

CASS COUNTY ELECTRIC COOPERATIVE, INC.

FIRST AMENDED AND RESTATED BYLAWS

Effective November 25, 2008

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FIRST AMENDED AND RESTATED BYLAWS
OF
CASS COUNTY ELECTRIC COOPERATIVE, INC.

ARTICLE I. MEMBERSHIP

Section 1.1 Members and Membership. Cass County Electric Cooperative, Inc. (the “Cooperative”) has one class of members, composed of those who meet the requirements and follow the procedures of this Article I (a “Member”), each of whom is deemed to hold a single membership and who together comprise the Members of the Cooperative. As allowed by applicable law and these bylaws (as amended the “Bylaws” and each provision hereof a “Bylaw”) the Members have the authority to elect the Board of Directors (collectively, the “Board” and each individually a “Director”) together with such other rights, duties, and obligations as provided by Law, these Bylaws or any other Governing Document as defined in Section 1.4(A)(i).

Section 1.2 Membership Eligibility. Any Person who satisfies the following qualifications is eligible to become and remain a Member in the Cooperative:

- (A) If the Person is an individual, the Person must be of legal age and, at the time the Person becomes a Member, have the capacity to enter into contracts. If the Person is an entity, the entity must be duly organized and existing with full authority to enter into binding contracts;
- (B) The Person must complete and agree to abide by all obligations set forth in Section 1.4 of these Bylaws and agree to acquire from the Cooperative all of its requirements for electrical power or energy generated, transmitted, distributed, sold, supplied, furnished, or otherwise provided by the Cooperative at the location to be served, unless expressly authorized to the contrary by the Cooperative;
- (C) The Person must satisfy other requirements for becoming a Member under NDCC Chapter 10-13 or a similar provision of any future electric cooperative act (the “Act”). Under the Act in effect as of the date of the adoption of these Bylaws, those requirements include the following:
 - (i) The Person must not receive central station service from another power supplier at the location served or to be served while a member in the Cooperative; and
 - (ii) The Person’s Service Location, as defined in Section 1.3(A), must not be inside the 1957 boundaries of a city which had at that time a population of more than 2,500 persons.
 - (iii) The Person may not be an Ineligible Person under Section 1.3.

For the purpose of this Bylaw, a “Person” is an individual person and any of legally recognized entity (an “Entity”), including, without limitation, whether foreign or domestic: corporations; profit and nonprofit; unincorporated associations; business trusts; estates; partnerships; limited partnerships; limited liability companies; trusts; two or more persons having a joint or common economic interest; and all other legally recognized entities, associations or organizations. A

Person also includes all municipalities, states and agencies thereof; the United States of America; and foreign governments or any agencies or divisions thereof.

Section 1.3 Ineligible Persons. Unless otherwise required by Law or as otherwise determined by the Board, a Person is not eligible to become and, subject to the procedures set forth in Section 1.8, remain a Member in the Cooperative (an “Ineligible Person”) if the Person:

- (A) Seeks Membership or is a Member with respect to any Service Location which is served by the Cooperative under the name of another Person occupying the Service Location. For the purpose of these Bylaws, a “Service Location” is any location, building, structure or facility, or portion thereof, served by the Cooperative under a separate meter;
- (B) Has failed to pay or is past due on any obligation owed to the Cooperative; or
- (C) Occupies any Service Location also occupied by a Person who has failed to pay or is past due on any obligation owed the Cooperative with respect to the Service Location.

No Person may hold more than one Cooperative Membership, even if the Person is a Member with respect to two or more Service Locations.

Section 1.4 Membership Procedure. Except as provided in these Bylaws or as determined by the Board, any eligible Person seeking to become a Member (“Applicant”) must complete the procedures stated in this Bylaw to the Cooperative’s satisfaction (“Membership Procedures”) before initially using electrical energy provided by the Cooperative (“Electric Service”).

- (A) *Membership Application*. Each Applicant must complete and signify acceptance, in writing or by means of electronic communication, a membership application provided by the Cooperative in which the Applicant acknowledges and agrees to:
 - (i) Comply with all agreements included in the membership application and the following documents and materials, as currently existing or as later adopted or amended (collectively, “Governing Documents”):
 - (a) All applicable Laws and legally binding agreements regarding the Cooperative; its operations and assets; its Member and Patrons; and the provision and use of Electric Services and equipment provided and owned by the Cooperative (“Cooperative Equipment”) or any equipment owned by a Member and connected to Cooperative Equipment (“Member Equipment”), including, but not limited to, applicable local, state, and federal constitutions, statutes, case law, regulations, ordinances, rulings, or orders; and legally binding contracts between the Cooperative and the Applicant (collectively, “Law”);
 - (b) The Cooperative’s Articles of Incorporation (“Articles”);
 - (c) These Bylaws;
 - (d) The Cooperative’s policies, operating procedures and regulations;

- (e) The National Electrical Code;
 - (f) The National Electrical Safety Code;
 - (g) The Cooperative's rate or price schedules; and
 - (h) All rules, regulations, requirements, guidelines, procedures, policies, programs, determinations, resolutions, or actions taken, adopted, promulgated, or approved by the Board or Membership;
- (ii) Be or remain a Member;
 - (iii) pay the Cooperative for all Electric Services used by the Applicant at the Service Location covered by the application at prices, rates, or amounts determined by the Board and pursuant to the terms, conditions, time, and manner specified by the Cooperative; and
 - (iv) Pay all other dues, assessments, fees, deposits, contributions, or other amounts required by the Articles, these Bylaws, Board policies, or Law.
- (B) *Information and Documents.* Each Applicant must:
- (i) Submit to the Cooperative all information requested by the Cooperative; and
 - (ii) Complete any additional or supplemental document or contract required by the Board for the Electric Service which the Applicant is seeking to use.
- (C) *Payment of Amounts.* Each Applicant must pay the Cooperative:
- (i) Any dues, assessment, fee, deposit, contribution, or other amount required by Cooperative policy or applicable Law; and
 - (ii) Any outstanding amounts owed the Cooperative by the Applicant or any related entity, unless waived in writing by the Board, or waived pursuant to Board policy generally applicable to all Applicants.

Section 1.5 Effective Date of Membership. Unless these Bylaws provide otherwise, or unless the Board determines otherwise, a Person eligible to become a Member is automatically a Member of the Cooperative effective the date the Person initially uses or requests to use Electric Service, following the time the Member:

- (A) Initially uses or requests to use the Electric Service from the Cooperative; and
- (B) Complies with all provisions herein for becoming a Member.

The Cooperative may, but is not obligated to, provide temporary Electric Service to an Applicant before the Applicant becomes a Member.

Section 1.6 Joint Membership. Subsequent to the date of these Bylaws, the Cooperative will admit no new Joint Members. A husband and wife occupying the same Service Location who are Joint Members as of the date hereof are deemed to have a "Joint Membership" and may continue to be Joint Members, subject to the following terms and conditions:

- (A) *Joint Member Rights and Obligations.* Unless denied Membership as provided by these Bylaws, and unless otherwise specified by these Bylaws, each individual who together with another comprises a Joint Membership (“Joint Member”) has and may enjoy all the rights, benefits, and privileges, and is subject to all the obligations, requirements, and liabilities, of being a Member. As used in these Bylaws, and unless otherwise provided in these Bylaws, the word “Membership” includes any Joint Membership, and the word “Member” includes any Joint Member.
- (B) *Effect of Joint Member Actions.* For each Joint Membership:
- (i) Notice of any meeting provided to either Joint Member, or waiver of notice of any meeting signed by either Joint Member, constitutes notice or waiver of notice for both Joint Members comprising the Joint Membership;
 - (ii) The presence of either or both Joint Members at any meeting:
 - (a) Constitutes the presence of one (1) Member at the meeting;
 - (b) Waives notice of the meeting for both Joint Members comprising the Joint Membership.
 - (iii) Only one (1) Joint Member may vote on any matter that comes before the Members;
 - (iv) Except upon the death of a Joint Member, or the divorce or legal separation of Joint Members, the suspension or termination of either Joint Member constitutes suspension or termination of both Joint Members; and
 - (v) A Joint Member otherwise qualified is eligible to serve as a member of the Board, regardless of whether the other Joint Member is eligible to serve as a Director. If both Joint Members are otherwise qualified to serve as a Director, then either Joint Member, but not both Joint Members simultaneously, is eligible to serve as a Director.
- (C) *Joint Membership Conversion and Termination.* Upon a death, divorce, or legal separation of Joint Members:
- (i) If one (1) Joint Member continues legal use of Electric Service at the Service Location at which the Joint Members had used Electric Service, then the Joint Membership converts to a membership in the name of the Joint Member continuing to legally use Electric Service at that Service Location;
 - (ii) If both Joint Members continue legal use of Electric Service at the Service Location at which the Joint Members had used Electric Service, then the Joint Membership converts to a Membership in the name of the Joint Member determined by the Cooperative; or

- (iii) If neither Joint Member continues legal use of Electric Service at the Service Location at which the Joint Members had used Electric Service, then the Joint Membership terminates.
- (iv) The death of the first Joint Member will not result in the early retirement of capital credits, and the surviving Joint Member will continue to own the capital credits previously jointly owned, in his or her name until they are retired as provided herein. Capital credits held by Joint Members retained by the surviving Joint Member will be subject to all rights and obligations that apply to capital credits held by individual Members.

Section 1.7 Obligations of Members. Each Person who is or becomes a Member of the Cooperative and uses the Cooperative's Electric Service voluntarily accepts and acknowledges the following obligations and/or conditions:

- (A) To agree and acknowledge that:
 - (i) Every Member is a vital and integral part of the Cooperative;
 - (ii) The Cooperative's successful operation depends upon every Member complying with the Governing Documents; and
 - (iii) All Members are united in an interdependent relationship.
- (B) To comply with and abide by the Governing Documents, and with reasonable policies and procedures adopted by the Cooperative pertaining to the Cooperative's business or the use of Electric Service. Among other things, the Articles of Incorporation and these Bylaws are contracts between the Cooperative and each Member, subject to modification by the Cooperative as provided in these Bylaws or by applicable Law.
- (C) To purchase from the Cooperative all available electric energy used at the Service Location referenced in the application of such Member for Membership, and to pay the fees and charges assessed by the Cooperative for the availability and use of electric energy, at rates fixed by resolution of the Board, from time to time. Each Member must also pay all other obligations which may, from time to time, become due and payable to the Cooperative;
- (D) That the Cooperative neither insures, guarantees, nor warrants that it will provide adequate, continuous, or non-fluctuating electric power or energy or other Electric Services. The Cooperative will not be liable for any damages, costs, or expenses, including attorney fees or legal expenses, caused by the Cooperative providing any inadequate, non-continuous, or fluctuating electric power or energy or other Electric Service;
- (E) That all Cooperative responsibility and liability for providing Electric Service terminates upon delivery of Electric Service to a Member or other Person acting for a Member, and the Cooperative shall not be responsible for any injury suffered by any person after delivery of Electric Service to a meter at any Service Location;

- (F) Not to tamper with, alter, interfere with, damage, or impair any meter, control device, or other Cooperative Equipment or Member Equipment, or take any action which adversely impacts the Cooperative's ability to operate the Cooperative or provide any Electric Service safely, reliably, and efficiently. Unless otherwise determined or indicated by the Board, the Cooperative owns all Cooperative Equipment. Each Member will protect all Cooperative Equipment and all Member Equipment, and must install and maintain any protective device, and backup system required by the Cooperative, and implement and follow any protective procedure, required by the Cooperative; and
- (G) To maintain in good condition and repair:
 - (i) Every Service Location occupied by the Member at or for which the Cooperative provides Electric Service, and
 - (ii) Any and all Member Equipment.

Section 1.8 Member Termination and Suspension. Termination and suspension of Members shall be governed by the provisions of this Bylaw unless otherwise limited by applicable Law.

- (A) *Automatic Termination.* A Member's membership in the Cooperative will automatically terminate if the Member:
 - (i) Dies, legally dissolves, or legally ceases to exist, unless the member is a Joint Member; or
 - (ii) Is a Joint Member and both Members die.
 - (iii) No longer owns or occupies any Service Location served by the Cooperative.
- (B) *Partnership Members.* Unless otherwise determined by the Board, a partnership-Member continuing to use Electric Service is not automatically suspended upon the death of any partner, or following any other alteration in the partnership. A partner leaving a partnership-Member remains liable to the Cooperative for any amounts owed to the Cooperative by the partnership-Member at the time of the partner's departure.
- (C) *Suspension Without Notice.* In its discretion, the Cooperative may immediately suspend a Member without notice or an opportunity to be heard upon the voluntary request of the Member or if the Member:
 - (i) Tampers with, alters, interferes with, damages, or impairs any Cooperative Equipment;
 - (ii) Commits any act or omits to take act which adversely impacts the Cooperative's ability to safely, reliably, and efficiently operate the Cooperative or provide any Electric Service; or
 - (iii) Maintains in unsafe condition any Cooperative Equipment or any Member Equipment.

- (iv) Fails to pay any amounts due the Cooperative within the period allowed by the policies of the Cooperative or any written agreement with the Member.

Section 1.9 Termination After Suspension. A Member who has been suspended under these Bylaws may be terminated only after notice, as provided below.

- (A) *With Notice*. Subject to the notice requirements of the subsection (B) below, the Cooperative may suspend or terminate a Member for any of the following reasons (a “Member Default”):
 - (i) Suspension of the member under Section 1.8 Section 1.8(C)
 - (ii) Failure to comply with the Governing Documents;
 - (iii) Ceasing to use for six (6) consecutive months any electrical energy provided by the Cooperative, unless such lack of use is due to the contemplated seasonal usage, damage or destruction of the Service Location, or other good cause as determined by board policy; or
 - (iv) For any other good cause determined by the Board.
- (B) *Notice Requirements*. When required by these Bylaws, the Cooperative will:
 - (i) Provide the Member at least fifteen (15) days prior written notice of the Member’s possible termination and the underlying Member Default, which notice must be provided by mail to the Member’s most current address shown on the Membership List (as defined in Section 1.14(D));
 - (ii) Notify the Member that the Member may, within five (5) days after the effective date of the notice, comment upon the reason for the Member Default, either orally or in writing; and
 - (iii) Not terminate any Member until the time periods provided herein have expired.

Section 1.10 Effect of Member Suspension Upon Cooperative. Upon a Member’s suspension:

- (A) The Cooperative’s duties, obligations and liabilities imposed by these Bylaws or applicable Law with respect to the Member cease; and
- (B) The Cooperative may cease providing any Electric Service to the Member.

Nothing in the provision may affect the Cooperative’s obligation to retire and refund Capital Credits and Affiliated Entity Capital Credits, or the obligations of the Cooperative arising out of the Cooperative’s dissolution.

Section 1.11 Effect of Member Suspension Upon Member. Other than the right to receive retired and refunded Capital Credits and Affiliated Entity Capital Credits, and other than rights upon the Cooperative’s dissolution, a suspended Member forfeits and relinquishes all rights provided in the Governing Documents. In particular, a suspended Member forfeits and relinquishes any voting rights provided by Law, the Articles, or these Bylaws, and the right to be

or remain a member of the Board. A suspended Member, however, remains subject to all obligations imposed by the Governing Documents.

Section 1.12 Lifting of Suspension. Unless otherwise determined by the Board, a Member's suspension is automatically lifted upon the Member rectifying, to the Cooperative's reasonable satisfaction as determined in its discretion, the underlying Member Default within ten (10) days of the suspension. The Board may also lift any Member suspension for good cause as determined by the Board.

Section 1.13 Member Termination. The Cooperative may terminate any Member, with or without prior suspension, following notice as provided above. If the Cooperative terminates a Member under this provision, the Member will have no further rights as a Member, including but not limited to the right to receive Electric Service, vote, or serve as a Director or in any capacity for the Cooperative. A Member who has been suspended pursuant to this subsection may be terminated by the Board unless the Board is precluded from doing so under applicable Law. Termination of a Member does not release the Member from any debts, liabilities, or obligations owed the Cooperative.

Section 1.14 Access to Information. Members and non-Members will have access to cooperative information as set forth herein.

(A) *Public Access.*

- (i) Non-Members and Members of the Cooperative are entitled, upon request to the Cooperative at its principal office or any regional office that regularly employs management staff (a "Principal Office") to inspect and copy the following documents:
 - (a) annual return filed with the Internal Revenue Service for the three most recent years, including copies of all schedules included with said annual returns.
 - (b) the Cooperative's application for exemption from taxation filed with the Internal Revenue Service.
- (ii) Inspection of the foregoing information will be allowed at any Cooperative Principal Office upon reasonable request. Copies of the foregoing information will be provided upon payment of a reasonable copying charge plus postage, if any.
- (iii) The Cooperative may satisfy its obligations under this Section 1.14(A) by posting the documents listed in Section 1.14(A)(i) on its web page and notifying persons requesting access or copies of such information of the web page address where the information may be accessed. within seven days of receiving a Non-Member request.
- (iv) Access to information under this provision may be denied only where allowed by applicable Internal Revenue Service Regulations.

(B) *Member Access.* The Cooperative, or the Cooperative's agent, will upon no less than five (5) business days' prior written notice by a Member, provide to a

Member access to the following documents at the Cooperative's headquarters or a service center designated by the Cooperative:

- (i) Minutes of meetings of the Board, Members and any executive committee of the Board, except that minutes taken while the Board is meeting in executive session (exclusive of motions adopted while the Board is in executive session) are confidential and need not be disclosed.
 - (ii) Copies of annual financial statements as prepared by the Cooperative's accountants;
 - (iii) The information specified in Section 1.14(A);
 - (iv) Subject to the qualifications set forth in Section 1.14(D) a copy of the Membership List (as defined below) of the Members including name and street addresses; and
 - (v) Such other documents as may be made available under applicable policies and procedures adopted by the Cooperative.
- (C) *Conditions of Access.* The Cooperative will provide Members copies of documents subject to inspection under the preceding subparagraph only upon satisfaction of the procedures set forth herein and provided that the Member first pays the Cooperative a reasonable charge, as determined by the Cooperative, covering the Cooperative's labor and material cost of preparing and copying the documents.
- (D) *Membership List.* Notwithstanding the foregoing, to protect the privacy and identity of its Members, no Member is entitled to inspect, copy, or receive a copy of, the names and addresses the Cooperative's Members (a "Membership List") except as allowed herein.
- (i) Before any Member will be allowed to access the Membership List, each of the following conditions must be satisfied:
 - (a) A written request setting forth the proper purpose has been made, approved by the President, and any required copying fee has been paid to the Cooperative, as more fully specified above;
 - (b) The Cooperative has determined, in the exercise of reasonable discretion, that the Member's request is in good faith and for a reasonable and proper purpose, and the Membership List is reasonably required for such proper purpose; and
 - (c) If requested, the Member has signed an agreement agreeing to limit use of the Membership List for the purpose specified in the Member's request, and agreeing to indemnify, defend, and save harmless the Cooperative from any and all liability, loss, costs, judgments, or expense, including reasonable legal fees, as a consequence of the Member's unauthorized transfer, distribution or use of the Membership List.

- (ii) None of the following will be deemed to be a proper purpose for use of the Membership List:
 - (a) To solicit money or property, except that a Member may use the Membership List to solicit money or property for the sole purpose of funding a campaign for votes for election to the Board or for any other matter required by these Bylaws or applicable Law to be submitted to the Members for approval;
 - (b) Any commercial purpose; or
 - (c) sale or transfer to any other Person.

Section 1.15 Member Liability. A Member is not liable to any party for the Cooperative's acts, omissions, debts, liabilities, or obligations. This provision is not intended to limit a Member's liability to the Cooperative for Electric Service or other amounts due to the Cooperative.

ARTICLE II. MEMBER MEETINGS AND MEMBER VOTING

Section 2.1 Member Meetings. The Cooperative will periodically hold meetings of its Members ("Member Meetings"), including an Annual Member Meeting, Special Member Meeting, and Informational Member Meeting as set forth below.

Section 2.2 Annual Member Meetings. The Cooperative will hold an Annual Member Meeting of its Members ("Annual Member Meeting") within any county in which the Cooperative provides Electric Service between January 1 and June 30 each year. The Board will determine the precise date, time, and location of the Annual Member Meeting.

Section 2.3 Special Member Meetings.

- (A) *Calling of a Special Member Meeting*. The Cooperative must hold a special meeting of its members (a "Special Member Meeting") within a county in which the Cooperative provides Electric Service, at a date, time, and location determined by the Board but within no later than 120 days following:
 - (i) A vote of the majority of the Board;
 - (ii) Receipt of a valid Member Demand as defined herein.
- (B) *Member Demand*. A valid demand for a special member meeting (a "Member Demand") must satisfy each of the following requirements:
 - (i) It must be in writing;
 - (ii) It must be signed and dated by at least 10% of the Membership as of the Record Date within 60 days following the date of the first signature; and
 - (iii) On each page, it must describe the matter or matters to be considered, voted or acted upon at the Special Member Meeting.
- (C) *Evaluation of Member Demands*. The Board in its sole discretion must evaluate whether a Member Demand complies with the foregoing provisions so as to require a Special Member Meeting.

- (D) *Notice of Member Demands.* Member Demands must be provided to the Board within one month of receipt of the Member Demand.
- (E) *Failure to set Special Member Meeting.* If the Cooperative fails to notify the Members of a Special Member Meeting within 45 days of receiving any Member Demand, then a Member signing the Member Demand may: (i) reasonably set the time, place and location of the Special Member Meeting; and (ii) properly notify Members of the Special Member Meeting in the manner provided herein.

Section 2.4 Conduct and Attendance at Member Meetings. The following provisions shall govern the attendance and conduct of all Annual Member Meetings and Special Member Meetings:

- (A) *Order of Business.* Subject to the requirements of Section 2.5, the Board will determine the agenda and order of business for Meetings.
- (B) *Conduct of Meeting.* Unless otherwise determined by the Board before any Annual Member Meeting or Special Member Meeting, the chairman of the Cooperative will preside at all Meetings and may exercise any power reasonably necessary for the efficient and effective conduct of the Meeting. In years which the then current Chairman has been nominated for election to another term on the Board, the Vice-President, or such other Person designated by the Board, will preside over all proceedings relative to the election of the Board.
- (C) *Member Action at Member Meetings.* Unless otherwise determined by the Board before any Annual Member Meeting or Special Member Meeting, Members may consider, vote, or act at Meetings only upon matters which:
 - (i) the Members are required to consider, vote, or act under these Bylaws and applicable Law;
 - (ii) these Bylaws expressly grant Members the right to vote; and
 - (iii) in the case of Special Member Meetings, solely on the issue specified in the notice of the Special Member Meeting.

Except as provided above, all action taken at a meeting of the Members is not binding on the Cooperative and will be deemed advisory in nature.

Section 2.5 Notice of Member Meetings. The Cooperative must deliver written notice of any Member Meeting (whether an Annual or Special) to all Members at least 10, but no more than 30, days prior to the Meeting.

- (A) *Means of Notice.* Notice may be delivered:
 - (i) personally;
 - (ii) by mail; or
 - (iii) by electronic means of communication to any Member who has authorized electronic delivery.
- (B) *Time of Delivery; Effect of Non-Receipt.* Unless these Bylaws provide otherwise, notice of a Meeting is delivered:

- (i) If personally delivered, when delivered to the Member personally;
- (ii) If mailed, when deposited in the United States mail in a sealed envelope with pre-paid postage affixed and addressed to a Member at the Member's address shown on Cooperative records; or
- (iii) If delivered electronically, when sent by electronic means.

Delivery of notice to one of two Joint Members constitutes delivery of notice to the Joint Member. The failure of any Member to receive a notice of a Meeting sent as allowed by this Section 2.5 will not affect the validity of any action taken at the Meeting.

- (C) *Content of Notice.* The notice must indicate the date, time, and location of the Meeting, as well as other information as may be reasonably provided relative to the matters to come before the Members at the meeting.
- (D) *Special Member Meeting Notice.* In addition to the foregoing, notice for any Special Member Meeting must state the purpose of the Special Member Meeting and describe any matter to be considered, or voted or acted upon.
- (E) *Notice of Adjournment.* Unless otherwise provided in these Bylaws, the Cooperative must notify Members of a Meeting adjourned to another date, time, or location ("Adjourned Meeting") unless:
 - (i) the Meeting is adjourned to another date occurring within 60 days following the Record Date for the original Meeting; and
 - (ii) the new date, time or location is announced at the Meeting prior to adjournment.

Section 2.6 Waiver of Notice.

- (A) *Written Waiver.* A Member may waive notice of a Meeting, or waive notice of any matter to be considered, or voted or acted upon, at a Meeting, by signing and delivering to the Cooperative a written waiver of notice either prior to the Meeting or within 30 days following the Meeting.
- (B) *Waiver by Attendance.* Unless a Member objects to holding or transacting business at a Meeting, a Member's attendance in person at a Meeting waives the Member's objection to lack of notice, or to defective notice, of the Meeting. Unless a Member objects to considering a matter at a Meeting, a Member's attendance at the Meeting waives the Member's objection to considering, or voting or acting upon, the matter at the Meeting.

Section 2.7 Record Dates. The date to be used for sending notices to Members of Member Meetings, determining the validity of a Member Demand, or to determine who is authorized to vote at a Member Meeting or Adjourned Meeting (the "Record Date") is as follows:

- (A) *Member Meeting.* The Board may fix a Record Date for determining the number of Members entitled to receive notice of a Annual Member Meeting or a Special

Member Meeting and to vote at a Meeting. Unless otherwise fixed by the Board, the Record Date for determining the total number of Members is:

- (i) for purposes of determining who must receive notice of a Member Meeting, the close of business on the business day preceding the day the Cooperative notifies Members of the Member Meeting; and
 - (ii) for purposes of determining which Members may vote at the Member Meeting, the date of the Member Meeting.
- (B) *Member Demand.* The Record Date for determining the total number of Members and Members entitled to sign a Member Demand is the close of business on the 45th day prior to the Cooperative's receipt of the Member Demand.
- (C) *Adjourned Meeting.* The Record Date for determining the total Members entitled to vote at a Member Meeting adjourned to a date not more than 60 days following the original Record Date is the date of the Adjourned Meeting. If the Meeting is not held within 60 days following the Record Date for the Adjourned Meeting, the procedure set forth in Section 2.7(A) will apply.

Section 2.8 Quorum. The presence in person of at least 75 Members entitled to vote, or their proxies (only if expressly allowed by Section 2.13), constitutes a quorum for the transaction of business at Member Meetings. In the case of a Joint Membership, the presence at the meeting of either of the Joint Members will be regarded as the presence of one Member. If less than a quorum is present at any meeting, the majority of those present may adjourn the meeting to a date not more than 60 days following the date of the Member Meeting.

Section 2.9 Voting. Upon presenting identification or proof of Cooperative Membership as required in this provision, and regardless of the value or quantity of Electric Service used, each non-suspended Member may cast one (1) vote on any matter for which the Member is entitled to vote. No individual may cast more than one vote except that, an individual who is entitled to vote as an individual Member or spouse of an individual Member may also vote as the representative of an entity or entities that the member represents. If a Member and a Member's spouse both attend the meeting, either one may vote unless the Member objects, in which case only the Member will be entitled to vote. Individuals voting on behalf of an Entity must execute a statement indicating that the person is a director, officer, or employee of the Entity which is a Member, and that he or she is authorized by the Entity to cast its vote at the meeting.

Section 2.10 Conditions for Action and Approval. Unless otherwise provided by Law, the Articles, or these Bylaws, Members approve a matter and act if a quorum is present in person and a majority of Members present in person, entitled to vote on a matter, and voting on the matter, vote in favor of the matter.

Section 2.11 Manner of Voting. The individual presiding over the vote at any Meeting may require the Members to vote by voice. If the individual presiding over the vote determines in good faith that a voice vote is not sufficient to determine the vote results accurately, then the Members shall vote by written ballot, or by any other reasonable manner determined by the individual presiding over the vote.

Section 2.12 No Cumulation. Members may not cumulate votes. Agreements signed by Members providing the manner in which a Member will vote are not valid.

Section 2.13 Voting by Proxy. Members may not appoint another Member or individual to vote on any matter for the Member, and the Cooperative will not accept such votes. Notwithstanding the foregoing, if a Member does not attend a Member Meeting, then the Member's spouse may attend the Member Meeting and vote as the Member's proxy. All Members represented by a spouse will be considered and counted in determining whether a quorum exists.

Section 2.14 Informational Meetings. The Cooperative may hold informational meetings of the Members ("Informational Meeting"). Informational Meetings may be addressed to all Members, to Members in one or more districts, or to Members of particular service classes. The purpose of Informational Meetings shall be solely to communicate with the Members and to receive input or comment on matters of Cooperative concern. No action may be taken at any Informational Meeting. Informational Meetings are not subject to any of the requirements of this Article pertaining to Annual and Special Member Meetings, including those governing conduct of Meetings, notice of Meetings, or voting at Meetings as set forth in Section 2.4 through 2.10.

ARTICLE III. BOARD OF DIRECTORS

Section 3.1 Board Authority. The business and affairs of the Cooperative will be managed by a Board, who shall number no less than five and no more than 18 and who may exercise all of the powers of the Cooperative except those which by Law, the Articles or these Bylaws are conferred upon or reserved to the Members. The Board will be composed of Directors elected and qualified in the manner provided in this Article III.

Section 3.2 Rules and Regulations. The Board shall have the power to make and adopt such rules and regulations not inconsistent with Law, the Articles of Incorporation of the Cooperative, or these Bylaws as it deems advisable for the management, administration, and regulation of the business and affairs of the Cooperative.

Section 3.3 Director Districts. Directors shall be elected from and shall represent Director Districts, which shall be established and revised as set forth in this Section 3.3.

- (A) Establishment of Director Districts. Based on geographic location, population, or any other equitable consideration determined by the Board, the Board will: (i) divide the territory served by the Cooperative ("Electric Service Area") into no less than seven and no more than nine districts ("Director Districts"); and (ii) establish the number of Directors elected from each Director District.
- (B) Revision of Director Districts. Based upon geographic location, population, and any other equitable consideration determined by the Board, the Board may from time to time revise the boundaries of the Director Districts and/or increase or decrease the number of Directors elected from one or more Director Districts. Provided, however, that no revision of a Director District may:
 - (i) Lengthen an existing Director's term;
 - (ii) Shorten any existing Director's term, unless the affected Director consents in writing.

- (C) Notice and Effective Date of Revision. Within thirty (30) days following any decision by the Board to revise any Director District, and at least thirty (30) days before the next Annual Member Meeting, the Cooperative must publish or otherwise notify Members affected by the revision of the Director District. Director District revisions are effective on the date the Cooperative issues such notice.

Section 3.4 Terms. Except as otherwise expressly provided in Article III, Directors will be elected for terms of three years. Terms will be staggered so that as close as possible the same number of Directors will be up for election each year. Despite the expiration of a Director's term, a Director will continue to serve until a new Director is elected, or until the number of Directors is decreased.

Section 3.5 Qualifications. Only Persons meeting the following eligibility requirements may be nominated, elected, or serve as a Director.

- (A) Required criteria. To be nominated, elected, or serve as a Director of the Cooperative, a Person must:
- (i) be an individual Member of the Cooperative or the spouse of an individual Member residing with said Member; and
 - (ii) be a bona fide resident of the district for which the Director serves.
- (B) Disqualifying criteria. To be nominated, elected, or serve as a Director of the Cooperative, a Person must not:
- (i) Currently be, or within the immediately previous five year period have been, a director, officer or employee of any entity, other than another electric cooperative or affiliate of an electric cooperative, which engages in either:
 - (a) the electrical distribution, generation or transmission business or a business engaged in the sale or generation of a source of energy which competes with electricity, whether or not done directly or through a parent, subsidiary, or other affiliated organization which is under common ownership or control, from any area within thirty miles from an area served by the Cooperative; or
 - (b) any business not described in subpart (A)(i) above which competes directly or indirectly with any business activity carried on by the Cooperative or by a Related Entity, unless otherwise approved by vote of a majority of all of the disinterested Directors of the Cooperative;
 - (ii) Have a Close Family Member who currently is, or within the previous five years has been, a director or corporate officer of any entity with an entity described in Section 3.5 above, unless otherwise approved by vote of a majority of all of the disinterested Directors of the Cooperative;
 - (iii) Have any of the following relationships with the Cooperative or a Related Entity:

- (a) Have, within the past five years, been compensated as an employee of the Cooperative or Related Entity.
- (b) Have received within any of the past three calendar years, total compensation or other payments exceeding \$10,000 from the Cooperative or a Related Entity, as an independent contractor, exclusive of any expense reimbursement or compensation paid as a consequence of service on the Board of the Cooperative or Related Entity.
- (c) Have otherwise received directly or indirectly Material Financial Benefits from the Cooperative or Related Entity. Transactions which give rise to reportable “Material Financial Benefits” under this provision are: (i) loans to and from current or former officer, Directors or and any Person who is a managing employee or one of the five highest paid employees of the Cooperative or Related Entity (exclusive of consumer loans generally made available to all qualifying members of the Cooperative); (ii) receipt of scholarships, fellowships, internships, prizes and awards, or other benefits including the provision of goods or services or use of facilities; or (iii) any business transaction in which total payments exceed the greater \$10,000 or 1% of the Cooperative’s revenues, or in which all payments from the Cooperative or Related Entity to the Director or Close Family Member exceed \$100,000 during a calendar year. Financial benefits which result directly from a Member’s being a Member such as receipt or payment of capital credits, or which arise out of goods or services or loans generally available to Members of the Cooperative, are not to be considered as Material Financial Benefits under this provision.
- (d) Have a Close Family Member that engaged in any transaction described in Section 3.5(B)(iii)(a) or (c), except that an individual disqualified solely as a result of the operation of this subpart may be qualified to serve by the vote of a majority of the disinterested Directors.
- (iv) Have ever been convicted of, or pleaded guilty or nolo contendere to, any criminal act constituting a felony under the Law of the jurisdiction in which the conviction, guilty plea, or plea of nolo contendere occurred;
- (v) Be employed by the same employer, or by any Related Entity of an employer, that employs any other Directors of the Cooperative, provided that this provision may not be construed to disqualify any Director who is employed by the same or Related Entity of the same employer as another Director, solely as the result of the change of employment of another director, or sale or acquisition of control of the employer of the other director; or

- (vi) Currently be, or within the previous five years have been employed by the Cooperative or a Related Entity of the Cooperative.
- (C) *Definitions.* For the purpose of this Article:
 - (i) “Close Family Member” means a Member’s spouse, parents, children and grandchildren (including adopted children and grandchildren).
 - (ii) “Related Entity” means any entity of which more than 50% of the voting equity interests are held by the Cooperative, or in which the Cooperative, directly or through another entity, has the right to elect or otherwise select or control the selection of at least fifty percent of the voting interest of the governing board of the entity.
- (D) *Effect of Noncompliance.* The failure of any Director to be qualified under this Section 3.5 will not affect the validity or enforceability of matter approved by the Board.

Section 3.6 Nominations. Members who are eligible to serve as a Director may be nominated for election to the Board as set forth below.

- (A) *Nominating Petition.* Persons who desire to serve as a member of the Board must deliver to the Cooperative office in Kindred, North Dakota each of the following at least ninety (90) days prior to the date of the Annual Member Meeting at which an election will be held:
 - (i) a petition signed by fifteen (15) or more Members or spouses of Members who reside in the district from which nomination is to be made, placing in nomination the name of a bona fide Member residing in such district. In the event of Joint Membership, the signature of only one of the Joint Members may be counted toward the fifteen Member requirement; and
 - (ii) biographical information and such other information as the Board or Credentialing Committee may require to establish and verify the qualifications of the proposed Director to serve.
- (B) *Credentialing Committee.* The names of all candidates who submit the required information in the time and manner specified in this provision will be submitted to a Credentialing Committee consisting of between 3 and 8 Members, as determined by the Board (the “Credentialing Committee”).
- (C) *Composition and Selection.* Members of the Credentialing Committee will be selected by the Board following receipt of recommendations of the Chairman. Members of the Credentialing Committee must be Members and may not be either: (i) a current Director up for election; (ii) an employee of the Cooperative or a Related Entity; or (iii) a Close Family Member of any nominee.
- (D) *Duties.* The credentialing committee must review the petitions and information provided by candidates, together with such other information it may obtain, to determine whether each candidate is qualified to serve as a Director. The Credentialing Committee may require candidates to provide and verify additional information it deems relevant.

- (E) *Report.* At least 45 days prior to the Annual Member Meeting, the Credentialing Committee must submit a report to the Board containing the following information:
- (i) names of all candidates the Credentialing Committee finds as qualified to serve as members of the Board;
 - (ii) names of all candidates the Credentialing Committee has determined are not qualified to serve as a Director of the Cooperative, along with relevant information relied on by the credentialing committee in making that determination and a specification of the reasons the nominee is not qualified;
 - (iii) names of all candidates whose qualifications are referred to the Board for final approval as a result of a finding by the Credentialing Committee that either: (a) the candidate is not qualified to serve solely as the result of the nominee's failure to satisfy a qualification which is waivable by the Board; or (b) the qualifications of the candidate to serve are ambiguous or uncertain under these Bylaws as written, along with all relevant information relied on by the Credentialing Committee in making its determination.
- (F) *Referred Nominations.* Prior to the Annual Member Meeting, the Board must review and consider whether to allow a candidate to be nominated for election whose nomination has been referred to the Board by the Credentialing Committee under Section 3.6(E)(iii). No Director who has filed petitions for the election may participate in or vote on issues relating to the referred petitions.
- (G) *Lack of Nominations.* If no nominations are received or no candidate is found qualified to serve as a Director for any seat which is to be filled at the Annual Member Meeting, the Board may publish notice of that fact, and otherwise request additional nominations for the seat or seats for which there is no nominee, and establish new deadlines pertaining to the submission of petitions, credentialing and nomination of Directors from the affected district(s). The Credentialing Committee must act as soon as practicable with respect to any additional petitions submitted in the manner proscribed by these Bylaws, as modified by the Board in accordance with this paragraph.
- (H) *Notice of Approved Nominees.* The Secretary will post at the Principal Office of the Cooperative a list of all nominees who are approved to be nominated for election by the Credentialing Committee or the Board, as applicable, within twenty-five (25) days before the Annual Member Meeting, or promptly following the date a candidate is found qualified to serve, whichever is later. The Secretary must mail with the notice of the Annual Member Meeting a statement of the number of Directors to be elected and a list of candidates who have been found to be eligible to run for and serve as a Director for each of the districts in which a vacancy occurs.
- (I) *Failure to Comply.* No individual may serve as a Director whose nomination does not comply with the provisions of this section. Any election to the Board of

any Person who does not comply with the qualifications specified in this Article is null and void and will create an immediate vacancy on the Board. The decision of a majority of disinterested Directors is final with respect to any ambiguities or uncertainties regarding the qualification of any particular candidate to serve, or whether to waive any waivable qualification to serve. Unless the Board expressly authorizes nominations from the floor to fill any seat for which no nominee has been qualified to fill, nominations from the floor will not be authorized.

- (J) *Removal for Violations.* Any Director who submits materially misleading information to the Board or Membership as part of the election process, or who otherwise engages in fraudulent conduct, or conduct in violation of generally applicable election policies, may be removed by a vote of a majority of all disinterested Directors within 120 days after receipt of allegations of wrongful conduct.

Section 3.7 Director Elections. Directors shall be elected at Annual Member Meetings as provided herein.

- (A) *Ballots.* At the Annual Member Meeting, the Credentialing Committee's report and any action taken thereon by the Board will be communicated to the Members. A ballot will be prepared listing all qualified nominees by Director District, providing a means of Members to vote distinctly for one candidate in each district seat up for election. Nominees will be listed alphabetically, with incumbents noted.
- (B) *Voting.* Persons entitled to vote under Section 2.9 are entitled to one ballot, and to cast one vote for each Director seat which is being elected. A Member which is an Entity is entitled to one ballot and may cast one vote for each seat up for election. The candidate receiving the highest number of votes cast for each seat up for election will be elected.
- (C) *Unopposed Nominees.* Notwithstanding anything in these Bylaws or applicable procedural rules to the contrary, a candidate who is the only qualified nominee for a seat up for election may be elected at the Annual Member Meeting by motion adopted by a voice vote show of hands or other appropriate means.

Section 3.8 Removal of Directors. A Director's service on the board may be terminated prior to the expiration of the Director's term as a consequence of any one or more of the following:

- (A) *Resignation.* A Director may resign at any time by delivering written notice of resignation to the Board, or the President, Chairman, or Secretary. Unless the notice of resignation specifies a later effective date, a Director's resignation is effective upon due receipt of the written notice of resignation. If a Director's resignation is effective at a later date, and if the successor Director does not take office until the effective date of the Director's resignation, then the pending Director vacancy may be filled before the effective date of the Director's resignation.

- (B) *Loss of Qualification.* A Director who becomes unqualified to be elected, serve, or remain a Director under Section 3.5 will be removed on the earlier of: (i) the date the Board votes to remove the Director; or (ii) sixty days after the Director becomes unqualified, unless the lack of qualification is subject to waiver by the board under the express provisions of these Bylaws, and the Board votes to waive the condition giving rise to the lack of qualification.
- (C) *Board Removal.* If a Director materially breaches any policy applicable to the Board, or is guilty of a serious dereliction of duty, becomes physically or mentally impaired in a manner which compromises the ability of the Director to carry out his or her duties and responsibilities as a Director, or is not physically present at the place of the of where the meeting is held more than three times during any calendar year, may be removed by the Board, but only after the Director has been notified of the grounds for removal and has had an opportunity to present to the Board evidence rebutting or justifying the claimed grounds for removal.
- (D) *Member Removal.* A Director may be removed by the Members for taking or omitting any gross or willful negligence or misconduct significantly and adversely affecting the Cooperative according to the following provisions:
- (i) For each Director for whom removal is requested, one or more Member shall deliver to the Chairman or Secretary a separate written and dated petition (“Director Removal Petition”). A Director Removal Petition must:
 - (a) Identify the Director on each page;
 - (b) Explain on each page the basis for requesting the Director’s removal and identifying the gross or willful negligence or misconduct significantly and adversely affecting the Cooperative which is the basis for the Director Removal Petition; and
 - (c) Contain the printed names, printed addresses, and original and dated signatures obtained within sixty (60) days following the Director Removal Petition date, of at least ten percent (10%) of all the Members.
 - (ii) Within sixty days following receipt of a Director Removal Petition:
 - (a) The Cooperative will forward a copy of the Director Removal Petition to the implicated Director; and
 - (b) The Board will meet to review the Director Removal Petition.
 - (iii) If the Board determines that the Director Removal Petition complies with this Bylaw, then the Cooperative shall provide notice and hold a Member Meeting within sixty (60) days following the Board’s determination. Notice of the Member Meeting must state that:
 - (a) The purpose of the meeting is to consider removing a Director;
 - (b) Evidence may be presented, and a Member vote taken, regarding removing the Director; and

- (c) Members may elect a successor Director.
- (iv) If a quorum, as defined in Section 2.8, is present in person at the Member Meeting, then for the Director named in each Director Removal Petition:
 - (a) Prior to any Member vote, evidence must be presented supporting the basis for removing the Director;
 - (b) The Director may be represented by legal counsel, and must have the opportunity to refute, and present evidence opposing, the basis for removing the Director;
 - (c) Following the Director's presentation, and following Member discussion, the members must vote whether to remove the Director; and
 - (d) Upon a vote of a majority of the Membership, the Director is removed effective the time and date of the Member vote.
- (v) Neither a Director Removal Petition, nor the removal of a Director affects, any Board action. No Director may be removed for lawfully advocating or opposing any lawful Cooperative action or position.

Section 3.9 Director Vacancy. Unless otherwise provided in these Bylaws, vacancies on the Board shall be filled as follows:

- (A) *Director Vote*. By the affirmative vote of a majority of the remaining Directors, the Board must fill any vacant Director position, including any vacant Director position resulting from increasing the number of Directors, no later than 90 days after the vacancy occurs, unless the Annual Member Meeting of the Members will be held within 120 days after the vacancy occurs. In such case, the Members will vote to fill the unexpired term.
- (B) *Term of Directors Elected to Fill Vacancy*. Any Director elected by the Board to fill any vacant Director position shall serve until the next Annual Member Meeting, at which time the Members must elect a Director to fill the unexpired term. A Director elected by the Members to fill a vacant Director position will serve the remaining unexpired term applicable to the position.
- (C) *Vacancy by Resignation*. Should a Director resign effective at a specified date, then the Board may fill the vacancy before the vacancy occurs, and in such case the Director so elected will begin to serve on the date specified in the resignation notice. An individual elected to fill a vacant Director position must comply with all qualifications for a Director. The procedures applicable to election of Directors at the expiration of a Director term apply to any Member election of Directors to fill an unexpired term.

Section 3.10 Director Compensation. Directors may not receive any salary or other compensation except as set forth herein. The Board shall determine or approve the manner, method, and amount of any Director reimbursement, compensation, or benefits as authorized by this Section 3.10.

- (A) *Reimbursement.* The Board may reasonably reimburse, provide insurance or other benefits to Directors and pay Directors a fixed fee and expenses for attending any:
 - (i) Board meeting;
 - (ii) Function, meeting, or event involving or relating to the Cooperative; or
 - (iii) Function, meeting, or event involving, relating to, or reasonably enhancing the Director's ability to serve in, the role of Director.
- (B) *Other Benefits.* The Cooperative recognizes that Directors are expected to devote, and do in fact devote, extensive amounts of time and energy to the business of the Cooperative, above and beyond the time actually spent at meetings and other functions. In recognition of the time and effort Directors devote to the business of the Cooperative, the Board may elect to provide Directors with additional benefits, including, but not limited to, health insurance or payments in lieu thereof.

Section 3.11 Director Conduct. Unless modified or prohibited by Law:

- (A) *Standard of Conduct.* A Director shall discharge the Director's duties, including duties as a member of a Board Committee:
 - (i) In good faith;
 - (ii) Consistent with standards required of a Director under applicable legal requirements; and
 - (iii) In a manner the Director believes to be in the Cooperative's best interests.
- (B) *Reliance on Others.* Unless a Director possesses knowledge concerning a matter making reliance unwarranted, then in discharging a Director's duties, including duties as a Board Committee member, a Director may rely upon information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by:
 - (i) One or more Cooperative Officers or employees whom the Director reasonably believes to be reliable and competent in the matters prepared or presented;
 - (ii) Legal counsel, public accountants, or other individuals regarding matters the Director reasonably believes are within the individual's professional or expert competence; and
 - (iii) A Board Committee of which the Director is not a member regarding matters within the Board Committee's jurisdiction, if the Director reasonably believes the Board Committee merits confidence.
- (C) *Liability.* A Director is not liable to the Cooperative, any Member, or any other individual or Entity for action taken, or not taken, as a Director which either:
 - (i) Satisfies the requirements of this Bylaw; or

- (ii) Satisfies the standard set forth in NDCC Section 10-15-31, or comparable provision of future Law.
- (D) *Status.* No Director is deemed a trustee regarding the Cooperative of any property held or administered by the Cooperative, including but not limited to property potentially subject to restrictions imposed by the property's donor or transferor.

Section 3.12 Indemnification of Directors and Officers.

- (A) *Indemnity.* Subject to subsections (B) and (C), the Cooperative will indemnify and defend a current or former Director or Officer of the Cooperative ("Indemnified Party") who is made or is threatened to be made a party to any civil, criminal, administrative, arbitration or investigative proceeding from any judgments, penalties, fines, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the Indemnified Party as a result of the Indemnified Party's service:
 - (i) on the governing Board of the Cooperative or any committee of the Board;
 - (ii) as the President/CEO or as an elected officer of the Cooperative;
 - (iii) as a Director, Officer, manager, partner, trustee of another organization, retirement plan, or employee benefit plan (a "Related Organization").
- (B) *Conditions:* The Cooperative's obligation to indemnify and defend under this policy will not exist to the extent that, based on the acts or omissions of the Indemnified Party complained of in the proceeding for which indemnity is sought, the Indemnified Party:
 - (i) is entitled to be indemnified by another organization or an employee benefit plan for the same judgment, penalty or fine for which the Indemnified Party seeks indemnity;
 - (ii) is covered by a policy of insurance;
 - (iii) seeks indemnity for a claim arising out of personal injury or property damage arising from a motor vehicle accident involving a vehicle operated by the Indemnified Party;
 - (iv) failed to act in good faith;
 - (v) in the case of a criminal proceeding, had reasonable cause to believe the conduct involved a criminal act or if the criminal act did not arise out of negligent, as opposed to willful or intentional misconduct; and
 - (vi) the Indemnified Party did not believe that the conduct was in the best interests of the Cooperative or Related Organization.
- (C) *Additional Exclusions.* Notwithstanding the foregoing, the Cooperative is not required to indemnify or defend an Indemnified Party if the claim for which the Indemnified Party is seeking indemnity arises out of any one or more of the following:

- (i) actual fraud or willful misconduct by the Indemnified Party in connection with the claim for which indemnity is sought;
 - (ii) intentional or willful violation by the Indemnified Party of written policies or directives of the Cooperative or a Related Organization;
 - (iii) gross or willful negligence or gross or willful misconduct by the Indemnified Party or
 - (iv) the Indemnified Party's attempting to seek or obtain an unauthorized personal profit, gain or advantage to the detriment of the Cooperative or Related Organization.
- (D) *General Provisions.* The Indemnified Party seeking indemnification or payment or reimbursement of expenses pursuant to this section has the burden of establishing that the he or she is entitled to indemnification or payment or reimbursement of expenses. Nothing contained in this provision is intended to limit the discretionary authority of the Cooperative to indemnify an Indemnified Party or other individual who is not a Director or Officer of the Cooperative by resolution, contract or otherwise. Indemnification under this provision is not exclusive of other rights to which the Indemnified Party may have under any policy of insurance.

ARTICLE IV. BOARD MEETINGS AND DIRECTOR VOTING

Section 4.1 Regular Board Meetings. The Board shall meet monthly at a date, time, and location determined by the Board ("Regular Board Meeting"). Regular Board Meetings may be held without notice other than the resolution fixing the time and place for regular meetings. For good cause, the Chairman may change the date, time, or location of any Regular Board Meeting, provided notice of the change is provided to other members of the Board in the manner required herein. Any Director not present at any Board Meeting at which the Regular Board Meeting date, time, or location is changed is entitled to receive notice of the Regular Board Meeting change at least five days before the next Regular Board Meeting.

Section 4.2 Special Board Meetings. The Board, the Chairman, or at least three (3) Directors may call a special meeting of the Board ("Special Board Meeting") by providing each Director at least two (2) days' prior notice indicating the date, time, and location and purpose of the Special Board Meeting.

Section 4.3 Conduct of Board Meetings. Unless otherwise provided in these Bylaws, the following terms shall govern any Regular Board Meeting or Special Board Meeting (either one or both a "Board Meeting"):

- (A) *Location and attendance.* Board Meetings may be held at any place the Board chooses. With the approval of the Board in each case, absent Directors may participate through any means of communication by which all Directors participating in the Board Meeting may simultaneously hear and approximately instantaneously communicate with each other during the Board Meeting. A director participating electronically will be deemed to be present for the purpose of computing a quorum and voting, but not for the purposes of Section 3.8(C)

- (B) *Presiding Officer.* If a Director Quorum as defined by Section 4.6 is present at any Board Meeting, then:
 - (i) In descending priority, the following Officers may preside at the Board Meeting: Chairman, Vice-Chairman, Secretary, and Treasurer; and
 - (ii) If no Officer is present, or desires, to preside over any Board Meeting, then the Directors attending the Board Meeting shall elect a Director to preside over the Board Meeting.
- (C) *Board Policies.* The Board may promulgate or approve policies, rules, and procedures consistent with applicable Law regarding:
 - (i) Attendance at, participation in, or presentation during Board Meetings by Persons other than Directors;
 - (ii) The right to access, inspect, or copy any minutes, records, or other documents relating to any Board Meeting by Persons other than Directors; and
 - (iii) Conduct of Board Meetings.

Section 4.4 Waiver of Board Meeting Notice.

- (A) *Written Waiver.* A Director may at any time waive notice of any Board Meeting by delivering to the Cooperative a written waiver of notice signed by the Director and later filed with the Board Meeting minutes or the Cooperative's records.
- (B) *Waiver by Conduct.* A Director's attendance at, or participation in, a Board Meeting waives notice of the Board Meeting and any matter considered at the Board Meeting, unless the Director:
 - (i) Upon arriving at a Board Meeting or prior to the vote on a particular matter, objects to lack of notice, or defective notice, of the Board Meeting or a matter being considered at the Board Meeting; and
 - (ii) Does not vote for, or assent to, an objected matter.

Section 4.5 Board Action by Written Consent.

- (A) *Action permitted.* The Board may take any action required, or permitted, to be taken at a Board Meeting without holding such a Board Meeting if the action is taken by all Directors and evidenced by one or more written consents ("Director Written Consent").
- (B) *Director Written Consent.* To be valid, a Director Written Consent must:
 - (i) Describe the action taken;
 - (ii) Be signed by each Director; and
 - (iii) Be included with the Cooperative's Board Meeting minutes.
- (C) *Effective date.* Unless the Director Written Consent specifies a different effective date, action taken by a Director Written Consent is effective when the last Director signs the Director Written Consent.

- (D) *Effect.* A Director Written Consent has the effect of, and may be described as, a Board Meeting vote.

Section 4.6 Director Quorum and Voting.

- (A) *Quorum.* A quorum of Directors is a majority of the Directors in office immediately before a Board Meeting begins (“Director Quorum”). For the purpose of computing a Director Quorum, Directors who participate in the meeting through electronic means under Section 4.3(A) are deemed to be present at the meeting.
- (B) *Voting.* If a Director Quorum is present at the time a matter is voted or acted upon, and unless the vote of a greater number of Directors is required, then the affirmative vote of a majority of Directors present and eligible to vote is the act of the Board. A Director precluded from voting under these Bylaws due to a conflict of interest is not considered eligible to vote under this provision.
- (C) *Proxies and Agreements.* A Director may not vote by proxy. An agreement signed by Directors providing the manner in which a Director will vote is not valid.

Section 4.7 Committees. The Board may create committees of the Board (“Board Committees”) and appoint Directors to serve on such Board Committees. Each Board Committee must consist of two or more Directors and serves at the Board’s discretion. The Board may create committees of the Members (“Member Committees”) and appoint Members, including Directors, to serve on the Member Committees.

- (A) *Creation and Appointment of Committees.* Except as otherwise provided in these Bylaws, at least a majority of Directors currently in office must approve each of the following:
- (i) Creation of any Board Committee or Member Committee;
 - (ii) Appointment of Directors to any Board Committee; and
 - (iii) Appointment of Members to any Member Committee.
- (B) *Conduct of Committee Meetings.* To the extent relevant, the provisions of this Article shall govern the conduct of committee meetings.
- (C) *Board Committee Authority.* Except as prohibited or limited by Law, the Articles, or this Bylaw, the Board may authorize a Board Committee to exercise Board authority. Notwithstanding the foregoing, a Board Committee is not authorized to:
- (i) Retire and refund Capital Credits and Affiliated Entity Capital Credits;
 - (ii) Approve the Cooperative’s dissolution or merger, or the sale, pledge, or Transfer of all, or substantially all, cooperative assets;
 - (iii) Elect, appoint, or remove Directors, or fill any Board or Board Committee vacancy; or
 - (iv) Adopt, amend, or repeal these Bylaws.

A Board Committee may recommend action with respect to any of the foregoing items.

- (D) *Member Committee Authority.* Member Committees may act as specified by the Board, but they may not exercise Board authority.

Section 4.8 Conflict of Interest Transactions.

- (A) *Definition.* A “Conflict of Interest Transaction” means a transaction with the Cooperative or with any Related Entity in which:

- (i) A Director is a party;
- (ii) A Close Family Member of a Director is a party;
- (iii) Any party is an entity in which a Director owns more than ten percent (10%), or an entity in which a Director has a business, financial, or similar relationship that would reasonably be expected to affect the entity’s judgment regarding the transaction in a manner adverse to the Cooperative or to the applicable Related Entity;
- (iv) Any party is an individual or entity with which a Director has a business, financial, or familial relationship that would reasonably be expected to affect the Director’s judgment regarding the transaction in a manner adverse to the Cooperative or to the applicable Related Entity;
- (v) A Director, or an individual or entity with which a Director has a business, financial, or familial relationship, has a material pecuniary interest in the transaction that would reasonably be expected to affect the Director’s judgment in a manner adverse to the Cooperative or to the applicable Related Entity; or
- (vi) A Director is subject to a controlling influence by a party to the transaction, or by an individual or entity with a material pecuniary interest in the transaction, which controlling influence could reasonably be expected to affect the Director’s judgment regarding the transaction in a manner adverse to the Cooperative or to the applicable Related Entity.

- (B) *Excluded Transactions.* A Conflict of Interest Transaction does not include a transaction between the Cooperative and any organization solely on the ground that a Director is a member of the governing board of the other organization unless:

- (i) The Director participates personally and substantially in negotiating the transaction for the Cooperative or for the other organization; or
- (ii) A Director who is a member of the Board and the governing board of the other organization casts a vote that is necessary to approve the transaction.

- (C) *Disclosure of Conflicts.* Regarding a Conflict of Interest Transaction, the Director shall disclose to the Board, or the Board must know, the material facts known to the Director concerning the conflict of interest and the transaction must be:

- (i) Fair to the Cooperative or to the applicable Related Entity when entered;

- (ii) Authorized in advance by a majority of disinterested Directors; or
- (iii) Ratified by a majority of disinterested Directors who could reasonably have concluded that the transaction was fair to the Cooperative or to the applicable Related Entity when entered.

ARTICLE V. OFFICERS

Section 5.1 Required Officers. The Cooperative must have a Chairman, Vice-Chairman, President, Secretary, and Treasurer (singularly, an “Officer” and collectively, “Required Officers”).

- (A) *Election of Required Officers*. The Board shall elect Required Officers:
 - (i) At the first Regular Board Meeting following each Annual Member Meeting, or as soon after each Annual Member Meeting as reasonably possible and convenient;
 - (ii) By affirmative vote of a majority of Directors in office; and
 - (iii) By secret written ballot without prior nomination, except that the President may be elected by voice vote or other means.
- (B) *Eligibility*. Except for the office of President, only Directors may be elected, and serve, as a Required Officer. One Director may simultaneously be Secretary and Treasurer.

Section 5.2 Officer Terms. Subject to removal by the Board, each Required Officer shall hold office until the Required Officer’s successor is duly elected. The Board shall fill any vacant Required Officer’s position for the remaining unexpired portion of the Required Officer’s term.

Section 5.3 Chairman. Unless otherwise determined by the Board, and unless otherwise required by Law, the Articles, or these Bylaws, the Chairman:

- (A) Shall preside, or designate another individual to preside, at all Board Meetings and Member Meetings;
- (B) On the Cooperative’s behalf, may sign any document properly authorized or approved by the Board or Members; and
- (C) Shall perform all other duties, shall have all other responsibilities, and may exercise all other authority, prescribed by the Board.

Section 5.4 Vice-Chairman. Unless otherwise determined by the Board, and unless otherwise required by Law, the Articles, or these Bylaws, the Vice-Chairman shall:

- (A) Upon the Chairman’s death, absence, disability, improper refusal, or inability to act, perform the duties, and have the powers, of the Chairman; and
- (B) Perform all other duties, have all other responsibilities, and may exercise all other authority, prescribed by the Board.

Section 5.5 President. The Board shall elect a President who may be, but who shall not be required to be, a Member of the Cooperative. The President shall be the principal

executive officer of the Cooperative. The President shall perform such duties as the Board may from time to time require and shall have such authority as the Board may from time to time vest in the President.

Section 5.6 Secretary. Unless otherwise determined by the Board, and unless otherwise required by Law, the Articles, or these Bylaws, the Secretary:

- (A) is responsible for the preparation and maintenance of minutes of Board and Member Meetings;
- (B) is authorized to authenticate the Cooperative's records;
- (C) is entitled to affix the Cooperative's seal to any document authorized or approved by the Board or Members; and
- (D) must perform all other duties, have all other responsibilities, and exercise all other authority, prescribed by the Board.
- (E) may delegate or assign the Secretary's duties to Cooperative staff or other parties whose duties are subject to oversight by the Secretary.

Section 5.7 Treasurer. Unless otherwise determined by the Board, and unless otherwise required by Law, the Articles, or these Bylaws, the Treasurer shall perform all duties, shall have all responsibility, and may exercise all authority, prescribed by the Board.

Section 5.8 Other Officers. As provided herein, the Board may elect or appoint officers other than the Required Officers ("Other Officers").

- (A) Eligibility and Selection. Other Officers:
 - (i) may be Directors, Cooperative employees, or other individuals;
 - (ii) must be elected or appointed by the affirmative vote of a majority of current Directors;
 - (iii) may be elected by secret written ballot and without prior nomination;
 - (iv) may assist Required Officers; and
 - (v) shall perform all duties, shall have all responsibilities, and may exercise all authority, prescribed by the Board.
- (B) *Multiple Offices*. Officers other than the President, may simultaneously hold more than one office, except that the offices of Chairman and Vice-Chairman must be held by separate individuals. Unless allowed by Law, no individual may execute, acknowledge, or verify any document in more than one capacity.

Section 5.9 Officer Resignation and Removal. At any time, any Required Officer or Other Officer (collectively, Cooperative Officer) may resign by delivering to the Chairman, President, or Board an oral or written resignation. Unless the resignation specifies a later effective date, an Officer resignation is effective when received. If an Officer resignation is effective at a later date, then the Board may fill the vacant Officer position before the later effective date, but the successor Officer may not take office until the later effective date. The Board may remove any Officer for any reason, with or without cause, at any time.

Section 5.10 Officer Standard of Conduct. Every Officer shall discharge the Officer's duties:

- (A) In good faith;
- (B) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (C) In a manner the Officer reasonably believes to be in the Cooperative's best interests.

Section 5.11 Officer Contract Rights. The election or appointment of any Officer, by itself, does not create a contract between the Cooperative and the Officer. An Officer's resignation does not affect the Cooperative's contract rights, if any, with the Officer. An Officer's removal does not affect the Officer's contract rights, if any, with the Cooperative.

Section 5.12 Authority to Execute Documents. On the Cooperative's behalf, any two (2) Required Officers may sign, execute, and acknowledge any document properly authorized or approved by the Board or Members. The Board may authorize additional Cooperative Directors, Officers, employees, agents, or representatives to sign, execute, and acknowledge any document on the Cooperative's behalf.

Section 5.13 Officer Compensation. The power, duties and compensation of the President will be fixed by the Board.

Section 5.14 Bonds. At the Cooperative's expense, the Cooperative may purchase a bond covering any Cooperative Director, Officer, employee, agent, or representative.

Section 5.15 Indemnification. As allowed by Law and the Articles, and as determined by the Board, the Cooperative will indemnify the Officers selected by the Board under this Article as provided in Section 3.12.

ARTICLE VI. COOPERATIVE OPERATION

Section 6.1 Nonprofit and Cooperative Operation. The Cooperative will:

- (A) Operate on a nonprofit basis;
- (B) Operate on a cooperative basis for the mutual benefit of all Members; and
- (C) Not pay interest or dividends on Capital furnished by a Patron (as defined in Section 6.2).

Section 6.2 Allocating and Crediting Capital. In operating the Cooperative:

- (A) *Patron*. A Cooperative patron ("Patron") is a Member or a non-Member Person who uses any Electric Service distributed by the Cooperative. A Patron must furnish and contribute to the Cooperative as capital ("Capital") the amount ("Operating Margins") by which the funds and amounts received by the Cooperative from a Patron of its electrical distribution business ("Operating Income") exceed the Cooperative's costs, expenses and reserves authorized by Law in connection with the Cooperative's furnishing electric energy ("Operating Cost"). The Cooperative will annually allocate to each Patron, and pay by credit to a capital account for each Patron ("Capital Credit Account") Operating

Margins from the electrical distribution business of the Cooperative in proportion to the value or quantity of the electrical energy used by each Patron during the applicable fiscal year (“Capital Credits”).

- (B) *Affiliated Entity.* If the Cooperative is a Member or Patron of an entity providing goods or services used by the Cooperative in providing electrical power to each Patron (“Affiliated Entity”) then, to the extent the Affiliated Entity allocates or credits funds, amounts, or capital to the Cooperative in proportion to the value or quantity of the goods or services used by the Cooperative (“Affiliated Entity Allocated Capital”), the Cooperative may separately allocate and credit to each Patron the Affiliated Entity Allocated Capital (“Affiliated Entity Capital Credits”) in proportion to the value or quantity of the electric energy used by each Patron.
- (C) *Operating Margins.* Any Operating Margins generated by the Cooperative from revenue, which are not Operating Income, reduced by Cooperative expenses, which are not Operating Costs, constitute the “Non-operating Margins” of the Cooperative. Non-operating Margins may be:
 - (i) Allocated as Capital Credits to each Patron in the same manner as the Cooperative allocates Operating Margins to each Patron;
 - (ii) Used by the Cooperative to offset previous year’s losses;
 - (iii) Retained or used by the Cooperative as permanent, non-allocated capital;
 - (iv) Used to pay or offset any Cooperative cost or expense; or
 - (v) Used as otherwise determined or approved by the Board.

Section 6.3 Allocation of Capital Credits. The books and records of the Cooperatives must be established and maintained in such a manner that at the end of each fiscal year the amount of Capital, if any, so furnished by each Patron is clearly reflected and credited in an appropriate record to the Capital Credit account of each Patron as provided in accordance with these Bylaws and the Act.

- (A) *Basis of Allocations.* Allocations will be made on the basis of the value or quantity of Electric Service consumed by each Patron during the applicable fiscal year.
- (B) *Capital Expenses.* Upon agreement between the Cooperative and a Patron, the portion of any payments for Electric Service allocable to repayment of extraordinary capital expenses incurred by the Cooperative in constructing or acquiring facilities necessary to serve the Patron will not be considered fees from the provision of Electric Service for the purpose of allocating capital to each Patron.
- (C) *Notification.* The Cooperative will within a reasonable time after the close of the fiscal year notify each Patron of the amount of Capital Credits and Affiliated Entity Capital Credits credited to the Patron’s account.
- (D) *Treatment of Credits.* Capital Credits and Affiliated Entity Capital Credits must be treated as though the Cooperative paid the Capital Credit amounts to each Patron in cash pursuant to a pre-existing legal obligation and as though each

Patron furnished or contributed the Capital to the Cooperative in the corresponding Capital Credit amounts.

Section 6.4 Dissolution of Cooperative. In the event of dissolution or liquidation of the Cooperative, after all outstanding indebtedness of the Cooperative shall have been paid, outstanding Capital Credits shall be retired in the manner provided in Article X of the Articles.

Section 6.5 No Assignment. Capital credited to the account of each Patron may not be assigned or transferred except in any one or more of the following circumstances:

- (A) Capital Credits held by a deceased Patron may be transferred to the deceased member's heirs at law.
- (B) Capital Credits held by an Entity that is being liquidated:
 - (i) may not be subdivided or resubdivided so that any of the Capital Credits held by the liquidated entity are at any time held by more than five successors;
 - (ii) will remain classified as entity Capital Credits even if the successors are individuals; and
 - (iii) will not be subject to early retirement on the death of the successor.
- (C) To a party that is a successor in occupancy to each location where the Capital Credits were earned.
- (D) No assignment need be honored by the Cooperative unless the assignee provides the Cooperative such information as it may reasonably require in order to carry out its legal obligations and insure proper payment of the Capital Credits when retired.

Section 6.6 Early Retirement of Capital Credits.

- (A) *Death of Patron*. Notwithstanding any other provision of these Bylaws, upon the death of any Patron who is a natural person, the Board shall have discretion to retire Capital Credits to any such Patron immediately upon such terms and conditions as the Board acting under policies of general application and the legal representative or other proper representatives of the Patron's estate shall agree, provided that: (i) the legal representative or other proper person requests in writing that the Capital Credited to any such Patron be retired; and (ii) the financial condition of the Cooperative will not be impaired thereby
- (B) *Dissolution, Insolvency or Bankruptcy of an Entity*. The dissolution, insolvency or bankruptcy of a corporation, partnership, limited partnership, limited liability company, or similar entity, shall not constitute grounds for the early retirement of Capital Credits as provided above, provided that if the Cooperative and the authorized legal representative of any such entity agree, the Cooperative may, in its discretion, pay to such entity up to 10% of the Capital Credits on the books of the Cooperative allocable to such entity in exchange for the retirement of all Capital Credits in favor of the entity.

- (C) *Death of a Partner.* In the event a partnership is a Member or Patron, upon the death of one partner, Capital Credits allocable to the deceased partner's interest in the partnership may be paid under policies of general application, to the estate of the deceased, to the surviving partner, or to the heirs of the decedent upon proper proof of interest.
- (D) *Small Capital Accounts.* The Board shall have discretionary power to retire Capital Credit Accounts of \$250 or less ("Small Capital Accounts") at any time under terms and conditions as established by the Board.
- (E) *Former Member Defaults.* The board may elect to retire all or a portion of the capital credits held by former Members who have failed to pay when due any obligation owed to the cooperative. When capital credits are retired under this subpart, the present value of the retired capital credits, determined by Board policy, will be applied to reduce the balances due to the Cooperative by the former member.
- (F) *Consolidation or Merger.* Consolidation or merger of a corporation shall not be the equivalent of dissolution, but the successor corporation shall be entitled to the Capital Credits when paid. In the event that a school district having Capital Credits is attached to more than one other school district, the Capital Credits shall be pro-rated between or among the successor school districts. Upon dissolution of a school district, the Board, at its discretion, may pay the present value of the accumulated Capital Credits of the district to its successor school district.
- (G) *Post-1997 Allocations.* Notwithstanding any other provisions of these Bylaws, for all capital credits earned and allocated after January 1, 1998, the Board may by resolution determine annually the method, basis, priority, time and order of retirement of such capital, provided that no such change shall allow capital credits earned after January 1, 1998 to have priority over capital credits previously earned, other than Small Capital Accounts which may be retired as authorized herein.

Section 6.7 Unclaimed Capital Credits. Members and former Members who hold unredeemed Capital Credits must maintain a current address with the Cooperative so that Capital Credits may be reported and paid. If a Member fails to do so and payments for retired Capital Credits sent to the last known address of the Member are returned with no forwarding address ("Unclaimed Capital Credits") the Cooperative will undertake to locate the Member through publishing the names of Members in a publication available to current Members of the Cooperative and other means deemed appropriate by the Cooperative. If any Unclaimed Capital Credits remain outstanding for a period of six years from the date authorized for retirement or payment, the Board may elect to treat such Unclaimed Capital Credits as forfeited and contribute them to the Capital of the Cooperative in accordance with applicable legal requirements pertaining to any such forfeiture. Once Unclaimed Capital Credits have been forfeited under this provision, the obligation of the Cooperative to pay the forfeited Unclaimed Capital Credits will be extinguished and no Member or former Member will have any claim to the forfeited Unclaimed Capital Credits.

ARTICLE VII. PATRON AGREEMENT.

Section 7.1 Patron Agreements. Each Patron of the Cooperative agrees that:

- (A) Neither Capital Credits, Affiliated Entity Capital Credits, nor similar amounts are securities under state or federal Law;
- (B) A Patron's right to receive Capital Credits, Affiliated Entity Capital Credits, or similar amounts vests, accrues, and becomes payable only upon the Cooperative retiring or refunding the Capital Credits, Affiliated Entity Capital Credits, or similar amounts as provided in these Bylaws, and not upon the Cooperative allocating or crediting the Capital Credits, Affiliated Entity Capital Credits, or similar amounts; and
- (C) To the extent required by local, state, or federal Law, each Patron will:
 - (i) Report to the appropriate authority allocated, credited, retired, or refunded Capital Credits, Affiliated Entity Capital Credits, and similar amounts;
 - (ii) Pay to the appropriate authority any tax or similar amount on allocated, credited, retired, or refunded Capital Credits, Affiliated Entity Capital Credits, and similar amounts.

Section 7.2 Non-Member Patrons and Non-Member Non-Patrons Agreements. As a condition of Using any Electric Service, and unless otherwise determined by the Board:

- (A) To the same extent as Members, Patrons who are not Members ("Non-Member Patrons") and Persons using any Electric Service who are neither Members nor Patrons ("Non-Member Non-Patrons") shall abide by, and be bound to:
 - (i) All the duties, obligations, liabilities, and responsibilities imposed by the Governing Documents upon Members; and
 - (ii) These Bylaws, unless otherwise provided in these Bylaws;
- (B) Non-Member Patrons and former Non-Member Patrons shall have none of the rights granted by the Governing Documents to Members, other than the rights to:
 - (i) Be allocated and paid by credit to a Capital account Capital Credits and Affiliated Entity Capital Credits; and
 - (ii) Receive retired and refunded Capital Credits and Affiliated Entity Capital Credits; and
- (C) Non-Member Non-Patrons shall have none of the rights granted by the Governing Documents to Members.

ARTICLE VIII. DISPOSITION OF COOPERATIVE ASSETS

Section 8.1 Transfer of Cooperative Assets. The Cooperative may not enter into any sale, lease, exchange, or other disposition ("Transfer") of more than five percent (5%) of the Cooperative's property or assets ("Transfer Assets") during any twelve (12) month period unless:

- (A) At the expense of the person or entity seeking to purchase, lease or acquire the Transferred Assets, the Board appoints a qualified independent appraiser who,

within a reasonable time after appointment, evaluates and renders an appraisal valuing the proposed Transfer Assets (“Transfer Appraisal”);

- (B) Within a reasonable time of receiving the Transfer Appraisal, the Cooperative invites any other entities operating on a cooperative basis, providing electric power and energy, and primarily located within the same state as, or within a state adjacent to, the state in which the Cooperative is primarily located to submit proposals to purchase, lease, or acquire the Cooperative’s Assets specified in the proposed Transfer, or to Merge or Consolidate with the Cooperative;
- (C) The Board approves the proposed Transfer;
- (D) No less than two-thirds of the entire Membership approves the proposed Transfer; and
- (E) Notice of any Member Meeting at which Members will consider a proposed Transfer states that one of the purposes of the Meeting is to consider the proposed Transfer and includes a copy or summary of the terms of the proposed Transfer.

Section 8.2 Abandonment. Unless otherwise determined by the Members, after the Members approve a Transfer, the Board may abandon the Transfer.

Section 8.3 Exclusions. Section 8.1 will not apply to any Transfer made:

- (A) To secure indebtedness; including, without limitation, the granting of any mortgage, security interest, pledge, or assignment of any Cooperative Asset, securing the repayment or performance of any obligation of the Cooperative or a Related Entity.
- (B) Pursuant to condemnation or threat of condemnation;
- (C) Pursuant to an existing legal obligation;
- (D) Associated with a Consolidation or Merger undertaken pursuant to Section 8.4;
- (E) To another Entity operating on a cooperative basis and providing electric power and energy;
- (F) In exchange for physical plant of equal monetary value; or
- (G) To a Related Entity.

Section 8.4 Merger or Consolidation. In a manner determined by the Board that is consistent with this Bylaw, the Cooperative may consolidate or merge with any other Entity provided the survivor is an electric cooperative operating on a cooperative basis. The Board must approve an agreement or plan to consolidate or merge (“Consolidation or Merger Agreement”) stating:

- (A) The terms and conditions of the consolidation or merger;
- (B) The name of each Entity consolidating or merging with the Cooperative;
- (C) The name of the new or surviving consolidated or merged Entity (“New Entity”);

- (D) The manner and basis, if any, of converting memberships, or ownership rights, of each consolidating or merging Entity into memberships or ownership rights of, or payments from, the New Entity;
- (E) The number of directors of the New Entity;
- (F) The date of the New Entity's annual meeting;
- (G) The names of the New Entity directors who will serve until the New Entity's first annual meeting; and
- (H) Any other information required by Law.

Section 8.5 Member Approval of Merger or Consolidation. After the Board approves a consolidation or merger agreement, a majority of the Members present and voting in person at a Member meeting must approve the consolidation or merger agreement.

Section 8.6 Notice. The Cooperative must notify Directors of any Board Meeting, and Members of any Member Meeting, at which Directors or Members may consider a consolidation or merger agreement. This notice and any material soliciting Member approval of the consolidation or merger agreement must contain, or be accompanied by, a summary or copy of the consolidation or merger agreement and the New Entity's articles of incorporation and bylaws.

Section 8.7 Other Mergers or Consolidations. Any merger or consolidation not authorized by Section 8.4 may only be undertaken if the procedures for sales of cooperative assets set forth in Section 8.1 are satisfied.

ARTICLE IX. FISCAL MATTERS

Section 9.1 Contracts. Except as otherwise provided in these Bylaws, the Board may authorize one or more Officers or agents, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Cooperative, and such authority may be general or confined to specific instances.

Section 9.2 Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, and all notes, bonds or other evidence of indebtedness issued in the name of the Cooperative shall be signed by one or more Officers, agents or employees of the Cooperative and in such manner as shall from time to time be determined by resolution of the Board.

Section 9.3 Deposits and Investments. Funds and Reserves retained by the Cooperative, in such amounts as may be approved by the Board, shall be deposited or invested in federally insured interest bearing accounts, sound loan arrangements, or other prudent investments, as may be approved by the board, including investments designed to enhance the economic development of the areas served by the Cooperative.

Section 9.4 Records. The corporate seal and books and records of the Cooperative must, unless otherwise ordered by the Board, be kept in a principal office of the Cooperative, and no Officer of the Cooperative shall be personally liable or responsible for the loss of any such records nor for the mistakes, misfeasance or malfeasance of any employee or employees of the Cooperative to whom such Officer has delegated a duty; and no Officer of the Cooperative shall be responsible or liable for actions done by employees of the Cooperative which are in

accordance with the usual practice and custom as established and consented to by the Board, whether such consent be expressed or implied.

Section 9.5 Reasonable Reserves. Regardless of any contrary Bylaw, and to meet the Cooperative's reasonable needs, the Cooperative may accumulate and retain amounts exceeding those needed to meet current losses and expenses ("Reasonable Reserves"). The Cooperative shall keep records necessary to determine, at any time, each Member's rights and interest in any Reasonable Reserves.

Section 9.6 Fiscal Year. Unless otherwise provided by Law or in the Articles, the Board shall determine, and may modify, the Cooperative's fiscal year.

ARTICLE X. MISCELLANEOUS

Section 10.1 Electronic Documents. The following provisions shall govern electronic signatures, contracts, records, notices, communications, and other documents (collectively, "Electronic Documents"):

- (A) *Member Agreement*. If a Member owns, controls, or has reasonable access to a computer or other hardware and software allowing electronic communication of notices, information, reports or other data, then, regardless of any contrary Bylaw, the Member agrees to:
 - (i) Use, accept, send, and receive Electronic Documents any transaction with, for, or involving the Cooperative;
 - (ii) Conduct any action or transaction with, for, or involving the Cooperative by electronic means; and
 - (iii) Give this consent electronically, or confirm this consent electronically.
- (B) *Electronic Documents to Satisfy Requirements*. All Electronic Documents to or from any Member described in Section 10.1 satisfy the following requirements:
 - (i) Any requirement imposed by Law, the Articles, or these Bylaws that the underlying signature, contract, record, notice, communication, or other document be in writing;
 - (ii) Any requirement imposed by Law, the Articles, or these Bylaws that the underlying signature, contract, record, notice, communication, or other document be sent or received personally or by mail; and
 - (iii) Any requirement imposed by Law, the Articles, or these Bylaws regarding the form or manner of taking an action
- (C) *Electronic Document Notice*. Any Electronic Document sent electronically to a Member or former Member at the Member or former Member's last known electronic address is considered sent and received on the date sent. Any Electronic Document sent electronically to the Cooperative from a Member or former Member is considered sent and received on the date received by the Cooperative.

Section 10.2 Bylaw Amendments. These Bylaws may be altered, amended or repealed by the affirmative vote of not less than two-thirds (2/3) of the entire Board at any Board Meeting,

provided the notice of such meeting contains a copy of the proposed alteration, amendment or repeal. Members must be notified of a Bylaw change by mail within sixty (60) days after the amendment thereof and a summary of changes made will be provided at the first Annual Member Meeting following the amendment.

Section 10.3 Notice.

- (A) *Manner of Notice.* Unless otherwise provided in these Bylaws, notice may be:
- (i) Oral or written; and
 - (ii) Communicated:
 - (a) In person;
 - (b) By telephone, telegraph, teletype, facsimile, electronic communication, or other form of wire or wireless communication;
 - (c) By mail or private carrier; or
 - (d) If the above-listed forms of communicating notice are impractical, then by newspaper of general circulation in the area where published, or radio, television, or other form of public broadcast communication.
- (B) *Multiple Members at one Address.* If addressed, or delivered, to an address shown in the Membership List, then a written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to Members constitutes a written notice or report to all Members:
- (i) Residing at the address; or
 - (ii) Having the same address shown in the Membership List.
- (C) *Notice Effective Date.* If communicated in a comprehensible manner, then unless otherwise provided in these Bylaws:
- (i) Oral notice is effective when communicated; and
 - (ii) Written notice is effective upon the earliest of:
 - (a) When received;
 - (b) With the postmark evidencing deposit in the United States Mail, if correctly addressed and mailed with first class postage affixed, five (5) days after deposit in the United States Mail; or
 - (c) If mailed with other than first class, registered, or certified postage affixed, then ten (10) days after deposit in the United States Mail; or
 - (d) If sent by registered or certified mail, return receipt requested, and if the return receipt is signed by, or on behalf of, the addressee, then on the date indicated on the return receipt; or
 - (e) If sent by electronic means, the date sent.

- (iii) Written notice is correctly addressed to a Member if addressed to the Member's address shown in the Membership List.

Section 10.4 Governing Law. These Bylaws must be governed by, and interpreted under, the laws of the State of North Dakota.

Section 10.5 Titles and Headings. All titles and headings of Bylaw articles, sections, and sub-sections are for convenience and reference only, and do not affect the interpretation of any Bylaw article, section, or sub-section.

Section 10.6 Partial Invalidity. When reasonably possible, every Bylaw article, section, sub-section, paragraph, sentence, clause, or provision (collectively, "Bylaw Provision") must be interpreted in a manner by which the Bylaw Provision is valid. The invalidation of any Bylaw Provision by any court possessing proper jurisdiction and authority, which does not alter the fundamental rights, duties, and relationship between the Cooperative and Members, does not invalidate the remaining Bylaw Provisions.

Section 10.7 Cumulative Remedies. The rights and remedies provided in these Bylaws are cumulative. The Cooperative or any Member asserting any right or remedy provided in these Bylaws does not preclude the Cooperative or Member from asserting other rights or remedies provided in these Bylaws.

Section 10.8 Entire Agreement. Between the Cooperative and any Member, the Governing Documents:

- (A) Constitute the entire agreement; and
- (B) Supersede and replace any prior or contemporaneous oral or written communication or representation.

Section 10.9 Successors and Assigns. To the extent allowed by Law:

- (A) The duties, obligations, and liabilities imposed upon the Cooperative or any Member by these Bylaws are binding upon the successors and assigns of the Cooperative or Member; and
- (B) The rights granted to the Cooperative by these Bylaws inure to the benefit of the Cooperative's successors and assigns. The binding nature of the duties, obligations, and liabilities imposed by these Bylaws upon the successors and assigns of the Cooperative and any Member does not relieve the Cooperative or Member of the duties, obligations, and liabilities imposed by these Bylaws upon the Cooperative or Member.

Section 10.10 Waiver. The failure of the Cooperative to assert any right or remedy provided in these Bylaws does not waive the right or remedy provided in these Bylaws.

Section 10.11 Lack of Notice. To the extent allowed by Law and the Articles, the failure of any Member or Director to receive notice of any Meeting, action, or vote does not affect, or invalidate, any action or vote taken by the Members or Board.

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