



**Delta-Montrose Electric Association
Board of Directors Policy**

Board of Directors

Subject: Director Duties and Standards of Conduct		Policy Number: 103
Original Issue : 03/23/2004	Last Reviewed: 02/23/2021	Last Revised: 02/23/2021

OBJECTIVE

To outline the general responsibilities and duties of the Delta-Montrose Electric Association (DMEA) board of directors (board, directors) and to identify the legal duties and standards of conduct for which they will be held accountable when serving on the DMEA board.

ACCOUNTABILITY

The board of directors

POLICY

1. General Responsibilities and Duties of the DMEA Board.

- a. Ensure that DMEA follows relevant laws and regulations, and that DMEA follows its articles of incorporation, bylaws, and policies.
- b. Review and approve rates, rules, regulations, and policies for DMEA’s members and adopt and periodically amend board policies as appropriate for DMEA’s governance and operation.
- c. Select and evaluate DMEA’s chief executive officer (CEO), general counsel, and auditor.
- d. Set DMEA’s overall program from year-to-year, and engage in longer range strategic planning to establish its general course for the future.
- e. Establish fiscal policy and boundaries, with budgets and financial controls, to maintain a sound financial structure for DMEA.
- f. Participate in regular board self-evaluation and development.
- g. Study information presented to the directors, prepare for DMEA board deliberations, and become skilled in questioning the results achieved in certain key performance areas and in interpreting operating and financial reports.
- h. Communicate the work of DMEA among the membership and in the community, consistent with DMEA board policies regarding communications.



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- i. Establish committees and receive reports and recommendations from such committees.
- j. Review and approve key contracts, such as loan agreements, franchise agreements, wholesale power contracts, and power system contracts, unless such tasks have been delegated to the CEO.
- k. Review and approve changes to the DMEA bylaws and, where appropriate, review and recommend to the membership changes to the DMEA articles of incorporation.
- l. Approve the addition of DMEA members.
- m. Ensure accurate minutes of board meetings and any membership meetings are prepared, approved, and maintained.
- n. Authorize the CEO to initiate key legal proceedings, such as eminent domain.
- o. Review periodic reports from the CEO to ensure conformity to the board's approved goals, objectives, policies, plans, and programs.
- p. Work to advance legislative and public policy issues that further DMEA's goals.
- q. Support the seven cooperative principles.
- r. DMEA directors do *not* have the responsibility or duty:
 - i. To engage in the day-to-day operations of DMEA;
 - ii. Make detailed programmatic decisions; or
 - iii. To hire or terminate (other than the CEO, general counsel, and auditor).

2. Fiduciary Duties and Standards of Conduct.

- a. **General Fiduciary Duties.** Colorado law imposes three primary fiduciary duties on DMEA directors: a *duty of loyalty*, a *duty of due care*, and a *duty not to usurp*.
- b. **Duty of Loyalty.** Under the duty of loyalty, directors must:



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- i.** Act only in the best interests of DMEA;
- ii.** Place the interests of DMEA above personal interests;
- iii.** Avoid a substantial financial interest in any competing business;
- iv.** Avoid any conflict of interest, or even the appearance of such a conflict;
- v.** Represent and support the interest of DMEA to elected and public officials;
- vi.** Disclose all information the director has that may be materially relevant to DMEA’s business or affairs; and
- vii.** Publicly support decisions of the DMEA board except in extraordinary circumstances where the director actually believes that there is a clear and present threat to the survival of the cooperative.

c. Duty of Due Care. Under the duty of due care, directors must:

- i.** Exercise that degree of care that an ordinarily prudent person would exercise under similar circumstances;
- ii.** Acquire the knowledge and skills necessary to direct DMEA’s affairs;
- iii.** Study and adhere to all obligations imposed by the articles of incorporation, the bylaws, contractual agreements, and board policies;
- iv.** Make every effort to attend all meetings of the board and study materials sent prior to each board meeting; and
- v.** Maintain proper qualifications, as identified in the DMEA bylaws, to remain a member of the DMEA board.
 - A.** If the board should determine that an incumbent, nominee, or potential appointee lacks or has lost any of the necessary qualifications, it is the duty of the board to remove such incumbent or to declare such nominee or potential appointee ineligible.



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d. Duty Not to Usurp an Opportunity of DMEA. Under the duty not to usurp, directors must:

- i.** Not pursue a business opportunity that might otherwise have been a business opportunity for DMEA without first letting DMEA consider the opportunity, and
- ii.** Not engage in a business opportunity that competes with or is harmful to the business interests of DMEA.

3. Other Legal Duties. In addition to fiduciary duties, a director's duties include a duty of obedience, a duty to act within the scope of authority, a duty of fairness, a duty of good faith, and a duty of candor. Directors must also maintain the confidentiality of confidential information entrusted to them, except when disclosure is authorized by DMEA's CEO, general counsel, auditor, or is required by applicable laws or regulations.

4. Conduct with Respect to Fellow Directors. Directors must:

- a.** Demonstrate mutual respect:
- b.** Allow opportunity for other directors to be heard on matters being considered;
- c.** Abstain from revealing to persons other than directors, the CEO, and the general counsel any differences of positions among directors on matters considered and acted upon by the board. (This standard does not prevent fair and accurate publication of such differences to the system's members in relation to contests for director elections or other matters to be voted upon by the members.); or
- d.** Reveal all information or interests that they may have and that may bear upon action being considered by DMEA.

5. Director Access to Cooperative Information.

- a.** Requests for information and access to DMEA resources and personnel must be made through the CEO.
- b.** In any instance in which a DMEA director has sought access to information or data not generally or ordinarily made available or reported to the board, the CEO shall so report in detail at the next DMEA board meeting.



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- c. In no case shall a director seek such information from employees other than the CEO, unless expressly authorized by DMEA’s general counsel (in the course of investigating a complaint or concern regarding the CEO).
 - d. Director communications with employees other than the CEO shall be conducted on a courteous basis, but not for the purpose of obtaining information without the knowledge of the CEO or to influence employee’s position or attitude.
 - e. Information received by a director pursuant to this policy shall not be revealed to any other person except to the remaining directors and the general counsel. If any information received by a director is sought by any governmental entity, or is subject to future disclosure in litigation or by court order, the affected director shall, as soon as practicable, promptly notify the CEO and general counsel.
- 6. Board Member Compliance with Bylaws and Board Policies.** DMEA directors must honor and comply with the DMEA bylaws and board policies. Directors violating any bylaw or board policy are subject to DMEA board sanction including a private or public censure, a written admonition, removal from any board office, removal as a representative to other cooperative entities, excluded from participating in executive sessions, and being prohibited from attending one regular or special meeting of the board. Before imposing any of the foregoing sanctions, the DMEA board shall consider the severity of the offense, whether the violation was intentional, the number of violations, the willingness of the offending director to come into compliance, and the potential harm to DMEA from the violations. The foregoing list of sanctions is in an ascending order and unless extraordinary circumstances warrant, the board will consider imposing minor sanctions before imposing major sanctions.
- 7. Director Acknowledgement.** All candidates, nominees, appointees, and current directors on the board shall receive a copy of the DMEA articles of incorporation, bylaws, and board policies, and will sign the following acknowledgement:

William N Patterson

William N Patterson (Feb 24, 2021 05:50 MST)

President of the Board

Feb 24, 2021

Date



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ACKNOWLEDGMENT OF DMEA ARTICLES, BYLAWS, AND POLICIES

I, _____,
as a [member of/candidate for/appointee to] the board of directors of Delta-Montrose Electric Association (DMEA), hereby acknowledge receipt of a copy of the DMEA articles of incorporation, bylaws, and all board policies. I affirm that I have read these materials, and agree to comply with them as they now exist or as they may be amended by future actions, and agree to enforce these articles, bylaws, and policies.

I specifically affirm that I have read, understand, and agree to be bound by the board policies concerning Director Duties and Standards of Conduct (policy 103) and concerning Conflicts of Interest (policy 105).

Dated this _____ day of _____, 20____.

Director/Candidate/Appointee Signature

BP 103 Director Duties and Standards of Conduct Updated 2.23.2021

Final Audit Report

2021-02-24

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