

Conflict of Interest Policy – Board of Directors

PEDERNALES ELECTRIC COOPERATIVE, INC.

1. Purpose:

It is the Policy of the Board of Directors to govern the 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 officers and employees have a personal interest in a matter of such nature and magnitude that an antagonism may exist between 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 represents the framework in how the Board addresses conflicts, appearances of conflicts, and disclosure of necessary information to ensure transparency and integrity in decision-making.

2. Scope:

This Policy applies to members of the Board of Directors and to certain PEC officials, officials or employees identified by the Policy.

2.1 Each Board Director, Officer, Key Employee, Chief Executive Officer, Vice President, Chief Information Officer, Chief Financial Officer, General Counsel, and Director of Pedernales Electric Cooperative, Inc. must comply with this Policy as well as the Cooperative's Code of Ethics.

2.2 If any portion of this Policy conflicts with the Bylaws of the Pedernales Electric Cooperative, Inc., the Bylaws control.

3. Definitions

3.1 Board - means the Pedernales Electric Cooperative, Inc. Board of Directors.

3.2 Board Director - means a member of the Board of Directors

3.3 Business Opportunity - means an opportunity to engage in a business activity, other than an opportunity offered to all similarly situated Cooperative members, of which:

3.3.1 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

3.3.2 An Official becomes aware and knows is closely related to a business in which Cooperative or a Subsidiary is engaged or expects to engage.

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- 3.4 Chief Executive Officer - means the Chief Executive Officer of the Cooperative, or if the Chief Executive Officer's position is vacant, the individual with ultimate responsibility for implementing the Board's decisions or supervising the Cooperative's management, administration, and operations.
- 3.5 Chief Financial Officer - means the Chief Financial Officer of the Cooperative, or if the Chief Financial Officer's position is vacant, the individual with ultimate responsibility for the Cooperative's finance and accounting functions.
- 3.6 Chief Information Officer - means the Chief Information Officer of the Cooperative, or if the Chief Information Officer's position is vacant, the individual with ultimate responsibility for the Cooperative's information technology function.
- 3.7 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:
- 3.7.1 To which an Official is a party; or
 - 3.7.2 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.
- 3.8 Control or Controlled - means:
- 3.8.1 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;
 - 3.8.2 Being subject to a majority of the risk of loss from an entity's activities; or
 - 3.8.3 Being entitled to receive a majority of an entity's residual returns.
- 3.9 Cooperative - means Pedernales Electric Cooperative, Inc.
- 3.10 Director - means any employee of the Cooperative who is classified as a Director or Senior Director within the employee job classification schedule.
- 3.11 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:

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- 3.11.1 Is not associated with the income, employment, or compensation; is not engaged in the Transaction; and is not taking advantage of the Opportunity; and
 - 3.11.2 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 regarding the income, employment, competition, Transaction, or Opportunity.
- 3.12 General Counsel - means the Board of Directors' General Counsel, Outside General Counsel, or if any of the positions is vacant, the individual with ultimate responsibility for the Cooperative's legal functions.
- 3.13 Key Employee - means a Cooperative employee, other than an Officer, who:
- 3.13.1 Receives more than \$150,000 in compensation reported to the Internal Revenue Service on Form W-2;
 - 3.13.2 Has responsibilities, powers, or influence over the Cooperative similar to a Officer; 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
 - 3.13.3 Is one of the twenty Cooperative employees with the highest compensation reported to the Internal Revenue Service on Form W-2
- 3.14 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.
- 3.15 Officer - means an individual:
- 3.15.1 Appointed by the Board, or by another Officer authorized by the Board or by the Cooperative's articles of incorporation or Bylaws; and
 - 3.15.2 Serving as a chief executive, operating, financial, legal, or accounting officer; being in charge of a principal business unit; or performing a major policymaking function.
- 3.16 Official - means a Board Director, Officer, Key Employee, Chief Executive Officer, Vice President, Chief Information Officer, Chief Financial Officer, General Counsel, and Director of the Cooperative.

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- 3.17 President - means a Board Director who is President of the Board of the Cooperative.
- 3.18 Policy - means this Pedernales Electric Cooperative, Inc. Conflict of Interest Policy.
- 3.19 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.
- 3.20 Related Entity - means an entity, other than the Cooperative, a Subsidiary, or an entity of which the Cooperative is a member:
- 3.20.1 Controlled by an Official or an Official's Related Individual;
 - 3.20.2 In which an Official owns more than ten percent of the entity's shares or interests;
 - 3.20.3 For which an Official is a general partner or member of the governing body;
 - 3.20.4 For which an Official is a trustee, guardian, personal representative, or similar fiduciary;
 - 3.20.5 Employing an Official; or
 - 3.20.6 Controlled by an entity employing an Official.
- 3.21 Related Individual - means an individual
- 3.21.1 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 ;
 - 3.21.2 Residing with an Official or Cooperative employee who is not an Official;
 - 3.21.3 For whom an Official or Cooperative employee who is not an Official is a trustee, guardian, personal representative, or fiduciary; or
 - 3.21.4 Employing an Official or Cooperative employee who is not an Official.
- 3.22 Related Person - means a Related Entity or a Related Individual.
- 3.23 Subsidiary - means an entity Controlled by the Cooperative.
- 3.24 Vice President - means any employee of the Cooperative who is classified as a Vice President within the employee job classification schedule.

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4. Policy Statement and Implementation:

4.1 Employment and Income.

- 4.1.1 A Board Director may not be employed by the Cooperative or a Subsidiary.
- 4.1.2 Former 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 Director of the Cooperative.
- 4.1.3 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:
 - 4.1.3.1 Other than retirement or insurance income from the Cooperative, and other than 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;
 - 4.1.3.2 May not directly or indirectly receive more than twenty-five percent of the Official's annual gross income from another Official; or
 - 4.1.3.3 May not have a Related Individual employed by Cooperative or a Subsidiary.

4.2 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:

- 4.2.1 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
- 4.2.2 The Official discloses the competition to the Board and a majority of Disinterested Board Directors authorizes or ratifies the competition.

4.3 Conflicting Interest Transaction. An Official may not engage in a Conflicting Interest Transaction unless:

- 4.3.1 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;

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- 4.3.2 Disinterested Board Directors deliberate and vote regarding the Transaction outside the presence of, and without participation by, the Official; and
 - 4.3.2.1 A majority of Disinterested Board Directors, but not less than two, authorizes the Transaction; or
 - 4.3.2.2 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.
- 4.4 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:
 - 4.4.1 The Official informs the Cooperative or Subsidiary of the Opportunity; and
 - 4.4.2 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.
- 4.5 Insider Pecuniary Benefit. An Official may not use Cooperative or Subsidiary property, material private information, or position to secure pecuniary benefit unless:
 - 4.5.1 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;
 - 4.5.2 The use is payment of compensation or provision of benefits;
 - 4.5.3 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;

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- 4.5.4 Assuming the use is a Conflicting Interest Transaction, a majority of Disinterested Board Directors authorizes the Transaction under this Policy; or
- 4.5.5 The benefit is received as a Cooperative member; made available to all other similarly situated Cooperative members; and lawful.

5. Procedure Responsibilities

- 5.1 The Board interprets and enforces this Policy.
- 5.2 The Cooperative's legal counsel must annually review this Policy with all Officials.
- 5.3 The minutes of all Board meetings should record all disclosures, votes, authorizations, and other actions taken under this Policy.
- 5.4 Each Official must annually complete and sign the Conflict of Interest Certification and Disclosure Form attached to this Policy and deliver the completed and signed Form to the President or the CEO.
- 5.5 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 President immediately.
- 5.6 An Official has an obligation to disclose, upon request or otherwise, information sufficient to determine whether the Official 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.
- 5.7 Any person subject to this policy may seek a confidential advisory opinion on compliance with this 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.

6. Enforcement

- 6.1 If the President receives a Form disclosing any information or fact that could impact an Official's compliance with this Policy, then, the President must distribute the Form to the Board and the Chief Executive Officer. If the Chief Executive Officer or the President receives or discovers any other information or fact that could impact any Official's compliance with this Policy, then, respectively, the Chief Executive Officer must disclose this information or fact to the President and the 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:

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- 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 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 Chief Executive Officer to act as appropriate.
- 6.5 Any Cooperative Employee 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. Superseding Effect

This Policy supersedes all previous policies and memoranda concerning the subject matter. Only the Approver may authorize exceptions to this policy.

8. References and Related Documents:

PEC Bylaws, Directors' Code of Conduct, Code of Ethics, Conflict of Interest Certification and Disclosure Form

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Policy Title:	Conflict of Interest Policy
Review Frequency:	Every 3 Years
Last Reviewed:	November 14, 2016
Date Adopted:	December 16, 2008
Effective Date:	December 16, 2008
Amendment Dates:	February 11, 2013; December 16, 2013; December 8, 2014; July 18, 2016, November 14, 2016
Approver:	Board of Directors
Applies to:	Board of Directors, Officials, Officers and Key Employees
Administrator:	Board of Directors, CEO, 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.

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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 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:

- 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 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: **James Powers**

Position of Official: **Director**

Date: **June 28, 2017**

Signature of Official: 