

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



PV PROPERTIES, INC.
PETITIONER

CASE NO.: NEPR-QR-2022-0060

v.

MATTER: Final Resolution and Order

PUERTO RICO ELECTRIC POWER
AUTHORITY, LUMA ENERGY, LLC,
LUMA ENERGY SERVCO, LLC
RESPONDENT

FINAL RESOLUTION AND ORDER

I. Introduction and Procedural Background

On October 17, 2022, the Petitioner, PV Properties, Inc. ("PV Properties"), filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a *Complaint* against the Puerto Rico Electric Power Authority ("PREPA"), LUMA Energy, LLC and LUMA Energy ServCo, LLC ("LUMA"), pursuant to Article 5.03 of the Regulation 8863¹.

The Petitioner *Complaint* consisted of a *Motion Requesting Puerto Rico Energy Bureau to Act Concerning Renewable Energy Certificates*. In the motion, the Petitioner expressed that on October 5, 2021, Windmar filed a motion before the Energy Bureau concerning the issue of Renewable Energy Certificates ("REC's") and a year before, Windmar filed a Motion requesting PREPA to offer complete and accurate information concerning distributed energy in Puerto Rico in order to verify compliance with the Renewable Portfolio Standard. Therefore, the Petitioner requests the Energy Bureau order PREPA and LUMA to pay for the REC's before claiming compliance with the Renewable Portfolio Standards (RPS) or stop using unpaid REC-energy as compliant with the RPS law requirements.²

On December 6, 2022, PREPA filed a *Motion to Dismiss for Violation of Automatic Stay* in the above-mentioned case. In the motion, PREPA expressed that PV Properties asks the Energy Bureau to act upon a complaint, about an issue previously decided by the Energy Bureau in cases NEPR-QR-2019-0157 and CEPR-QR-2017-0001. In addition, the Energy Bureau stayed both cases due to the automatic stay afforded to PREPA as part of the Title III Case. Therefore, PREPA requested that the Puerto Rico Energy Bureau dismiss this case with prejudice for violating the automatic stay.³

On December 14, 2022, LUMA filed a *Motion to Dismiss*. In the motion, LUMA expressed that PV Properties lacks standing to file and pursue its claim. In addition, LUMA also expressed that the Title III Court, in its *Opinion and Orden* of September 27, 2021, determined that there is no private right of action and private remedy available to PV Properties to enforce for its own benefit any obligation that PREPA may have to purchase RECs. Therefore, LUMA requested that the Energy Bureau allow LUMA to join PREPA's *Motion to Dismiss for Violation of Automatic Stay* and dismiss the above-mentioned case with prejudice.⁴

On December 14, 2022, the Petitioner filed a Reply to PREPA's *Motion to Dismiss*. In the motion, the Petitioner clarified that the *Motion Requesting Puerto Rico Energy Bureau to Act Concerning Renewable Energy Certificates* does not constitute a request to grant any remedy or payment to PV Properties. In addition, the Petitioner expressed that the *Motion* constitutes a request to the

¹ Regulation No. 8863, on the Procedure for Bill Review and Suspension of Electric Service Due to Failure to Pay, as amended, December 1, 2016.

² Motion Requesting Puerto Rico Energy Bureau to Act Concerning Renewable Energy Certificates, October 17, 2022, pag. 1-32.

³ Motion to Dismiss for Violation of Automatic Stay, December 6, 2022, p.1-64.

⁴ Motion to Dismiss, December 14, 2022, p.1-4.

Energy Bureau to exercise its legal obligations and act regarding the REC's.⁵

On February 27, 2023, the Puerto Rico Energy Bureau held an Evidentiary Hearing in the case of reference.

II. Applicable Regulation

Section 6.4. (a)(3) of Act 57-2014 states that the Bureau shall have primary and exclusive jurisdiction over cases and disputes regarding noncompliance with the public policy on energy of the Commonwealth of Puerto Rico. To that end, Article 1.2(p) establishes as public policy that "Electricity bill or service disputes shall be resolved equitably and diligently." Section 6.4. (a)(2) further extends the primary and exclusive jurisdiction over cases and disputes related to the review of the electricity bills sent by electric power companies' customers for electric power services.

Section 6.01 of Regulation 8543⁶ states that "instead of, or in addition to filing a response to a claim, counterclaim, third-party claim, or crossclaim, any respondent may petition the Energy Bureau for dismissal of the action through a duly founded motion. Respondent may argue on motion that the Energy Bureau lacks personal or subject-matter jurisdiction to address the controversies raised in the complaint, **that the complaint filed against them lacks merit, that it fails to state a claim upon which relief may be granted, or any other applicable ground in accordance with the Law.**"

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The Energy Bureau on two prior occasions, cases NEPR-QR-019-0157 and CEPR-QR-2017-0001, has dealt with the issue of whether PREPA has violated Act 82-2010 by failing to purchase RECs offered by PV Properties. The Energy Bureau stayed both cases due to the automatic stay afforded to PREPA as part of the Title III Case. This case is no different. Therefore, the Energy Bureau sustains its position that the petition regarding the purchase of REC's is stayed by the automatic stay afforded to PREPA as debtor in the proceeding under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA") in the Federal District court for the District of Puerto Rico, under sections 362(a) and 922(a) of the Bankruptcy Code, as incorporated by Section 301(a) of PROMESA, 48 U.S.C 2161. The automatic stay precludes the prosecution of PVP's claim against LUMA as well.

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Furthermore, during the Evidentiary Hearing PV Property admitted that they do not have a valid claim against LUMA or PREPA and that the purpose of the case at hand was to pressure the Energy Bureau to act in regard to the purchase of RECs to comply with the RPS.⁷ Given the statement by PV Properties there is no controversy against the Respondents and the claim is moot.

III. Conclusion

AMH
Based on the above, the Energy Bureau **DISMISSES** this Complaint and **ORDERS** the closure of the case.

AMH
Any party adversely affected by this Final Resolution and Order 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 date in which copy of this Final Resolution and Order is notified and such notice is filed in the case docket by the Energy Bureau's Clerk. Any motion for reconsideration must be filed at the Energy Bureau Clerk's Office, located at the World Plaza Building, 268 Muñoz Rivera Ave., San Juan, PR 00918. Also, such request can be filed through the Energy Bureau's electronic filing tool at: <https://radicacion.energia.pr.gov>. A copy of the motion as filed must be sent by email to all parties notified of this Final Resolution and Order 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. If the Energy Bureau rejects it forthright or fails to consider it within said period of

⁵ Reply to PREPA'S Motion to Dismiss, December 14, 2022, p.1-7.

⁶ Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings, December 1, 2014.

⁷ Evidentiary Hearing, February 27, 2023; Min. 13:00.

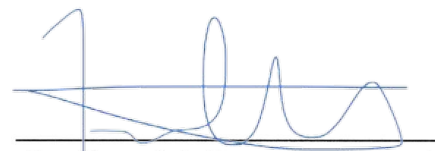


fifteen (15) days, the term to seek judicial review shall begin on the date in which the Energy Bureau notifies its rejection or the date in which said fifteen (15) days expire, whichever occurs first. If the Energy Bureau considers the motion, the term to seek judicial review shall commence from the 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 Clerk. The Energy Bureau shall have ninety (90) days from the date the motion for reconsideration was filed to issue a final determination. If the Energy 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) 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 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 pursuant to the applicable provisions of Regulation 8543, the LPAU the Rules of the Puerto Rico Court of Appeals.

Be notified and published.


Lillian Mateo Santos
Associate Commissioner


Ferdinand A. Ramos Soegaard
Associate Commissioner


Sylvia B. Ugarte Araujo
Associate Commissioner


Antonio Torres Miranda
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on May 30, 2024. The President Edison Avilés Deliz did not intervene. I also certify that today, May 30, 2024, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau. I also certify that on May 30, 2024 a copy of this Final Resolution and Order was notified by electronic mail to the following: margarita.mercado@us.dlapiper.com, mariana.muniz@dlapiper.com, agraifte@agraitlawpr.com, lionel.santa@prepa.com, lionel.santa@prepa.pr.gov, and by regular mail to:


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For the record, I sign this in San Juan, Puerto Rico, today May 30, 2024.


Sonia Seda Gaztambide
Clerk