



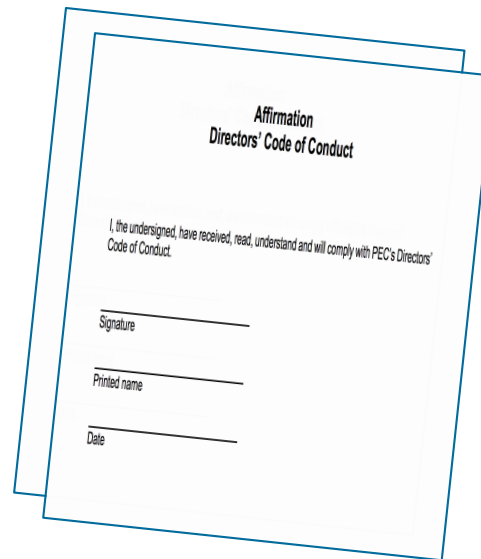
# 2018 ANNUAL REVIEW OF DIRECTORS CODE OF CONDUCT

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## OVERVIEW OF PEC CODE OF CONDUCT

- Code requires Director compliance and affirmation
- Code requires annual review
- Outlines directors' fiduciary duties and personal liability implications
- Establishes standards of conduct



*Affirmation  
Directors' Code of Conduct*

*I, the undersigned, have received, read, understand and will comply with PEC's Directors' Code of Conduct.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Date



## BOARD AUTHORITY AND DIRECTOR RESPONSIBILITIES

- **Mission and Purpose:** Establish the overall goals and objectives of PEC “to deliver low-cost, reliable and safe energy solutions for the benefit of our Members”
- **Legal and Ethical Accountability:** Adopt and enforce policies governing ethical conduct, accountability and compliance
- **Ethics and Compliance Program Oversight:** “Tone at the Top”; “Set Goals and Program Oversight”; and “Review Reports and Outcomes”
- **Delegation of Authority:** Define Board Responsibilities and then delegate day-to day management of PEC to CEO, with certain exceptions; respecting delegation
- **Governance:** Approves and may amend the PEC Bylaws, Business Rules and Tariff, and governing Policies



## BOARD AUTHORITY AND DIRECTOR RESPONSIBILITIES (CONTINUED)

- **Hire and evaluate the Chief Executive Officer**
- **Approve Bylaws and Tariffs**
- **Approve contracts above established thresholds**
- **Power Supply Strategy**
- **Sponsor Employee Benefit Plans**
- **Maintain status as tax-exempt organization 501(c)(12)**



## BOARD AUTHORITY AND DIRECTOR RESPONSIBILITIES (CONTINUED)

### **Fiscal Oversight:**

- Establish financial risk tolerances
- Authorize borrowing and bond indentures
- Authorize real estate transactions
- Approve PEC's budget (operational & capital)
- Review and approve significant investments, loans and acquisitions, real estate
- Establish Rates and terms for providing electric service to Members
- Evaluate financial statements, audits, and reports
- Review and approve annual report and audited financial statements
- Oversight of litigation and regulatory actions



## DIRECTOR FIDUCIARY DUTIES

- Duty of Due Care and Diligence – “Attending to Business”
- Duty of Obedience – “Company Obeys the Law”
- Duty of Loyalty & Candor – “Avoiding Conflicts”
- Duty of Confidentiality – “Maintain Confidences and Proprietary Information”
- Additional Duty:
  - Good Faith & Fair Play – Fair & Courteous Communications



# LEGAL DUTIES – DUE CARE AND DILIGENCE

- Required to conduct business with same degree of fidelity and care as an ordinarily prudent person should exercise in management of their own affairs.
- Business Judgment Rule:
  - Fiduciary duty to act according to best judgment.
  - Act in good faith for interests of the cooperative
  - May be liable for negligence in performing duties, but not liable for errors of judgment or for mistakes while acting with reasonable skills and prudence.

Obligations	Fiscal	Duties
Legal	Fulfill	Authority
Prudent	Diligence	Policy



# DUTY OF CARE AND DILIGENCE

- **The degree of care that a prudent person would exercise under similar circumstances:**
  - ✓ Regularly attend meetings
  - ✓ Review materials furnished for meetings
  - ✓ Participate in Board discussions
  - ✓ Inquire as needed until fully informed
  - ✓ Exercise independent judgment, relying on subject matter experts
  - ✓ Acquire knowledge necessary to oversee PEC's business
  - ✓ Attend training and professional development





## DUTY OF OBEDIENCE

- Avoid *ultra vires* acts (beyond powers of company or as individual Director)
- Must operate within the authority granted by the articles of incorporation, the bylaws and any statutes and regulations.
- Directors can only bind PEC when acting as the board.
- Directors cannot ordinarily bind PEC while acting in their individual capacity.
- Directors must establish policies and procedures.
- Assure that PEC acts within its authority
  - ✓ AOI
  - ✓ Bylaws
  - ✓ Policies
  - ✓ Federal & State statutes and regulations



# DUTY OF LOYALTY & CANDOR

- Act in good faith and in the best interests of PEC and its Members
- Reveal information and interests relevant to issues or investigations
- Avoid or Disclose conflicts of interest
- Eliminated any Self-Dealing
- Conflicting transactions
- Using Coop information for private gain
- Gratuities
- Annual reporting of conflicts, including potential conflicts or appearance of conflict
- May not be employed by PEC or engaged in any nature by PEC for a period of 5 years after serving as a director



# DUTY OF CONFIDENTIALITY

- Competitive and Contract Issues
- Commercial and Financial Information and Trade Secrets
- Privacy Issues of Members and Employees
- Attorney-Client Communications
- Maintain Confidences Among Board and Staff
- Create trust and candor



# BOARD OF DIRECTORS: THE PUBLIC ROLE

- Democratically Elected by District Members
- Member right to attend & speak at all Board meetings
- Board meetings are live-streamed on website
- Board votes are taken in open meetings
- Committee meetings are audio recorded
- Meeting videos & Board materials are posted to website
- PEC Directors actions are available to Members, legislators, media, and public
- IRS Form 990 disclosures and publication
  - (track hours worked on PEC matters)



## GOOD FAITH AND FAIR PLAY

- Express views, questions, and concerns with good faith
- Reveal relevant information and interests on issues
- Not pursue positions to unduly harass
- Communications directed in casual and courteous basis



## BASIC DIRECTOR RESPONSIBILITY

### General Oversight of Operation:

Provide overall supervision of operations of the company – manage oversight

- Responsibility is not to manage day-to-day matters but to review and supervise the management team.
- Fiduciary responsibility for company & member funds.
- Evaluate the Board's performance and accomplishments



# TIME COMMITMENT & COMPENSATION

- **Time Commitment**
  - Directors are required to track hours spent on co-op business, which in the most recent reporting year ranged from 8 to 24 hours per week, per director
- **Board Meetings**
  - 1 per month, and any special or emergency called meetings
  - Annual Membership Meeting
- **National Meetings and Trainings**
  - Required Director training credential from national organization (NRECA)
  - \$5,000 annual travel budget per director (required training not included)
  - Registration fees, travel and other expenses reimbursed up to annual budget
  - No additional compensation for time spent on these activities
- **Other Duties**
  - Public and PEC events
  - Member correspondence and calls (Director's PEC email address is generally provided to Members)
- **Compensation**
  - \$3,000 per month retainer
  - Reimbursement of allowable expenses (Director Travel & Expense Reimbursement Policy)



# ACCESS TO PEC INFORMATION

- Every director is entitled to cooperative information for a proper purpose:
  - Should relate to cooperative business; and
  - Can't be used for personal gain.
- Request from full board if significant resources required.
- All directors are to receive the same information.





## DIRECTOR LIABILITY, INDEMNIFICATION AND INSURANCE

- Bylaws Article III, Section 8, Liability limited when performing functions for PEC (*exceptions*: breach of loyalty; act not in good faith, improper benefit, limited by statute, unlawful distribution to Members). [Tx. Bus. Org. Code Section 7.01]
- Indemnification for claims by 3<sup>rd</sup> party actions as a director when act done in good faith. [Tx Util. Code Section 161.078]
- PEC provides D&O and Fiduciary Insurance
  - Pays for director loss arising from a “wrongful act” if not otherwise indemnified by PEC
  - “Wrongful act” includes claims of breach of legal duty and neglect
  - No coverage for criminal acts, fraud, harassment, or acts outside of duties.



# QUESTIONS



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