

BYLAWS  
OF  
SOUTHERN MONTANA ELECTRIC GENERATION  
AND TRANSMISSION COOPERATIVE, INC.

Revised this 18<sup>th</sup> day of June, 2004.

*4 13<sup>th</sup> day of Sept, 2004.*

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**BYLAWS  
OF  
SOUTHERN MONTANA ELECTRIC GENERATION  
AND TRANSMISSION COOPERATIVE, INC.**

9/13/2004  
Aug 15 2003  
Resolution  
for membership

**ARTICLE I  
Members**

**Section 1, General:** The limitations, conditions, restrictions, and rights pertaining to membership and the privileges, duties, and obligations of Members are set forth in these Bylaws.

**Section 2, Classes of Membership:** The Cooperative shall have no stock, but membership in the Cooperative shall be evidenced by a membership certificate. Membership in the Cooperative shall be of one class, as follows:

**a. Class A Membership.** Any incorporated cooperative association organized under the laws of the State of Montana for the purposes, among other things, of constructing, operating and maintaining electric transmission and distribution lines or systems and/or transmitting and selling electric energy or other entity or association approved by the Board of Trustees may become a Class A Member, upon compliance with Article I, Section 4, and executing a contract to purchase electric service from the Cooperative's generating units as soon as electric service is needed to meet such Member's electric requirements in excess of such Member's existing generation capacities or contracts for the purchase of electric service, or the obligations to purchase power from others pursuant to federal or state statute. Class A Members may also purchase any other class of electric service, if available.

Each Class A Member shall pay for such power and/or energy or other electric services monthly at rates or on a basis to be determined from time to time in accordance with the Bylaws and contracts entered into between the Cooperative and the Member. Each Class A Member shall pay to the Cooperative all assessments, capital calls, or other amounts as shall be fixed by the Board of Trustees from time to time on a load ratio share basis. Each Class A Member shall also pay all amounts owed to the Cooperative as and when the same shall become due and payable.

**Section 3, Membership Fee.** The membership fee for each class of membership in the Cooperative shall be as follows:

a. Class A Membership: \$500.00

No membership certificate in the Cooperative shall be issued for less than the appropriate membership fee, nor until such membership fee has been fully paid for

in cash. No dividend shall be paid upon the fee paid for membership in the Cooperative.

**Section 4, Requirements for Membership.** Any party eligible for a class of membership as provided for in Article 1 of these Bylaws, upon payment of the appropriate fee for a class of membership applied for, may become a Member by:

- a. Executing a written application for the class of membership therein applied for;
- b. Agreeing to purchase electric service from the Cooperative in accordance with the provisions of these Bylaws for the class of membership applied for; and
- c. Agreeing to comply with and be bound by the Articles of Incorporation and Bylaws of the Cooperative and any rules and regulations adopted by the Board of Trustees.

However, no incorporated cooperative association, except the incorporators of the Cooperative, shall become a Member unless and until it has been accepted for membership by the Board of Trustees or the Members. No Member may hold more than one Membership in the Cooperative. Membership in the Cooperative shall not be transferable.

**Section 5, Membership Certificates.** Certificates representing membership in the Cooperative shall state the restrictions or limitations upon its ownership, voting, transfer or cancellation, and shall contain such other provisions and be in such form as shall be determined by the Board of Trustees. Such certificates shall be signed by the President and Secretary of the Cooperative and shall be sealed with its seal. Each certificate, among other things, shall state in substance:

- a. That no dividends shall be payable upon the issuing price of membership in the Cooperative; provided, however, that this limitation shall not prohibit the payment of patronage credits except as provided in these Bylaws; and
- b. That all members shall have the same rights, privileges, and duties; and that holders of memberships shall have one vote, and no more, by a duly authorized representative, as provided in these Bylaws; and
- c. That no membership shall be transferable and all certificates thereof shall be surrendered to the Cooperative upon a Member becoming ineligible for membership or upon the expiration of the corporation existence, dissolution or expulsion of the Member holding such certificate.

In case of a lost, destroyed or mutilated certificate, a new certificate may be issued thereafter upon such terms and such indemnity to the Cooperative as the Board of Trustees may prescribe.

**Section 6, Expulsion of Members.** The Board of Trustees of the Cooperative may, by the affirmative vote of not less than three-fifths (3/5) of the Members of the Board of Trustees, expel any Member of the Cooperative, which shall have willfully violated or refused to comply with any of the provisions of the Articles of Incorporation or the Bylaws of the Cooperative or any rules or regulations promulgated by the Board of Trustees or which shall have ceased to engage in or carry on in a substantial degree the business which made it eligible for membership in the Cooperative, or which shall have ceased to engage in or carry on in a substantial degree the business of transmitting, distributing, and/or selling electric energy, or which shall have failed to pay any debt or obligation due the Cooperative when the same shall have become due and payable.

Any Member so expelled who undertakes to comply with all of the provisions of the Articles of Incorporation, the Bylaws, and all rules and regulations promulgated by the Board of Trustees may be reinstated as a Member by a vote of the Members at any annual or special meeting of the Members. Except in the instance of fresh violations or refusals to comply with the provisions of the Articles of Incorporation and of these Bylaws and of any rules or regulations promulgated by the Board of Trustees, or the substantial cessation of the business which makes a cooperative eligible for membership in the Cooperative, the action of the Members with respect to any such reinstatement shall be final.

**Section 7, Termination of Membership.** If (i) the corporate existence of any Member shall expire or such member shall be dissolved, (ii) any Member shall voluntarily withdraw from membership in the Cooperative, or (iii) any Member should be expelled from the Cooperative, the membership of such Member shall forthwith be canceled. In any such case, the Cooperative shall pay to such Member the value of its membership as shown by the books of the Cooperative on the date of such cancellation, but in no event shall such payment exceed the amount of the original issuing price of such membership. Such payment shall be made within sixty (60) days after the date of such cancellation. Interest shall not, in any case, be paid upon the value of any such membership determined as hereinabove provided.

**Section 8, Withdrawal of Membership.** Subject to the provisions of Section 7 of this Article I, a Member may withdraw from membership upon compliance with such equitable terms and conditions as the Board of Trustees may prescribe; provided, however, that no Member shall be permitted to withdraw until it has met all its contractual obligations to the Cooperative.

**Section 9, Non-liability for Debts of Cooperative.** The property of the Members of the Cooperative shall not be subject to the payment of the corporate debts of the Cooperative, and no Member shall be individually liable for the corporate debts of the Cooperative except as may otherwise be agreed.

**Section 10, Property Interest of Members.** A Member shall have no individual or separate interest in the property or assets of the Cooperative except, upon dissolution, after (1) all debts and liabilities of the Cooperative shall have been paid, and (2) all capital furnished through patronage shall have been returned. Any remaining property and assets of the Cooperative shall be distributed to or among the Member(s) and former Members in the proportion which the aggregate contributed patronage capital of each bears to the total contributed patronage capital of all Members and former Members.

## **ARTICLE II Meetings of Members**

**Section 1, Annual Meeting.** Regular Annual Meetings of the Members of the Cooperative shall be held on such date as shall be fixed by the Board of Trustees, for the purpose of passing upon reports covering the previous fiscal year and transacting such other business as may come before the meeting. If the election of Trustees shall not be confirmed on the day designated herein for any Annual Meeting, or at any adjournment thereof, the Board of Trustees shall cause the confirmation to be had at a special meeting of the Members as soon thereafter as conveniently may be. Failure to hold the Annual Meeting at the designated time shall not work a forfeiture or dissolution of the Cooperative.

**Section 2, Special Meetings.** Special meetings of the Members of the Cooperative may be called by the President or the Board of Trustees, and the Board shall do so upon the written demand of at least forty percent (40%) of the Members.

**Section 3, Notice.** Each Member shall be entitled to receive not less than twenty (20) days nor more than thirty (30) days written notice of the time and place of all meetings and of the purpose of all special meetings. The Notice for any Annual Meeting or for any Special Meeting shall contain a copy of proposed amendments to the Articles of Incorporation, amendments to the Bylaws, or any resolutions which would enable the Cooperative to participate in any business purpose not previously authorized. Such notice shall be given by mail directed to each Member at its principal office as shown on the books of the Cooperative. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at its address as it appears on the records of the Cooperative, with postage thereon prepaid. Any Member may waive in writing notice of any meeting of the Members.

**Section 4, Quorum.** Sixty percent (60%) of the number of Class A Members represented by their duly authorized representatives, shall constitute a quorum for the transaction of business at all meetings of the Members of the Cooperative. If less than a majority of the Members shall be so represented at any meeting of the Members, a majority of such representatives present may adjourn the meeting from time to time without further notice.

**Section 5, Rules of Order.** Except as otherwise provided by law or the Bylaws, all regular and special meetings of the Members shall be conducted according to Robert's Rules of Order Newly Revised.

**Section 6, Voting.** No Member of the Cooperative shall own more than one (1) membership and each Member shall be entitled to one (1) vote and no more in the affairs of the Cooperative, provided, however, when one or more Members merge or consolidate with another Member, the merged or consolidated entity shall be entitled to one (1) vote in the affairs of the Cooperative for each Member which consolidated or merged for a period of three (3) years after the merger or consolidation. At the expiration of the three (3) years, only the remaining Member shall be entitled to vote. The vote of each Member of the Cooperative shall be cast by its duly authorized representative, evidenced by an instrument in writing, executed by its President and Secretary under its corporate seal, pursuant to a resolution duly adopted by the Board of Trustees. At all meetings of the Members at which a quorum shall be present all elections shall be had and all questions decided by vote of a majority, except as otherwise specifically provided in these Bylaws or by law, of the authorized representatives of the Members present.

**Section 7, Order of Business.** The order of business at the regular Annual Meeting of the Members of the Cooperative and, so far as possible, at all other meetings of the Members, shall be as follows:

- a. Call of the roll.
- b. Reading of the notice of the meeting, together with the proof of the due giving thereof or the waiver of notice of such meeting.
- c. Presentation and reading of unapproved minutes of previous meetings of the Members and the taking of necessary action thereon.
- d. Presentation and consideration of, and acting upon, reports of officers, trustees, and committees.
- e. Election of Officers.
- f. Unfinished business.
- g. New business.
- h. Adjournment.

### **ARTICLE III Trustees**

**Section 1, General.**



a. The business and affairs of the Cooperative shall be managed by a Board of not less than five (5) nor more than twelve (12) Trustees; provided that the Bylaws may authorize the Board of Trustees to appoint an executive committee from their own number to exercise such of the powers and functions of the Board as the Board may by resolution prescribe. Each Class A Member shall have an equal number of Trustees.

b. The Trustees shall be chosen and elected from persons who are directors, trustees, or city managers of Class A Members of the Cooperative. The Trustees so chosen shall serve for a period of three (3) years as provided in the Bylaws and for so long as they shall be Trustees or city managers of Members of the Cooperative, unless sooner removed from office.

Nothing in this section shall affect in any manner whatsoever the validity of any action taken at any meeting of the Board of Trustees.

**Section 2, Nomination, Election, and Tenure of Trustees.** Trustees shall be elected for three (3) year terms and until their respective successors shall have been elected and shall have qualified, in the manner provided in these Bylaws. Each Class A Member shall nominate and elect one (1) Trustee to become a member of the Board of Trustees of the Cooperative. The Board of Trustees or other governing body of each Class A Member of this Cooperative shall, no more than ninety (90) days prior to the Annual Meeting of the Members in each year in which an election is provided for, nominate and elect such Trustee, and the Secretary of the meeting at which such Trustee is nominated and elected shall certify such election to this Cooperative at the Annual Meeting of Members of this Cooperative in each year in which an election is held. No person shall continue to be a Trustee of the Cooperative after the Class A Member of which such person is a Trustee shall have ceased to be a Member of the Cooperative, or after such person shall have ceased to be a Trustee of the Member they represent.

In the event a vacancy shall occur in the Board of Trustees the vacancy shall be filled by the vote of the Board of Trustees of the Member from which the vacancy shall have occurred in the manner otherwise provided for election of Trustees.

**Section 3, Removal of Trustees by Members.** Any Member may bring charges against a Trustee for cause by filing them in writing with the Secretary, together with a petition signed by at least forty percent (40%) of the Members requesting the removal of the Trustee in question. The removal shall be voted upon at the next regular or special meeting of the Members. The Trustee against whom such charges have been brought shall be informed in writing of the charges thirty (30) days prior to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present evidence; and the person or persons bringing the charges against them shall have the same opportunity. Any vacancy pursuant to this Section 3 may be filled in the manner prescribed in Section 2, of Article III of these Bylaws.

**Section 4, General Power.** The Board of Trustees shall have power to make and adopt such rules and regulations, not inconsistent with these Bylaws of the Cooperative, as it may deem advisable for the management, administration and regulation of the business and affairs of the Cooperative.

**Section 5, Compensation.** The Trustees shall not receive salaries for their services, but by resolution of the Board of Trustees, a fixed sum may be allowed any Trustee not otherwise receiving compensation as hereinafter provided, for attendance at each regular or special meeting of the Board of Trustees, and expenses of attendance, if any. Any Trustee representing the Cooperative on any duty authorized by the Board of Trustees other than regular or special meetings of the Board of Trustees, shall receive such fixed sum and expenses, if any, as shall be fixed by the Board of Trustees. Except in emergencies, no Trustee shall receive compensation for serving the Cooperative in any other capacity, unless authorized by a vote of the Board of Trustees.

**Section 6, Conflict of Interest.** No persons shall be eligible to become or remain a Trustee or to hold any position of trust in the Cooperative who is in any way employed by or financially interested in a competing enterprise or a business selling electric energy to any Member of the Cooperative. No person shall be eligible to serve on the Board of Trustees of the Cooperative if any member of his/her immediate family is then an employee of the Cooperative; and no person shall be eligible to be employed by the Cooperative if he/she is a member of the immediate family of a Trustee or the General Manager of the Cooperative. For the purpose of this section, the term "immediate family" shall mean spouse, son, daughter, parent, brother, sister, father-in-law, or mother-in-law, and shall include such relatives through marriage. Nothing in this section contained shall, or shall be construed to, affect in any manner whatsoever the validity of any action taken at any meeting of the Board of Trustees.

**Section 7, Accounting Systems and Reports.** The Board of Trustees shall cause to be established and maintained a complete accounting system, which, among other things, subject to applicable laws and rules and regulations of any regulatory body, shall conform to such accounting system as may from time to time be designed by the Administrator of the Rural Utilities Service of the United States of America. All accounts of the Cooperative may be examined by a committee of the Board of Trustees, as may be directed by the Board of Trustees. The Board of Trustees shall also, after the close of the fiscal year, cause to be made a full and complete audit of the accounts, books and financial condition of the Cooperative as of the end of such fiscal year. Such audit report shall be submitted to the Members at the following Annual Meeting of Members.

**Section 8, Delegate.** The Board of Trustees shall have full power and authority on behalf of the Cooperative to select one or more of the Trustees (a) to attend any meeting of the Members or security holders of another cooperative or other corporation of which the Cooperative may be a member or otherwise hold securities, and (b) to vote on behalf of this Cooperative. At such meeting, the

Trustee or Trustees so selected shall possess and may exercise the rights and powers incident to the ownership of such membership certificates or securities as the Cooperative possesses. The Board of Trustees may, from time to time, confer or delegate such powers to one or more other persons.

**Section 9, Authority to Sell and Encumber.** The Board of Trustees shall have full power and authority on behalf of the Cooperative to purchase, sell, transfer or encumber any and all assets of the Cooperative and membership certificates or other securities of any other cooperative or corporation owned by the Cooperative, and may execute and deliver such documents as may be necessary to effectuate such purchase, sale, transfer or encumbrance. The Board of Trustees may, from time to time, confer or delegate such powers to one or more other persons.

#### **ARTICLE IV Meetings of Trustees**

**Section 1, Regular Meetings.** A regular meeting of the Board of Trustees shall be held without notice other than as set forth in these Bylaws, immediately after, and at the same place, as each regular Annual Meeting of the Members of the Cooperative. A regular meeting of the Board of Trustees shall also be held monthly and at such time and place as the Board may provide by resolution. Such regular monthly meeting may be held without notice other than such resolution fixing the time and place thereof.

**Section 2, Special Meetings.** Special meetings of the Board of Trustees may be called by the President or any three (3) or more Trustees. The President or any three or more Trustees who shall, pursuant hereto, call a special meeting of the Board of Trustees shall fix the time and place for the holding of any such special meeting of the Board of Trustees called by them.

**Section 3, Notice.** Notice of the time, place, and purpose of any special meeting shall be given at least five (5) days previous thereto by written notice, delivered personally or mailed to the Trustees at their last known address. Any Trustee may waive notice of any meeting. The attendance of a Trustee at any meeting shall constitute a waiver of notice of such meeting, except in the event that a Trustee shall attend a meeting for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

**Section 4, Quorum.** A majority of the Board of Trustees shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees; provided, that if less than a majority of the Trustees shall be present at said meeting, a majority of the Trustees present may adjourn the meeting from time to time without further notice. The act of the majority of the Trustees present at a meeting at which a quorum is present shall be the act of the Board of Trustees.

**Section 5, Presence at Meetings.** Any or all Trustees may participate in any meeting of the Board of Trustees, or of any duly constituted committee thereof, by any means of communication through which the Trustees may simultaneously hear

and speak to each other during such meeting. For the purposes of establishing a quorum and taking any action, such Trustees participating pursuant to this Section 5 shall be deemed present in person at the meeting.

## **ARTICLE V Officers**

**Section 1, Officers.** The officers of the Cooperative shall be a President, Vice President, Secretary, Assistant Secretary, Treasurer, and such other officers as may be determined by the Board of Trustees from time to time. The offices of Secretary and Treasurer may be held by the same person.

**Section 2, Election.** The officers of the Cooperative, except one Assistant Secretary, shall be elected by ballot, annually by and from the Board of Trustees at the first meeting of the Board of Trustees held after each regular meeting of the Members of the Cooperative. One Assistant Secretary may be elected by the Board of Trustees, but shall not be required to be a Member of the Board of Trustees. Each officer shall hold office until the next Annual Meeting of the Board of Trustees and until their successor shall have been chosen and shall qualify, unless removed as hereinafter provided. The Trustees may also choose and may remove such officers and employees as they deem proper.

**Section 3, Removal.** At any meeting called for that purpose, any officer of the Cooperative may be removed by a vote of a majority of the Members of the Cooperative.

**Section 4, Vacancy.** A vacancy in any office may be filled by the Board of Trustees for the unexpired portion of the term.

**Section 5, President.** The President:

- a. Shall be the principal executive officer of the Cooperative and shall preside at all meetings of the Members of the Cooperative of the Board of Trustees;
- b. Shall sign, with the Secretary, certificates of membership, the issue of which shall have been authorized by resolution of the Board of Trustees, and may sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board of Trustees to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board of Trustees or by these Bylaws to some other officer or agent of the Cooperative, or shall be required by law to be otherwise signed or executed; and
- c. In general, perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Trustees from time to time.

**Section 6, Vice President.** In the absence of the President, or in the event of their inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting, shall have all powers of and be subject to all restrictions upon the President and shall perform such other duties as from time to time may be assigned to them by the Board of Trustees.

**Section 7, Secretary.** The Secretary shall:

- a. Keep the minutes of the meetings of the Members and the Board of Trustees in one or more books provided for that purpose;
- b. See that all notices are duly given in accordance with these Bylaws or as required by law;
- c. Be custodian of the corporate records and of the seal of the Cooperative and see that the seal of the Cooperative is affixed to all certificates for membership prior to the issue thereof and to all documents, the execution of which on behalf of the Cooperative under its seal is duly authorized in accordance with the provisions of these Bylaws;
- d. Keep a register of the post office address of each Member which shall be furnished to the Secretary by such Member;
- e. Sign with the President certificates for membership in the Cooperative, the issue of which, subject to the provisions of these Bylaws, shall have been authorized by resolution of the Board of Trustees; and
- f. In general, perform all duties incident to the office of the Secretary and such other duties as from time to time may be assigned to them by the Board of Trustees.

**Section 8, Assistant Secretary.** In the absence of the Secretary, or in the event of their inability or refusal to act, the Assistant Secretary shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary and shall perform such other duties as from time to time may be assigned to them by the Board of Trustees.

**Section 9, Treasurer.** The Treasurer shall:

- a. Have charge and custody of and be responsible for all funds and securities of the Cooperative;
- b. Receive and give receipts for monies due and payable to the Cooperative from any source whatsoever, and deposit all such monies in the name of the Cooperative in such banks as shall be selected in

accordance with the provisions of Section 2 of Article X of these Bylaws; and

c. In general, perform all the duties incident of the office of Treasurer and such other duties as from time to time may be assigned to them by the Board of Trustees.

**Section 10, Non-Trustee Assistant Secretary.** Should the Board of Trustees elect an Assistant Secretary who is not a Member of the Board of Trustees, such Assistant Secretary, in the absence of the Secretary and the Assistant Secretary who is a Member of the Board of Trustees, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary, and perform such other duties as from time to time may be assigned to them by the Board of Trustees.

**Section 11, General Manager.** The Board of Trustees may appoint a General Manager who may be, but who shall not be required to be, a member of any incorporated cooperative association which is a Member of the Cooperative. The Board of Trustees may by resolution designate such additional titles as it deems necessary and as permitted by law. The General Manager shall perform such duties as the Board of Trustees may from time to time require and shall have such authority as the Board of Trustees may from time to time vest in that position. The salary of the General Manager shall be fixed by the Board of Trustees.

**Section 12, Bonds.** The Board of Trustees shall require the Treasurer and any Manager and any other officer or employee of the Cooperative charged with responsibility for the custody of any of its funds or property to give bonds for the faithful discharge of their duties, in such form and containing such terms and conditions and with such surety and sureties as the Board of Trustees shall determine.

**Section 13, Salary.** The salaries of the officers of the Cooperative shall be fixed from time to time by the Members, and no officer shall be prevented from receiving such salary by reason of the fact that they are also a Trustee of the Cooperative. The salaries, duties, and terms of employment of all other employees of the Cooperative shall be fixed and determined by the Board of Trustees.

**Section 14, Fiscal Report.** The officers of the Cooperative shall submit at each regular Annual Meeting of the Members reports covering the business of the Cooperative for the previous fiscal year and showing the condition of the Cooperative at the close of such fiscal year.

## **ARTICLE VI Executive Committee**

**Section 1, Appointment of Executive Committee.** The Board of Trustees shall have the power, by resolution, to appoint an Executive Committee of four (4) Members of the Board, two (2) of whom shall be the President and Secretary. The

Executive Committee shall hold office at the pleasure of the Board and shall exercise such powers of the Board as the Board may by resolution delegate to it; and it may be given responsibility for the general direction and management of the Cooperative when the Board of Trustees is not in session.

**Section 2, Meetings.** The Executive Committee shall make rules for the calling of its meetings and the conduct of its business. Three (3) members of the Executive Committee shall constitute a quorum for the transaction of its business. Record of all business transacted at meetings of the Executive Committee shall be kept by the Secretary and preserved with the minutes of the meetings of the Board of Trustees and the Members.

## **ARTICLE VII Non-Profit Operation**

**Section 1, Interest or Dividends on Capital Prohibited.** The Cooperative shall at all times be operated on a cooperative non-profit basis for the mutual benefit of its patrons. No interest shall be paid or payable by the Cooperative on any capital furnished by its patrons.

**Section 2, Patronage Capital in Connection with Furnishing Electric Service.** In the furnishing of electric service, the Cooperative's operation shall be so conducted that all patrons will, through their patronage, furnish capital for the Cooperative. In order to induce patronage and to assure that the Cooperative will operate on a non-profit basis, the Cooperative is obligated to account on a patronage basis to all its patrons for all amounts received and receivable from the furnishing of electric energy in excess of the sum of (a) operating and maintenance expenses, taxes, depreciation and interest on outstanding obligations, and other expenses properly chargeable against the furnishing of electric energy, and (b) to the extent of such amount as may be determined by the Board of Trustees, to (i) offset any losses incurred during the current or any prior fiscal year, (ii) to reduce future rates to member patrons, (iii) abate current charges for electric energy, or (iv) otherwise return such amounts to the patrons on a pro-rata basis according to the amount of business done with each patron during the year. Any non-operating margins shall be applied to reduce the operating costs and expenses of furnishing electric service. All such amounts in excess of operating costs and expenses are received with the understanding that they are furnished by the patrons as capital. The Cooperative is obligated to pay by credits to a capital account for each patron all such amounts in excess of operating costs and expenses. The books and records of the Cooperative shall be set up and kept 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 account of each patron, and the Cooperative shall within a reasonable time after the close of the fiscal year notify each patron of the amount of capital so credited to their account. All such amounts credited to the capital account of any patron shall have the same status as though they had been paid to the patron in cash in pursuance of a legal obligation to do so and the patron had then furnished the Cooperative corresponding amounts for capital.

All other amounts received by the Cooperative from its operations in excess of costs and expenses shall, insofar as permitted by law, be (a) used to offset any losses incurred during the current or any prior fiscal year, and (b) used to fund such reserves for improvement, new construction, depreciation and contingencies as the Board of Trustees may prescribe from time to time, and to the extent not needed for those purposes, such amounts received by the Cooperative from its operations in excess of costs and expenses shall be allocated to its patrons on a patronage basis and any amount so allocated shall be included as part of the capital credited to the accounts of patrons, as herein provided.

The Board of Trustees shall have the power to adopt rules providing for the separate retirement of that portion ("other cooperative portion") of capital credited to the accounts of patrons which corresponds to capital credited to the account of the Cooperative by any other cooperatives of which this Cooperative is a Member. Such rules shall (a) establish a method for determining the other cooperative portion of capital credited to each patron for each applicable fiscal year, (b) provide for separate identification on the Cooperative's books of the other cooperative portion of capital credited to the Cooperative's patrons, (c) provide for appropriate notifications to patrons with respect to the other cooperative portion of capital credited to their accounts, and (d) preclude a general retirement of the other cooperative portion of capital credited to patrons for any fiscal year prior to retirement of such capital credits by such fuel supply or financial services 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 without priority on a pro-rata basis before any payments are made on account of property rights of Members. If, at any time prior to dissolution or liquidation, the Board of Trustees shall determine that the financial condition of the Cooperative will not be impaired thereby, the capital then credited to patrons' accounts may be retired in full or in part. Any such retirements of capital shall be made in order of priority according to the year in which the capital was furnished and credited, the capital first received by the Cooperative being first retired.

Capital credited to the account of each patron shall be assignable only on the books of the Cooperative pursuant to written instruction from the assignor and only to the successors in interest in the business or the physical assets of such patron served by the Cooperative unless the Board of Trustees, acting under policies of general application, shall determine otherwise.

The patrons of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the Articles of Incorporation and Bylaws shall constitute and be a contract between the Cooperative and each patron, and both the Cooperative and patrons are bound by such contract, as fully as though each patron had individually signed a separate instrument containing such terms and provisions. The provisions of this Article of the Bylaws shall be called to the attention of each



patron of the Cooperative by posting in a conspicuous place in the Cooperative's office.

**Section 3, Patronage Refunds in Connection with Furnishing Other Services.** In the event the Cooperative should engage in the business of furnishing goods or services other than electric service, to patrons other than those receiving such service under a class of service which does not provide for contributions of capital, all amounts received and receivable therefrom which are in excess of costs and expenses properly chargeable against the furnishing of such goods or services may be used to offset any losses associated with the providing of such goods or services incurred during the current or any prior fiscal year or to fund reserves for improvement, new construction, depreciation and contingencies, all in such amounts as may be determined by the Board of Trustees, and the remaining excess amount shall, insofar as permitted by law, be prorated annually on a patronage basis and returned to those patrons from whom such amounts were obtained.

**Section 4, Capital Credits.** All capital credited to the account of each Member shall continue to be the obligation of the Cooperative to such Member until paid or otherwise discharged in accordance with the provisions of the Articles of Incorporation and Bylaws of the Cooperative.

**Section 5, Non-Operating Income.** All amounts received by the Cooperative from its other activities including, but not limited to, investments, rentals and other incidental services, in excess of costs and expenses properly chargeable against such activities shall, insofar as permitted by law, be (1) used to offset any losses incurred during the current or any prior fiscal year and (2) to the extent not needed for that purpose, retained or allocated, at the Board's discretion, among the classes of business for which the receipts exceed the allocable costs and expenses, in proportion to the amounts of such margins, and to its Members on a patronage basis. Any amount so allocated shall be included as a part of the capital credited to the accounts of members, as provided for in subsection X, above.

**Section 6, Discounting of Patronage Credits.** Notwithstanding the provision regarding redemption of patronage capital above, the Board of Trustees may authorize the early redemption of patronage capital at a discount from face value taking into account the cooperative's cost of capital. The determination of the eligibility for such discount and the discount rate to be applied shall be exclusively at the discretion of the Board. For all amounts retained by the cooperative resulting from the discounting procedure shall be classified as Class B patronage credits in the name of the member or former member to be redeemed only upon the dissolution or liquidation of the organization.

**Section 7, Other Services of the Cooperative,** To the extent the cooperative elects to engage in the business of furnishing products and services other than electric service on a cooperative basis, amounts received and receivable therefrom in excess of operating costs and expenses properly chargeable against the

furnishing of such products and services shall be, insofar as permitted by law, allocated and assigned annually on a patronage basis and credited on the books of the cooperative as patronage capital to those patrons so furnished such products and services, in substantially the same manner provided in this paragraph with respect to furnishing electric service.

**Section 8, Classification of Business.** In determining and allocating the operating costs and expenses to form the basis of determining, in turn, the respective amounts of capital furnished by patrons through their patronage, Board of Trustees, in its sole discretion, to classify the business done by the Cooperative with all of its patrons into appropriate pools or departments of business or patronage. The Board shall determine the methods, policies and procedures for establishment of such allocation pools.

Operating margins will be allocated to each Member within each such pool or department on a patronage basis after full allocation of all direct and indirect costs associated with service. All patronage margins contributed by patrons within a given classification of business shall be assigned to such patrons on a dollar volume basis of patronage, but no patronage capital shall be deemed to have been contributed by, or shall be allocated to, any patron within any class of business, if the receipts from all patrons within such class do not exceed the costs and expenses chargeable or allocable to such class. In the event patronage from any patron falls into two or more classes of business, capital credits assigned to such patron shall be the net amount of the capital credits determined after debiting and crediting such patron's account with all patronage debits and credits from all such classes of business. The cost allocation methodologies will be subject to periodic review by the Board of Trustees.

**Section 9, Agreement to First Lien on Patron's Capital.** The Cooperative, before the transfer in full or in part of the retirement of any capital credit to any patron's account, may deduct therefrom any amount owing by such patron to the Cooperative, together with interest thereon at the organization's cost of equity capital. By becoming members of the Cooperative, all members are deemed to have granted a first lien on all capital credits or patronage refunds held for the member by the Cooperative to secure the payment of all indebtedness of the member to the Cooperative. This first lien may be perfected by possession of the collateral under the Uniform Commercial Code or through the filing of a Financing Statement with the office of the Secretary of State. The Articles of Incorporation, bylaws, tariffs and rules and regulations of the Cooperative shall constitute a security agreement under the Uniform Commercial Code.

## **ARTICLE VIII Disposition of Property**

**Section 1, Disposition of Property.** Except as provided in subsection (a), the Cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all

or any substantial portion of its property unless such sale, mortgage, lease, or other disposition or encumbrance is authorized at a duly held meeting of Members, thereof by affirmative vote of no less than two-thirds (2/3) of all Members of the Cooperative and unless the notice of such proposed sale, mortgage, lease, or disposition or encumbrance shall have been contained in the notice of the meeting.

a. The Board of Trustees of the Cooperative, without authorization by the Members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon the pledging or encumbrance of any or all the property, assets, rights, privileges, licenses, franchises, and permits of the Cooperative, whether acquired or to be acquired and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the Board of Trustees shall determine, to secure any indebtedness of the Cooperative to the United States of America or any instrumentality or agency thereof or to any other financing source within the United States.

b. Before a meeting is held to vote on authorization of disposition of Cooperative property, the Board of Trustees shall:

i. Have the property appraised by two appraisers chosen by the Board and not associated with the Cooperative or a proposed buyer of Cooperative property;

ii. Notify all Cooperative Members, at least ninety (90) days in advance, of the meeting to vote on disposition of Cooperative property. Detailed proposals for disposition of such property must accompany the notice;

iii. At least thirty (30) days before the meeting, notify all other cooperatives situated and operating in the state that the property is available for disposition and include with the notice one copy of each appraisal on the Cooperative property; and

iv. At least thirty (30) days before the meeting mail to all Members any alternative proposal made by the Cooperative Members if it has been submitted to the Board and signed by two (2) or more Members.

c. The vote on property disposition may take place at any annual meeting if the Board of Trustees notifies the Members as provided in this section.

d. This section does not apply to the transfer of Cooperative property in a merger or consolidation of cooperatives.

**ARTICLE IX**  
**Fiscal year**

**Section 1, Fiscal Year.** The fiscal year of the Cooperative shall begin on the first (1<sup>st</sup>) day of January in each year and end on the thirty-first (31<sup>st</sup>) day of December in each year.

**ARTICLE X**  
**Deposits, Checks and Execution of Instruments**

**Section 1, Checks, Drafts, Etc.** All checks, drafts or other orders for the payment of money, notes, bonds or other evidences of indebtedness in the name of the Cooperative shall be signed by such officer or officers, agent or agents, employee or employees of the Cooperative, as may be authorized to do by the Board of Trustees, and in such manner as shall from time to time be determined by resolution of the Board of Trustees.

**Section 2, Deposits.** All funds of the Cooperative shall be deposited from time to time to the credit of the Cooperative in such bank or banks as the Board of Trustees may select.

**Section 3, Authorization to Contract.** The Board of Trustees may authorize any officer or officers, agent 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 confirmed to specific instances.

**Section 4, Indemnification of Officers, Trustees, Employees and Agents; Insurance.**

a. The Cooperative shall indemnify any person who was or is a party or is threatened to be made a party to any threatened pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Cooperative) by reason of the fact that they are or were a Trustee, officer, employee or agent of the Cooperative, or are or were serving at the request of the Cooperative as a Trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by them in connection with such action, suit, or proceedings if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the Cooperative, and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, if itself, create a presumption that the person did not act in good faith and in a manner which they reasonably believed

to be in or not opposed to the best interests of the cooperative, and, with respect to any criminal action or proceeding, had reasonable cause to believe that their conduct was unlawful.

b. The Cooperative shall indemnify any person who was or is a party or is threatened to be made a party to any threatened pending or completed action or suit by or in the right of the Cooperative to procure a judgment in its favor by reason of the fact that they are or were a Trustee, officer, employee or agent of the Cooperative or are or were serving at the request of the Cooperative as a Trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by them in connection with the defense or settlement of such action or suit if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the cooperative and except that no indemnification shall be made in respect to any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of their duty to the Cooperative unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses which such court shall deem proper.

c. To the extent that a Trustee, officer, employee or agent of a Cooperative has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue, or matter therein, they shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by them in connection therewith.

d. Any indemnification under the foregoing provision of this section (unless ordered by a court) shall be made by the Cooperative only as authorized in the specific case upon a determination that indemnification of the Trustee, officer, employee or agent is proper in the circumstances because they have met the applicable standard of conduct as set forth in subsections (a) and (b). Such determination shall be made (i) by the Board of Trustees by a majority vote of a quorum consisting of Trustees who were not parties to such action, suit, or proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable a quorum of disinterested Trustees so directs, by independent legal counsel in a written opinion, or (iii) by the Members of the Cooperative.

e. Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Cooperative in advance of the final disposition of such action, suit or proceeding as authorized by the

Board of Trustees in the specific case upon receipt of an undertaking by or on behalf of the Trustee, officer, employee or agent to repay such amount unless it shall ultimately be determined that they are entitled to be indemnified by the Cooperative as authorized in this section.

f. The indemnification provided by this section shall not be deemed exclusive of any other rights to which those seeking indemnity may be entitled under any Bylaw, agreement, vote of Members or disinterested Trustees or otherwise, both as to action in their official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Trustee, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

g. The Cooperative may purchase and maintain insurance on behalf of any person who is or was a Trustee, officer, employee or agent of the Cooperative, or is or was serving at the request of the Cooperative as a Trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against them and incurred by them in any such capacity, or arising out of their status as such whether or not the Cooperative would have the power to indemnify them against such liability under the provisions of this section.

## **ARTICLE XI Amendments**

**Section 1, Amendments.** These Bylaws may be altered, amended, or repealed only by the Members at any regular or special meeting. The notice of any meeting of Members at which such action is taken shall contain notice of the proposed alteration, amendment or repeal.