

DOWNRIVER UTILITY WASTEWATER AUTHORITY

BOARD MEMBER APPOINTMENT POLICY

The Downriver Utility Wastewater Authority (DUWA) is a public body corporate organized pursuant to Act 233. Representatives from DUWA's 13 Communities act as Board Members. DUWA's Board Members exercise all powers of DUWA. The Board Members meet monthly to jointly discuss, deliberate and determine the direction of DUWA's current and future operations. The DUWA Articles of Incorporation require that voting Representatives and Alternates be either an elected official or employee of the Community. The purpose of this policy is to ensure that the Authority, acting thru its System Manager and financial professionals, treats all Members equally. The Board is empowered to set policy for the Authority by a majority vote of the Members. A vote to adopt the policy shall not be used as an argument against the Member in the future on the basis of estoppel or laches.

I. Background

The DUWA Service Agreement, as approved by the DUWA Board October 13, 2016, and approved by all 13 Member Communities by March 21, 2017, provides the process for Member Communities to monitor Flow contributions. Article 4 of the Service Agreement states that the "process currently used to monitor Flows from the Communities is set forth in the System Monitoring Plan." The current System Monitoring Plan, revised April 9, 2015, gives guidance for Member Communities to estimate its Flow rates. The Flow rate estimates then become part of each Community's rates that are paid to DUWA, under Articles 5 and 6 of the DUWA Service Agreement. The Service Agreement is a contract between the Members and this policy is subservient to that contract. Any conflict between the Service Agreement and this policy is controlled by the Service Agreement.

II. Board Appointment Policy

The Articles of Incorporation control the appointment of the Board members. The Articles state in particular:

ARTICLE VII

The governing body of the Authority shall be a Commission consisting of thirteen (13) members, which shall be made up of the Mayors or Supervisors of each constituent municipality or their designees. Each constituent municipality shall also designate a member of its legislative body or other designee as an alternate Commissioner, who shall exercise all powers of that municipality's Commissioner in his or her absence or disability. **Provided, however, that any designee must be either an elected official or municipal employee for the community to be represented.** Each Commissioner shall qualify by taking the constitutional oath of office and filing it with his or her respective City or Township Clerk. The alternate Commissioner shall be designated by the legislative bodies of the constituent municipalities at the time of the adoption of these Articles of 3. (Emphasis added).

It is the policy of the Board that this requirement of a municipal employee shall mean either directly employed by the municipality or that an individual signed to a personal service contract with the municipality and that shall qualify as a "municipal employee" solely for purposes of this Article interpretation. For further clarity, the Board policy excludes those individuals whose firm maybe acting under a contract as the municipal engineering firm, consultant, or advisor.

Adopted by DUWA Board March 10, 2022

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