

# VALLEY ELECTRIC ASSOCIATION, INC.

## Corporate Policy #102

### LEGAL SERVICES

Dated: June 26, 2009  
Supersedes: February 1, 1997  
Formerly: Policy Cor 103

#### I. OBJECTIVE

The Board of Directors of the Association recognizes that competent legal representation and effective use of attorneys are critical to the successful operation of the Association. Although an attorney or law firm retained or employed by the Association (“Attorney”) and the Attorney’s representation of the Association are governed by rules of professional conduct and other local, state, and federal law, the objective of this policy is to provide additional guidance for, and emphasize important aspects of, the Attorney’s representation of the Association and the Association’s use of the Attorney.

#### II. POLICY

- A. General Counsel. The Association shall retain or employ an Attorney to continually provide general legal services to the Association (“General Counsel”). General legal services include, but are not limited to: (1) attending, and drafting or reviewing minutes of, all meetings of the Board of Directors and all annual and special meetings of the Association members; (2) negotiating, drafting, and reviewing contracts; (3) providing legal services for the disposition or acquisition of real property and interests in real property; and (4) providing legal services regarding general business, cooperative, and electric utility law.
- B. Special Counsel. As reasonably necessary, and following consultation with the General Counsel, the Association may retain or employ an Attorney to provide special legal services to the Association (“Special Counsel”). Special legal services require competence in a particular field of law and include, but are not limited to: (1) representing the Association in state or federal court, or before a local, state, or federal agency; (2) providing legal services regarding power supply, regulatory, labor, employment, tax, antitrust, environmental, or intellectual property law; and (3) providing legal services for the borrowing or lending of money. In providing special legal services to the Association, a Special Counsel shall provide the General Counsel copies of all communications, memoranda, briefs, notices, motions, and other documents prepared, filed, received, or sent by the Special Counsel. As determined by the Board and or CEO, the General Counsel may provide special legal services to the Association.

- C. Board Counsel. As determined by the Board, it may retain, employ, direct, and discharge an Attorney to continually or periodically provide legal services to the Board (“Board Counsel”), with the Board Counsel representing the Board as his or her client. The Association shall pay a Board Counsel a reasonable fee and reasonable expenses. To the extent practical, a Board Counsel’s representation of the Board must be governed in a manner similar to the manner in which an Attorney’s representation of the Association is governed under this policy.
- D. Competent Legal Representation and Conflicts of Interest. An Attorney shall provide competent legal representation to the Association, and shall have or acquire the appropriate knowledge, skills, time, and qualifications necessary to provide competent legal representation. No Attorney, however, guarantees, promises, or warrants a successful or favorable outcome regarding legal services provided to the Association. An Attorney shall comply with conflict of interest requirements prescribed in applicable local, state, and federal law and rules of professional conduct. An Attorney may provide legal services to an entity in which the Association owns an interest (“Affiliated Entity”) only if the Attorney complies with these conflict of interest requirements and all other legal requirements. An Attorney shall inform the Association’s Chief Executive Officer, or person authorized by the Chief Executive Officer in writing of any other entity engaged in generating, transmitting, distributing, marketing, or selling electric energy for which the Attorney provides legal services.
- E. Retaining, Employing, and Discharging Attorney. The Board or Directors or designated Committee of the Board or Directors shall make decisions regarding retaining, employing, and discharging the General Counsel and shall annually evaluate the performance of the General Counsel. Following consultation with the General Counsel, the Chief Executive Officer shall make decisions regarding retaining, employing, and discharging any Special Counsel. By providing written notice to an Attorney, the Association may discharge the Attorney, and terminate any attorney engagement agreement, at any time for any reason. By providing written notice to the Association, and as required or allowed by applicable law and rules of professional conduct, an Attorney shall or may withdraw from representing the Association and terminate any attorney engagement agreement. The Association shall be responsible for any reasonable fees and expenses incurred prior to termination of an Attorney and/or Special Counsel.
- F. Third Party. As part of providing legal services to the Association, and with the Chief Executive Officer’s prior consent, an Attorney may retain another attorney or may use an attorney or paraprofessional associated with the Attorney in a law firm. As reasonably necessary or helpful in providing legal services to the Association, and subject to any limitations stated in an attorney engagement agreement, an Attorney may contract for a non-attorney and non-paraprofessional third party to provide goods or services as approved by the Chief Executive Officer.

- G. Directing Attorney. Only the Board of Directors, the President of the Association, or the Chief Executive Officer may request that an Attorney provide legal services to the Association. As requested by an Attorney, and as reasonably necessary or helpful in providing legal services to the Association, the Association shall provide the Attorney reasonable access to its directors, officers, employees, consultants, agents, representatives, records, and documents. The Chief Executive Officer and an Attorney shall keep the Board of Directors reasonably informed regarding any matter for which the Attorney is providing legal services to the Association. In consultation with the Board of Directors or as directed by the Board of Directors, the Chief Executive Officer shall direct an Attorney. In providing legal services to the Association, and subject to the Board of Directors or Chief Executive Officer's direction, an Attorney may act on the Association's behalf in any manner reasonably believed to be in the Association's best interest. Unless the Chief Executive Officer gives his or her prior consent, an Attorney may not make a statement outside of a tribunal regarding the Attorney's provision of legal services to the Association, which statement the Attorney knows or reasonably should know will be disseminated by means of public communication.
- H. Attorney Fees and Expenses. The Association shall pay an Attorney a reasonable fee and reasonable expenses. An Attorney shall provide legal services to the Association in a cost-effective and efficient manner. The Association shall indemnify an Attorney for liability and expenses, including reasonable attorney fees, to which the Association has exposed the Attorney without the Attorney's fault.
- I. Unauthorized Practice of Law. No Association director, officer, employee, consultant, agent, or representative may provide legal services to the Association unless the individual is an attorney admitted to practice law in an appropriate jurisdiction.
- J. Association as Client. In providing legal services to the Association, an Attorney represents the Association, as his or her client, acting through its authorized directors, officers, employees, and members. In representing the Association, an Attorney does not represent the Association's directors, officers, employees, or members. If the Board of Directors gives its informed, written, and prior consent, and if an Attorney complies with applicable conflict of interest requirements, then the Attorney may represent an Affiliated Entity and the Attorney may represent individual Association directors, officers, employees, and members in matters related to the Attorney's representation of the Association.
- K. Attorney-Client Privilege. Confidential communications between the Association, or its agent or representative, and the Attorney, or his or her agent or representative, made to facilitate the Attorney's provision of legal services to the Association are protected by the attorney-client privilege. Association directors, officers, employees, consultants, agents, and representatives shall not disclose these communications to third persons, other than those to whom disclosure is made in furtherance of this provision of legal services, or those reasonably necessary for transmitting the

communications. To the extent these communications are disclosed to Association employees, consultants, agents, or representatives, they must only be disclosed to individuals who reasonably need to know of the communications. The Attorney shall not disclose attorney-client communications without the permission of the Chief Executive Officer or the Board of Directors.

- L. Attorney's Duty to Inform and Consult. An Attorney shall keep the Board of Directors and the Chief Executive Officer reasonably informed regarding a matter for which the Attorney is providing legal services to the Association. For decisions regarding the matter to be made by the Association, the Attorney shall explain the matter to the Board of Directors and the Chief Executive Officer to the extent reasonably necessary to permit the Association to make an informed decision. An Attorney shall promptly comply with the Association's reasonable request for information.
- M. Reliance. In providing legal services to the Association, an Attorney may rely upon information provided by the Association, unless the Attorney knows that the reliance is unwarranted. In performing his or her duties, an Association director, officer, or employee may rely upon information, opinions, reports, and statements prepared or presented by an Attorney. A director, officer, or employee's reliance, however, is only permitted regarding matters involving skills or expertise that he or she reasonably believes are within the Attorney's professional or expert competence. Further, this reliance is only permitted if the director, officer, or employee acts in good faith and reasonably believes that the reliance is warranted and that the Attorney merits confidence.
- N. Evidence of Violation of Law or Breach of Duty. If an Attorney, other than the General Counsel, knows or reasonably should know of any evidence of an actual or intended material violation of law or material breach of duty, or evidence of an actual or intended violation of law or breach of duty likely to result in substantial injury to the Association, by the Association or by any Association director, officer, employee, consultant, agent, or representative ("Evidence"), then the Attorney shall report the Evidence to the General Counsel. If the General Counsel knows or reasonably should know of any Evidence, then the General Counsel shall report the Evidence to the Chief Executive Officer and/or the Board of Directors.

Within thirty (30) days of Evidence being first reported, the General Counsel, the Chief Executive Officer, or the Board of Directors as determined by the Chief Executive Officer, shall investigate the Evidence, respond appropriately to the Evidence, and inform the reporting Attorney regarding the investigation and the response. If an Attorney, other than the General Counsel, reasonably believes that the General Counsel, the Chief Executive Officer, or the Board of Directors has not investigated or responded appropriately to the Evidence, or if the Attorney believes it is reasonably necessary in the best interest of the Association, then the Attorney shall report the Evidence to the Board of Directors or the legal and bylaws committee of the Board of Directors ("Legal Committee") in person and without the presence of

any other person, except a person invited by the Attorney. If the General Counsel reasonably believes that the Chief Executive Officer has not investigated or responded appropriately to the Evidence, or if the General Counsel believes it is reasonably necessary in the best interest of the Association, then the General Counsel shall report the Evidence to the Board of Directors or the Legal Committee in person and without the presence of any other person, except a person invited by the General Counsel.

If a reporting Attorney reasonably believes that he or she has been discharged because he or she reported Evidence, then the Attorney shall inform the Board or the Legal Committee of this belief. To encourage and facilitate the reporting and investigating of Evidence, and responding appropriately to Evidence, the Board or the Legal Committee shall meet at least quarterly with the General Counsel and without the presence of any other person, except a person invited by the General Counsel.

- O. Legal Programs, Publications, and Memberships. The Association shall encourage the General Counsel to: (1) attend legal programs sponsored by, and to subscribe to legal publications published by, the National Rural Electric Cooperative Association and any association of Associations located within the state; and (2) be a member of, and attend programs sponsored by, the Electric Cooperative Bar Association and any association of attorneys representing Associations located within the state.

### III. RESPONSIBILITY

The Board of Directors is responsible for compliance with this policy. The Chief Executive Officer is responsible for communicating with an Attorney regarding the Attorney's provision of legal services to the Association.