

September 16, 2019

Ralph Kreil
President, Board of Directors
Puerto Rico Electric Power Authority
Santurce, Puerto Rico
VIA ELECTRONIC MAIL

Re: Board Meetings

Mr. Chairman of the Board,

As a member of the Board of Directors of PREPA, with a specific legal mandate - different to the other members - to represent the consumer, I want to bring to the Board a serious concern. It involves our Board compliance with several applicable laws which create the legal and policy framework in which we must operate as a public entity, in order for our actions to be legally correct and binding.

Law 159 of 2013 states in its statement of motives states:

“The times of handling public affairs on dark rooms have to remain in the past. From the Boards of Corporations and Public Instrumentalities, nefarious chapters, of granting excessive productivity bonuses, abusive pensions and countless other negative determinations for our people, have been written. The People must witness the decisions taken within these organizations. For this reason, the Legislative Assembly of the Commonwealth of Puerto Rico, in order to guarantee total transparency in the management of Public Corporations, and taking advantage of the benefits provided by the technology of the 21st Century, order the Public Corporations the transmission through electronic mechanisms of all its ordinary meetings through its Internet portal containing the matters contained in its meetings.”

This law specifically applies to PREPA.

The Public Policy (Art. 2) states:

“Article 2.- Statement of Public Policy

It is declared as public policy of the Commonwealth of Puerto Rico to develop mechanisms of democratic governance, transparency and citizen participation in the administration of all Public Corporations of the Government of the Commonwealth of Puerto Rico.”

The Article 3 states:

“Article 3.- General Provisions

a) Every Public Corporation of the Commonwealth of Puerto Rico is ordered to transmit via Internet, with audio and image, simultaneously to the physical meeting, all the meetings of their respective Boards where the Public Corporation's matters, that not expressly excluded in this Law, are deliberated. The cost of simultaneous transmission shall be as low as possible, safeguarding the audio and video image requirements established by this Law.”

The only exceptions to this binding mandate are in Article 5, which states:

“Article 5.- Exceptions

Internet transmission provided in subsection (a) of Article 3 of this Law shall not be required when:

- a) It is an Emergency Meeting, as defined by this Law.
- b) It is related to a judiciary action, as defined by this Law.
- c) Issues related to internal Human Resources procedures are discussed. This exception will be applicable only when discussing issues of private and identifiable employees, following the established ordinary procedure of sanctions, penalties and / or bonuses; and only when there is a reasonable risk of harming the reasonable expectation of employee privacy. **This exception shall not apply to, and must be transmitted over the Internet, any deliberation on a restructuring of the Public Corporation**, severance payments or bonuses to employees in general, as well as the deliberation on bonuses for productivity.
- d) Issues protected by the Health Insurance Portability and Accountability Act (HIPAA), covered by Rule 506 of the Rules of Evidence of 2009, as amended, related to patient-physician relationship or by Rule 508 of such in relation to the psychotherapist and patient relationship.
- e) It is a commercial or business secret in accordance with Rule 513 of the Puerto Rico Rules of Evidence.
- f) Information on internal investigations of the Public Corporation is discussed as long as said investigation has not been completed. This exception did not include the discussion of the final report and research findings.

- g) Information related to the negotiation strategies of collective agreements or employer-employee disputes are discussed.
- h) Issues on the intellectual property of third parties are discussed.
- i) Public security issues are discussed if these are related to threats against the Public Corporation, its assets or its employees. "

The law is sufficiency detailed to establish the order in which the agenda of the meetings have to develop, Article 6 states:

“Article 6.- Order of proceedings

a) In the event that at any meeting, matters covered by one or more of the exceptions provided by this Act were to be discussed, the Board will hold the meeting, and transmit the same via the Internet, attending in the first instance the matters not excepted. Once the discussion of these matters is completed, the Board will proceed to notify in loud voice that the transmission is completed at that time to address the discussion of matters covered by Article 5 of this Law, identifying the particular paragraph that applies.

Once the transmission of the meeting is over, no matter can be discussed, unless covered by any of the exceptions provided. **Any determination made once the transmission via Internet of the meeting is completed is null.**

The law was amended on the year 2014, with Act 25-2014. The amendment states in the “statement of motives”:

“Now, there should be no doubt that it is the legislative intention of this Seventeenth Legislative Assembly that **all public corporations of the Commonwealth of Puerto Rico that are subject to the provisions of this Law, must transmit the meetings of their respective Boards, without excuses or delays.** As we stated in the Statement of Motives of Act 159-2013: "The times of handling public affairs on dark rooms have to remain in the past." And so it will have to be.”

The substantive rules stay the same as the original law.

The concerns I bring to the Board’s attention is that this Board continuously celebrate executive meetings which are not authorized by the cited law, as exceptions to be public nature of the Board meetings. This practice shall be immediately abandoned, and meetings that are not public and transmitted via internet shall not be conducted. Especially when discussing or approving resolutions related to the awarding of contracts.

This issue was particularly addressed during the Act 190-2006 training held on August 29, 2019 at the Comptroller Office, specifically on the matter related to the approval and discussion of contracts.

Furthermore, this might mean that prior decisions of this Board taken during executive meetings, not transmitted via Internet to the public, and not specifically excluded from this law, might be subject to legal questioning.

In terms of the public access to public to documents, the public policy in of Act 141-2019 confirms that the information and documentation produced by the government is presumed public and accessible to all people. The Public Policy in Article 3 states:

“Article 3.-Public Policy

The following is established as public policy of the Government of Puerto Rico:

- 1) **The information and documentation produced by the government is presumed public and accessible to all people equally.**
- 2) The information and documentation produced by the government in its studies, transactions and in the exercise of public authority, directly or delegated, are the heritage and memory of the people of Puerto Rico.
- 3) The constitutional right of access to information requires government transparency.
- 4) Any information or document that is released, kept or received in any government agency, even if it is in the custody of a third party, is presumed public and must be accessible to the People and the press.”

In regards accessibility and dissemination of information, Article 4 states:

“Article 4.-Routine dissemination of information

In the Government of Puerto Rico, **access to public information will be facilitated and it will be routinely disseminated, through its official electronic pages** and through other means of communication, information on its operation, actions and the results of its management. **The government entity has the duty to disclose on its official website periodically, proactively and updated, information on its operation, the execution and control of delegated functions, as well as any public documentation that is routinely carried out by the entity.** Personnel records or any such information will not be public information.”

Information produced during the Board meetings is public and as such it should be published. This issue was also particularly addressed during the Act 190-2006 training in terms of the Duty of Diligence of the Board. Information in terms of opposition to different discussions and support information used to make informed decisions must also be public, annexing those to the meeting minutes. As such, votes in oppositions of Board members to

different decisions and supporting information discussed during the Board meetings, as the reports presented by the directorates of PREPA, in accordance with current law, must be included as annexes on the meeting minutes.

Finally, the last meeting minutes available at the PREPA web page are from the meetings conducted in March 27 and April 23, 2019. Minutes pertaining to remaining meetings must be posted in the web page of PREPA, considering the points discussed on this letter.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Tomás J. Torres", is written over the printed name.

Tomás J. Torres

Board Member

Consumers Representative

XC: Files, Board Members, Secretary of the Board