



CONFLICT OF INTEREST POLICY – BOARD OF DIRECTORS AND OTHER OFFICIALS

Effective Date Last Revised: -October 16, 2020 TBD

POLICY AT A GLANCE

The PEC Board of Directors governs the business and affairs of the Cooperative with fairness, integrity, and without regard to personal gain. This conflict of interest policy addresses the framework in for how the Board addresses conflicts, appearances of conflicts, and disclosure of necessary information to ensure transparency and integrity in decision-making.

POTENTIAL CONFLICTS ADDRESSED IN THIS POLICY



Employment and Income



Pecuniary Interests



Business Opportunities



Conflicting Interest Transactions



1. PURPOSE

- 1.1. It is the Policy of the Board of Directors ("Board") of Pedernales Electric Cooperative ("PEC" or "Cooperative") to govern the business and affairs of the Cooperative with fairness, integrity, and without regard to personal gain. A conflict of interest generally exists when a Director or certain Cooperative employees have a personal interest in a matter of such nature and magnitude that ~~an antagonism-maya tension~~ -exists between the personal interest and that of the Cooperative. In such cases, a person may not be able to exercise independent and objective judgment on the matter in the best interests of the Cooperative. This Conflict of Interest Policy ("Policy") represents the framework in-for how the Board addresses conflicts, appearances of conflicts, and disclosure of necessary information to ensure transparency and integrity in decision-making.

2. SCOPE

- 2.1. This Policy applies to ~~members~~ Members of the Board and Officials of PEC as identified by ~~the this~~ Policy.
- 2.2. If any portion of this Policy conflicts with the Bylaws of the Cooperative, the Bylaws control.

3. POLICY AND IMPLEMENTATION

- 3.1. Employment and Income.
 - 3.1.1. A Board Director may not be employed by the Cooperative or a Subsidiary.
 - 3.1.2. Former Board Directors shall not be employed or compensated by the Cooperative for any engagement until the fifth anniversary after the last day of service as a Board Director of the Cooperative.
 - 3.1.3. Unless an Official discloses income or employment to the Board and a majority of Disinterested Board Directors authorizes or ratifies the income or employment, the Official:
 - 3.1.3.1. Other than retirement or insurance income from the Cooperative, and other than Board Director or employment compensation from the Cooperative, may not directly or indirectly receive more than ten percent of the Official's annual gross income from Cooperative, a Subsidiary, or a Cooperative or Subsidiary employee;
 - 3.1.3.2. May not directly or indirectly receive more than twenty-five percent of the Official's annual gross income from another Official; or
 - 3.1.3.3. May not have a Related Individual employed by Cooperative or a Subsidiary.
- 3.2. Competition. An Official may not advance the Official's pecuniary interests, or have a Related Person that advances the Related Person's pecuniary interests, by competing with the Cooperative or a Subsidiary, unless:
 - 3.2.1. Any benefit that the Cooperative or the Subsidiary may reasonably expect to derive from the competition outweighs any reasonably foreseeable harm to Cooperative or the Subsidiary from the competition; and

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- 3.2.2. The Official discloses the competition to the Board and a majority of Disinterested Board Directors ~~authorizes~~ authorize or ~~ratifies~~ ratify the competition.
- 3.3. Conflicting Interest Transaction. An Official may not engage in a Conflicting Interest Transaction unless:
- 3.3.1. To the extent unknown by Disinterested Board Directors, the Official discloses the existence and nature of the Official's conflicting interest and all facts known to the Official regarding the Transaction that a Disinterested Board Director would reasonably believe to be material in acting regarding the Transaction;
 - 3.3.2. Disinterested Board Directors deliberate and vote regarding the Transaction outside the presence of, and without participation by, the Official; and
 - 3.3.2.1. A majority of Disinterested Board Directors, but not less than two, ~~authorizes~~ authorize the Transaction; or
 - 3.3.2.2. According to the circumstances at the time the Board considers the Transaction, or at the time the Cooperative or the Subsidiary becomes legally obligated regarding the Transaction, the Transaction, as a whole, benefits the Cooperative or the Subsidiary, considering, as appropriate, whether the Transaction was fair in terms of the Official's dealings with the Cooperative or the Subsidiary and whether the Transaction was comparable to what might have been obtained in an arm's length transaction, given the consideration paid or received by the Cooperative or Subsidiary.
- 3.4. Business Opportunity. An Official may not directly or indirectly take advantage of a Business Opportunity unless, before the Official becomes legally obligated regarding the Opportunity:
- 3.4.1. The Official informs the Cooperative ~~or Subsidiary~~ of the Opportunity; and
 - 3.4.2. To the extent unknown by Disinterested Board Directors, the Official discloses the existence and nature of the Opportunity and all facts known to the Official regarding the Opportunity that a Disinterested Board Director would reasonably believe to be material in acting regarding the Opportunity; Disinterested Board Directors deliberate and vote regarding the Opportunity outside the presence of, and without participation by, the Official; and the Cooperative, by a vote a majority of Disinterested Board Directors, but not less than two, disclaims interest in the Opportunity.
- 3.5. Insider Pecuniary Benefit. An Official may not use Cooperative or Subsidiary property, material private information, or position to secure pecuniary benefit unless:
- 3.5.1. Value is given for the use and assuming the use is a Conflicting Interest Transaction, the Official could engage in the Transaction under this Policy;
 - 3.5.2. The use is payment of compensation or provision of benefits;
 - 3.5.3. The use is of information only and the use is not connected with trading securities, is not a use of proprietary information, and does not harm the Cooperative or Subsidiary;
 - 3.5.4. Assuming the use is a Conflicting Interest Transaction, a majority of Disinterested Board Directors ~~authorizes~~ the Transaction under this Policy; or



- 3.5.5. The benefit is received as a Cooperative ~~member~~Member; made available to all other similarly situated Cooperative ~~members~~Members; and lawful.

4. PROCEDURE RESPONSIBILITIES

- 4.1. The Board ~~shall~~ interprets and enforces this Policy.
- 4.2. The Cooperative's General Counsel or its designee must annually determine ~~Disclosing Employees—which PEC employees constitute Officials,~~ and review this Policy with all Officials.
- 4.3. The minutes of all Board meetings should record all disclosures, votes, authorizations, and other actions taken under this Policy.
- 4.4. Each Official must annually complete and sign the Conflict of Interest Certification and Disclosure Form, attached as Appendix A to this Policy, and deliver the completed and signed Form to the Board President or the CEO.
- 4.5. If an Official discovers any information or fact that could impact another Official's compliance with this Policy, then the Official must disclose the information or fact to the Board President or CEO immediately.
- 4.6. An Official has an obligation to disclose, upon request or otherwise, ~~sufficient~~ sufficient information to determine whether the Official ~~is in 's is in~~ compliance with this Policy. Any Official who is a Board Director ~~has and~~ must comply with the Board Directors' ~~heightened Duty of Candor under law~~ Duty of Loyalty, as required in the Directors' Code of Conduct.
- 4.7. Any person subject to this ~~policy~~ Policy may seek a confidential advisory opinion on compliance with this ~~policy~~ Policy from the General Counsel or other attorney designated by the Board as Cooperative counsel, to the degree such confidence is consistent with the attorney's duties to the Cooperative.

5. DEFINITIONS

- 5.1. **Board Director** - Means a ~~member~~ Member of PEC's Board of Directors.
- 5.2. **Business Opportunity** - Means an opportunity to engage in a business activity, other than an opportunity offered to all similarly situated Cooperative ~~members~~ Members, of which:
- 5.2.1. An Official becomes aware in connection with performing Official functions; under circumstances reasonably indicating that the opportunity was expected to be offered to Cooperative or a Subsidiary; or through using Cooperative or Subsidiary information or property if the Official should reasonably expect the opportunity to interest Cooperative or the Subsidiary; or
- 5.2.2. An Official ~~knows or~~ becomes aware, and ~~knows~~ is closely related to a business in which Cooperative or a Subsidiary is engaged or expects to engage.
- 5.3. **Conflicting Interest Transaction** - Means a financial transaction or proposed financial transaction by Cooperative or a Subsidiary, other than the payment of Official compensation or provision of Official benefits, and other than a transaction offered to all similarly situated Cooperative ~~members~~ Members:



- 5.3.1. To which an Official is a party; or
- 5.3.2. For which, at the time the Board considers the transaction, or at the time the Cooperative or the Subsidiary becomes legally obligated regarding the transaction, an Official had knowledge and a Material Interest known to the Official; or an Official knew that a Related Person was a party or had a Material Interest.
- 5.4. **Control or Controlled** - Means:
 - 5.4.1. Having the direct or indirect power, through ownership of shares or interests, by contract, or otherwise, to elect or remove a majority of an entity's governing body;
 - 5.4.2. Being subject to a majority of the risk of loss from an entity's activities; or
 - 5.4.3. Being entitled to receive a majority of an entity's residual returns.
- 5.5. **Disinterested Board Director** - Means a Board Director who, at the time the Board acts regarding income, employment, competition, a Conflicting Interest Transaction, or a Business Opportunity:
 - 5.5.1. Is not associated with the income, employment, or compensation; is not engaged in the Transaction; and is not taking advantage of the Opportunity; and
 - 5.5.2. Does not have a relationship with an Official associated with the income, employment, or compensation; engaged in the Transaction; or taking advantage of the Opportunity, which relationship would reasonably be expected to impair the objectivity of the Board Director's judgment-~~Opportunity~~.
- 5.6. **Disclosing Employee** - Means the following Cooperative employees:
 - 5.6.1. Executives, including the Chief Executive Officer ("CEO") and other individuals holding chief executive roles with ultimate responsibility for implementing the Board's decisions or supervising the Cooperative's management, administration, operations, financial and accounting, information technology, or legal functions;
 - 5.6.2. Any employee of the Cooperative who is classified or has a job title of Vice President, Director, or similar level within the Cooperative's classification schedule; and
 - 5.6.3. Any other Cooperative employee who:
 - 5.6.3.1. Has a procurement or expenditure delegation of authority of \$250,000 or greater;
 - 5.6.3.2. Has responsibilities, powers, or influence over the Cooperative and manages a segment or activity of the Cooperative representing ten percent or more of the Cooperative's activities, assets, income, or expenses; or has or shares authority to control or determine ten percent or more of the Cooperative's capital expenditures, operating budget, or employee compensation; or
 - 5.6.3.3. Is one of the twenty Cooperative employees with the highest compensation reported to the Internal Revenue Service on Form W-2 and listed in the I.R.S. Form 990.
- 5.7. **Material Interest** - Means an interest in a transaction, financial or otherwise, that would reasonably be expected to impair the objectivity of an Official's judgment regarding the transaction.
- 5.8. **Official** - Means a Board Director ~~and-or a~~ Disclosing Employee of the Cooperative.



- 5.9. Potential Conflict** - Means any circumstance for which a duty to disclose does not currently exist, but that a reasonable person would believe or an Official actually believes is likely to result in a future duty to disclose.
- 5.10. Related Entity** - Means an entity, other than the Cooperative, a Subsidiary, or an entity of which the Cooperative is a ~~member~~Member:
- 5.10.1.** Controlled by an Official or an Official's Related Individual;
 - 5.10.2.** In which an Official owns more than ten percent of the entity's shares or interests;
 - 5.10.3.** For which an Official is a general partner or ~~member~~Member of the governing body;
 - 5.10.4.** For which an Official is a trustee, guardian, personal representative, or similar fiduciary;
 - 5.10.5.** Employing an Official; or
 - 5.10.6.** Controlled by an entity employing an Official.
- 5.11. Related Individual** - Means an individual:
- 5.11.1.** Who is by blood, marriage, or other legal action: parent, spouse, child, sibling, grandparent, grandchild, aunt, uncle, nephew, niece, first cousin, and corresponding in-law or step relation of an Official or Cooperative employee who is not an Official;
 - 5.11.2.** Residing with an Official or Cooperative employee who is not an Official;
 - 5.11.3.** For whom an Official or Cooperative employee who is not an Official is a trustee, guardian, personal representative, or fiduciary; or
 - 5.11.4.** Employing an Official or Cooperative employee who is not an Official.
- 5.12. Related Person** - Means a Related Entity or a Related Individual.
- 5.13. Subsidiary** - Means an entity Controlled by the Cooperative.

6. POLICY ENFORCEMENT

- 6.1.** If the Board President receives a Conflict of Interest Certification and Disclosure Form (or "Form" as provided Appendix A) disclosing any information or fact that could impact an Official's compliance with this Policy, then, the Board President must distribute the Form to the Board and the CEO. If the CEO or the Board President receives or discovers any other information or fact that could impact any Official's compliance with this Policy, then, respectively, the CEO must disclose this information or fact to the Board President and the Board President must disclose this information or fact to the Board.
- 6.2.** Upon receiving or discovering any information or fact that could impact a Board Director's compliance with this Policy, the Board must:
- 6.2.1.** Provide the Board Director an opportunity to comment orally and in writing regarding the information or fact, and an opportunity to be represented by legal counsel; and
 - 6.2.2.** Determine whether the Board Director complies with this Policy.
- 6.3.** If the Board determines that a Board Director does not comply with this Policy, then:
- 6.3.1.** The Board must provide the Board Director an opportunity to comply with this Policy within thirty days; and



- 6.3.2.** If the Board Director does not comply with this Policy within thirty days, then, as allowed by law, the Board may, upon a proper motion by a Board Director, proceed to remove the Board Director under Article III, Section 5 of the Bylaws.
- 6.4.** Upon receiving or discovering any information or fact that could impact any other Official's compliance with this Policy, the Board must act as appropriate or authorize the CEO to act as appropriate.
- 6.5.** Any ~~Cooperative Employee Senior Leader~~ Official who is subject to this Policy must comply with all applicable provisions of this Policy. Failure to comply with this Policy may result in disciplinary action, up to and including termination.

7. REFERENCES AND RELATED DOCUMENTS

[PEC Bylaws](#)

[Directors' Code of Conduct](#)

[Conflict of Interest Certification and Disclosure Form](#)

[Election Policy and Procedures](#)

[I.R.S. Form 990, Return for Organization Exempt from Income Tax](#)

Date adopted:	December 16, 2008
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Effective date:	October 16, 2020 <u>TBD</u>
Approver:	Board of Directors
Applies to:	Board of Directors and Officials
Administrator:	Board of Directors, Chief Executive Officer, and General Counsel
Superseding effect:	This Policy supersedes all previous policies and memoranda concerning the subject matter. Only the Approver may authorize exceptions to this Policy.



APPENDIX A

CONFLICT OF INTEREST CERTIFICATION AND DISCLOSURE FORM

As defined in the Pedernales Electric Cooperative, Inc. Conflict of Interest Policy (Policy), the undersigned Official states:

1. I affirm that I have received or have access to, have read, and understand the most current version of the Policy;
2. I agree to comply with the Policy;
3. Based upon my good faith belief, to the best of my knowledge, and except as disclosed below, I certify that I currently comply with the Policy;
4. I disclose in the space provided below the following information or facts regarding any Potential Conflict or any actual income, employment, compensation, Conflicting Interest Transaction, Business Opportunity, or pecuniary benefit, or other information or fact that could impact my compliance with the Policy. (If you have no Potential or actual information or facts to disclosure, state "**None to Disclose**" in the space provided below.)

5. Upon discovering any information or fact regarding any Potential Conflict or any actual income, employment, compensation, Conflicting Interest Transaction, Business Opportunity, or pecuniary benefit, or other information or fact, that could impact my compliance, or another Official's compliance, with the Policy, I agree to disclose this information or fact to the Cooperative's Board President or Chief Executive Officer; and

Upon not complying with the Policy, I agree to any sanction, disqualification, removal, or other action taken under the Policy, consistent with law and the Cooperative Bylaws.

Printed Name of Official: _____

Position of Official: _____

Date: _____

Signature of Official: _____

