

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

NEPR

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**IN RE: GENERA PR, LLC, ELECTRIC
COMPANY CERTIFICATE
APPLICATION**

CASE NO.: NEPR-CT-2023-0001

**SUBJECT: PREPA Governing Board's
vacancies**

**ICSE'S REQUEST FOR THE STAY OF
ILLEGAL GOMA AMENDMENT NEGOTIATIONS**

TO THE HONORABLE ENERGY BUREAU:

Comes now the **Institute of Competitiveness and Economic Sustainability ("ICSE" as its Spanish acronym)**, represented by the undersigned, respectfully states and prays:

On April 21, 2025, ICSE filed its *Request for the Stay of Illegal GOMA Amendment Negotiations*. ICSE brought to the attention of the PREB that according to PREPA's website, there were currently only two members in PREPA's Governing Board, Memphis Cabán Rodríguez and Maricarmen Boria Goitía. Meanwhile, PRPEA's enabling act requires a minimum of four members to constitute the quorum to make decisions that validly bind the public corporation.

Upon a recent review of PREPA's website, ICSE noticed that PREPA has updated its information regarding its Board and now shows a third member as its President: Eduardo Soria Rivera.¹ This, however, is still an insufficient amount of board members.

¹ See: <https://aeepr.com/#/junta> (visited last on May 1, 2025).

As we highlighted in our April 21 Motion, this is not only means that PREPA cannot consent to the proposed amendment to the GOMA, “but the issue transcends the subject matter of this proceeding. It means that PREPA is unable to conduct appropriate oversight of all its responsibilities be them contractual of statutory.” And calls into question the legality of PREPA’s corporate officials.

There has been no appearances by PREPA on this proceeding answering ICSE’s arguments and we would also like to point out that the Bureau’s website does not show ICSE’s April 21 Motion.

The motion stated:

“I. PREPA’s Governing Board of Directors

Act 83 of May 2, 1941, the Puerto Rico Electric Power Authority Act, establishes that its powers “shall be exercised, and its general policy and strategic direction shall be determined by a Governing Board, which shall serve as its governing body.” Section 4, 22 LPRA § 194. Regarding the composition of said Governing Board, the statute provides a maximum of seven (7) members, six (6) of which are to be named by the Governor of Puerto Rico: three (3) are to be confirmed by the Senate and the rest can be named at the sole discretion of the Chief Executive. Id. (a).

The Act requires a minimum of four (4) members to constitute the quorum necessary to conduct the public corporation’s business and any other purpose. Id (b). The Act, however, is silent on how to conduct business when, as is the case now, there are vacancies on the Governing Board.

Professor Carlos Díaz Olivo in his treatise *Corporaciones: Tratado sobre derecho corporativo* states:

For a corporation’s board of directors to make decisions and exercise its powers, the meeting must be duly convened and a quorum must be present. A quorum is the minimum number of individuals who must be present at the start of a meeting for it to be properly constituted and for deliberations and decisions to be validly made. Id, at p. 184 (translation ours).

This raises the question of the legal effect of an overwhelming number of vacancies that renders the corporation unable to meet the statutory quorum requirement. Professor Díaz Olivo’s treatise commenting Article 4.01 (B) of Puerto Rico General Corporations Act, Act 164-2019, 14 LPRA § 3561, argues that “a quorum cannot be

established until the existing vacancies on the board are filed.” Id. (translation ours).

“What is the alternative when quorum is not possible due to vacancies? First, we must refer to the corporations’ bylaws. According to PREPA’s website, the public corporation’s current Bylaws are the ones approved on April 18, 2006, and lastly revised on June 19, 2007. Bylaws mirror PREPA’s enabling act at the time of the bylaws’ approval: “five members, as provided by law, constitute a quorum and all action of the Governing Board shall be taken by not less than five of its members”. Section 2 (a) of PREPA’s Bylaws. The current composition scheme was introduced through Act No. 37 of June 26, 2017.

Both the Enabling Act and PREPA’s Bylaws are silent on what the Governing Board can do in times where there are insufficient members to have quorum. Act 164-2009, that is applicable subsidiarily in corporate matters, provides that the Board of Directors can first fill the vacancies. However, such a rule cannot be deemed applicable to PREPA’s Governing Board, as the power to appoint members lies exclusively with the Governor, subject to Senate’s counsel and confirmation, in the applicable cases.

In conclusion, the Government of Puerto Rico- both the Executive and Legislative Branch- are required to fill the Governing Board’s vacancies. Until that moment, any action purportedly taken by the corporation is null and void or, in other words, constitutes a complete absence of corporate action. This situation even calls into question the appointment of officers such as the Executive Director, since such appointments would lack the required corporate authorization and therefore be ultra vires and null.²

This, in turn, implies that the corporation’s officers lack the legal authority to perform their duties and represent the public corporation.

This is a serious conundrum not only for PREPA but also for this Bureau because PREPA’s appropriate governance is one of the reasons this Bureau was created for in the first place.”

ICSE fact-based claim concerning the nonexistence of a PREPA, legally constituted board, is based on PREPA’s own website and the Official Puerto Rico Senate website concerning appointments by the Governor.

² On PREPA’s website, the last meeting with its corresponding minute is the one celebrated March 25, 2024: <https://aeepr.com/#/resoluciones>. This is contrary to the Puerto Rico Supreme Court’s ruling in *Engineering Services International, Inc. v. PREPA*, 205 DPR 136 (2020).

We recognize that under applicable law there are certain appointments by the Governor to the PREPA Board that do not require Senate confirmation, but there is no record of any such appointment.

WHEREFORE, it is respectfully requested that this Energy Bureau (i) publish *ICSE's Request for the Stay of Illegal GOMA Amendment Negotiations* in the Bureau's website; and (ii) act on the remedies therein requested, that is: (iii) issue an order staying all ongoing or future GOMA amendment negotiations until PREPA's Governing Board is duly constituted in accordance with law; (iv) **stay its own preliminary review or withhold any expressions of preliminary approval.**

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, May 1st, 2025.

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