

**KAUA`I ISLAND UTILITY COOPERATIVE
BOARD POLICY NO. 18
(Reviewed 08/28/2018)**

BOARD MEMBER QUALIFICATIONS AND ELIGIBILITY

PURPOSE OF POLICY: To Publish the Qualifications for Election or Appointment to, and for Service on, KIUC's Board; and to Establish a Related Procedure and Affirmation Form.

POLICY CONTENT:

A. **General.** Certain minimal qualifications are required by Hawaii law and KIUC's bylaws for one to be eligible to be elected or appointed to, and to serve on, the KIUC Board. It is the ultimate legal responsibility of the Board to ensure these requirements are met and complied with. If the Board determines an incumbent, nominee or potential appointee lacks or has lost any of the necessary legal qualifications, it is the duty of the Board to remove such incumbent or to declare such nominee or potential appointee ineligible for election, whichever may be the case. By adopting, publishing and appropriately disseminating this Policy and the related Affirmation Form, a copy of which is attached hereto as Attachment "A", it is the Board's respectful hope that Board member incumbents, nominees or potential appointees will not only be fully apprised of these requirements, but mindful of their importance in deciding whether to continue or commence service on the Board.

B. **Requirements.**

1. **General Legal Requirements.** Hawaii law provides that a person, to be eligible for election or appointment to, and to serve on, KIUC's Board shall, among other things:

A. adhere to all applicable requirements of law, KIUC's articles and bylaws, and KIUC's duly made decisions;

- B. be loyal to KIUC, acting at all times in good faith for its best interests;
- C. have no continuing and substantial interests that are in conflict with the best interests of KIUC;
- D. be possessed of the minimum knowledge and skills necessary to govern the affairs of KIUC; and
- E. be willing to devote such time and effort to his/her duties as a Board member as may be necessary to govern KIUC's business and affairs.

2. **Bylaw Requirements.** KIUC's bylaws provide that a person, to be eligible for election or appointment to, and to serve on, KIUC's Board, shall:

- A. be an individual member of KIUC (a natural person), or a designated representative of a member of KIUC which member is a partnership, joint venture, corporation, limited liability company, political entity or other legal entity;
- B. not be a paid employee of the Association;
- C. have the reasonable skills, experience and background requirements for being eligible to serve or continuing to serve as a Director established by the Board of Directors.

3. **Board Requirements.** To be eligible for election or appointment to, and to serve on or continue to serve on KIUC's Board, an individual must meet following additional requirements:

- A. Have the capacity to enter into a legally binding contract.

- B. The Membership which the individual has indicated is the basis of his or her candidacy must be an active membership.
- C. Within two (2) years of becoming a Director, unless excused by the Board of Directors for good cause, receive a Credentialed Cooperative Director designation or Director Certificate or similar certification from the National Rural Electric Cooperative Association. Directors are strongly encouraged to continue pursuing educational courses for Cooperative Directors
- D. Unless excused for good cause by the Board of Directors, attend at least two-thirds of all Board meetings during any twelve (12) month period.
- E. Attend prospective director orientation or have previously been a KIUC Director.
- F. Have not been an employee of KIUC within three (3) years of the date of the individual's prospective election to the Board.
- G. Not be a close relative (spouse, partner in a civil union, domestic partner, reciprocal beneficiary, child [including adoptive and step children], parent [including step parents and/or adoptive parents], sibling [including step siblings and/or adoptive siblings] or an in-law of said child, parent or sibling) of an employee, or have had such a close relative employed at KIUC within three (3) years of the date of the individual's prospective election to the Board.

- H. Not be a contractor, supplier, sub-contractor, or employee thereof, which contractor, supplier or sub-contractor earned more than 40% of its gross revenue from KIUC currently or within any of the three (3) years immediately preceding the individual's prospective election to the Board.
- I. Not be a close relative (as defined in subparagraph F above) of a contractor, supplier, sub-contractor, or employee thereof, which contractor, supplier or sub-contractor earned more than 40% of its gross income from KIUC currently or within any of the three (3) years immediately preceding the individual's prospective election to the Board.
- J. All officials elected to federal, state or county office are prohibited from running for election to the KIUC Board of Directors.
- K. Not having ever been convicted of a felony or any crime involving dishonesty or theft (unless pardoned or granted clemency by the appropriate authority).
- L. The fiduciary duty each KIUC Director and each non-Director member of a KIUC Board Committee owes to KIUC requires that each such Director or individual refrain from disclosing certain non-public, confidential, or proprietary information concerning KIUC to individuals outside of KIUC (those who are not KIUC Employees or Directors) and/or those who otherwise have no need to know of such information. In keeping with such obligation, each individual

elected to or appointed to a KIUC Directorship shall, prior to taking office, be required to execute an appropriate Confidentiality and Nondisclosure Agreement in the form attached hereto as Attachment "B", and each non-Director member of a KIUC Board Committee shall, prior to becoming a member of such Committee, be required to execute an appropriate Confidentiality and Nondisclosure Agreement in the form substantially similar to that attached hereto as Attachment "B".

4. **Procedure for Policy Implementation.** This Policy shall be implemented as follows:

- A. It shall be explained periodically in KIUC's newsletter.
- B. It shall be disseminated and explained to KIUC's Nominating Committee each year, prior to their making nominations, and the Committee will be urged to screen all persons considered for nomination as directors to ensure they are qualified in accordance with the Policy.
- C. Immediately after receipt of any nomination by petition, KIUC shall furnish the nominee with a copy of this Policy to ensure he/she is qualified in accordance with it and agrees to attend or has attended the required orientation.

- D. The Board, in filling any vacancies occurring on the Board, shall ensure that an appointee is first fully apprised of this Policy and is qualified in accordance with it.
- E. All persons actually nominated or being considered for appointment as directors shall, prior to election or appointment, be required to read this Policy and to then execute the Affirmation Form. If a potential appointee or nominee refuses to execute the Affirmation Form or qualifies his execution in any manner that the Board considered to be unfavorable to the best interests of KIUC, the appointment shall be withheld or, as to the nominee, the Board may inform the members of such fact prior to the election or disqualify the nominee, whichever it determines to do in the facts and circumstances existing.
- F. The Board shall not allow voting on any nominee who is determined by the Board to be ineligible under this Policy; and the Board shall cause to be removed from office pursuant to the Bylaws of KIUC any nominee duly elected to the Board or any incumbent who is determined by the Board to have lost or never had eligibility under this Policy.
- G. Every year prior to or at the Annual Meeting of KIUC's Board of Directors as specified in Article III, Section 6, of the KIUC Bylaws (or the Bylaws' successor provision), each incumbent whose office was not up for election at said meeting shall be required to review,

this Policy and to execute or re-execute, as the case may be, the Affirmation Form.

- H. Every year prior to or at the Annual Meeting of KIUC's Board of Directors as specified in Article III, Section 6, of the KIUC Bylaws (or the Bylaws' successor provision), all newly elected Directors, who have not theretofore executed the Confidentiality and Nondisclosure Agreement (“Agreement”) required herein shall execute said Agreement prior to their installation as a Director. Further, any sitting Director shall annually execute such Agreement, and all individuals appointed to fill any KIUC Director vacancy who have not theretofore executed said Agreement shall be required to execute same prior to being installed as a Director.

RESPONSIBILITIES:

The Board shall be responsible for the enforcement of this Policy.

Adopted on this 28th day of August, 2018

/s/ Calvin Murashige
Calvin Murashige
Secretary

Reviewed: 08/28/2018
Revised: 11/29/2016
Revised: 11/25/2014
Revised 05/22/2012
Revised: 05/31/2011
Revised: 04/27/2010
Revised: 02/24/2009
Revised: 11/26/2005
Revised: 08/25/2004
Original Adoption: 2003

ATTACHMENT "A"

AFFIRMATION CERTIFICATE FORM

Kauai Island Utility Cooperative
4463 Pahe'e Street
Lihue, Kauai, Hawaii 96766

Affirmation of Director Qualification

I, the undersigned, hereby affirm that I have read the attached KIUC Policy No. 18 on, **KIUC Board Member Qualifications and Eligibility**, and that I am qualified in accordance with the Policy to be nominated and elected or appointed as a KIUC Board member, or as an incumbent to continue serving as such Board member, as the case may be.

I have accordingly signed my name hereto and had the same witnessed this _____ day of _____, 20__.

Signed: _____

Address: _____

Telephone No.: _____

WITNESS

Name: _____

Address: _____

Telephone No.: _____

Attachment "B"



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**CONFIDENTIALITY AND
NONDISCLOSURE AGREEMENT
(Directors and non-Director Board Committee Members)**

In connection with the undersigned individual ("Recipient") agreeing to serve or being elected or appointed as a Director of Kauai Island Utility Cooperative ("KIUC") or being appointed as non-Director member of a KIUC Board Committee (the "Committee"), KIUC or its representatives may provide to Recipient certain non-public, confidential, or proprietary information concerning KIUC, or concerning future transactions involving KIUC (the "Material"). Material may consist of written or oral information provided by KIUC, including, without limitation, any written or electronic documents marked "Confidential", any information conveyed to the Recipient where the individual conveying the information requests that it be held confidential or under circumstances where the confidentiality of the information is obvious, financial statements, projections, cost and expense data, and other business or trade information. Material also includes all analyses, compilations, forecasts, studies or other material prepared by Recipient containing, based on or reflecting any confidential non-public information furnished by KIUC. Material does not include information that (i) the Recipient can show was known to the public, or in the published literature prior to KIUC's disclosure of such Material to the Recipient under the terms of this Agreement; (ii) subsequent to the time of KIUC's disclosure to the Recipient, becomes known to the public or appears in the published literature through no fault of the Recipient; or (iii) is lawfully acquired by the Recipient from a third party (specifically not including any employee or agent of KIUC) who is not in breach of any confidentiality agreement with KIUC.

In consideration of being furnished with the Material, the Recipient agrees that:

1. The Material will be kept confidential and will not, without the prior written consent of an authorized agent of KIUC, be disclosed by the Recipient in any manner whatsoever, in whole or in part, and will not be used by the Recipient directly or indirectly, for any purpose other than in connection with Recipient's service as a Director of KIUC and/or on the Committee.
2. The Recipient will not, without prior written consent of an authorized agent of KIUC, make any statement, any public announcement, any release to trade publications or to the press, or make any statement to any competitor, customer, employee, or other third party, regarding

Material, except as may be necessary, in the opinion of counsel, to comply with the requirements of any law, governmental order, or regulation.

3. The Recipient will keep records of each location where the Material is kept. If the Recipient is no longer a Director of KIUC and/or a member of the Committee, Recipient will, in that case, and at any time upon the request of KIUC, destroy or return all copies of the Material immediately, without retaining any copies and confirm such destruction in writing to KIUC. Any oral information covered by this Agreement will continue to be subject to the terms of the Agreement.

4. In the event that the Recipient is requested or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, or any similar process) to disclose all or any part of the Material, the Recipient will (i) promptly notify KIUC of the existence, terms and circumstances surrounding such request; (ii) consult with KIUC on the advisability of taking legally available steps to resist or narrow such request; (iii) only disclose the information requested after complying with clauses (i) and (ii); and (iv) exercise reasonable effort (if so requested by KIUC) to obtain, to the extent practicable, a protective order or other reliable assurance that confidential treatment will be accorded to such portion of any disclosed information as the requestor may designate. In the event that a protective order or other remedy is not obtained or that the requestor waives compliance with the provisions of this Agreement, the Recipient will furnish only that portion of the Material that is legally required and will exercise his or her best efforts to obtain reliable assurance that confidential treatment will be accorded the Material.

5. It is understood and agreed that no failure or delay by KIUC in exercising any right, power, or privilege under this Agreement will operate as a waiver. It is further understood that no single or partial waiver of any right, power, or privilege will preclude any other or further exercise of any right, power, or privilege under this Agreement.

6. The Recipient agrees that money damages would not be a sufficient remedy for any breach of this Agreement, and that, in addition to all other remedies, KIUC will be entitled to specific performance of Recipient's obligations relating to this Agreement and to injunctive or other equitable relief as a remedy for any such breach. For purposes of seeking equitable relief, the Recipient stipulates and agrees that any breach of the provisions of this Agreement may subject KIUC to irreparable harm and injury. .

7. This Agreement is the entire agreement between Recipient and KIUC regarding the nondisclosure of Material and supersedes all prior agreements and understanding regarding this subject. This Agreement may be amended only by written agreement executed by both Recipient and KIUC

8. This Agreement is not assignable or transferable by Recipient without the prior written consent of KIUC.

9. This Agreement is governed and will be construed in accordance with the laws of the State of Hawaii. If any terms or provision of this Agreement is found to be invalid or unenforceable, the remaining terms will remain in full force and effect.

IN WITNESS WHEREOF, this Agreement is executed by the Recipient indicated below, intending to be bound by its terms, and is effective as of the date indicated:

RECIPIENT

Signature: _____

Printed Name: _____

Date: _____