



Republic of the Philippines  
**National Electrification Administration**

November 23, 2005

**LEGAL ADVISORY NO. 10**

**TO : ALL ELECTRIC COOPERATIVES  
ALL NEA OFFICES CONCERNED**

**SUBJECT : RESPONSIBILITIES OF EC BOARDS**

1. The Boards of ECs should be fully accountable to the member-consumers, act in the best interest of the EC and treat all members and consumers equitably. The EC Board is primarily responsible for the success or failure of the EC and is answerable for this to the EC general membership. EC Board members could even be individually liable if any of the following is proven:
  - a.) Inexcusable/gross negligence or bad faith in directing the affairs of the EC;
  - b.) The board acted beyond its authority/committed ultra vires/illegal acts (board actions in contravention of NEA rules are illegal acts);
  - c.) The act is in violation of general and/or special laws for which criminal, administrative or civil liability is imposed;
  - d.) The EC Director assented to a patently unlawful corporate act;
  - e.) Personal interest has been placed over and above the interest of the EC resulting to damage to the EC, the general membership, or other persons.

The primary responsibility of the EC Board for the success or failure of the EC is anchored on their legal prerogative to exercise all of the powers of the EC not conferred upon or reserved to the members by law or by the EC's Articles of Incorporation or By-laws, which includes the power to hire, discipline, remove or replace the EC General Manager for just cause after observance of due process.

2. The Boards of ECs should carry out their functions of monitoring management and strategic guidance in line with the EC's mandate and objectives and within the parameters set by law and corresponding DOE, NEA, ERC and other implementing rules and regulations. To carry out their role effectively and responsively, the EC Board should actively:

1. Formulate, monitor and review corporate strategy within the framework of the EC's mandate and objectives and in a way that is responsive to the changes and challenges brought by EPIRA;
2. Establish appropriate performance indicators and identify key risks;
3. Monitor the disclosure and communication processes especially on financial and performance results (i.e. systems loss, collection efficiency, etc.);
4. Assess and follow management performance; and
5. Develop effective succession plans for key executives.

One key function of the EC Board is their power to appoint, discipline and dismiss the EC General Manager. This power allows the EC Board unhampered freehand to fully exercise their management monitoring function. This power is one primary reason why the EC Board is responsible, and should feel responsible, for the EC management's performance. This power, however, does not give them the authority or prerogative to interfere in the day-to-day management whether as a body or as individuals. This power, does not carry with it the license to wield it arbitrarily or abusively. It can only be exercised with the best interest of the EC and the general membership, rather than personal, individual or political interest, in mind. Any EC Board or individual board member who exercise this power arbitrarily, abusively or on the basis of interests other than the best interest of the EC and the general membership, may and can be held collectively or individually liable.

3. The Boards of ECs should be composed such that they can exercise objective and independent judgment. While they may have been supported by various interests including politicians/local leaders during election, they owe their loyalty and allegiance to the EC and the general membership from the moment they took their oath of office.

If, for whatever reason, a person or a candidate has reason to believe that he can not exercise objective and independent judgment as an EC Board member, then he should not run for such office, in the first place. Any member of the EC board having any conflicts of interest, is duty-bound to disclose such conflict of interest to the EC Board which must decide how such should be managed.

This objectivity and independence of judgment is indispensable for the EC Board's proper and effective exercise of its duties of monitoring managerial performance, preventing conflicts of interest and balancing competing demands on the EC. All board members should be nominated/screened through a transparent process and it should be clear that it is their duty to act in the best interest of the EC as a whole, rather than acting as individual representatives of the constituencies that elected them. In other words, while the board nomination/screening process should be focused on competence and independence, the EC Board members, in making their decisions, should be focused on the best interest of the EC and the general membership.

EC Board members who possess relevant competence and experience are generally more capable of objective and independent judgment as compared to those who do not have the necessary competence and experience and who mostly rely on third party advices which often times they do not even understand. Considering that ECs will soon be exposed to an

open and competitive market, such EC Board members' competence and experience hand in hand with independent and objective judgment, will certainly be crucial to the survival and success of the EC in the new EPIRA environment.

4. The Boards of ECs, when necessary, should set up specialized committees to support the full board in performing its functions (audit, risk management, information disclosure, remuneration).

The present nomination/screening/election principles and practices currently in effect do not ensure the election of an EC Board that is 100% competent and independent. Yet such competence and independence in the EC board is crucial to its survival and success in the EPIRA environment.

The use of specialized board committees can reinforce both the competency of the EC Board and its independence and legitimacy. Such board committees, composed of both board members and non-members (i.e. executives/employees) can be effective in changing the board culture and, thus, strengthen its independence and legitimacy in areas where there is a potential for conflicts of interests such as on matters relating to procurement (bidding), pending decisions subjected to external pressures (political or otherwise), related party transactions, and remuneration issues.

Since EC board committees are not mandated by law (except for those ECs registered with the Cooperative Development Authority), the EC or the PHILRECA should develop a policy to define cases/situations where the EC would be better off if its Board sets up such specific specialized board committees. This policy should be based on a combination of criteria, including the size of the EC, specific risks the EC is facing, and /or competencies in the EC Board that need to be beefed-up. Large ECs will find it very useful to have an audit committee or equivalent board committee with powers to meet with any officer of the EC and coordinate with the NEA or other external auditor.

It is important that specialized board committees be chaired by a non-executive and include a sufficient number of independent members. The proportion of independent members as well as the type of independence required (i.e. independence from management) will depend on the type of board committee, the sensitivity of the issue to conflicts of interest, among others. The audit committee, for instance, should be composed of only independent and financially and/or technically literate board members. Specialized board committees should have written terms of reference that clearly define their composition, duties and authority. Such committees should report to the board as a body and the minutes of their meetings should be circulated to all the members of the EC Board.

The EC Board's collective responsibility for all matters, nonetheless, remains, with or without such specialized board committees.

5. The Boards of ECs should carry out a periodic evaluation to appraise their performance.

The EC board should institutionalize a systematic board performance evaluation process.

The evaluation should cover both the overall board performance as well as the effectiveness and contribution of individual board members. Such evaluation of individual board members should not, however, impede the desired and necessary collegiality of all work of the EC Board. The evaluation should be carried out under the responsibility of the President and in accordance with best practices. The evaluation should provide input to the review of issues such as board size, composition and allowances/remuneration of board members. The EC Board, in carrying out the evaluation, can seek advice from external and independent experts including regulatory agencies such as the NEA. The results of such evaluation should be reported to the general membership.

An effective and objective board performance evaluation system can bring about the following desirable results:

- a. Highlighting of the responsibilities of the EC Board and the duties of its members;
  - b. Identification of necessary competencies and board members profiles;
  - c. Motivation of individual board members to devote sufficient time and effort to their duties as board members;
  - d. Ability to develop more effective and responsive induction and training programs for both new and old EC Board members;
  - e. Enhancement of professionalism and accountability in the EC Board; and
  - f. Transparency on EC Board performance for a more informed general membership and more intelligent board election decisions.
6. The Boards of ECs should allow employee representatives as observer in the board. Being transparent will go a long way in gaining the trust, support, cooperation and commitment of the employees and even the member-consumers.

For your information and guidance.

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11-29-05

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