

POLICY BULLETIN NO. 1-13

SUBJECT: CONFLICT OF INTEREST

Each Director, Officer, and Key Employee of Southwest Tennessee Electric Membership Corporation must comply with this Policy.

1. Definitions. As used in this Policy, and unless the context requires otherwise:
 - A. Board means the Southwest Tennessee EMC Board of Directors.
 - B. Business Opportunity means an opportunity to engage in a business activity, other than an opportunity offered to all similarly situated Cooperative members, of which:
 - 1) An Official becomes aware in connection with performing Official functions; under circumstances reasonably indicating that the opportunity was expected to be offered to Cooperative or a Subsidiary; or through using Cooperative or Subsidiary information or property if the Official should reasonably expect the opportunity to interest Cooperative or the Subsidiary; or
 - 2) An Official becomes aware and knows is closely related to a business in which Cooperative or a Subsidiary is engaged or expects to engage.
 - C. Conflicting Interest Transaction means a transaction or proposed transaction by Cooperative or a Subsidiary, other than the payment of Official compensation or provision of Official benefits, and other than a transaction offered to all similarly situated Cooperative members:
 - 1) To which an Official is a party; or
 - 2) For which, at the time the Board considers the transaction, or at the time Cooperative or the Subsidiary becomes legally obligated regarding the transaction, an Official had knowledge and a Material Financial Interest known to the Official; or an Official knew that a Related Person was a party or had a Material Financial Interest.
 - D. Control or Controlled means:
 - 1) Having the direct or indirect power, through ownership of shares or interests, by contract, or otherwise, to elect or remove a majority of an entity's governing body.
 - 2) Being subject to a majority of the risk of loss from an entity's activities; or
 - 3) Being entitled to receive a majority of an entity's residual returns.
 - E. Cooperative means Southwest Tennessee Electric Membership Corporation
 - F. Director means a member of the Board.

- G. Disinterested Director means a Director who, at the time the Board acts regarding income, employment, competition, a Conflicting Interest Transaction, or a Business Opportunity:
- 1) Is not associated with the income, employment, or compensation; is not engaged in the Transaction; and is not taking advantage of the Opportunity; and
 - 2) Does not have a relationship with an Official associated with the income, employment, or compensation; engaged in the Transaction; or taking advantage of the Opportunity, which relationship would reasonably be expected to impair the objectivity of the Director's judgment regarding the income, employment, competition, Transaction, or Opportunity.
- H. Key Employee means a Cooperative employee, other than a Director or Officer, who:
- 1) Receives more than \$150,000 in compensation reported to the Internal Revenue Service on Form W-2.
 - 2) Has responsibilities, powers, or influence over Cooperative similar to a Director or Officer; manages a segment or activity of Cooperative representing ten percent or more of Cooperative's activities, assets, income, or expenses; or has or shares authority to control or determine ten percent or more of Cooperative's capital expenditures, operating budget, or employee compensation; and
 - 3) Is one of the twenty employees with the highest compensation reported to the Internal Revenue Service on Form W-2.
- I. President means the individual with ultimate responsibility for implementing the Board's decisions or supervising Cooperative's management, administration, or operation, regardless of job title.
- J. Material Financial Interest means a financial interest in a transaction reasonably expected to impair the objectivity of an Official's judgment regarding the transaction.
- K. Officer means an individual:
- 1) Appointed by the Board, or by another Officer authorized by the Board or by Cooperative's articles of incorporation or bylaws; and
 - 2) Serving as a chief executive, operating, financial, legal, or accounting officer; overseeing a principal business unit; or performing a major policymaking function. An Officer includes the President and the individual with ultimate responsibility for managing Cooperative's finances.
- L. Official means a Director, Officer, or Key Employee.
- M. Chair means a Director who is the Chair of the Board.
- N. Policy means this Southwest Tennessee EMC Conflict of Interest Policy.
- O. Related Entity means an entity, other than Cooperative, a Subsidiary, or an entity of which Cooperative is a member:
- P. Controlled by an Official or an Official's Related Individual.

- 1) In which an Official owns more than ten percent of the entity's shares or interests.
- 2) For which an Official is a general partner or member of the governing body.
- 3) For which an Official is a trustee, guardian, personal representative, or similar fiduciary.
- 4) Employing an Official; or
- 5) Controlled by an entity employing an Official.

Q. Related Individual means an individual:

- 1) Who is the spouse of an Official.
- 2) Who is, or is the spouse of, a child, stepchild, grandchild, parent, stepparent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece, or nephew of an Official or the Official's spouse.
- 3) Residing with an Official.
- 4) For whom an Official is a trustee, guardian, personal representative, or similar fiduciary; or
- 5) Employing an Official.

R. Related Person means a Related Entity or a Related Individual.

S. Subsidiary means an entity Controlled by Cooperative.

2. Employment and Income. A Director may not be employed by Cooperative or a Subsidiary. Unless an Official discloses income or employment to the Board and a majority of Disinterested Directors authorizes or ratifies the income or employment, the Official:

- A. Other than retirement or insurance income from Cooperative, and other than Director or employment compensation from Cooperative, may not directly or indirectly receive more than ten percent of the Official's annual gross income from Cooperative, a Subsidiary, or a Cooperative or Subsidiary employee.
- B. May not directly or indirectly receive more than twenty-five percent of the Official's annual gross income from another Official; and
- C. May not have a Related Individual employed by Cooperative or a Subsidiary.

3. Competition. An Official may not advance the Official's pecuniary interests, or have a Related Person that advances the Related Person's pecuniary interests, by competing with Cooperative or a Subsidiary, unless:

- A. There is no reasonably foreseeable harm to Cooperative or the Subsidiary from the competition.
- B. Any benefit that Cooperative or the Subsidiary may reasonably expect to derive from the competition outweighs any reasonably foreseeable harm to Cooperative or the Subsidiary from the competition; or
- C. The Official discloses the competition to the Board and a majority of Disinterested Directors authorizes or ratifies the competition.

4. Conflicting Interest Transaction. An Official may not engage in a Conflicting Interest Transaction unless:
 - A. To the extent unknown by Disinterested Directors, the Official discloses the existence and nature of the Official's conflicting interest and all facts known to the Official regarding the Transaction that a Disinterested Director would reasonably believe to be material in acting regarding the Transaction; Disinterested Directors deliberate and vote regarding the Transaction outside the presence of, and without participation by, the Official; and a majority of Disinterested Directors, but not less than two, authorizes the Transaction; or
 - B. According to the circumstances at the time the Board considers the Transaction, or at the time Cooperative or the Subsidiary becomes legally obligated regarding the Transaction, the Transaction, as a whole, benefits Cooperative or the Subsidiary, considering, as appropriate, whether the Transaction was fair in terms of the Official's dealings with Cooperative or the Subsidiary and whether the Transaction was comparable to what might have been obtained in an arm's length transaction, given the consideration paid or received by Cooperative or Subsidiary.

5. Business Opportunity. An Official may not directly or indirectly take advantage of a Business Opportunity unless, before the Official becomes legally obligated regarding the Opportunity:
 - A. The Official informs the Cooperative or Subsidiary of the Opportunity; and
 - B. To the extent unknown by Disinterested Directors, the Official discloses the existence and nature of the Opportunity and all facts known to the Official regarding the Opportunity that a Disinterested Director would reasonably believe to be material in acting regarding the Opportunity; Disinterested Directors deliberate and vote regarding the Opportunity outside the presence of, and without participation by, the Official; and a majority of Disinterested Directors, but not less than two, disclaims interest in the Opportunity.

6. Insider Pecuniary Benefit. An Official may not use Cooperative or Subsidiary property, material private information, or position to secure pecuniary benefit unless:
 - A. Value is given for the use and assuming the use is a Conflicting Interest Transaction, the Official could engage in the Transaction under this Policy.
 - B. The use is payment of compensation or provision of benefits.
 - C. The use is of information only and the use is not connected with trading securities, is not a use of proprietary information, and does not harm Cooperative or Subsidiary.
 - D. Assuming the use is a Conflicting Interest Transaction, a majority of Disinterested Directors authorizes the Transaction under this Policy; or
 - E. The benefit is received as a Cooperative member; made available to all other similarly situated Cooperative members; and lawful.

7. Compliance and Enforcement. The Board interprets and enforces this Policy. Cooperative's legal counsel must annually review this Policy with all Officials. The minutes of all Board meetings should record all disclosures, votes, authorizations, and other actions taken under this Policy. Each Official must annually complete and sign the Conflict of Interest Certification and Disclosure Form attached to this Policy and deliver the completed and signed Form to Chair or President. If an Official discovers any information or fact that could impact another Official's compliance with this Policy, then the Official must disclose the information or fact to Chair or President immediately. If President or Chair receives a Form disclosing any information or fact that could impact an Official's compliance with this Policy, then, respectively, President must deliver the Form to Chair and Chair must distribute the Form to the Board. If President or Chair receives or discovers any other information or fact that could impact any Official's compliance with this Policy, then, respectively, President must disclose this information or fact to Chair and Chair must disclose this information or fact to the Board. Upon receiving or discovering any information or fact that could impact a Director's compliance with this Policy, the Board must:

- A. Provide the Director an opportunity to comment orally and in writing regarding the information or fact, and an opportunity to be represented by legal counsel; and
- B. Determine whether the Director complies with this Policy.

If the Board determines that a Director does not comply with this Policy, then:

- A. The Board must provide the Director an opportunity to comply with this Policy within thirty-days; and
- B. If the Director does not comply with this Policy within thirty-days, then, as allowed by law, the Board must follow procedure as stated in the Bylaws to remove the Director.

Upon receiving or discovering any information or fact that could impact any other Official's compliance with this Policy, the Board must act as appropriate or authorize the President to act as appropriate.

Reviewed: 01/28/2020

POLICY BULLETIN NO. 1-13A

Conflict of Interest Certification and Disclosure Form

As defined in the Southwest Tennessee Electric Membership Corporation Conflict of Interest Policy (Policy), the undersigned Official:

1. Affirms that Official has received or has access to, has read, and understands the most current version of the Policy.
2. Agrees to comply with the Policy.
3. Based upon Official's good faith belief, to the best of Official's knowledge, and except as disclosed below, certifies that Official currently complies with the Policy.
4. Discloses the following information or facts regarding any actual or potential income, employment, compensation, Conflicting Interest Transaction, Business Opportunity, or pecuniary benefit, or other information or fact, that could impact Official's compliance with the Policy:

5. Upon discovering any information or fact regarding any actual or potential income, employment, compensation, Conflicting Interest Transaction, Business Opportunity, or pecuniary benefit, or other information or fact, that could impact Official's compliance, or another Official's compliance, with the Policy, agrees to disclose this information or fact to Cooperative's Chair or President; and
6. Upon not complying with the Policy, agrees to any sanction, disqualification, removal, or other action taken under the Policy.

Printed Name of Chair

Signature of Chair

Title

Date _____