

# Missouri Clean Energy District

---

## **Policies, Practices and Application Materials**

*Revised June 20,2017*

*The following are the Policies, Practices and Application Materials (“Policies”) of the Missouri Clean Energy District (the “District”). This summary has been prepared to assist parties to District conduit financings and it addresses issues that are common to many transactions. This is not intended to be all-inclusive and questions regarding issues that are not addressed by the following should be directed to the District or its administrator. The Exhibits listed are an integral part of the Policies.*

**Exhibit A** – Letter from the Borrower

**Exhibit B** – Letter from the Underwriter, Bond Purchaser or Lease Provider

**Exhibit C** – Application Data Request

**Exhibit D** – Policies for Multi-State Issuance

**Exhibit E** – Fee Schedule

**Exhibit F** – Typical Timetable for Financing

## **GENERAL POLICIES AND PHILOSOPHY**

**Fulfill District’s Mission.** The Mission of the District is to provide access to the capital markets in an effort to lower energy costs of the built environment in Missouri by providing high quality, readily available, low cost financing alternatives for Missouri property owners. References herein to “bond” or “bonds” shall also include notes and other evidence of indebtedness. The bonds are solely payable out of payments made by the borrower. The payments on the bonds are not an obligation of the District or the State of Missouri.

**Professional Decorum.** The District’s staff and advisors are to assist borrowers prior to, during and after financings in a professional and courteous manner. The staff and advisors operate under the assumption that the District is in existence to serve its constituents.

**District’s Role in Financings.** The District is to assist borrowers in qualifying for, structuring and completing quality transactions. The District has determined not to dominate financings and dictate financial terms. The District defers to the rating agencies, credit enhancers, bond trustees and the underwriters or other bond purchasers to negotiate terms with the borrowers and to assure that proper protection and disclosure is provided bondholders. The District reviews the terms of the financing, assists the borrower with the financing process and insists on certain terms for the protection of its reputation and to assure that it is free from monetary liability. The borrowers are responsible for their own decisions as to financings and should employ financial professionals and attorneys to advise them with respect to the structure and terms of the financings.

## **DURING THE FINANCING**

**Preliminary Intent Resolution.** When required, the District process typically starts with the adoption by the District of a preliminary intent (or inducement) resolution. The District's counsel drafts the resolution upon receipt by the District of the Application and Data listed in **Exhibit C** and the letters from the borrower and its underwriter, bond purchaser or lease provider requesting inducement and generally describing the proposed financing. The letters should include a description of the project or refunding, any other relevant details, the estimated principal amount, and an acknowledgment of the District's Policies. Attached hereto as **Exhibits A and B** are general forms of such letters.

**Organizational Meeting or Call.** The District requires an "in-person" organizational meeting or telephone conference call at the outset of the financing involving all relevant parties.

**Official Statement.** In connection with public offerings, in which a bond offering document (Official Statement) is used, the following guidelines shall typically be followed:

- a. Official Statement must follow legal requirements and general industry practices as to disclosure relative to bonds and borrower; the borrower and underwriter, rather than the District, are responsible for the preparation of and the disclosure in the Official Statement.
- b. Official Statement provides that District is not responsible for payments on the bonds other than out of loan repayments from the borrower.
- c. The District does not sign the Official Statement.
- d. In addition to being addressed to the Underwriter, the Underwriter's or Disclosure Counsel provides a legal opinion (or reliance letter) addressed to and satisfactory to the District as to the adequacy of the disclosure in the Official Statement.
- e. The borrower will be required to comply with any contractually agreed upon requirements concerning on-going disclosure after the bonds are issued.
- f. The Official Statement, including Appendices thereto, should be in "substantially final" form at the time of the adoption by the District of the final bond issuance resolution.
- g. The Official Statement can be printed and/or electronically distributed and the bonds marketed in advance of the adoption of the final bond issuance resolution by the District with the prior consent of District staff; the risk that the resolution may not be adopted will rest with the borrower.

**Bond Documents.** The bond documents should contain:

- a. Standard representations, warranties, covenants and default provisions and provisions regarding indemnification of the District and its members, officers and staff and payment of its charges.
- b. All attorneys' opinions and accountants' letters are to be addressed to the District.
- c. Bond Counsel to draft basic bond documentation and to provide legal opinion as to the validity and tax exemption of the bonds. District's counsel typically drafts purchase contract for bonds and District closing certificate.
- d. Bond Counsel to draft bond issuance resolution to be adopted by District, to be provided to District and District's counsel for review no later than seven (7) days before the meeting at which the resolution is to be adopted.
- e. Bond documents in "substantially final" form at the time of adoption by the District of the final bond issuance resolution.
- f. Bond Counsel to prepare and cause the publication of any TEFRA notice of public hearing, after review by the District and its counsel, and obtain the Governor's or such other approval as is required by the tax or other laws.
- g. Bond Counsel to provide material referencing tax compliance.

**Purchase Contract.** The Purchase Contract among the underwriter or other bond purchaser, the District and the borrower providing for the sale of the bonds typically is drafted by the District's counsel. The Purchase Contract will contain provisions regarding indemnification of the District by the underwriter or other bond purchaser and the borrower.

**Trustee's Role.** Once the bonds are issued, the bond documents provide, to the extent possible, that the Trustee rather than the District is responsible for monitoring the borrower's compliance with the for the protection of the bondholders. This includes declaring defaults and covenant compliance. Trustees also must provide information regarding the bonds and the borrower reasonably requested by the District including any year-end audit materials. A bond trustee is not required in all transactions but will typically be used in public offerings. The charges of the Trustee are not the responsibility of or obligation of the District.

**Post-Issuance Matters:** In addition to the discussion under the section "Trustee's Role," following the issuance of the bonds in any District financing, the underwriter or other bond purchaser and the borrower shall be responsible for any record-keeping, continuing disclosure and filing requirements required of them by the bond documentation, applicable law, regulation or practice.

### **POLICIES REGARDING FINANCING PARTICIPANTS:**

**Bond Counsel:** The District appoints Bond Counsel and requires that Bond Counsel be a Missouri firm subject to these Policies and any historical variances relative to financings of particular borrowers. The District considers the request of the borrower if there is a preference for a particular firm. The District retains the right to refuse to appoint any firm. The fees of Bond Counsel are negotiated and paid by the borrower.

**Underwriter's Counsel:** The Senior Managing Underwriter selects the Underwriter's Counsel which must be a Missouri firm subject to these Policies and any historical variances relative to financings of particular borrowers. The District retains the right to refuse the selection of any firm. Disclosure Counsel may be used as desired by borrower or underwriter. The fees of Underwriter's Counsel and Disclosure Counsel are not the responsibility of or the obligation of the District.

**Senior Managing Underwriter, Bond Purchaser or Lease Provider:** The borrower selects the Senior Managing Underwriter, Bond Purchaser or Lease Provider. The District staff and District Financial Director will assist in making these selections if requested by the borrower. The Senior Manager, Bond Purchaser or Lease Provider must execute and deliver to the District a copy of the letter included as **Exhibit B** hereto in connection with the submission by the borrower of the Application Data in **Exhibit C** and the letter (**Exhibit A**) requesting an inducement resolution. The fees and charges of the Underwriters, Bond Purchasers and Lease Providers are not the responsibility of or obligation of the District.

**Public Offering – Co-Managing Underwriters:** In a public offering of bonds the borrower and its Senior Managing Underwriter are to manage the underwriting process including its procedures, allocations priorities, documents, timing, etc., subject to the provisions hereof. The borrower may select as few or as many Co-Senior Managing or Co-Managing Underwriters as it desires but the District encourages the selection of at least one Co-Senior Managing Underwriter or Co-Manager for fixed rate transactions in excess of \$100 million. The District retains the right to refuse the selection of any Co-Manager. The District staff and its Financial Director will assist in making Co-Manager selections if requested by the borrower.

**Bond Pricing:** The District requires that it and its Financial Director be involved in the process of the "pricing" of the bonds in a public offering and, at a minimum, this should include participation in the pre-pricing and the final pricing calls. All final pricing decisions are made by the borrower.

**Trustee:** If used in a bond issue, the Trustee must be an institution which is (or an affiliate is) qualified to do business in the State of Missouri, with a Missouri presence and which is large enough to handle the financing in question based on assets and experience. The trustee, or its guarantor, must have a minimum reported capital and surplus of the lesser of the principal amount of the bonds or \$50 million (or comparable financial test satisfactory to the District). A Request for Proposals from banks qualified to do corporate trust work in Missouri can be coordinated by the District, if requested by the borrower. The proposals are collected and forwarded to the borrower for selection. The District does not choose the trustee nor is the borrower required to accept the lowest bid. Financial institutions can serve multiple roles as a Senior- or Co-Manager and/or as Bond Trustee or Master Trustee and/or as credit enhancer on transactions rated BBB+/Baa1/BBB+ or higher by Standard & Poor's, Moody's and/or Fitch.

**Credit Enhancers/Derivatives:** The borrower is responsible for the selection and payment of any credit enhancement relative to or in connection with the bonds. The District has no role in the selection of or advice provided by any credit enhancer or provider of derivatives with respect to or in connection with the bonds. The charges of any credit enhancer or provider of derivatives with respect to or in connection with the bonds are not the responsibility of or obligation of the District.

### **OTHER POLICIES AND PRACTICES**

**Minimum Credit Rating:** The District has discretion as to whether to issue bonds applied for by a borrower. In connection with the proposed issuance of bonds the District will consider each financing based on the higher of the underlying or enhanced credit ratings from Standard & Poor's, Moody's and/or Fitch, materials provided by the borrower, analysis of the staff and advisors and any other applicable information. Financings with a rating of BBB/Baa2/BBB or lower will require further analysis and discussion during the approval process and will be considered on a case by case basis. The nature of the credit, the collateral, the project, the covenants and borrowing alternatives will all be part of the analysis. A presentation to the District by the borrower or its representatives may be required. Unrated financings will be considered for private placements or direct bank (or bank affiliate) purchases with sale restricted to financial institutions, corporations and other sophisticated investors and on such other terms as approved by the District staff at the time of issuance. Direct bank (or bank affiliate) purchases will not require a rating. The charges of any credit rating agency with respect to any bonds shall not be the responsibility of or obligation of the District.

Any analysis of a financing by the District, and the actual issuance of any bonds by the District, shall not constitute a representation by the District to any party, including any underwriter or other bond purchaser, of the credit strength of the financing or the likelihood of payment of bonds. Neither the District nor its members, officers, employees, advisors, attorneys or agents shall have any financial liability or fiduciary responsibility or obligation to the borrower, any underwriter or other bond purchaser or any other party involved in a financing transaction arising out of any of their activities or role in any District financing.

**Financial Director and Legal Counsel:** It is the practice of the District to rely upon the advice of its Financial Director. Certain services of the District's Financial Director are extended to District borrowers in the course of a financing but the District's Financial Director does not serve as a Financial Director to the borrower.

The borrower may also employ a separate financial advisor and is encouraged to do so and the fees of such borrower's financial advisor are not the responsibility of or the obligation of the District.

The District employs its own legal counsel on each financing and such counsel does not serve as counsel to the borrower. The borrower will employ its own separate legal counsel on each financing and the fees of such counsel are not the responsibility of or the obligation of the District.

**Same Underwriter/Credit Enhancer/Bond Trustee:** Firms can serve multiple roles as Senior Managing or Co-Managing Underwriter, as Credit Enhancer and/or as Bond Trustee on transactions rated BBB+/Baa1/BBB+ or higher by Standard & Poor's, Moody's and/or Fitch. The same law firm can represent such a financial firm in multiple roles in the same transaction.

**District Fees and Costs:** The borrower will be responsible for the payment of the District's application fee, the on-going annual service fee and the cost of its legal counsel and Financial Director pursuant to the then-current schedule of the District. The current schedule is attached hereto as **Exhibit E.**

### **SUNSHINE LAW/DOCUMENT DISCLOSURE**

As a state District, the District is subject to many of the laws applicable to governmental entities in Missouri. The District is subject to the Missouri "Sunshine Law" which opens its meetings and records in its possession to the general public. The materials provided to the District by the borrower typically will be open to public inspection and copying.

### **POLICIES RELATING TO BORROWERS OPERATING IN MULTIPLE STATES**

It has long been the policy of the District to encourage and support participation by Missouri financial and law firms on financings completed through the District. However, understanding the burden this policy may place on some borrowers with operations in multiple states or which have had prior financings involving non-Missouri entities, the District has determined the need to be flexible in situations where the financing is completed with such borrowers

### **POLICIES REGARDING PROJECTS OUTSIDE MISSOURI**

For a discussion of the issuance of bonds by the District for projects located outside Missouri, please see the discussion in the accompanying document "Issuance of Bonds for Projects Located Outside the State of Missouri – Policy Matters and Procedures" attached hereto as **Exhibit D.**

### **APPLICATION OF POLICIES**

The Policies set forth herein are for the sole benefit of the District. These Policies are designed to allow the District to continue to be of service to Missouri property owners and the users of the services of those property owners. The District retains the right to make changes in these Policies at any time. The Executive Director of the District, after consultation with the District President, may grant variations deemed appropriate to any of these Policies. Any District financing transaction which has closed and in which a variance to any of these Policies has occurred shall be deemed to have been approved by the Executive Director.





**Exhibit B**  
**To Policies, Practices and Application Materials**  
 (Letter from Underwriter, Bond Purchaser or Lease Provider)

[FIRM'S LETTERHEAD]

[Date]

Mr. David A. Pickerill  
 Executive Director  
 Missouri Clean Energy District  
 Subdivision of the State of Missouri  
 530 Kehrs Mill Road, Suite 230  
 Ballwin, Missouri 63033

Re: [Name of Borrower]

Dear Mr. Pickerill:

The undersigned [Underwriter, Bond Purchaser or Lease Provider] has been selected by the above-captioned Borrower to serve as underwriter, bond purchaser or lease provider in connection with the proposed financing through the District.

The undersigned represents that a copy of the District's Policies, Practices and Application Materials, including all Exhibits, has been received and reviewed and that the financial institution understands and will comply with same in connection with the proposed financing unless an exception to a Policy is otherwise agreed to by the District's Executive Director.

Very truly yours,

[Name of Underwriter, Bond Purchaser or Lease Provider]

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_



**Exhibit C**  
**To Policies, Practices and Application Materials**

**Missouri Clean Energy District**

**General APPLICATION DATA REQUEST**

1. Letter from the borrower applying for the issuance of bonds or other obligations and requesting District adoption of the initial inducement resolution (sample of letter in **Exhibit A** of District's Policies, Practices and Application Materials)
2. Letter from the underwriter, bond purchaser or lease provider stating knowledge of, and commitment to compliance with, District's Policies, Practices and Application Materials (sample of letter in **Exhibit B** of District Policies, Practices and Application Materials)
3. Description of the project including amount, purpose, need, proposed facilities and/or improvements to be financed, details of any refinancing and proposed timetable
4. Tentative Plan of Finance including:
  - a.) Sources and Uses of Funds (Project description, refunding, etc.)
  - b.) Interest Rate Mode (e.g. fixed rate, variable rate - daily, weekly, etc.)
  - c.) Underlying Rating of Institution, if applicable
  - d.) Credit Enhancement? Provider?
  - e.) Liquidity Facility? Provider?
5. IRS Letter of Determination of Tax Status (for 501 (c) 3 borrowers)
6. Audited Financial Statements for Preceding Three Years
7. Status of Capital Campaign Activities Directly Related to the Project, if applicable

**Other Information**

The District reserves the right to request additional legal, financial or other information as it deems necessary or appropriate.

**Exhibit D**  
**To Policies, Practices and Application Materials**

**Missouri Clean Energy District**

**Policy Matters and Procedures Regarding Issuance of Bonds for  
Projects Located Outside the State of Missouri**

The Missouri Clean Energy District is authorized to issue bonds for facilities outside of Missouri if the borrower or an affiliate also operates a facility within the State of Missouri or maintains a regional or national headquarters within the State of Missouri. The following policy criteria will be applied by the District on a case by case basis in deciding to issue bonds to finance projects outside of Missouri:

I) **Finding of Public Purpose**

The District shall make a determination as to whether the project outside the State of Missouri meets the public purposes of its enabling act by:

- a) Lowering the cost of operation resulting in a savings to owners and or third parties, including federal or state governments, and others who must pay for such costs; and
- b) Providing a benefit to Missouri by (i) enhancing the economic circumstances of a property owner in Missouri, (ii) furthering economic development in the State by job creation, retention or stabilization, and/or (iii) promoting more efficient and economical operation of facilities with a regional or national headquarters and/or substantial operations in Missouri.

II) **Missouri Presence and Relationship**

The District shall make a determination as to whether the borrower, an affiliate or related entity has a substantial presence, relationships and impact in the State of Missouri. Each or any combination of the following factors will be considered by the District on a case by case basis in making such determination:

- a) Whether the institution, affiliate or related entity has or is part of a system that has a regional or national headquarters in Missouri;
- b) Whether the institution, affiliate or related entity has substantial operations in Missouri;
- c) Whether a significant portion of the bond issue is to finance facilities in Missouri; and
- d) Whether the Missouri and out of state facilities are functionally and operationally related.

Unless expressly approved in advance by an District resolution, the District will consider all contacts and relationship with Missouri and the various degrees of each will be part of the analysis. In connection with

that consideration, based on the District's experience and analysis to date, the proceeds of bond issues should involve the expenditure of at least the following percentages of the proceeds on facilities located in Missouri: (a) 25% in the case of a borrower, affiliate or related entity whose headquarters is located in Missouri; and (b) 40% in all other cases. The foregoing percentage analysis may include bond proceeds from prior District bonds issued in the three years prior to the new bond issue but shall not include any subsequent bond issue.

III) Presentation and Certifications as To Public Purpose and Missouri Contacts

In connection with the finding of public purpose and Missouri presence:

a) The borrower may be asked to make, or cause to be made on its behalf, an in-person or telephonic presentation to the District at a meeting; and

b) The borrower shall execute and deliver to the District a Certificate which has been finalized with representatives of the District detailing certain factors supporting a finding of public policy and Missouri presence with respect to the proposed bond issue. This process shall be completed at least one week prior to the consideration of the District of a final bond issuance resolution with respect to the financing.

IV) Other State Involvement

The Federal tax code may require that (a) a public hearing be held in the locale of the out of state project and (b) the approval for the project be obtained from the "highest elected" official or governing body in the locale of the project. The hearing and approval requirement can be met at the State level by the Governor or at the local level by the chief elected official or the governing body of the local governmental unit. In either event, there will need to be coordination outside of Missouri. The District will retain the option of coordinating the hearing and approval with required assistance of borrower and the financing team but these approvals will typically be the responsibility of the other members of the financing team including the borrower, Bond Counsel and the Underwriters. The District will consider working with other state authorities on these matters.

V) Requirement of Bond Counsel Opinion

Each borrower will have to evidence that a qualified Bond Counsel firm will provide a legal opinion on the legality of the bond issuance.

**Exhibit E**  
**To Policies, Practices and Application Materials**

**Missouri Clean Energy District**

**FEE SCHEDULE**

For Bonds Issued After the Revised Date of These Policies Set Forth Above

One-Time District Application Fee: \$1,000

On-going District Annual Service Fee (payable throughout the life of the financing):

- .0002 X principal amount of Bonds outstanding up to \$40 million  
plus
- .0001 X principal amount of Bonds outstanding in excess of \$40 million

One-Time District's Financial Director Fee – .001575 X principal amount of Bonds issued, with a minimum fee of \$5,000 and a maximum fee of \$31,500. The fee is paid 50% by the borrower and 50% by the District. However, if the borrower has an ***underlying*** credit rating of BBB+/Baa1/BBB+ or higher from Standard & Poor's, Moody's or Fitch, the borrower does not pay any Financial Director fee.

One-Time District's Counsel Fee – paid by the borrower based on firm's hourly rates – the fees typically range from \$10,000 to \$20,000; such fees typically are at the higher end in complex or extended transactions and in bond issues involving projects outside the State of Missouri.

Note: For District “program” bond or note transactions the foregoing fees are to be paid as an expense of the Program.

**Exhibit E**  
**To Policies, Practices and Application Materials**

**Missouri Clean Energy District**

**TYPICAL TIMETABLE FOR FINANCING**

\* District Board meetings generally are held on an as needed basis\*

At least **14 days prior** to first District Meeting: Application Letters and Application Data Request materials received at District office

10 days prior to first District Meeting: District Meeting Notice and Agenda distributed by District staff

7 days prior to first District Meeting: Meeting materials including Application summary distributed to District Members

**FIRST DISTRICT MEETING: Initial Inducement Resolution considered and adopted, preliminary approval granted**

Financing timetable, structure and documents completed by financing team as appropriate, may take more than one month

At least 7 days prior to second District Meeting: Final Authorizing Resolution prepared by Bond Counsel and provided to District staff and advisors for review and distribution to District Members

At least 2 days prior to second District Meeting: “substantially final” bond documents and official statement, including appendix A, completed and distributed to District staff and advisors to be available at the District Meeting

**SECOND DISTRICT MEETING: Final Authorizing Resolution (“Parameters” Resolution) considered and adopted, final approval of transaction and final bond documents granted**

Transaction ready for closing as appropriate