



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

Board of Directors

Subject: Conflict of Interest		Policy Number: 105
Original Issue : 05/25/2004	Last Reviewed: 11/17/2020	Last Revised: 11/17/2020

OBJECTIVE

1. To ensure that in making decisions affecting DMEA, members of DMEA’s Board of Directors identify and address conflicts of interest that could adversely influence their judgment, objectivity, or loyalty to DMEA.
2. To provide a process whereby a Director’s conflict of interest, potential conflict of interest, or appearance of a conflict of interest, will be addressed by the Board.

ACCOUNTABILITY

The Board of Directors

SUMMARY

DMEA directors have a fiduciary duty to act in good faith and in DMEA’s best interest. That duty may conflict with a director’s personal or outside interests or relationships, or with a direct or indirect interest in specific transactions involving DMEA. Such a conflict or potential conflict may justify or even require a director’s recusal from board deliberations and decisions.

Moreover, directors have access to confidential DMEA information and may learn of potential business opportunities relating to DMEA. Their fiduciary duty prohibits directors from using such information to improperly benefit themselves or a third party.

POLICY

1. **Definitions.** For purposes of this Policy:
 - a. An entity is an “affiliate of a Director” if such Director is a director or officer of such entity and such Director has a financial interest in such entity that is known to, and material to, such Director.
 - b. A “Corporate Opportunity” is any business opportunity relating, in any way, to any business that DMEA, or any of its subsidiaries, engages in or has plans to engage in.
 - c. An “associate” of a Director means:
 - i. any corporation or organization (other than DMEA or a subsidiary of DMEA) of which such Director is an employee, officer, or director or is, directly or indirectly, the beneficial owner of 10% or more of any ownership interest;



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- ii. any trust or other estate in which such Director has more than a 10% beneficial interest or in which such Director serves as trustee or in a similar fiduciary capacity;
- iii. a Director’s relative (unless defined otherwise in DMEA’s Bylaws, “relative” means a spouse, daughter, son, father, mother, sister, brother, mother-in-law, father-in-law, son-in-law, daughter-in law, brother-in-law, or sister-in-law); and
- iv. a city, town, or county of which such Director is an employee or elected official, where that city, town, or county competes with DMEA or any of its subsidiaries for customers.

2. **Conflicts Defined.** A conflict of interest (“Conflict”) exists when:
 - a. DMEA provides a loan or other assistance to a Director or to an affiliate of a Director;
 - b. DMEA guarantees an obligation of a Director or an affiliate of a Director;
 - c. DMEA enters into a contract or transaction with a Director or an affiliate of a Director; or
 - d. A Director takes a Corporate Opportunity, except to the extent permitted pursuant to DMEA’s articles of incorporation.
 - e. The private or financial interest of a Director, or an associate of that Director, either interferes with the interests of DMEA or has a reasonable likelihood of interfering with those interests.
3. **No Conflict With Subsidiaries.** The term “Conflict” does not include any transaction between DMEA and any entity that is wholly owned by DMEA.
4. **Conflict Examples.** While it is impossible to detail all circumstances that present a Conflict, some examples are illustrative:
 - a. The private interests of a director and the interests of DMEA can implicate a Conflict with respect to line extensions, right-of-way easements, or a new distribution line across a director’s property.
 - b. Conflicts also arise when a director has the ability to influence a DMEA-involved business transaction and where the director, or the director’s associate, may receive some financial or business advantage from the transaction.
 - c. A Conflict is present where a director’s associate competes with DMEA or a DMEA subsidiary.
 - d. A director may not use confidential DMEA information for the director’s personal gain or advantage, or for the gain or advantage of the director’s



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associate. Nonpublic information may not be disclosed to those lacking the need to know, or whose interest may be adverse to DMEA.

- e. A Conflict exists where a director learns of an opportunity to engage in a business activity that the director became aware of because of his or her position on the DMEA board, where such business opportunity could also be of interest to DMEA.
 - f. It is also a Conflict to accept gifts, loans, or favors from third parties where those gifts, loans, or favors can influence a director’s DMEA-related decision (for example, in awarding a contract). This does not prohibit casual entertainment, or gifts and favors of nominal value, where such items meet all standards of ethical business conduct and involve no element of concealment.
5. **Conflict Notification and Disqualification Procedures.** A Director aware of a Conflict reasonable likelihood of a Conflict, or the appearance of a Conflict, shall immediately;
- a. Disclose the material facts of the Conflict or potential Conflict to the full Board, or the applicable committee, in writing, or raise it at the next Board or committee meeting for discussion.
 - b. Following discussion, the Director may then voluntarily recuse himself or herself from relevant Board or committee deliberations and decisions.
 - c. Alternatively, a quorum of the Board or committee may consider the issue and, at its discretion, disqualify such Director from receiving information about, deliberating, influencing, or voting upon the issue.
6. **Approval or Waiver of Conflicts.** At its discretion, the DMEA board may approve or waive a director’s (or associate’s) Conflict, reasonable likelihood of a Conflict, or appearance of a Conflict if:
- a. All of the material facts about the issue and the relevant director’s interest are disclosed to the DMEA board,
 - b. A majority of more than one director with no relation to the Conflict approves or waives the Conflict, and such approval or waiver is made in good faith and meets the relevant fiduciary duties to DMEA.
7. **Dual Directors on Overlapping Boards.** Certain DMEA directors will necessarily also serve on other boards (for example, Western United Electric Supply). These “dual directors” must manage their participation on both boards so as to preserve their ability to discharge the duties separately owed to each entity. If with respect to a particular issue a dual director cannot in good faith discharge his or her fiduciary duties to both DMEA and the other organization, that director must withdraw from deliberation and decision on the issue.



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8. **Exclusions.** This Policy does not apply to:
 - a. Normal receipt of residential/business electric service and normal timely payments for such services,
 - b. Participation in local renewable and net meter accounts, and
 - c. General policies or actions having broad effect and only incidentally applying to—or technically implicating the interests of—DMEA directors.

9. **DMEA Subsidiaries.** Notwithstanding anything else in this Policy, the DMEA board may waive conflicts of interest and potential conflicts of interest with respect to transactions between DMEA and its subsidiaries. Nothing in this Policy shall inhibit the ability of directors to also serve as fiduciaries of DMEA subsidiaries.

10. **Director Compliance.** Each director must disclose any situation that, in his or her opinion, violates, may violate, or could appear to violate the intent of this Policy—even if it relates to a different director. Failure to comply with this Policy may result in legal liability and/or various sanctions against a director, including those set forth separately in a Board policy.

11. **Record of Actions.** The minutes of DMEA board and committee meetings should record all disclosures, determinations, votes, and actions made under this Policy.

12. **Procurement Conflict of Interest Policy.** The DMEA board shall also ensure compliance with any separate Procurement Conflict of Interest Policy, adopted pursuant to federal law or regulation, which sets forth written standards of conduct regarding the selection, award, and administration of contracts.

13. **Maintaining Confidential DMEA Information.** Directors may not use confidential DMEA information for any Director’s personal gain or advantage, or for the gain or advantage of any Director’s affiliates or associates, or any third party. Only (a) information released from the Marketing and Communication department or authorized DMEA staff and (b) information shared during public meetings (in accordance with C.R.S. § 40-9.5-108 is considered public information. All other information, including information presented in non-public Board or committee meetings, may not be disclosed to those outside of the Directors, General Counsel, authorized staff of DMEA or its subsidiaries, or others authorized by the CEO or the Board Chair.



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14. **Conflict of Interest Certification and Disclosure Form.** At the organizational meeting of the DMEA board following the annual member meeting, each DMEA board member shall complete and submit the attached “Conflict of Interest Certification and Disclosure” Form.



President of the Board

Nov 17, 2020

Date



**Delta-Montrose Electric Association
Conflict of Interest Certification and Disclosure Form**

The undersigned member of the DMEA Board of Directors* :

1. Affirms that the director has received, read, and understands the current version of the DMEA Board of Directors Conflict of Interest Policy (“Policy”).
2. Agrees to comply with the Policy.
3. Based upon a good faith belief, to the best of the director’s knowledge, and except for the material facts disclosed below, certifies that the director currently complies with the Policy.
4. Discloses the following material information that impacts—or could potentially impact—the director’s compliance with the Policy:

5. Agrees to immediately disclose to the full DMEA Board any material facts that become known to the director that impact—or could potentially impact—the director’s compliance with the Policy.
6. Acknowledges that the director’s insufficient disclosure may result in legal liability and/or various sanctions, including those set forth in Board policy.

Signature of Director

Date

* Or candidate for the Board of Directors, if applicable.






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Final Audit Report

2020-11-17

Created:	2020-11-17
By:	Amy Taylor (amy.taylor@dmea.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAy-aV7fwea6bk5G7BQe4hsTOs7eEULqYt

"BP 105 Conflict of Interest - revised clean copy" History

-  Document created by Amy Taylor (amy.taylor@dmea.com)
2020-11-17 - 4:21:01 PM GMT- IP address: 170.10.66.84
-  Document emailed to William N Patterson (bpatterson@montrose.net) for signature
2020-11-17 - 4:21:25 PM GMT
-  Email viewed by William N Patterson (bpatterson@montrose.net)
2020-11-17 - 8:56:24 PM GMT- IP address: 170.10.88.6
-  Document e-signed by William N Patterson (bpatterson@montrose.net)
Signature Date: 2020-11-17 - 8:57:02 PM GMT - Time Source: server- IP address: 170.10.88.6
-  Agreement completed.
2020-11-17 - 8:57:02 PM GMT