

□ Procedure No.: PS/00072/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and based on  
to the following:

### BACKGROUND

FIRST: The Association of Consumers and Users in Action (FACUA), acting  
in the name and representation of D. A.A.A. (hereinafter, the claimant) on the 15th of  
November 2019 filed a claim with the Spanish Agency for the Protection of  
Data.

The claim is directed against Curenergia Marketer of Last Resort  
S.A. with NIF A95554630 (hereinafter, the claimed one).

The grounds on which your claim is based are that your  
identity because he did not receive the last two bills from the  
claimed, because the postal address has been modified in them, indicating in the  
themselves the home of his brother.

The claimant provides the following documentation:

Complaint to the National Police dated October 15, 2019.

Invoices of the last four months, in which it is verified that the two

The latter go to an address that the claimant has not provided,  
producing an identity theft.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5  
December, Protection of Personal Data and guarantee of digital rights  
(LOPDGDD), which has provided a mechanism, prior to the admission for processing of the  
claims made before the Spanish Agency for Data Protection,  
consisting of transferring them to the Data Protection Delegates designated by

those responsible or in charge of the treatment, for the purposes provided in article 37

of the aforementioned norm, or to these when they had not been designated, the transfer of the claim presented by the claimant to the claimed, so that it proceeded to its analysis and respond to this Agency within a month.

It is recorded that on April 29, 2020, the respondent responds to the transfer of the claim, stating the following: "That the claimant resided in the home located at \*\*\*ADDRESS.1, as a tenant. that from the month of June 2019 and for unknown reasons, the claimant stops paying the invoices corresponding to the supply, despite the fact that they were coming sending to the same address as always and which corresponds to the point of supply, that is: \*\*\*ADDRESS.1. Attached as document Annex No. 1, the request for payment that is sent to the claimant at the same address as always on June 28, 2019.

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That subsequently, they were sent to the claimant, at the same address as always, the invoices corresponding to the consumption of the following months, this is the invoices dated July 4, and July 19, 2019. They are attached as documents Annexes No. 2 and No. 3.

That the claimant definitively cancels the contract on July 19, 2019, leaving unpaid the last two corresponding invoices.

That in relation to the statement of the claimant regarding the impossibility of paying invoices for not receiving them at home, it is necessary to indicate that, not only is he

sent the payment requirements to their usual address, but also and  
Had that been his true intention, the claimant could also have put  
contact the CURENERGÍA telephone service number or through its  
customer area, to ask the amount of the invoices and even pay them with the  
help from the telephone service, by credit card, bank transfer or  
at any ATM.

That on July 24, 2019, the address is modified for the purposes of  
of notifications, by someone who is accredited by telephone as the owner  
of the contract, for the purpose of paying the invoices pending payment. that the fact of  
that there are third parties with the intention of supplanting identities, is a conduct that  
CURENERGÍA attempts to mitigate by implementing, as has already been reported to  
that Agency in similar files that have resulted in the filing of actions,  
robust mechanisms through which it is ensured that the person requesting  
carrying out any management with respect to your contract, such as a  
change of telephone number, or a change of ownership, or any other management,  
either in person at a service point, by telephone or through your  
online client area, is the owner of the contract, requiring for this certain  
personal information of the owner depending on the requested management.  
However, any person who, due to their relationship with the claimant, has access to  
said data, could supplant your identity without this being the responsibility of  
CURENERGÍA, nor does it imply a violation in the protection of personal data  
as the complainant alleges, since it is something totally alien to CURENERGÍA and its  
verification procedures.

That notwithstanding the foregoing, CURENERGÍA has proceeded and in response  
to the content of this claim, to modify again the address of  
correspondence of the affected contract so that it returns to the address indicated by

the holder, as can be seen in the attached table, as indicated by the same before this Agency.

THIRD: On March 15, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of Article 6.1 of the RGD, typified in Article 83.5 a) of the GDPR.

FOURTH: Once the initiation agreement has been notified, the entity claimed, by means of a letter of dated April 6, 2021, made, in summary, the following allegations:

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“The claimant failed to pay the amount for the electricity supply corresponding to the following invoices: • Invoice with reference number 09190708010052506 issued on July 8, 2019, corresponding to consumption between June 4, 2019 and July 4, 2019. • Invoice with number of reference 09190722010050187, issued on July 22, 2019, corresponding to the consumption between July 4, 2019 and July 19, 2019. 3. The

The aforementioned invoices were issued in the name of the claimant and sent to the address of supply. To this end, attached as documents number one and two are the aforementioned original invoices, stating the aforementioned supply address.

On July 19, 2019, the complainant addressed Iberdrola, in whose Group he integrates CURENERGÍA requesting the resolution of its supply contract referenced as 318852070, to which my client proceeded on that same date.

Attached as document number three, written request for resolution of the contract

formulated by the Claimant, in which a copy of his National Document of Identity, and as document number four, accreditation of the effective processing of the cancellation of the service by means of a copy of the screen in which it appears as the date of cancellation the one already mentioned at this point. 5.

On July 23, 2020, that is, four days after the resolution of the previous contract, who identified himself as D. B.B.B. and claimed to be the owner of the estate in which the claimant resided and with respect to which he had contracted the supply electric went to Curenergia assuming the payment of the unsatisfied receipts for the claimant and requesting registration with Iberdrola Clientes (hereinafter, "IBERCLI") in the supply contract for the home located at \*\*\*ADDRESS.1.

On July 24, 2019, that is, five days after the resolution of the previous contract the person who had assisted you the day before contacted with D. B.B.B., in order to meet the request made by it. In this sense, it is

It is necessary to clarify that in accordance with the provisions of article 83.3 of the Royal Decree 1955/2000, of December 1, which regulates transport activities, distribution, marketing, supply and authorization procedures for electric power installations, in cases where the effective user of the energy, with fair title, is a person other than the owner that appears in the contract, may demand, as long as you are up to date with your payments, the change to your name of the existing contract, without further formalities. Therefore, it is possible for the person who declares to be the user of the energy at a supply point and to have fair title on the property, you can put the contract in your name when there is no debt pre-existing or proceed to pay pending invoices at said point of supply.

Attached as document number five is a recording of said call, of which results in the following extremes: • The accreditation that D. B.B.B. there was requested, the day immediately before, to take charge of the unpaid receipts and

enter into a new contract with IBERCLI (minute 0:36). • In said communication,

it shows that the service had been "deactivated by the tenant"; that is,

by the claimant, since the contract was in his name (minute 4:35). •

On the occasion of said communication, D. B.B.B. requested that they be forwarded to his

address copies of receipts pending payment, in order to prove your cash

payment (minute 0:32). • It was also provided to D. B.B.B., in its capacity as user

energy cash, the CURENERGIA bank account number in which to do

payment of unsatisfied receipts referring to the previously resolved contract, as well

as the reference of the contract, in order to be able to proceed to the payment of the same

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(minute 2:05). • When the contract was terminated, a new one was requested.

regarding the service that had already been discharged by the claimant, granting

said contract, by telephone, by D. B.B.B..

To this end, D.B.B.B. provided as an email address for the

receipt of invoices \*\*\*EMAIL.1, being able to verify that the first three

letters coincide with the initials of the interested party (minute 13:30). • The interested

Likewise, he provided for payment purposes the twenty digits of his current account in order to

direct debit receipts, identifying themselves as C.C.C. (minute 14:30 to 15:10) •

Finally, the conclusion of the contract was recorded, informing the interested party about

of the consultation of credit information systems (minute 16:45), indicating that the

contracting is carried out "today, July 24, 2019 at 11 hours and 32 minutes"

(minute 17:52), expressly referring to the National Identity Document

of the applicant (minute 18:08), indicating the place of the supply point and its

CUPS (minute 18:25) and stating the conditions of the contract.

Likewise, the telephone number of the new owner of the contract and the account

direct debit current of the service (minute 20:50), confirmed by the interested party. 7.

As a consequence of said conversation, he was referred to D. B.B.B. copy of the contract

held on the same date, without there having been the

non-payment of any invoice. For this purpose, documents number six are attached,

seven, and eight copies of the service invoices corresponding to the year 2021, in the

which includes the current account number of the new holder of the contract. Likewise, it

attached as document number nine, proof that it does not exist on the date of

issuance of this writing any debt pending payment by the subscriber, having

All invoices have been paid by the new contract holder.

Likewise, as a consequence of the request mentioned in point 6 above,

CURENERGIA sent to D. B.B.B., at the address that it provided, a copy of the

unpaid invoices, stating in their content the new

address, as the new owner has assumed the payment of pending debts, in his

condition of effective user of energy with just title, which effectively

satisfied.

The change of delivery address of the invoice occurred when assuming the payment of the

same D. B.B.B., on July 24, 2019

It is unequivocally established that the claimant terminated his contract with my principal

on July 19, 2019, not having proceeded, however, to the payment of the

supply made by CURENERGIA and that can be deduced from the invoices provided

also to the procedure by my client. To this end, it should be emphasized that

As can be verified from the aforementioned invoices, the supply was provided

up to said date. This means that from the moment the

low in the contract, requested by the Claimant to my represented, and as evident

As a result of said resolution, the referral to the interested party of

any information or documentation referring to a contract already concluded on the date on which

who appeared at the offices of CURENERGIA.

The owner of the home, in his capacity as an effective user of energy with fair

title, and given the coincidence in the surnames, probably the claimant's brother,

assumed the realization of the aforementioned payments contracting again with my

represented the electrical supply of the house on July 24, 2019, is

that is, after the date of cancellation of the contract, as it could not be of another

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mode, and also after the issuance and dispatch of the last of the invoices

dissatisfied and whose payment was assumed by the new holder.

As a result of the assumption of said payment, two duplicates were issued

of the invoices, which were sent to the address that the owner of the house, who

had assumed his payment, he provided during the telephone conversation with a

representative of Curenergia and that has also been provided along with this

written. In this way, the treatment of the data of the address of the new owner brings

also its cause of the existence of a contractual relationship with the new owner,

given that it assumed, as has been reiterated, the payment of the invoices, having as its only

purpose of being able to provide the payer with proof of satisfied service.

For this reason, in the invoices requested by the claimant one month after

having requested cancellation in the contract, the address of the person who



had actually proceeded to the payment and not that of the complainant, who resolved the contract and did not face the same.

It must be made clear that at the time of conclusion of the contract, the new holder provided all the data necessary to carry out the contract, including the information referring to your National Identity Document, as well as the direct debit account of the receipts in which it appears as the owner and in which the paid for the service without any problem such as as a result of an alleged impersonation of the identity of the new owner or the claimant.

In this way, there has been no impersonation in the present case, but a processing of personal data perfectly lawful and always protected by the existence of a contractual relationship and the fact that unpaid invoices by the Claimant were finally paid by the new holder of the contract, holder of the dwelling of which he was a tenant.

FIFTH: On April 13, 2021, the respondent was notified of the opening of the testing period, considering all the previous actions incorporated, as well as as the documents provided by the claimed entity.

#### PROVEN FACTS

1º On November 15, 2019, the claimant states that he has been supplanted his identity because he has stopped receiving the two last invoices issued by the claimed party, due to the fact that the postal address indicating on them the address of his brother.

2nd It is established that the claimant failed to satisfy two invoices to the claimed one, corresponding to the period from June 4 to July 4, 2019 and from the date prior to July 19 of the same year. The said invoices were issued in the name of the claimant and sent to the supply address.

On July 19, 2019, the claimant requested the termination of the contract of the electrical supply.

3º There is a recording accrediting that on July 23, 2019, whoever identified as D.B.B.B. contacted the claimed party and claimed to be the owner  
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of the farm in which the claimant resided, and went to the claimed one assuming the payment pending invoices and also requested registration in the supply contract for the home located at \*\*\*ADDRESS.1.

4th It is verified that the new holder of the contract made the payment of the two pending invoices, requesting that copies of the receipts pending payment, in order to prove your effective payment.

5º There is a recording of the contract, referring to the DNI, with indication of the place of the supply point and its CUPS and recording the contract conditions. Likewise, the telephone number of the new holder is reiterated.  
of the contract and the direct debit account of the service, confirmed by the interested.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDPGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

## II

Law 39/2015, of Common Administrative Procedure of the Administrations

(LPACAP) establishes in its article 89.1 that "the termination of the

procedure, with filing of the actions, without the need to formulate

of the proposed resolution, when in the instruction of the procedure it is stated

I declare that any of the following circumstances exist:

a) The non-existence of the facts that could constitute the infraction".

## III

The defendant is accused of committing an infraction for violation of Article 6

of the RGPD, "Legality of the treatment", which indicates in its section 1 the assumptions in which

that the processing of third party data is considered lawful:

"1. The treatment will only be lawful if at least one of the following is met  
conditions:

a) the interested party gave their consent for the processing of their data  
personal for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the  
interested party is a party or for the application at the request of the latter of measures  
pre-contractual;

(...)"

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The infringement is typified in Article 83.5 of the RGPD, which considers as such:

"5. Violations of the following provisions will be sanctioned, in accordance

with section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) The basic principles for the treatment, including the conditions for the consent under articles 5,6,7 and 9.”

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements considered very serious" provides:

"1. Based on the provisions of article 83.5 of the Regulation (U.E.) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in it and, in particularly the following:

(...)

b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679.”

IV

In the case at hand, after a detailed study of the documents in the present proceeding, and the allegations of the claimed, we must state that the processing of personal data of the claimant, materialized in the sending to the new holder of the two invoices whose payment had assumed and referred to the contract previously signed with the claimed party, finds its basis of legitimation in art. 6.1 b) of the RGPD insofar as they were necessary for the execution of the electricity supply contract to be signed by the new holder of said contract given the impossibility of contracting if there was

debt associated with the point of supply, as in the present case.

Apart from the legitimacy for the aforementioned treatment, it should be noted that the personal data provided to the new owner of the home's electricity supply were known to him given his status as a family member of the claimant and owner of the property dwelling where the energy service was installed in which the non-payments occurred.

Therefore, the file of this sanctioning procedure proceeds.

Having seen the aforementioned precepts and others of general application, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: FILE sanctioning procedure PS/00207/2020, instructed to

CURENERGIA COMERCIALIZADOR DE LAST RESOURCE S.A., with NIF A95554630, for having proven that he used reasonable diligence.

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SECOND: NOTIFY this resolution CURENERGIA COMERCIALIZADOR DE LAST RESOURCE S.A., with NIF A95554630.

In accordance with the provisions of article 50 of the LOPDPGDD, this

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDPGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

counting from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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