

# **DESIGNATION OF COMPETITIVE MATTERS POLICY**

## **Designation Of Competitive Matters Policy**

### **PEDERNALES ELECTRIC COOPERATIVE, INC.**

#### **1. Purpose:**

- 1.1.** The ~~Cooperative's~~ Articles of Incorporation of Pedernales Electric Cooperative, Inc. ("PEC" or "Cooperative") provide that Members have the right, on written request, to examine and copy at the Member's expense the records of PEC, except those specifically exempted, including those that are clearly competitive. ~~Likewise, Members have the right to attend meetings of Board of Directors except as allowed by policy. Both the Open Records Policy and the Board Meetings Policy provide for an exception of Cooperative Competitive Matters.~~ The Articles of Incorporation specifically provide an exception to release of clearly competitive information when the Board of Directors ("Board") determines in good faith that disclosure presents a compelling risk of likely harm to the Cooperative or its Members. Likewise, Members have the right to attend meetings of Board except as allowed by policy. Both the Open Records Policy and the Board Meetings Policy provide for an exception of Cooperative Competitive Matters. ~~This Policy~~
- 1.1.1.2.** This Designation of Competitive Matters Policy ("Policy") establishes the Board's good faith determination of clearly Competitive Matters and provides an exception to disclosure under the Open Records ~~and~~ Policy or attendance under the Board Meetings Policies ~~Policy~~.

#### **2. Scope:**

- 2.1.** This Policy addresses when an exception to Member disclosure or attendance exists for ~~Cooperative~~ Competitive Matters. It applies to all Members, the Board, and all employees of the Cooperative.

#### **3. Definitions:**

- 3.1.** Competitive Matter – Means information of the Cooperative for which the Board has determined, in good faith, that disclosure presents a compelling risk of likely harm to the Cooperative or its Members. A Competitive Matter may include commercial information and utility related matters that are related to the Cooperative's competitive activity that would, if disclosed, give an advantage to individuals or entities who have sought or are likely to seek business from the Cooperative or seek the dissolution, takeover, or sale of PEC, or would adversely affect PEC's ability to competitively purchase goods and services.
- 3.2.** Competitors – Means individuals or entities who have sought or are likely to seek business from the Cooperative or seek the dissolution, takeover, or sale of PEC, or whose information the release of which would adversely affect PEC's ability to competitively purchase goods and services.

#### **4. Policy Statement and Implementation:**

- 4.1.** The Board, as the governing body of PEC, has identified general areas which it deems to be Competitive Matters, as well as identifying the potential harm to the Cooperative's competitive position and the nature of the potential advantage to Competitors in the event such matters are required to be open to the public, and in

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the event information relating to such matters is released or otherwise discussed in an open meeting.

- 4.2. In the exercise of good faith and cognizant of its fiduciary duty in managing and operating PEC, the Board determines that the items listed on "Attachment A" to this Policy constitute Competitive Matters. As Competitive Matters, information relating to the listed items is excepted from disclosure under the Cooperative's Open Records Policy or excepted from attendance under the Board Meetings Policies Policy. The Board may determine on a case-by-case basis that a specific matter is not competitive, and therefore, may be disclosed and publicly discussed. The Board may on a case-by-case basis also make a good-faith determination that information is a Competitive Matter.

#### **5. Procedure Responsibilities:**

- 5.1. The Board shall implement this Policy when conducting meetings and when releasing or withholding Cooperative information. ~~The CEO shall implement this Policy when, upon request of a Member, providing or withholding Cooperative records.~~ The Board may supplement or amend the list of Competitive Matters set out in this Policy from time to time by addition or deletion as may be appropriate and desirable in order to continue to operate and manage PEC in a manner consistent with the interests of its Members and consistent with its status as a private Texas non-profit electric cooperative corporation.

#### **6. Enforcement**

- 5.2. The ~~General Counsel, the~~ Chief Executive Officer ("CEO") shall implement this Policy when providing or withholding Cooperative records upon request of a Member.

#### **6. Enforcement:**

- 6.1. The Board shall enforce this Policy.

- ~~6.1.6.2.~~ The CEO, General Counsel, or their designees are authorized to take such actions as needed to implement and administer this Policy. ~~Violations of this Policy may result in disciplinary, up to and including, termination.~~

- 6.3. Violations of this Policy may result in disciplinary action, up to and including, termination.

#### **7. Superseding Effect:**

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

#### **8. References and Related Documents:**

- 8.1. Articles of Incorporation; Article IX, Sections 3 and 4

- 8.2. Bylaws; Preamble; Article IV Meetings of Directors

- 8.3. Tariff and Business Rules §§ 200.24-300.4, Member Access to Cooperative Records and 500.4, Fee Schedule

- 8.4. Board Meeting Meetings Policy

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**8.5.** Open Records Policy

**8.6.** Privacy and Confidentiality Policy

**8.7.** Record Management Policy

Policy Title:	Designation Of Competitive Matters Policy
Review Frequency:	<del>Triennial</del> <u>Every 5 years</u>
Last Reviewed:	<del>November 14, 2016</del> <u>XX/XXXXXX</u>
Date Adopted:	March 21, 2011
Effective Date:	<del>March 21, 2011</del> <u>XX/XX/XXXX</u>
Amendment Dates:	March 21, 2011 <sup>7.1</sup> ; November 21, 2011 <sup>7.1</sup> ; December 19, 2011 <sup>7.1</sup> ; October 7, 2013 <sup>7.1</sup> ; November 14, 2016 <sup>7.1</sup> ; <u>XX/XX/XXXX</u>
Approver:	Board of Directors
Applies to:	All PEC Members, Board of Directors, and all PEC employees
Administrator:	<del>Legal Services</del> <u>General Counsel</u>
Superseding Effect	This Policy supersedes all previous policies and memoranda concerning the subject matter. Only the Approver may authorize exceptions to this <del>policy</del> <u>Policy</u> .

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### Attachment A

~~Portions of contracts~~ The Board finds the following items are “Competitive Matters” disclosure of which presents a compelling risk of likely harm to the Cooperative or its Members:

1. Contracts for purchased power or proprietary software, the disclosure of which is limited by confidentiality provisions in such contracts; ~~and.~~
2. Audit or consultant working papers, including all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit or benchmarking report, including:
  - a. internal and external communications; and
  - b. drafts of the audit report or portions of those drafts.

Final versions of audits, audit or consultant reports, are not Competitive Matters under this provision, unless they separately qualify as Competitive Matters based on subject matter or content; ~~and.~~

3. Financial planning information, sensitivity and scenario analyses, including interest rate and financial market information and forecasts and rate-making data, which, if disclosed, ~~could~~may adversely affect the Cooperative’s position in a contemplated borrowing, investment ~~or,~~ banking ~~transaction~~transactions or other types of transactions or ~~related matter; and~~proceedings.
4. Bids and pricing information and PEC contract prices for purchased power, generation, fuel, and ancillary services and strategies; ~~and.~~
5. Effective fuel and purchased power agreements and fuel transportation arrangements and contracts; ~~and.~~
6. Risk management information, contracts, and strategies, including hedging and storage; ~~and.~~
7. Plans, studies, proposals, and analyses for system improvements, additions, or sales; ~~and.~~
8. Customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies; ~~(including amount of sales of electricity or other financial or statistical information by city or geographic area subset of the service area, or information from which that information can be derived; and).~~
9. Information, including pricing information, that, if released, would give advantage to a Competitor or bidder; ~~and.~~

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10. Trade secrets obtained from a person and privileged or confidential by statute or judicial decision; ~~and.~~
11. Commercial or financial information for which disclosure would cause competitive harm to the person from whom the information was obtained; ~~and.~~

12. Commercial or financial information for which disclosure would harm the Cooperative's interests or ability to receive benefits from competition within a market.

~~12.~~ 13. Information related to economic development negotiations involving PEC and a business prospect that PEC seeks to have locate, stay, or expand in or near the territory of PEC and the information relates to:

- a. a trade secret of the business prospect; ~~or~~
- b. commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained; ~~or~~
- c. ~~Unless and until an agreement is made with the business prospect,~~ information about a financial or other incentive being offered to the business prospect by PEC, unless and until an agreement is made with the business prospect.

After an agreement is made with the business prospect, this section does not apply to an incentive offered to a prospect by PEC or by another person, if PEC funds are used or if the incentive results in a reduction of revenue to PEC; ~~and.~~

~~13.~~ 14. Contract drafts, term-sheets, letters of intent, and other contract materials related to the items listed above.

~~14.~~ 15. Discussions or deliberations by the PEC Board concerning any PEC strategic plan or its equivalent. Approval of such a plan will require a vote in Open Session, consistent with the PEC Member Bill of Rights and the ~~PEC~~ Open Board Meetings Policy. Notwithstanding this provision, any plan promulgated and approved by the Board as a result of such discussions or deliberation shall be subject to disclosure, consistent with and to the full extent authorized by the Member Bill of Rights and the PEC Open Records ~~policy~~ Policy.

16. Internal or external communications privileged from discovery in litigation, including pursuant to attorney-client privilege; attorney work product privilege; or

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deliberative process privilege, consisting of draft records and advice, opinion or recommendations on rate-making or policy-making matters.

17. Information for the distribution system pertaining to reliability and continuity of service, to the extent security sensitive.