



PEC Board of Directors Conflict of Interest Policy Annual Review

Ross Fischer, Board Counsel

August 16, 2019



Why PEC Has a Conflict of Interest Policy (COI)

1. Tax Status Requirements:
 - 501(c)(12) Tax Exempt Organization Cooperative Electric Company
 - IRS Form 990 Questionnaire
2. As Legislative authorized; member-owned organization, Commitment to Membership – without personal gain
3. Policy requires annual review with officials

Question 12a: Did the organization have a written conflict of interest policy?

Question 12b: Were officers, directors, trustees and key employees required to disclose annually interests that could give rise to conflicts?

Question 12c: Did the organization regularly and consistently monitor and enforce compliance with the policy?

Question 13: Did the organization have a written whistleblower policy?

Question 19: Describe in Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year.

IRS Form 990

Part VI

(publicly – available)

Conflict of Interest Applies to:

- Board Directors
- Officers and Officials (Chief Executive Officers; employees in charge of a principal business unit or performing major policy making function)
- Key employees
 - Compensation of \$150,000 or greater
 - 20 Highest compensated employees
 - Responsibilities similar to Official
 - Manages over 10% of PEC activities, assets, income or expenses
 - Manages or shares 10% of capital expenditures, operating budget or employee compensation

What is Conflict?



- A conflict exists generally when a Director has a personal interest in a matter
- Where nature and magnitude may create an antagonism between an individual and PEC
- When a person may not be able to exercise independent and objective judgment

Five Conflicts Prohibited

1. Certain Employment and Income
2. Competition with PEC (including, PEC Vendors or Financial Institutions - Bylaws)
3. Conflicting Interest Transaction
4. PEC Business Opportunities
5. Insider Pecuniary Benefit

Employment and Income

1. Directors may not be employed by PEC
2. Former Directors shall not be employed or compensated by PEC for 5 years after service
3. Income (unless otherwise disclosed and approved by the Board)
 - No more than 10% of annual gross income from PEC (excludes retirement, insurance or Director compensation)
 - No more than 25% of annual gross income from another official
 - May not have Related Individual / Entity employed by PEC

Competition



Director may not advance pecuniary interests, or Related Individual's/ Entity interests, by competing with PEC

Directors may not be employed or provide service to PEC vendors or financial institutions

Exception:

1. Disclosed and
2. Benefit to PEC outweighs harm

Prohibits financial transactions by Official, or Related Individual, and PEC where Official has material interest

- Material Interest – transaction that would reasonably be expected to impair the objectivity of judgment regarding the transaction
- Exceptions:
 - Official compensation or
 - Transactions offered to all similarly situated PEC members or
 - Where all facts are disclosed, Board approves transaction given circumstances and benefits PEC; Fair and comparable to arms – length transaction



Conflicting Interest Transaction

Business Opportunity

1. Prohibits Official from transaction where Official becomes aware of Opportunity in connection with Official functions

OR

2. Activity closely related to PEC business or when PEC expects to engage

Exceptions:

- Activity offered to all similarly situated PEC members
or
- After all facts disclosure, Board approves activity because benefit outweighs any harm to PEC

Insider Pecuniary Benefit

Official may not use PEC material private information to secure personal pecuniary benefit

Exceptions:

- Value is given for use (unless a conflicting transaction);
- Use is payment of compensation;
- Use is not for trading securities; not proprietary; not harm PEC;
or
- Made available to all similarly situated members



Disclosure

When a Director is involved with a Conflict of Interest Transaction or Potential Conflict to the Company, the Following Should be Done:

- Director should make a full prior disclosure to board and answer all board questions.
- Director should remove them self from all board discussions.
- Director should not participate in the discussion, consideration, or questions in the matter.
- Director should take no part in the vote.
- Directors should keep the board fully informed of any developments that may later affect the transaction.
- Only Disinterested Directors may approve exceptions or authorize Policy exceptions.

1. Annual Disclosure Form (usually after Annual Meeting)
2. Ongoing obligation to disclose conflicts or potential conflicts
3. May seek confidential advisory opinion of General Counsel or other PEC counsel
4. Board President receives disclosures that may require Board action for distribution to disinterested Directors
5. After opportunity to comment, Director out of compliance may be disciplined or removed



Compliance

Employee Gratuities Policy

Generally prohibits or acceptance of favors, gifts, or gratuities in connection with business relationships of Cooperative.

Exceptions:

1. Good business practice (meals; social events)
2. No expectation of future business
3. Nominal value (\$100 or more must be reported)
4. Not embarrassing to Cooperative if public



pec.coop

Related Individual



1. (Blood; marriage; legally)

Parent	Grandparent	First cousin
Spouse	Grandchild	In-laws
Child	Aunt	Step relations
Sibling	Uncle	
	Nephew	
	Niece	

2. Resides with official or Cooperative employee;
3. Official or Employee is trustee, guardian, personal Representative or similar fiduciary; or
4. Employee of Official or Cooperative Employee

Related Entity

1. Controlled by Official or Related Individual and
 - a. Official owns more than 10% of entity; or
 - b. Official is general partner or member of governing board; or
2. Official is trustee, guardian, personal Representative or similar fiduciary or employing an Official
3. Controlled by entity employee and Official