

POLK-BURNETT ELECTRIC COOPERATIVE

Policy No.: **M-33**

Subject: **Disposition of Offers to Acquire All or Substantially All of the Cooperative's Assets**

Objective: To provide guidance for the cooperative's board of directors relating to the procedures for handling offers to acquire any substantial portion of the assets of the cooperative in accordance with Article X of the Bylaws.

Policy: This policy applies to any offer to acquire any substantial portion of the assets of the cooperative, whether by purchase, lease, merger, consolidation, or other means.

1. If an offer is received by the cooperative and such offer is not a Bona Fide Offer (as defined in Paragraph 3 below), it shall be considered an "Inquiry." The recipient of any Inquiry shall notify the person submitting the Inquiry that, under the terms of this policy, the board of directors shall not consider an offer unless it qualifies as a Bona Fide Offer, as defined in Paragraph 3a.
2. The general manager of the cooperative shall notify the board of any Inquiry or Bona Fide Offer immediately upon learning of it.
3. The board of directors shall consider only an offer which meets all of the criteria listed in this paragraph, in which case it shall be considered a Bona Fide Offer. If at any time it is determined that an offer does not meet all of the criteria in this paragraph, it shall be rejected by the board, and the person submitting the offer (the "Interested Party") shall be notified of the rejection. The Interested Party, however, shall be given an opportunity to submit additional information to meet these criteria within a reasonable period of time, not to exceed three (3) months.
 - a. A Bona Fide Offer must be in writing, must contain the acquisition price and all other material terms, and must be binding upon the Interested Party until a specified date on which it will expire if not accepted or rejected by the cooperative.
 - b. A Bona Fide Offer must disclose the identity of the Interested Party and any other persons the Interested Party contemplates may have a beneficial interest in the proposed transaction. A Bona Fide Offer shall be executed by authorized representatives of the Interested Party.
 - c. A Bona Fide Offer must contain the names, addresses, and telephone numbers of persons representing the Interested Party with whom the board may communicate and from whom it may secure authoritative answers regarding the Bona Fide Offer.
 - d. In light of the expense of responding to a Bona Fide Offer, a Bona Fide Offer must be accompanied by an escrow agreement acceptable to the cooperative, which agreement shall require the Interested Party to deposit in an escrow account an amount equal to at least 10% of the cooperative's Total Utility Plant. The terms of the escrow agreement shall provide that the principal amount of the deposit may be drawn on by the cooperative to:

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- i. pay for all costs of accounting, engineering, legal, tax, and other studies, reviews, analyses, and appraisals by and for the cooperative in its evaluation of the Bona Fide Offer; and
- ii. pay costs incurred by the cooperative in seeking approval and all other required regulatory and contractual approvals.

If the offer is withdrawn or rejected, any remaining balance in the escrow account shall be paid to the Interested Party when the board certifies that all costs incurred under (i) and (ii) of this section have been paid in full.

- e. A Bona Fide Offer must contain a confidentiality agreement approved and accepted by the board of directors from the Interested Party not to issue press releases, discuss the Bona Fide Offer with the media, or otherwise publicly disclose the Bona Fide Offer without prior written notification to the cooperative, and agreement to refrain from issuing misleading statements or advertising.
 - f. A Bona Fide Offer must not conflict with the terms of the cooperative’s Articles of Incorporation, Bylaws, policies, contractual obligations, or any law or instrument applicable to the cooperative.
4. Upon the determination by the board that it has received a Bona Fide Offer the board shall:
- a. Designate an individual from the cooperative to receive all communications, including telephone calls and written communications, from the Interested Party, the members, and the media. This individual shall understand and follow this Policy, but except as explicitly empowered in such designation shall not have authority to bind the cooperative on any matter regarding the Bona Fide Offer.
 - b. Notify the cooperative’s members of the receipt of the Bona Fide Offer. The notice should include the following:
 - i. a summary of the Bona Fide Offer;
 - ii. a statement that the board has taken the Bona Fide Offer under advisement pursuant to the terms of this policy;
 - iii. a brief description of any preliminary assessment of the Bona Fide Offer and of the procedures the board will follow in completing its evaluation of the Bona Fide Offer;
 - iv. a statement that the members may review a copy of the Bona Fide Offer at the cooperative’s office during regular business hours; and
 - v. the name of the person whom the members may contact with questions regarding the Bona Fide Offer.
 - c. Send a copy of the Bona Fide Offer to its attorney.
 - d. Send a copy of the Bona Fide Offer to Dairyland Power Cooperative and request a statement from Dairyland as to how the proposed transaction will comport with the cooperative’s obligations under the wholesale power contract.
 - e. Send a copy of the Bona Fide Offer to any lenders, and request statements from them as to how the proposed transaction will comport with the cooperative’s loan and security agreements.

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- f. Obtain at least two (2) independent appraisals concerning the value of the cooperative and the assets that are the subject of the offer, using commonly accepted valuation methods.
 - g. Obtain a comparison of the cooperative’s and the Interested Party’s present and reasonably foreseeable future rates; fees and charges, including service extension requirements; other service rules and regulations; adequacy and reliability of service; and any other considerations relevant to the provision of electric service.
 - h. Obtain detailed information from the Interested Party, such as annual reports, tax returns, and form 10-K filings dating back at least five (5) years; full copies of all relevant audits, internal planning documents, employee policy manuals and union contracts; a current stockholder list; a list of all pending court and administrative proceedings; and any relevant operations manuals, engineering studies, construction plans, and environmental impact statements.
 - I. Obtain from the Interested Party an independent expert opinion on the potential tax liabilities of the transaction to the cooperative and the members.
 - j. Undertake any other investigations, studies, or comparisons which the Board considers relevant to its evaluation of the Bona Fide Offer.
 - k. Evaluate the Bona Fide Offer in accordance with the terms of this policy, considering the evaluation criteria set forth below, and any other criteria which the board deems relevant.
5. After evaluation, if there is not a two-thirds (2/3) majority of the board that wants to pursue the transaction, the board shall notify the Interested Party and the cooperative’s members of the rejection of the offer and the reasons for the rejection. The board shall also notify Dairyland and any lenders of the board’s decision.
 6. If, after evaluation, a two-thirds (2/3) majority of the board determines that the sale, lease, merger, or other acquisition proposed in the Bona Fide Offer is in the best interest of the cooperative, its members, and the communities it serves, the board shall notify the Interested Party, the members, Dairyland, and lenders of its intent to further pursue the transaction, subject to negotiation and approval of a final written agreement detailing all terms of the sale, lease, or merger. Among other terms, the final agreement shall provide:
 - a. That all existing employees of the cooperative are offered continued employment for at least three (3) years upon terms at least equal to those enjoyed by the cooperative’s employees at the time the Bona Fide Offer was submitted to the board. The terms to be considered shall include wages, salaries, insurance, pension and other fringe benefits, rank and job title, place of employment, and residence;
 - b. That the total consideration for the acquisition will be paid directly to the cooperative or its account; provided, however, that a Bona Fide Offer of merger may provide for acquisition of stock by the cooperative’s members in exchange for their capital credits and membership;
 - c. That all obligations under the wholesale power contract with Dairyland shall be satisfied; and

- d. That the transaction will become void if all member, shareholder, regulatory, and contractual approvals are not obtained within a reasonable time after execution of the final agreement.

As a condition of the cooperative undertaking such final negotiations, the Interested Party shall agree in writing to indemnify and hold harmless any employees, directors, officers, agents, servants, attorneys, accountants, consultants, representatives, affiliates, subsidiaries, and insurers of, and all others acting in privity with, the cooperative for any actions taken in connection with the Bona Fide Offer, and to carry insurance covering this indemnification.

7. Before submitting the Bona Fide Offer to a vote of the members, the board shall notify Dairyland and any lenders of the board’s intention to submit it to a vote of the members.
8. Once the above procedures have been followed, and upon notification to the members, the board shall submit the Bona Fide Offer to the membership for a vote. The notice shall include a summary of the final terms and conditions agreed to. A membership meeting shall be called for the purpose of voting on the offer. The meeting shall be called pursuant to the cooperative’s Articles of Incorporation and Bylaws and applicable law.
9. Any meeting of the members to vote on the offer shall be conducted according to the current edition of Robert’s Rules of Order, and the board of directors shall designate a person with expertise in such matters to serve as parliamentarian for the meeting.
10. If the members vote to accept the offer, the board shall take all actions necessary to finalize the transaction and, if necessary, dissolve and wind up the business of the cooperative; provided, however, that it shall be the responsibility of the Interested Party to obtain all necessary regulatory and contractual approvals. Unless such approvals are obtained within a reasonable time, the transaction shall be deemed to be null and void.
11. If a Bona Fide Offer is rejected at any time, whether by the board or by the members, or if a Bona Fide Offer is withdrawn by the Interested Party, any further such offer by the Interested Party or any of its affiliates within two (2) years after the date of rejection shall be rejected by the board unless it materially differs from the withdrawn or rejected offer.

EVALUATION CRITERIA

As provided in paragraph 4 (k) above, the board may consider any criteria which the board deems relevant in its evaluation of a Bona Fide Offer. To the extent practicable, and so long as not inconsistent with the best interests of the members, the Articles and Bylaws of the cooperative, and applicable law, the board shall consider each of the following criteria:

1. Whether the Bona Fide Offer is in the best interest of the cooperative’s present and future members. In determining whether the Bona Fide Offer is in the members’ best interest, the board should consider both economic and non-economic matters, both at the present time and for the reasonably foreseeable future, including but not limited to the following:
 - a. Whether rates, fees, and other charges, and service rules and regulations, of the Interested Party will be at least equivalent to, or better than, those of the cooperative, both at the time of the Bona Fide Offer and for the reasonably foreseeable future, defined here as not less than five (5) years. In evaluating rates, the cooperative’s capital credit system and the possible future impacts of the cost of the acquisition shall be taken into account.

- b. Whether the Interested Party’s electric service will be at least as reliable as that provided by the cooperative at the time of the Bona Fide Offer and as projected into the reasonably foreseeable future.
 - c. Whether other service functions affecting the members will be at least as good as those afforded by the cooperative, at the time of the Bona Fide Offer and as projected into the reasonably foreseeable future.
 - d. Whether and to what extent the members will have ownership and governance rights in their electric supplier.
 - e. Whether and to what extent the employees, suppliers, communities in which the cooperative operates, and the affiliated Dairyland cooperatives will be impacted by the transaction.
2. Whether the offer represents the fair market value of the cooperative as an on-going concern, after, weighing the results of the independent appraisals. The board shall consider all such information and opinions and shall make the final determination of whether acceptance of the Bona Fide Offer is in the best interests of the members and should, therefore, be submitted to them for a vote pursuant to Article X of the Bylaws.
3. Whether the Bona Fide Offer is in compliance with all applicable laws, regulations, and the requirements of the cooperative’s Articles of Incorporation, Bylaws, and policies.
4. Whether the Bona Fide Offer is in compliance, and would allow the cooperative to comply, with all requirements of the cooperative’s mortgage and loan documents, wholesale power contract, and other contractual obligations.
5. Whether the Interested Party is financially able to consummate the transaction. The board should also consider the source and feasibility of the proposed financing, and the sufficiency of the proof furnished by the Interested Party that necessary financing commitments have been secured.

Edward O. Gullickson, President
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