

(H. B. 715)  
(Conference)  
(Reconsidered)

**(No. 29-2013)**

(Approved June 25, 2013)

## **AN ACT**

To amend Section 4 of Act No. 83 of May 2, 1941, as amended, known as the “Puerto Rico Electric Power Authority Act,” in order to restructure and reorganize the governing body of the Puerto Rico Electric Power Authority and modify the term of appointment of its members.

### **STATEMENT OF MOTIVES**

This Legislative Assembly has a commitment to the People of Puerto Rico to reexamine the government structures for the purpose of ensuring that they truly represent them; that public instrumentalities operate in an efficient and transparent manner; and that the services offered to citizens are of the best quality possible. Article III, Section 16, of the Constitution of the Commonwealth of Puerto Rico grants the Legislative Assembly one of the most important powers to operate the State: “the power to create, consolidate, or reorganize executive departments and to define their functions.” This is the power to configure the structure of every government agency entrusted with administering public resources, and providing services to all citizens. The manner in which each agency, administration, instrumentality, or public corporation is configured, in regards to the way it works and operates, determines the success or failure of the public policies that justified its creation in the first place.

Public corporations are fundamental pieces of the government structure; for such reason, these corporations have attributes such as their own juridical personalities and various degrees of autonomy in their functioning and operations. The governing boards or bodies of public corporations have duties and powers that, if exercised bearing in mind the socioeconomic impact thereof and aware of their duty to serve the People of Puerto Rico, are critical to make public projects feasible and to maximize the general wellbeing.

The Electric Power Authority is a public corporation created for the purpose of “conserving, developing and utilizing, and aiding in the conservation, development, and utilization of water and energy resources of Puerto Rico, [...] for the purpose of making available to the inhabitants of the Commonwealth, in the widest economic manner, the benefits thereof, and by this means to promote the general welfare and increase commerce and prosperity”. Naturally, for that public corporation to be able to fully meet its objectives, it is necessary that its governing body—the Governing Board—be composed of persons knowledgeable in the fields of engineering, corporate finance, and law.

Since the Act lacks specific requirements regarding the qualifications, preparation, experience, and representativeness of its members, the current structure of the governing body of the Electric Power Authority promotes a random and uncertain configuration; therefore, the composition thereof lacks the representativeness, balance, and qualifications to effectively meet the challenges faced by this government entity relating to its administration and the services it renders in the Island. In seeking to effectively and responsibly achieve the objectives set forth as part of the public policy for the wellbeing of the people, this Legislative Assembly needs to exercise its constitutional prerogative and reorganize the governing body of the Electric Power Authority.

The provisions of the “Puerto Rico Electric Power Authority Act” are hereby adjusted to restructure and reorganize the composition of the governing body of the Puerto Rico Electric Power Authority in order to ensure that this body is composed, at all times, of members that are representative of the people who are affected by the policies implemented by this public corporation, and who have the appropriate education or professional experience so that the public corporation can fully meet its public and legal responsibilities. In accordance with the power vested in the Legislative Assembly by the Constitution of the Commonwealth of Puerto Rico in Article III, Section 16, the restructuring and reorganization of the governing body of the Puerto Rico Electric Power Authority, under the parameters established in this Act, is hereby directed.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Section 4 of Act No. 83 of May 2, 1941, as amended, is hereby amended to read as follows:

“The powers of the Authority shall be exercised, and its general policy shall be determined by the Governing Board, to be known hereafter as ‘the Board.’

(a) Appointment and Composition of the Board.- The Governor of the Commonwealth of Puerto Rico shall appoint, with the advice and consent of the Senate, four (4) out of the nine (9) members, who shall compose the Board, two (2) of which shall be engineers authorized to practice their profession in Puerto Rico, one of which shall be an electrical engineer; one (1) shall be a professional with knowledge and broad experience in corporate finances; and one (1) shall be selected by the Governor from a list of at least ten (10) candidates submitted by professional associations and nonprofit organizations designated by the Governor that are renowned in the fields of economy, planning, public administration, or economic development, or whose members are persons knowledgeable in these fields. Such entities shall have thirty (30) calendar days after the Governor’s

request to submit their candidates. The Governor, at his discretion, shall evaluate the recommendations made by these associations or organizations and choose one (1) person from the list. If the Governor rejects the recommended persons, such associations or organizations shall submit another list within the next thirty (30) calendar days. Of the other five (5) members of the Governing Board, two (2) shall be *ex officio* members and three (3) shall be selected in an election to be supervised by the Department of Consumer Affairs (DACO, Spanish acronym) to be held in accordance with the procedure established in this Section. PREPA shall provide the facilities and financial resources needed for such purposes. Of the three (3) elected members, two (2) members shall represent the interests of residential customers, and one (1) member shall represent the interests of commercial or industrial customers. The Secretary of Transportation and Public Works and the Secretary of the Department of Economic Development and Commerce or the public officials from such agencies designated by said Secretaries shall be *ex officio* members of the Board. The payment of any compensation to the members of the Board is strictly prohibited. Nonetheless, the representatives of customer interests shall be entitled to a reasonable per diem for each day of session they attend, or for each day they carry out tasks entrusted by the Board or its Chair. However, under no circumstances shall a member receive a per diem greater than three hundred dollars (\$300) or less than two hundred dollars (\$200) per day. No member of the Board entitled to a per diem shall receive more than thirty thousand dollars (\$30,000) annually on such account.

The term of appointment of the members elected as customer representatives shall be six (6) years or until their successors take office. The term of appointment of the other four (4) members who are not *ex officio* members shall be four (4) years or until their successors take office.

Any vacancy in the office of the four (4) members appointed by the Governor shall be filled by appointment by the Governor, in accordance with the specifications applicable to the vacant position for the unexpired term of the original appointment. However, any vacancy in the office of the three (3) members elected as customer representatives shall be filled in accordance with the election process regulated by DACO, within one hundred twenty (120) days after the date on which the vacancy occurred and a new six (6)-year term shall begin to run.

No person may become a member of the Board (including the members representing customer interests) if he: (i) is an employee, retiree, or has directly or indirectly any substantial financial interest in any private company with which PREPA has any contracts or with whom it engages in transactions of any kind; (ii) within two (2) years before holding office, has had a business relationship with or any interest in any private company with which PREPA has any contracts or with whom it engages in transactions of any kind; (iii) has been a member of a local or central directing body of a political party registered in the Commonwealth of Puerto Rico during the year immediately preceding his appointment; (iv) is an employee, member, advisor, or contractor of PREPA's labor unions; or (v) has failed to provide the certification of having filed income tax returns during the five (5) preceding taxable years, the no debt certification issued by the Department of the Treasury, the certification of having no debts outstanding with PREPA, the Criminal Record issued by the Puerto Rico Police Department, as well as negative certifications of the Child Support Administration (ASUME, Spanish acronym) and the Municipal Revenues Collections Center (CRIM, Spanish acronym).

In the case of public employees, the time served in the Board's meetings shall be deemed as time worked in the agency, public corporation, or instrumentality of which they are employees.

(b) Organization of the Board; Quorum; Designation of the Executive Director.- Within thirty (30) days after its appointment, the Board shall meet, organize, and select its Chair and Vice-Chair. At that same meeting, it shall appoint and fix the compensation of an Executive Director, and shall also appoint a Secretary, neither of whom shall be a member of the Board. The works of the Board may be carried out in one or more working committees, whose composition and duties shall be determined by the Chair of the Board. The Board may delegate to the Executive Director or other officials, agents, or employees of PREPA such powers and duties as it may deem appropriate. The Executive Director shall be the executive officer of PREPA and shall be responsible for the implementation of its policy and for the general supervision of the operational phases of PREPA. The Board shall be empowered to contract, through the Executive Director, any independent advisors needed from time to time to carry out its duties under this Act in the best manner possible. PREPA shall have a General Auditor who shall be an employee of PREPA, but shall report his findings directly to the Board and have independent judgment. Five (5) members of the Board shall constitute a quorum for the transaction of its business and any other purpose, and every decision shall be made by not less than five (5) Board members.

Regular, special, and committee meetings of the Board shall be private. However, the agendas and minutes of the work of the aforementioned meetings shall be posted on PREPA's webpage once they have been approved by the Board in a subsequent meeting. Prior to the publication of the meeting minutes, the Board must also approve the versions of the minutes to be published which shall suppress (i) confidential information in accordance with the Rules of Evidence; (ii) information related to the negotiation of collective bargaining agreements; (iii) ideas discussed regarding the negotiation of potential PREPA contracts; (iv) information of strategies regarding lawsuits of PREPA;

(v) information of PREPA's internal investigations while these are being conducted; (vi) aspects regarding the intellectual property of third parties; (vii) trade secrets of third parties. The Secretary shall propose for the Board's approval the text of the minutes and the text to be deleted from the version to be published. It shall be understood as 'minute' a written account of the matters transacted, addressed, or agreed on by the Board.

The Executive Director shall post on PREPA's webpage an account of all contracts executed by PREPA, stating the parties, cause, and subject of said contracts.

Once a year, the Board shall hold a public meeting to answer questions and concerns of customers and the citizenry in general. People attending to such meeting may ask questions to the members of the Board about PREPA-related issues. Such meeting shall be notified within at least five (5) business days in advance in a newspaper of general circulation and PREPA's webpage.

The Executive Director shall be charged with the general supervision of the officials, employees, and agents of PREPA. The Executive Director may attend all meetings of the Board but shall not be entitled to vote.

(c) Procedure to elect the three (3) representatives of customers' interests.

(1) DACO shall approve regulations to implement the election procedure provided in this Section. Said regulatory procedure shall comply with the provisions of the Uniform Administrative Procedures Act, Act No. 170 of August 12, 1988, as amended.

(2) On or before one hundred twenty (120) days prior to the expiration of the term of each representative of customer interests in the Governing Board of PREPA, the Secretary of DACO shall issue a notice of elections, in which the requirements to be nominated as a candidate under the categories of representative of residential customers' interests and representative of commercial

or industrial customers' interests shall be specified. The notice of election shall be published by means of media advertisement, on PREPA's and DACO's webpages, and mailed to customers along with PREPA's bill.

(3) The Secretary of DACO shall design and distribute the form of the Request for Nominations, in which every person aspiring to become a candidate shall state under oath, his name, personal circumstances, street and mailing address, telephone number, place of work, profession, education, and PREPA account number. The request for nomination shall include the signature of at least fifty (50) customers, with their name, address, and PREPA account number, who endorse the nomination of the aspirant. The request form shall be available to be fully filled out on digital format by aspirants on PREPA's and DACO's webpages.

The Secretary of DACO shall include in the regulations a mechanism to validate endorsements pursuant to the purposes of this Act. The regulations shall provide that the results of the endorsement validation process shall be certified by a notary. Likewise, such regulations shall include the requirements to be met by candidates in accordance with this Act and other applicable laws. Every candidate must be a *bona fide* PREPA customer.

(4) On or before ninety (90) days prior to the expiration of the term of each representative of customers' interests, the Secretary of DACO shall certify as candidates the seven (7) nominees, under each one of the two customer representative categories, who have submitted the highest number of endorsements and have met all other requirements established in this subsection. Provided, that each one of the selected candidates may designate a person to represent him in the process and during canvassing.



(5) On or before sixty (60) days prior to the expiration of the term of each representative of customers' interests, the Secretary of DACO, in consultation with the Secretary of PREPA's Governing Board, shall continue with the design and printing of ballots, which shall state the deadline to receive ballots in order to begin the canvassing.

(6) Ballots shall be only be distributed by mail along with the electricity bill to each customer. However, prior to commencing the distribution of ballots by mail, the official designated by DACO shall certify the number of printed ballots under oath before a notary. Likewise, the official designated by PREPA shall keep a record of ballots sent and, once the distribution process concludes, shall certify the number of sent ballots under oath before a notary.

(7) Each one of the seven (7) candidates selected for each one of the two customers' interests representative categories shall designate one person to represent him during the process, and such seven (7) persons, together with a representative of the Secretary of DACO and a representative of the Secretary of the Board shall compose the Election Committee, which shall be chaired and directed by the representative of the Secretary of DACO.

(8) The Election Committee shall prepare and prominently post on PREPA's webpage any information of the candidates that enable customers to pass judgment on such candidates' abilities.

(9) The Election Committee shall enter into public service collaboration agreements with the different mass communication media in Puerto Rico to promote the election process among PREPA's customers and to introduce all aspirants under equal conditions.

(10) The Election Committee, within ten (10) days after the deadline to receive ballots, shall begin the canvassing and notify the results thereof to the Secretary of DACO, who shall certify the candidates-elect and notify such certification to the Governor of the Commonwealth of Puerto Rico and the Chair of the Board.”

#### Section 2.- Transitory Provisions.

The Department of Consumer Affairs (DACO) shall amend any regulations regarding the election of members representing customers’ interests in the Electric Power Authority’s Governing Board, pursuant to the provisions of Section 1 of this Act. DACO shall have sixty (60) days as of the approval of this Act to modify the corresponding regulations.

The Electric Power Authority shall amend any regulations regarding the election of members representing customers’ interests in the Electric Power Authority’s Governing Board, pursuant to the provisions of Section 1 of this Act. PREPA shall have sixty (60) days as of the approval of this Act to modify the corresponding regulations.

Both DACO and PREPA shall submit a full report on the changes made to their regulations and the implementation of the provisions set forth herein to the Governor and to the Office of the Clerk of the House and of the Secretary of the Senate within one hundred twenty (120) days after the approval of this Act.

#### Section 3.- Severability Clause

If any clause, paragraph, subparagraph, article, provision, section, or part of this Act were held to be null or unconstitutional by a competent court, said holding shall not affect, impair, or invalidate the remaining provisions of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, article, provision, section, or part thereof thus held to be null or unconstitutional.

#### Section 4.- Effectiveness

This Act shall take effect immediately after its approval. Once this Act becomes effective, the duties of the members of the Board shall cease when their successors take office, except for the members elected as representatives of customers' interests and those members whose professional qualifications are compatible with the requirements of the Governing Board's structure created in this Act. Upon the expiration of the term of appointment of the persons whose designation did not expire as a result of the new organization and structure of such body, their successors shall hold their respective office in the Governing Board for the term applicable to the position, pursuant to the provisions of this Act.

The organization, structure, and appointment of the members of the Governing Board shall commence immediately in accordance with the provisions of this Act.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 29-2013 (H. B. 715) (Conference) (Reconsidered)** of the **1<sup>st</sup> Regular Session** of the **17<sup>th</sup> Legislative Assembly of Puerto Rico**:

**AN ACT** to amend Section 4 of Act No. 83 of May 2, 1941, as amended, known as the “Puerto Rico Electric Power Authority Act,” in order to restructure and reorganize the governing body of the Puerto Rico Electric Power Authority and modify the term of appointment of its members.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 21<sup>st</sup> day of December, 2016.

Juan Luis Martínez Martínez  
Director