

Pedernales Electric Cooperative, Inc.
BOARD ADOPTED: March 21, 2011
AMENDMENTS: November 21, 2011, December 19, 2011

Designation of Competitive Matter(s)

WHEREAS, the Member Bill of Rights, added to the Articles of Incorporation of Pedernales Electric Cooperative, Inc. ("PEC") in June 2010, created a standard for the release of records under the PEC Open Records Policy for documents when they involve matters for which the Board determines in good faith that disclosure presents a compelling risk of likely harm to the Cooperative or its members; and

WHEREAS, the PEC Open Meetings Policy specifies a standard for discussion of commercial information and utility-related matters that the Board, in good faith, determines 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 or the dissolution, takeover or sale of PEC ("Competitors") or would adversely affect PEC's ability to competitively purchase goods and services (collectively, "Competitive Matters"); and

WHEREAS, after appropriate deliberations, the Board, as the governing body of PEC, has identified as of the present time, those general areas which it deems to be Competitive Matters, as well as 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 the event information relating to such matters is released upon request made pursuant to the PEC Member Bill of Rights and Open Records Policy or otherwise discussed in an open meeting;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE COOPERATIVE that the PEC Board, in the exercise of good faith and cognizant of its fiduciary duty in managing and operating PEC, hereby determines that the items listed on Exhibit A attached to this resolution constitute Competitive Matters the disclosure of which would present a compelling risk of likely harm to the Cooperative or its members, because they are related to present or future competitive activity of PEC and are related to the Cooperative's competitive activity that would, if disclosed or deliberated upon in an open meeting, give an advantage to Competitors; and

BE IT FURTHER RESOLVED that for items listed in Exhibit A, which may relate to a contract being negotiated, the Board determines that deliberation in an Open Meeting would have a detrimental effect on the position of the Cooperative; and

BE IT FURTHER RESOLVED that information shall not be withheld based on this policy

if it otherwise becomes publicly available through no wrongful act or omission or breach of any duties or obligations of any party; and

BE IT FURTHER RESOLVED that the PEC Board reserves the right to supplement or amend the list of Competitive Matters set out in this resolution from time to time by addition or deletion as may be appropriate and desirable under the Member Bill of Rights, 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; and

BE IT FURTHER RESOLVED, that notwithstanding the list set out in this resolution in Exhibit A, 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; and

BE IT FURTHER RESOLVED that the General Counsel, the Chief Executive Officer or their designees are authorized to take such actions as needed to implement and administer this resolution.

EXHIBIT A
Competitive Matters

1. Portions of 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, which, if disclosed, could adversely affect the Cooperative's position in a contemplated borrowing, investment or banking transaction or related matter; and
4. Bids 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
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. 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.
 - 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.

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