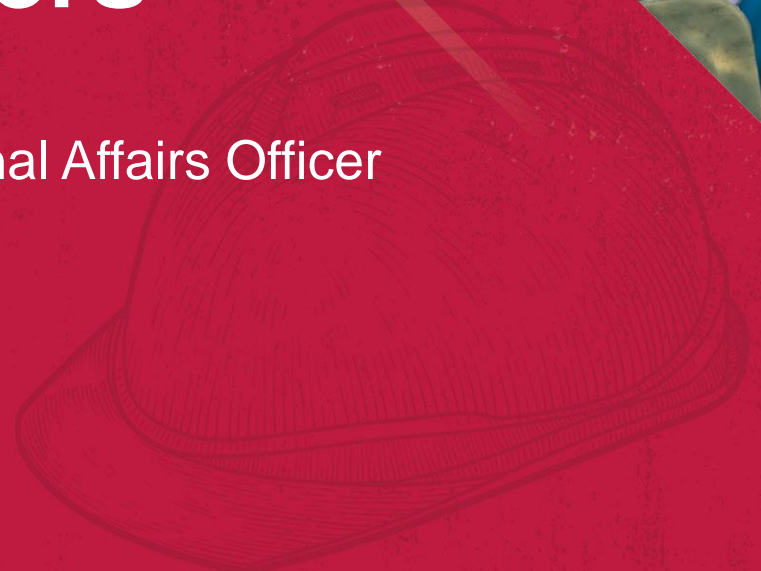




Responsibilities and Duties of Directors and Commissioners

Jay Morrison, Chief Legal and External Affairs Officer
January 2023



ElectriCities Governance Structure

NCMPA1 Board of Commissioners

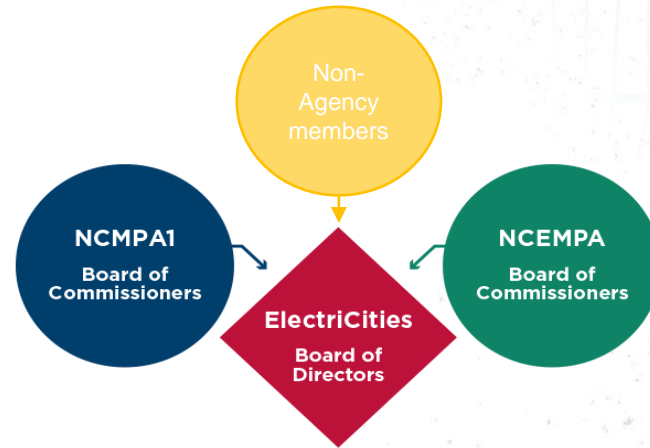
- Accepts/rejects wholesale **rates**
- Adopts NCMPA1 **budgets**
- Concurrence with **debt** issuance
- Elects Directors to the Board of Directors

NCEMPA Board of Commissioners

- Accepts/rejects wholesale **rates**
- Adopts NCEMPA **budgets**
- Concurrence with **debt** issuance
- Elects Directors to the Board of Directors

ElectriCities Board of Directors

- Sets policy and strategic direction
- Holds management accountable for day-to-day operations of the Power Agencies
- Adopts ElectriCities **budget**
- Approves Power Agencies **debt** issuance
- Adopts wholesale rates sufficient to cover Power Agencies' debt and expenses
subject to rejection by the Board of Commissioners



Trade Organization and Management Services

ElectriCities Staff

- Provides management services to the Power Agencies
- Provides other joint municipal assistance services to 88 cities in NC, SC and VA

ElectriCities Governance

The Agencies and ElectriCities delegated most authority to the Board of Directors.

However, each Agency kept the power to:

- Amend the Resolution creating the Board of Directors,
- Concur in the issuance of any debt for the Agency,
- Adopt or amend budgets,
- Adopt or amend bylaws for the Agency,
- Establish committees, and
- Exercise the powers and authority reserved by the Board of Commissioner.

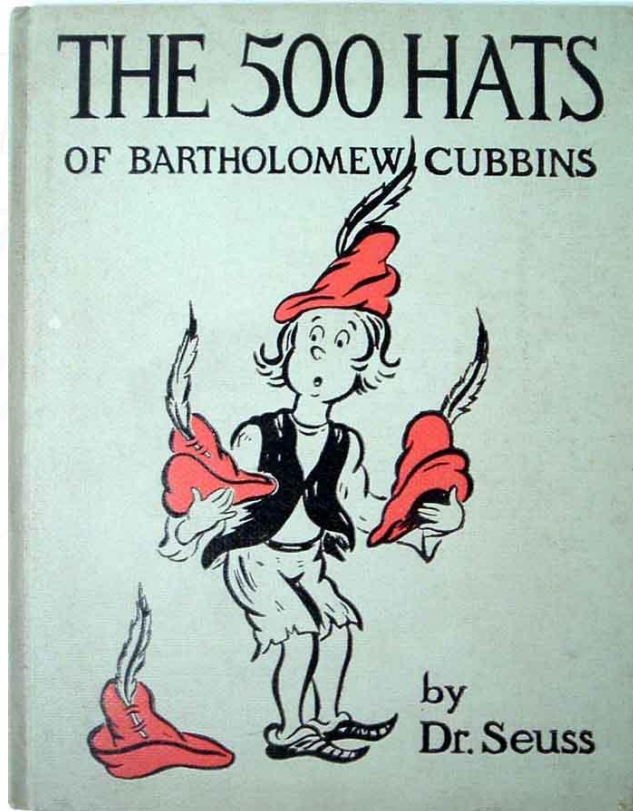
ElectriCities Governance

- Each Power Agency elects 6 directors to the Board of Directors.
 - 3 directors are elected by a **weighted** vote
 - 3 directors are elected by a **majority** vote.
- 2 directors are elected by the 14 non-Agency members of ElectriCities.
- Directors are elected for 3-year terms and can serve two consecutive terms.
- Directors serve at the pleasure of the Board of Commissioners and can be removed at any time and for any reason, with or without cause.
- Since 2009, the Chairs of the Board of Commissioners serve as ex officio members of the Board of Directors. They can participate in Board meetings, but they do not vote.

ElectriCities Governance

- Rate Committee
 - The bylaws of ElectriCities provide for a Rate Committee for each Agency as a committee of the Board of Directors.
 - The Rate Committee studies all rate issues and makes recommendations to the Board of Commissioners of each Agency as to rate matters, including increases and decreases.

Directors' and Commissioners' Fiduciary Duties



- Duty of Loyalty
 - Decisions must be free from fraud, bad faith and self dealing.
 - Interests of the organization in whose board room you are presently sitting must be paramount.

Directors' and Commissioners' Fiduciary Duties

- Duty of Care
 - Each director or commissioner must be diligent and prudent.
 - Affirmative duty to protect the Agencies and/or ElectriCities.
 - Directors and commissioners must inform themselves of all material information reasonably available before making a decision.
 - Directors and commissioners may rely on information prepared by engineers, accountants, financial advisors and attorneys who have experience in discrete matters beyond the normal business experience of a commissioner.
 - Reliance must be reasonable under the circumstances.

Business Judgment Rule

- The duties of loyalty and care allow directors to rely on the protection afforded by the “business judgment rule”.
 - Rule insulates directors from personal liability in making business decisions by creating a presumption that the directors acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the Power Agencies and ElectriCities
- A court will not second guess a Board decision if:
 - The directors and commissioners exercise their own honest and unselfish judgment without fraud and free of conflicts of interest.
 - The Board’s decisions were based on a rational business purpose

Statutory Provisions Related to Liability

- Exemption
 - Directors or officers of Electricities and the commissioners of the Agencies, or persons acting on their behalf, acting **within the scope** of their authority, are not personally liable or accountable in carrying out the express or implied powers of Electricities and the Agencies.
- Defense
 - Electricities and the Agencies may provide a defense against claims made against current and former commissioners, directors, officers, agents or employees of Electricities or the Agencies.

Statutory Provisions Related to Liability

- Indemnification
 - Board has purchased insurance to pay claims made against directors, commissioners and officers on account of any act or omission made in the scope and course of the director's or officer's duty
 - \$20,000,000 limit of liability
 - **Indemnification does not cover claims resulting from actual fraud, corruption or actual malice**

Duties as a Public Body

- ElectriCities and the Agencies are public bodies and their meetings are open to the public.
- Exceptions to open meetings include:
 - To prevent disclosure of information concerning a proposed or existing power supply or related contract of a power agency,
 - To preserve the attorney-client privilege,
 - To discuss the qualifications, competence, performance, fitness, or conditions of initial appointment of an individual officer or employee,
 - To investigate a complaint, charge, or grievance by or against an individual public officer or employee, and
 - To discuss economic incentives.
- Subject to limited exceptions, records kept or received by ElectriCities and the Agencies are “public records” and are subject to being produced pursuant to public records requests.

Questions or Additional Information

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