

Subject: DIRECTOR ELECTION AND VOTING		Policy No: 12
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**I. OBJECTIVES:**

- A. To establish general guidelines governing the voting process for the election of directors (Directors) to the Empire Electric Association Inc. (EEA) board of directors (Board) consistent with law, EEA's articles of incorporation and bylaws.
- B. To establish general guidelines governing the voting process for all other matters properly brought before the members (Members) of EEA consistent with law, EEA's articles of incorporation and bylaws.
- C. This policy is intended to ensure the fairness, impartiality, confidentiality, transparency, and integrity of the voting process and shall be posted on EEA's website.

**II. POLICY:****A. GENERAL**

1. The Board and EEA are prohibited from endorsing a candidate (Candidate) for election to the Board. Resources of EEA shall not be used to support or oppose a Candidate for election. The Board is not prohibited from taking a public position on other matters properly brought before the Members of EEA.
2. Directors are prohibited from sending individual newsletters using EEA resources.
3. Elections for Directors will be held at the annual meeting of EEA. The date, time and location for the annual meeting will be posted on EEA's website no less than six (6) months prior to the annual meeting. The Board shall select an annual meeting date during a regular meeting of the Board in sufficient time to allow for proper posting of the notice in accordance with applicable statute and this policy.
4. Information on how to become a Candidate and the schedule of elections shall be mailed to each member and posted on EEA's website no less than two (2) months before petitions to become a Candidate are due. Mailing may be by any combination of a separate mailing, a bill stuffer, or within EEA's newsletter (*The Echoes*) which is included as an insert in the *Colorado County Life* magazine.

**B. DIRECTOR CANDIDATE QUALIFICATIONS**

1. In compliance with the bylaws of EEA, to become or remain a director, the Director shall:
  - a. Be a member of EEA for at least one (1) year immediately prior to becoming a director.
  - b. Be a bona fide resident of the district represented for at least one-hundred twenty (120) days prior to becoming a Director, which means that the person must be a permanent occupant receiving electric service from EEA at his or her primary residential abode.
  - c. Be a citizen of the United States of America and a registered voter in the person's director district.
  - d. Be at least eighteen (18) years of age.
  - e. Not be an employee of EEA.
  - f. Disclose monetary and in-kind contributions to the director's campaign, in accordance with a policy adopted by the Board that is consistent with this requirement.

2. The Board has also developed additional qualifications for individuals elected or appointed to serve as a Director. The Director:
  - a. Should be willing to promote and safeguard EEA interests.
  - b. Should represent the entire membership impartially for the good of all.
  - c. Should not be employed by, or in any way financially interested in, a competing enterprise or business.
  - d. Should be willing to attend regular and special meetings of the Board, national, state and other meetings of organizations with associated interests that further EEA movement and training courses or seminars which aid in keeping well informed on matters affecting EEA..
  - e. Should know that Directors serve without salary, and receive per diem only, plus reimbursement of all reasonable expenses, for attending regularly scheduled and approved affairs of EEA.
  - f. Should agree to serve the term of office for which elected.
  - g. Should not use, or allow use of, his or her position as a Director to further any political ambitions.
3. A Director shall be expected to comply with all of the current Board polices but should be particularly aware of the following policies prior to seeking a director seat:
  - a. Policy 1 (Code of Ethics).
  - b. Policy 13 (Activities and Conduct of Individual Board Members).
  - c. Policy 15 (Compensation & Expenses of Board Members).
  - d. Policy 31 (Campaign Contributions Reporting).
  - e. Policy 47 (Anti-Nepotism).
  - f. Policy 50 (Board Education).

#### C. NOMINATING PETITIONS

1. Any Member in good standing with EEA is eligible to submit a nominating petition to become a Candidate for the Board. Nominations for Directors to serve on the Board shall be by written petition only. Any petition for nomination shall be in writing and be signed by not less than fifteen (15) Members of EEA who reside in the district for which the nomination is made. EEA will furnish official petition forms for this purpose. The official petition shall designate the name of the nominee, the term for which the nominee is being nominated and the director district for which the nomination is made. Nominating petitions may be picked up from EEA between ninety (90) and forty-five (45) days before the meeting at which Directors are to be elected.
2. All nominating petitions shall be filed at the office of EEA with the Board secretary at least forty-five (45) calendar days but not more than ninety (90) calendar days before the meeting at which Directors are to be elected.
3. The secretary shall post all nominations thus made at the principal office of EEA at least one business day after nominating petitions are due.
4. Nominations by petition will be the exclusive method of nomination.
5. Qualifying Candidates for a board election are entitled to membership lists including names, addresses and membership numbers, in accordance with the provisions of § 40-9.5-110(1)(b), C.R.S., as the same may be modified, amended, or superseded. Candidates shall use such lists solely for purposes of the election and shall sign the Affirmation of Director Qualifications form at the end of this policy affirming that they will not retain the data in any form and will return or destroy the lists immediately after the election.

#### D. ELECTION PROCEDURES:

1. If, in the opinion of the Board, it is impractical to arrange for an independent third party to oversee the storage and counting of ballots, then the Election Procedures developed in this section shall apply. If the Board selects an independent third party, the third party will coordinate their own election procedures with the General Manager to comport with other applicable sections of this Part D Election Procedures.
2. This policy is intended to ensure the fairness, impartiality, confidentiality, transparency, and integrity of the voting process and to ensure that ballots shall be stored in a way that protects their privacy.
3. Selection of election judges (Election Judges) and election employees (Election Employees)
  - a. Election Judges shall be at least 18 years of age prior to the meeting and they shall be a bona fide member of the district from which they are nominated.
  - b. The Board shall establish the number of Election Judges each year. There shall not be less than three (3) nor more than seven (7) Election Judges, depending upon the number and types of ballot issues pending before the membership in any given year. In no event shall there be an even number of Election Judges.
  - c. The selection of Election Judges will be made at least three (3) months prior to the meeting. The Board shall be responsible for nominating Election Judges. Each Director has the option to nominate up to one (1) nominee appointment for each director district before the meeting. If more than the established number of nominees are brought forth, the Election Judges shall be selected by random drawing from the group of nominees.
  - d. Compensation for Election Judges shall be an amount set by the Board, plus mileage for all meetings, including but not limited to the annual meeting.
  - e. The Election Judges constitute the election committee (Election Committee).
  - f. The president (President) of EEA shall be responsible for picking a chairman of the Election Committee to preside each year.
  - g. In addition to the Election Judges, the General Manager shall appoint for each meeting EEA employees to act as Election Employees, including but not limited to counters, envelope slicers, and ballot removers.
4. The Election Committee shall monitor the election procedure at EEA's annual meeting or special meeting, to ensure the regularity of the voting and prevent voter fraud.
5. It is the intention of the Board that a liberal interpretation should be applied to determine the validity of ballots so as to afford the membership the greatest possible opportunity to participate in the selection of its Directors and to voice its wishes on how EEA should conduct its business. Therefore, it is the desire of the Board that the Election Judges use this liberal interpretation as a guiding principal to determine the validity of ballots in questionable cases.
6. The Election Committee ultimately reports to the membership, but questions should be first directed to the General Manager and EEA's Attorney. The Election Committee is responsible for delivering the ballot boxes and the mail ballots to the counting room and shall oversee the actual opening and counting of the ballots by those delegated the counting task.
7. Control Procedure Relating to Mailed Ballots
  - a. Once the mailed secret ballots are returned to EEA, EEA shall at all times, except when such ballots are being alphabetically arranged or for other legitimate purposes, keep the ballots securely locked in a secure vault at EEA's headquarters. As the ballots come in, a designated EEA employee shall be responsible for making a determination whether the outside of the mailer has been improperly executed and is therefore spoiled. Spoiled ballots shall be placed in a separate category and a notation shall be made on each ballot why the accounting manager believes the ballot was spoiled. No more than five (5) calendar days prior to the meeting, the Election Committee shall review said mailers and make a decision whether to ratify or reverse the decision of the accounting manager. Reversed ballots shall

be properly placed with the other mail ballots and the notation shall be obliterated. Spoiled ballots by way of example, but not by way of limitation are those that:

- i. are received with improper certification on the mail ballot envelope;
  - ii. names which cannot be reasonably correlated with the master list of the members;
  - iii. mailed ballots sent in envelopes other than those provided by EEA for the return of ballots;
  - iv. two or more ballots appearing in one envelope;
- b. Spoiled ballots shall be stamped "Spoiled" in red with a spoiled ballot stamp, segregated, and kept until after the meeting and all time for appeal has expired.
  - c. After said procedure is completed, the ballots shall be placed in a secure vault until counted.
8. Recount Procedure and Time Limit for the Same
- a. In the event the total ballots cast for two or more Candidates in any competing directorship results in a difference in votes for each Candidate of one percent or less, there shall be an automatic recount of all the ballots for that directorship.
  - b. In the event the total ballots cast for two or more Candidates in any competing directorship results in a difference in votes for each Candidate of greater than one percent, any Candidate of that directorship may protest the count and request a recount by the Election Committee by submitting a signed written protest to the President of the Board or the General Manager by 5:00 P.M. not more than five (5) calendar days after the Election Committee's certified count has been announced.
  - c. Recounts shall be conducted by the Election Committee as soon thereafter as reasonably possible under the prevailing circumstances. It shall be permissible for any three (3) of the total number of Election Judges present at the meeting to conduct the recount. The recount decision of the Election Committee shall be final, but if the results turn upon the issue of spoiled or invalid ballots, the Election Judges shall consult with the General Manager and EEA's Attorney.
  - d. In the event the recount involves spoiled ballots and the recount is not resolved to the satisfaction of the contesting Candidate, the Candidate may use the procedures provided by Colorado law. All expenses, including but not limited to filing fees, attorneys' fees, and expert witness fees incurred by EEA shall be paid by the contesting Candidate filing the judicial contest unless the contesting Candidate prevails in his or her judicial challenge and then all expenses shall be borne by the party which incurred them. From the date of the final decision of the Election Committee, the contesting Candidate shall have a period ending at 5:00 P.M. on the fifteenth (15th) calendar day in which to file an action with the District Court. Venue shall only be proper in the District Court in and for the Twenty-Second Judicial District.
9. Ballot Security
- a. Ballots shall be retained until all contest and appeal times have lapsed. Ballots shall be placed in a locked receptacle and delivered to the accounting manager for safekeeping during the retainage period. The key to the receptacle shall be retained by the chairman of the Election Committee.
10. The Counting Process
- a. No more than five (5) calendar days prior to the meeting, all mail ballots will be counted.
  - b. In-balloting (ballots cast at the meeting) will be counted at the meeting.
  - c. The Election Committee shall be present at the ballot counting if the counting is performed by EEA instead of an independent third-party.
  - d. Candidates may be present during and observe the ballot counting. Observing the counting process shall not include obtaining a tally of votes cast before the final vote is announced at the Meeting of Members. Candidates shall be noticed no later than thirty (30) calendar

days prior to the annual meeting when the counting process will take place. For proper notice, Candidates are solely responsible for providing EEA with their contact information.

e. Election Committee Tasks

- i. The Election Committee should report suspicious activity or apparent irregularities which take place at the ballot box or in the counting room to the General Manager and the EEA Attorney. The Election Committee, with the assistance of the General Manager and the EEA Attorney, will make a determination as to whether the activity is actionable.
- ii. If questions arise as to the validity of some ballots, ballots determined to be invalid or spoiled should not be thrown away or otherwise destroyed but should be placed in a separate receptacle for safe keeping in the event close election results occur between two candidates and it is necessary to either re-count ballots or deliver the ballots to a court.
- iii. The Election Committee shall certify the tabulation of the mail-balloting and the in-house balloting. The tally of the voting shall be kept secret by the Election Committee until the counting is complete and the announcement is ready to be made at the Membership meeting.

11. Invalid Responses on Ballots

- a. Determination as to whether portions of a ballot are invalid or spoiled shall be made by the Election Committee. All remaining issues on a ballot may remain valid even if a portion of the ballot is deemed invalid.
- b. Examples of an invalid portion of a ballot include the following:
  - i. Two or more candidates in the same district have been voted for.
  - ii. More than one voting mark has been made on a ballot issue calling for one response.
  - iii. Voting marks have not been placed in the proper location on the ballot such as between the boxes, etc.
  - iv. Ballots reflect write-in director candidates.
  - v. A ballot is a copy of the original, mutilated, or typed over.

12. Irregularities During the Election Procedure

- a. The General Manager shall take prompt action to address any irregularity discovered during the election procedure. Any action taken shall comport with the Board's desire to provide Members the greatest possible opportunity to participate in the election.
- b. The General Manager shall promptly notify the Board of the irregularity and of any actions taken to address it.
- c. The General Manager shall also endeavor to contact any Members directly affected by the irregularity.
- d. The Board may direct the Manager to notify the entire membership of the irregularity and corrective actions if it deems such notification as necessary.

13. Miscellaneous

- a. Once registration is completed, the meeting is called to order, and a quorum is declared, the Election Committee and the Election Employees shall proceed with counting the in-ballots. In the interest of fairness and to dispel any appearance of impropriety, no person shall be present in the counting room except the Election Judges, the Election Employees, the Candidates, the Manager, the EEA Attorney, and Officers of the Board.
- b. The ongoing ballot count shall not be released or disclosed to any person outside the counting room until it is complete and authorized by the chairman of the Election Committee.
- c. Any complaints raised by the Members during the voting process should be immediately referred to the Election Committee.

- d. The voting procedure in EEA's bylaws and this policy should be read in concert, but if there is an inconsistency, the bylaws shall control.

#### E. VOTING

1. Each Member of EEA shall be entitled to vote on all issues properly brought before the membership including the election of directors either at a meeting held for such purpose or by mail.
2. Mail voting shall be in writing on ballots provided by EEA. Members may return mail ballots by mail, which shall be received by EEA not less than five (5) calendar days prior to the scheduled membership meeting. Members may also return mail ballots by delivering them to a drop box located at EEA's headquarters not less than one (1) calendar day prior to the scheduled membership meeting.
3. Members who vote by mail are not entitled to vote at the scheduled membership meeting.
4. At all meetings of the Members at which a quorum is present, all properly-noticed action items shall be decided by a vote of a majority of the Members voting in person or by mail; except as otherwise provided by law, or EEA's articles of incorporation or bylaws.
5. Manner of voting on all issues including election of directors:
  - a. Natural persons may vote their membership by mail or by being personally present at the meeting.
  - b. A partnership or limited partnership may vote its membership by any general partner.
  - c. Corporations, associations, churches, school districts, and government subdivisions may vote their membership by mail by properly executing a certification which shall be on the return envelope. These entities may vote said ballot in person by the presence of an officer of the entity, provided there is a properly executed and signed resolution from the entity authorizing the holder of the same to cast a ballot at the meeting.
  - d. Trusts and Estates may vote via a personal representative for an estate or a trustee for a trust may vote the estate or trust membership by mail or by being personally present at the meeting by executing a written ballot in the proper name of the estate or the trust.
  - e. EEA reserves the right to request proper identification of any natural person and to request such evidence as is necessary to establish the authority of a natural person's right to vote the membership of any entity not a natural person.
  - f. If a joint membership is held, such membership shall be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the members. Only one (1) signature of a joint member shall be required to cast the vote of the joint membership, but a vote shall not be invalidated if the signatures of multiple joint members appear on any ballot presented to cast a vote.
6. The secretary shall be responsible for mailing with the notice of the meeting (Notice), or separately, but at least fifteen (15) calendar days before the date of the meeting, the official ballot for all issues properly brought before the Membership including the election of directors. The official ballot for the election of directors will include the names of candidates nominated and the director district for which nominated. The official ballot for all other issues will be clearly identified. Such mailing shall be to all Members of EEA.
7. If a Member decides to cast a mail ballot, the ballot shall be marked by the Member, placed in a special envelope provided for the purpose so as to conceal the marking of the ballot, deposited in a return envelope which must be signed by the voting Member, and mailed back to EEA or their designee. Envelopes containing mail ballots shall remain sealed until counted under Part D of this policy. Ballots that are returned without the enclosed privacy sleeve, but are otherwise valid, will still be counted.
8. Voting for directors by proxy or cumulative voting shall be prohibited.

9. Should there be only one nomination from each district open for election then, no ballots for the election of directors will be mailed or cast and the nominee will be declared elected as a matter of law at the annual meeting or within five (5) calendar days thereafter as provided by EEA's bylaws.
10. The deadline for returning mail ballots shall be posted on EEA's website at least three (3) months prior to the deadline and shall remain posted until after the election.
11. The ballot position of a qualified Candidate will be selected on a random basis prior to the publication of the ballot.
12. The Notice that is mailed to Members with the ballot shall contain voting instructions and biographical information about each Candidate. Candidates will be identified by name, town of primary residence, and length of membership. A Candidate may submit up to a 250-word summary of their qualifications and views for inclusion in the Notice. In the event a Candidate submits more than 250 words, the statement will be truncated. EEA will not make any other edits to the statement.
13. A Member may request a replacement ballot. The Member will be advised that they may vote in person at the meeting. Should that be unsatisfactory, a ballot and attendant information will be reissued to them. Should EEA receive more than one ballot from any single Member, all ballots from said Member will be declared invalid.
14. In-person balloting at the meeting will be available to Members prior to the business portion of the meeting on the day of the meeting for a specific period of time. The Notice shall specify the hours of balloting and the specific time when balloting will cease.
15. A Candidate may observe the registration and voting process. Observing the registration and voting process shall not include obtaining a tally of votes cast before the final vote is announced at the Meeting of Members. Questions or concerns, raised by the Candidate regarding the registration and/or voting process should be directed immediately to the Election Committee for its immediate review and determination.
16. Any question, concern, dispute or inquiry regarding any election or voting issue that might arise during the registration and voting process will be submitted in writing by a Member to any Election Judge for the Election Committee's immediate review and determination. Any form of written submittal to any Election Judge shall be sufficient. The Election Committee may respond to non-written questions but such shall not be considered a legal form of inquiry.

#### F. DISPUTE RESOLUTION

1. The Election Committee shall have the authority to rule on all questions that may arise with respect to the validity of nominating petitions, validity of Member signatures, the registration of Members, counting of ballots cast, determination of the validity of any ballot irregularly marked or cast, rulings upon all other questions that may arise relating to the ballot by mail process, Member voting and the election of Directors, and decisions upon any challenge, protest or objection made with respect to any election or conduct that may affect the results of any election. The Election Committee decision on all such matters shall be final.

#### G. LEGAL AUTHORITY

1. This policy is intended to comport with C.R.S. § 40-9.5-109.5 and 40-9.5-110, as the same may be amended from time-to-time. In the event any clause or provision of this policy shall be adjudged to be invalid or void, or determined to be in conflict with EEA's articles of incorporation, bylaws, existing laws, rules, or regulations of the United States of America, State of Colorado, or any governing body having jurisdiction, then and in that event, such laws, rules, or regulations shall take precedence over the particular guideline and the fact that any

such clause or provision may be invalid or void shall not serve to invalidate the remaining guidelines, clauses and provisions contained herein.

III. RESPONSIBILITY:

- A. The Board shall be responsible for any change or revision of this policy.
- B. The Board and the General Manager are responsible for administration of this policy and for making recommendations for changes.



President's Signature

Date: 08/14/2020



AFFIRMATION OF DIRECTOR QUALIFICATIONS FORM

I affirm that I am:

1. A member of Empire Electric Association, Inc. for at least one year immediately prior to the date of the election.
2. A bona fide resident of the district represented for at least one-hundred twenty days prior to the date of the election, meaning that I am a permanent occupant receiving electric service from Empire Electric Association, Inc. at my primary residential abode, located in the district represented.
3. A citizen of the United States of America and registered to vote in the district represented.
4. At least eighteen (18) years of age.
5. Am not an employee of Empire Electric Association, Inc.
6. Will disclose all monetary and in-kind contributions to my campaign and comply with Board Policy that is adopted to implement rules for reporting campaign contributions consistent with this requirement.

I have read the current Empire Electric Association, Inc. Articles, Bylaws, Board Policy Number 12 (Director Qualifications), and the following policies:

1. Policy 1 (Code of Ethics)
2. Policy 13 (Activities and Conduct of Individual Board Members)
3. Policy 15 (Compensation & Expenses of Board Members)
4. Policy 31 (Campaign Contributions Reporting)
5. Policy 47 (Anti-Nepotism)
6. Policy 50 (Board Education)

I certify that I qualify according to Article III, Section 2 of the Bylaws and this Policy 12 for nomination, election, or appointment to serve as a Director on the Empire Electric Association, Inc. Board of Directors.

By checking this box, I request a membership list should I qualify as a Candidate. I certify that I will not retain the data in any form and will return or destroy the membership list immediately after the election. I further certify that I will use the membership list only for purposes of the election. (Policy 51)

I have accordingly signed my name and had the same witnessed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Email Address \_\_\_\_\_

PHYSICAL ADDRESS

\_\_\_\_\_  
\_\_\_\_\_

WITNESS: \_\_\_\_\_

MAILING ADDRESS

\_\_\_\_\_  
\_\_\_\_\_

CANDIDATE

\_\_\_\_\_  
Print Name

Phone Number: \_\_\_\_\_ Cell \_\_\_\_\_

\_\_\_\_\_  
Sign Name

