

Policy Type:	Board Policy
Policy No:	111
Title:	Election of Directors
Date Reviewed:	June 27, 2023
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Date Adopted:	January 25, 2022

SUBJECT: ELECTION OF DIRECTORS

I. OBJECTIVE: Colorado law requires that the Board adopt a written policy governing the election of Directors. This Policy and SMPA’s Bylaws provide that regarding the election of Directors:

II. POLICY:

- A. **Communication of Procedure.** Information on how to become a candidate and the schedule for elections will posted on the Cooperative’s website and mailed to Members in the district(s) being elected except where Members indicate their preference that the information be sent via email, no less than two months prior to petitions to become a candidate are due.

- B. **Districts.** In order to give equitable representation on the Board of Directors according to density of membership, the Board of Directors has divided the territory served by SMPA into seven districts and may from time to time as deemed advisable, change and adjust the districts so formed to meet any shift in the density of the membership of SMPA. One Member residing within each of the districts shall be elected to the Board of Directors by the Members residing in the respective districts. Members of the Board of Directors for each district shall be elected for a term of four years. Directors in various districts shall be elected to four year staggered terms, with Districts 3 and 6 in one year, District 2 in one year, Districts 1 and 4 in one year, and Districts 5 and 7 in one year.

- C. **Nomination.** Any fifteen or more Members from any particular district may make nominations for Directors from that district by signing and submitting a petition not less than sixty days prior to the election, and the Cooperative shall make a copy of any such petition available to any Member who requests it prior to the date of the election. Any Member signing such a nomination may withdraw his or her signature by written notice delivered to the Secretary not less than forty-five days prior to the election. Such petitions shall clearly designate the number of the district from which the candidate is nominated. The Cooperative shall post on the Cooperative’s website mail to Members, except where Members indicate their preference that the information be sent via email, with the notice of the election, a statement of the number of Directors to be elected, specifying in the case of each nominee, the district from which they are



nominated. At least ninety days (and not more than one hundred thirty-five days) before each election at which Directors are to be elected, the Cooperative shall cause to be published in at least one newspaper of general circulation in the certificated area, a notice captioned as follows:

“San Miguel Power Association, Inc.
Notice of Annual Election of Directors
Notice of Right to Nominate Directors”,

And including the following information:

That an annual election of the Board members is to be held.

The number of Directors to be elected at such election.

The district where Directors are to be elected.

That nomination may be made only by Petition signed by fifteen or more qualified Members from that district.

That such Petitions must be submitted according to instructions.

That such Petitions must be received on or before a certain date (giving date).

That Petition forms and information concerning legally required qualifications for prospective nominees and petition signers is available at the public offices of SMPA and by calling the numbers given below).

- D. **Campaigning.** All qualified candidates for Director will be entitled to membership lists in electronic format. All qualified candidates for Director will use those lists only for purposes of the election and will return or destroy those lists immediately after the election. Neither the Board of Directors nor any currently serving Director will send communications to Members of SMPA endorsing or opposing candidates using SMPA resources. Neither SMPA nor its Board of Directors will endorse or oppose any candidate for Director.
- E. **Ballots.** A ballot shall be prepared for each election, which shall list qualified candidates for each Director position. The order of names on the ballot shall be determined randomly in a manner that does not automatically assign the top line to the incumbent.
- F. **Voting.** Each Member shall be entitled to vote in the election of Directors for the district of their account (i) at a meeting to be held for such purpose, (ii) electronically, (iii) by mail or (iv) in person at any public office of the Cooperative, in all cases on ballots provided by the Cooperative. The qualified candidate receiving the highest number of votes of the nominees for Director within his or her district shall be elected a member of the Board of Directors for the term for which said election is held, or until his or her successors shall have been elected and shall have qualified. In the event of a tie vote, the election shall be determined by lot conducted by the independent third party as appointed in Section 7. A ballot shall be mailed to each Member at least ten days prior to the election in all contested elections. Electronic voting shall be available at least ten days prior to the election in all contested elections. In all uncontested elections, a ballot will not be mailed to each Member, and electronic voting will not be available, except that a Member may request a ballot in writing or by the telephone to any public office of the Cooperative at least ten (10) days prior to the election. If cast by mail, electronically or at any public office of the Cooperative, the

ballot must be received prior to the close of business on the business day prior to the meeting at which the election is to be held. The ballot deadlines will be posted on the Cooperative's website at least three months prior to the deadline, and will remain posted until after the election. Each ballot must be signed by the Member casting it. For the ballot of a joint membership, the ballot envelope mailed to the joint Member must include the name of each eligible voter. Any one of the joint Members may cast the ballot, and if only one joint Member votes, then the vote binds the joint membership and constitutes one vote. If both joint Members vote, then the first vote received binds the joint membership and constitutes one vote. For the ballot of an entity or non-natural Member, the first vote submitted by any representative of the entity or non-natural Member binds the entity or non-natural Member and constitutes one vote. Any Member who casts a vote electronically, by mail or in person at any public office of the Cooperative is not entitled to vote at the meeting held for such purpose. Voting for Directors by proxy and cumulative voting for Directors shall not be permitted.

- G. Election Supervision and Counting of Ballots.** As necessary, and not less than ninety days prior to any meeting of Members where an election may occur, the Board of Directors shall appoint an independent third party to receive, sort, verify and secure the return envelopes containing ballots, and at the appropriate time, count ballots and report voting results to the Members and the Board. All candidates for Director will be given the opportunity to be present during the counting of the ballots, or to have one representative present during the counting of the ballots; except that, if the Cooperative has contracted with a third party to collect and count ballots, the ballots must be delivered to the Cooperative under seal promptly after the count and, upon request of any candidate, made available to the candidate for inspection. Counting of ballots that are mailed can commence at any time prior to the deadline for receipt of ballots.
- H. Qualifications for Candidates and Directors.** A candidate for election as Director of a district, each Director elected to serve, and each Director appointed by the Board of Directors must be and remain throughout that person's term as Director: (i) a natural person; (ii) a Member in good standing of SMPA; (iii) legally capable of entering into legally binding contracts; (iv) within the past five (5) years not convicted of or plead guilty to a felony or to any crime of dishonesty, computer misuse, gambling, financial matters or other crimes which in the judgment of a majority of the current Board warrant disqualification; (v) not be financially interested in a competing enterprise or business selling electric energy or electric supplies to SMPA; (vi) not be employed in a managerial or sales capacity by a competing enterprise or a business selling electric energy or electric supplies to SMPA except local renewable and net meter accounts which have agreements with SMPA and are in compliance with SMPA policies; (vii) free of any continuing and substantial personal interest that is in conflict with the best interests of SMPA; (viii) not a relative of any employee of SMPA; (ix) not be employed by SMPA within the past three (3) years; (x) not an attorney hired by SMPA within the past three (3) years; (xi) not previously removed as a Director; (xii) a user of electric energy provided by SMPA; and (xi) a resident of that district. When a membership is held jointly by two or more persons, any one but not more than one joint owner may be elected a Director, provided however, that no joint owner shall be eligible to become or remain a Director unless all joint owners meet the qualifications of the Bylaws. No relative of a Director will be eligible to become or remain an employee of SMPA. For purposes of the Bylaws,



“relative” means a person who is a spouse, party to a civil union, child, grandchild, great-grandchild, parent, grandparent, great-grandparent, brother, sister, aunt, uncle, nephew, or niece, inclusive, (i) by blood or (ii) in-law. Determination of whether or not a Director is in compliance with the requirements of this Section shall be made by action of the Directors, after consultation with legal counsel. Nothing in this Bylaw provision shall, or shall be construed to, affect in any manner whatsoever the validity of any action taken at any meeting of the Board of Directors.

- I. **Date of Election.** The date of the election of Directors shall be fixed by the Board of Directors, posted on SMPA’s website, and otherwise published no less than six (6) months before the election. At each such election, Directors shall be elected as set forth in the Bylaws, to serve until their successors shall have been elected and shall have qualified, subject to the provisions of the Bylaws.

III. **RESPONSIBILITY:** The Board of Directors shall be responsible for the implementation of and compliance with this Policy