 late payment charge.<sup>36</sup> The Energy Bureau further stated, that Mr. Bejarano did not seek the remedies provided by Act 33 to dispute the \$2,363.12 bill before PREPA.

Moreover, if the Petitioner was interested in objecting the \$2,363.12 amount, he should have objected the January 16, 2016 bill, which was the bill in which such amount appears for the first time. There is no evidence in the administrative record of this case regarding the Petitioner’s objection of the January 16, 2016 bill. Such bill became final on February 15, 2016.

<sup>28</sup> *Rojas Lugo v. Axtmayer Enterprises, Inc.*, 150 DPR 560, 564 (2000).

<sup>29</sup> *Cruz Parilla v. Dpto. de la Vivienda*, supra, p. 403.

<sup>30</sup> *Soto Pino v. Uno Radio Group*, supra, pp. 92 – 93.

<sup>31</sup> *Febles v. Romar*, 159 DPR 714, 720 (2003).

<sup>32</sup> *Id.*

<sup>33</sup> *Arriaga v. F.S.E.*, 145 DPR 122, 132 (1998).

<sup>34</sup> *Soto Pino v. Uno Radio Group*, supra, p. 92.

<sup>35</sup> *Parrilla v. Rodríguez*, 163 DPR 263 (2004); *Mun. de San Juan v. Bosque Real, S.E.*, 158 DPR 743 (2003); *Worldwide Food Dis., Inc. v. Colón*, 133 DPR 827, 833-834 (1993); *Vázquez v. A.R.P.E.*, 128 DPR 513 (1991); *Díaz v. Navieras de P.R.*, 118 DPR 297 (1987).

<sup>36</sup> The Energy Bureau concluded that PREPA departed from the procedure established in Regulation 7982 and incorrectly rejected and dismissed Mr. Bejarano’s \$17.59 bill objection. Thus, the Energy Bureau ordered PREPA to initiate an investigation regarding said charges.



Accordingly, the Energy Bureau denied Mr. Bejarano's petition to initiate a formal procedure for the review of those charges. Having obtained a final judgement regarding the \$2,363.12 transfer charge, one that was not subject to judicial review and is, as a consequence, a final and firm determination, Mr. Bejarano is barred from bringing forward and challenging a matter already settled between the parties. As such, the Energy Bureau lacks jurisdiction to review the \$2,363.12 outstanding balance objection brought forward again. Therefore, Mr. Bejarano's request to reverse the transfer of claimed debt in the amount of \$2,363.12 to account number 5020841882, credit the account for all interest accrued, and completely forgive any claimed debt, must be denied due to lack of jurisdiction.

*B. The Petitioner's objection regarding the \$17.59 late payment charge*

Pursuant to Act 33 and Regulation 7982, the commencement of the informal administrative procedure for objecting to electric bills initiates once a customer objects a charge. Once the objection is filed, PREPA must conduct an investigation and notify the result of such investigation within sixty (60) days. 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.

In the instant case, Mr. Bejarano filed his objection before PREPA on November 2, 2016. Accordingly, in compliance with our Final Resolution and Order of August 17, 2017, PREPA initiated the informal administrative procedure for objecting the \$17.59 late payment charge. On March 15, 2018, as evidenced on the postmark of the envelope, PREPA served written notice of the result of its investigation to account holder Ms. Wendy Parker at the mailing address on record. Pursuant to Act 33 and Regulation 7982, Mr. Bejarano had ten (10) days from the date the result of the investigation was notified, to request review before PREPA's regional office. The applicable ten (10) day term began on the date of the postmark found on the envelope carrying said document. Consequently, Mr. Bejarano had until March 25, 2018 to file his motion for reconsideration before PREPA.

On March 28, 2018, the Petitioner learned that PREPA had attempted to notify account holder Ms. Wendy Carroll Parker its ruling. On March 29, 2018, the Petitioner made his first attempt to file a request for reconsideration through PREPA's website. PREPA's online system generated a failed message response to the Petitioner's request. On April 16, 2018, eighteen (18) days after said failed attempt and twenty-two (22) days after the 10-day term expired, Mr. Bejarano mailed his request for reconsideration to PREPA. Therefore, Mr. Bejarano's request for review was submitted late.

The 10-day term to submit a request for review before the regional office is non-jurisdictional. Therefore, it can be extended for just cause. As stated before, the proof of just cause is made with concrete and particular explanations, duly evidenced, that allow the administrative forum to conclude that there was a reasonable excuse for the delay. Vagueness and stereotypical excuses, therefore, are insufficient to meet the requirement of just cause.

Mr. Bejarano failed to show just cause to extend the 10-day term to submit a request for review before the regional office as established in Regulation 7982. The only explanation Mr. Bejarano offered for his tardiness was that PREPA "attempted to notify Wendy Parker (not myself, the one who filed the Act 33 objection) by standard US Mail (not by phone, as I'd explicitly requested multiple times)".<sup>37</sup> We reject Mr. Bejarano's contention and conclude that PREPA effectively notified the result of its investigation to account holder Ms. Wendy Parker at the mailing address on record.

Moreover, Mr. Bejarano was an authorized user on the account.<sup>38</sup> Additionally, the aforementioned procedure for the review of billing objection clearly states that "once an objection is filed, PREPA's commercial office must conduct an investigation and notify, in writing, the result of such investigation". Thus, having notified the result of the

<sup>37</sup> See Second Motion to Find in Petitioner's Favor.

<sup>38</sup> See Final Resolution and Order, Exhibit A – Findings of Facts, Number 18; p. 15.





investigation in writing, Mr. Bejarano cannot assert that PREPA did not abide by such regulation because it didn't notify him by phone. In addition, through the April 11, 2019 Motion, Mr. Bejarano acknowledged that on March 17, 2018, he received an automated email notification from the United States Postal Service, through which he was given notice that the incoming letter containing PREPA's determination would be arriving to his mailbox soon.<sup>39</sup> Nonetheless, despite being served notice thereof, Mr. Bejarano provided no specific grounds as to what impeded or interfered with his efforts to pursue his request for review within the prescribed 10-day term.

Therefore, since Mr. Bejarano filed its request for review outside the prescribed 10-day term, we conclude his request for reconsideration pertaining the \$17.59 late payment charge was untimely. Additionally, Mr. Bejarano did not show just cause as to why his request for review was tardily filed. Consequently, as the Petitioner did not provide just cause to excuse his tardiness, the Energy Bureau has no authority to extend the aforementioned term. In light of the above, not having filed a timely request for reconsideration, Mr. Bejarano's November 15 Motion requesting the Energy Bureau order PREPA to issue its final decision regarding his request for reconsideration must be denied.

#### IV. Conclusion

For all of the above, and in light of the Findings of Facts and Conclusions of Law provided in Attachment A of the present Report, the Energy Bureau **DENIES** the November 15 Motion **ORDERS** the closing and filing of the present case without prejudice.

Any party adversely affected by this Final Resolution may file a motion for reconsideration before the Energy Bureau, pursuant to Section 11.01 of Regulation 8543 and the applicable provisions of Act 38-2017, as amended, known as the Uniform Administrative Procedure Act of the Government of Puerto Rico ("LPAU", for its Spanish acronym). Said motion must be filed within twenty (20) days from the notification date of this Final Resolution. Such request must be filed at the Energy Bureau Clerk's Office, located at the World Plaza Building, 268 Muñoz Rivera Ave., San Juan, PR 00918. Copy of the motion as filed must be sent by email to all parties notified of this Final Resolution within the twenty (20) days established herein.


The Energy Bureau shall have fifteen (15) days from the date in which such motion is filed to consider it. Should the Energy Bureau reject it forthright or fails to act upon it within said period of fifteen (15) days, the term to seek judicial review shall begin on the date in which the Energy Bureau notifies such denial or the date in which said fifteen (15) day term expires, whichever occurs first. If the Energy Bureau considers the motion, the term to seek judicial shall commence from the notification date of such determination. Such resolution shall be issued and filed in the record within ninety (90) days after the motion for reconsideration has been filed. If the Energy Bureau considers the motion to reconsider but takes no action regarding said motion within ninety (90) days of its filing, it shall lose jurisdiction on the motion and the term to seek judicial review shall commence upon the expiration of said ninety (90) day term, unless the Energy Bureau, 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 form the notification date of this Final Resolution and Order. This in accordance with Section 11.03 of Regulation 8543, and the applicable provisions of the LPAU and the Court of Appeals Regulation.

Be it notified and published.



<sup>39</sup> See Petitioner's Position Regarding PREPA's Motion in Compliance of Order and Requesting Final Closing of the Case.



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Edison Avilés Deliz  
Chairman



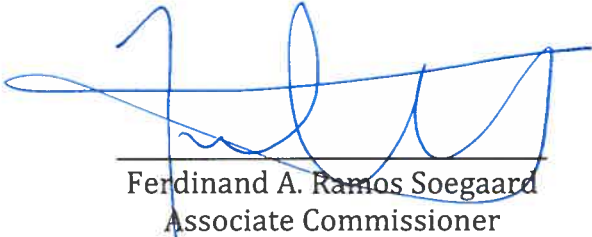
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Angel R. Rivera de la Cruz  
Associate Commissioner



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Lillian Mateo Santos  
Associate Commissioner



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Ferdinand A. Ramos Soegaard  
Associate Commissioner



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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 June 1st, 2022. I also certify that on June 7, 2022, I have proceeded with the filing of this Final Resolution and Order in relation to the Case CEPR-RV-2017-0004 and a copy of this Resolution and Order was notified by electronic mail to [astrid.rodriguez@prepa.com](mailto:astrid.rodriguez@prepa.com), [lionel.santa@prepa.com](mailto:lionel.santa@prepa.com) and by regular mail to:

**Autoridad de Energía Eléctrica de  
Puerto Rico**  
Lic. Astrid Rodríguez Cruz  
Lic. Lionel Santa Crispín  
PO Box 363928  
San Juan, P.R. 00936-3928

**MARC BEJARANO**  
2885 Sandford Ave. SW #16917  
Grandville, MI 49418-1342

For the record, I sign this in Juan, Puerto Rico, today, June 7, 2022.



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Sonia Seda Gaztambide  
Clerk



## ATTACHMENT A

### I. Findings of Facts

1. 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 only sought review of a \$17.59 late payment charge.
2. On March 15, 2018, as evidenced on the postmark of the envelope, PREPA notified account holder Ms. Wendy Carroll Parker written notice of the result of its investigation at the mailing address on record. Mr. Bejarano was an authorized user of the account.
3. On March 17, 2018, the Petitioner received an automated email notification from the United States Postal Service through which he was able to digitally preview a grayscale image of the exterior address side of the incoming letter containing PREPA's determination postmarked March 15, 2018. The notice indicated said letter would be arriving soon to his mailbox.
4. On March 28, 2018, the Petitioner learned that PREPA had attempted to notify account holder Ms. Wendy Carroll Parker the ruling referred to above.
5. On March 29, 2018, the Petitioner made his first attempt to file a request for reconsideration before PREPA regarding the \$17.59 bill objection using PREPA's web services. PREPA's online system generated a failed message response. As a result, Mr. Bejarano emailed PREPA regarding the error message.
6. On April 16, 2018, PREPA emailed Mr. Bejarano a response dated April 11, 2018, through which it instructed him requests for reconsideration shall be remitted via mail to the same address shown on the letter PREPA notified containing the result of the investigation. On that same day, the Petitioner requested reconsideration before PREPA through certified mail.
7. On April 18, 2018, said request for reconsideration was delivered to PREPA.
8. PREPA did not issue a final decision regarding the Petitioner's request for reconsideration.
9. On November 15, 2018, the Petitioner filed a document titled *Second Motion to Find in Petitioner's Favor*. Through said Motion the Petitioner requested the Energy Bureau order PREPA to issue or give notice of its final decision regarding his request for reconsideration. Additionally, he requested the Energy Bureau to reverse the transfer of claimed debt of \$2,363.12, credit the account for all interest accrued, and completely forgive any claimed debt.

### II. Conclusions of Law

1. The Petitioner's objection regarding the outstanding balance of \$2,363.12, previously under Mr. Bejarano's account and transferred to Ms. Parker's account on the January 16, 2016 bill, is barred by *res judicata*. Said claim has already been litigated and adjudicated through a Final Resolution and Order issued by the Energy Bureau on August 17, 2017. Therefore, Mr. Bejarano's request to reverse the transfer of claimed debt of \$2,363.12 to account number 5020841882, credit the account for all interest accrued, and completely forgive any claimed debt, must be denied due to lack of jurisdiction.
2. As Mr. Bejarano filed his objection before Regulation 8863 entered into effect, the applicable legal provisions are those of Act 33 and Regulation 7982.





3. Act 33 states that if a customer is unsatisfied with the result of the investigation, he/she may request review before PREPA within ten (10) days from the date the result of the investigation is notified.
4. Likewise, Section XIII of Regulation 7982 establishes that if a 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.
5. The 10-day term term to request reconsideration before PREPA is a non-jurisdictional term, which may be extended if just cause is shown.
6. On March 15, 2018, as evidenced on the postmark of the envelope, PREPA served written notice of the result of its investigation to account holder Ms. Wendy Parker at the mailing address on record. Mr. Bejarano was an authorized user on said account.
7. Mr. Bejarano had until March 25, 2018 to file his request for reconsideration before PREPA.
8. Mr. Bejarano's March 29, 2018 attempt to file his request for reconsideration using PREPA's web services was outside the regulatory 10-day term.
9. Mr. Bejarano mailed his request for reconsideration to PREPA on April 16, 2018, twenty-two (22) days after the regulatory 10-day term expired.
10. Mr. Bejarano notified PREPA his motion to reconsider outside the regulatory 10-day term, therefore, Mr. Bejarano's request for reconsideration was untimely.
11. Mr. Bejarano did not show just cause as to why his request for reconsideration pertaining the \$17.59 late payment charge was tardily filed. Consequently, the Energy Bureau has no authority to extend the prescribed 10-day term to file a request for review of the commercial office determination.
12. Not having filed a timely request for reconsideration, Mr. Bejarano's November 15 Motion requesting the Energy Bureau order PREPA to issue its final decision regarding his request for reconsideration must be denied.

