

# **MEDINA ELECTRIC COOPERATIVE, INC.**

**P.O. Box 370**

**Hondo, Texas 78861-0370**

## **BYLAWS**

**AMENDED JULY 1, 2015**

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## ARTICLE 1 - General

**Section 1.1 – Usage.** Within these Bylaws of Medina Electric Cooperative, Inc. (“Cooperative”) as currently or as later amended (“Bylaws”), except as otherwise provided and subject to the context requiring otherwise:

- 1) words and phrases that are not defined have their common and ordinary meaning;
- 2) the singular use of a word includes the plural use and the plural use of a word includes the singular use;
- 3) the masculine use of a word includes the feminine and neutral uses, the feminine use of a word includes the masculine and neutral uses, and the neutral use of a word includes the masculine and feminine uses;
- 4) the present tense of a word includes the past and future tenses, and the future tense of a word includes the present tense;
- 5) the words "shall" and "must" are words of obligation, with "shall" meaning "has a duty to" and "must" meaning "is required to;"
- 6) the word "may" is a word of discretion meaning "has discretion to," "is permitted to," "is authorized to," or "is entitled to;"
- 7) the words "may ... only" are words of limited discretion and prohibition;
- 8) the words "shall not," "must not," and "may not" are words of prohibition, with "shall not" meaning "has a duty not to," "must not" meaning "is required not to," and "may not" meaning "has no discretion to," "is not permitted to," "is not authorized to," and "is not entitled to;"
- 9) an exception to a word of obligation is a word of discretion and an exception to a word of discretion is a word of prohibition;
- 10) the words "except as otherwise provided" and "subject to" are words of limitation and exception;
- 11) the words "include," "includes," and "including" mean "include without limitation," "includes without limitation," and "including without limitation;"
- 12) the word “or” is inclusive, with “A or B” meaning “A or B or both;” and
- 13) the word “individual” means a “natural person” or “human being.”

**Section 1.2 - Defined Terms.** These Bylaws define certain words, phrases, and terms (“Defined Terms”). In general, Defined Terms are: 1) defined in a full sentence or part of a sentence; 2) capitalized, underlined, and enclosed within quotation marks when defined; 3) enclosed within parenthesis when defined in part of a sentence; and 4) capitalized when otherwise used in these Bylaws. Except as otherwise provided in these Bylaws and subject to the context requiring otherwise, Defined Terms have the meaning specified in the appropriate Bylaw.

The following Defined Terms are defined in the Bylaw noted in parenthesis:

- Amended (9.2); Annual Member Meeting (3.1); Applicant (2.2); Appraisal (8.1); Articles (1.3); Assets (2.2)
- Board (2.1); Board Committee (5.7); Board Meeting (5.3); Bylaws (1.1); Bylaw Provision (9.8)
- C&E Committee (3.13); Candidate (4.4); Capital Credits (7.2); Certification Committee (4.4); Close Relative (4.12); Conflict of Interest Director Qualifications (4.3); Conflict of Interest Transaction (5.8); Consolidate (8.2); Consolidation Agreement (8.2); Cooperative (1.1); Cooperative Equipment (2.2); Cooperative Officer (6.7); Cooperative Official (2.5); Cooperative Purpose (2.9); Cooperative Service (2.1); Cooperative Service Area (4.1); Cooperative Subsidiary (4.3)
- Defined Terms (1.2); Director (2.6); Director Districts (4.1); Director Qualifications (4.3); Director Disqualification (4.3); Director Quorum (5.6); Director Removal Petition (4.8); Director Term (4.6); Director Written Consent (5.5);
- Electing Members (4.5); Electronic Ballot (3.8); Electronic Document (9.1); Entity (2.1)
- Financial Expert (4.2)
- General Director Qualifications (4.3); Governing Documents (2.2)

- Indemnification of a Governing Person (6.13)
- Joint Members (2.6); Joint Membership (2.6)
- Law (1.3); Location (2.1)
- Mail Ballot (3.8); Member (2.3); Member Classes (2.4); Member Committee (5.7); Member Equipment (2.2); Member Meeting (3.3); Member Meeting Waiver of Notice (3.7); Member Petition (4.4); Member Petition Nominations (4.4); Member Property (2.7); Member Quorum (3.9); Member Voting Document (3.12); Membership Director Qualifications (4.3); Membership List (2.12); Membership Procedures (2.2); Merge (8.2); Merger Agreement (8.2)
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**Section 1.3 - Law and Articles.** These Bylaws are subject to applicable provisions of Law and the Articles of Incorporation of Medina Electric Cooperative ("Articles"). If, and to the extent that, a Bylaw conflicts with applicable provisions of Law or the Articles, then the Law or Articles control. "Law" includes local, state, and federal constitutions, statutes, ordinances, regulations, holdings, rulings, orders, and similar documents or actions, whether legislative, executive, or judicial.

## **ARTICLE 2 - Membership**

**Section 2.1 - Member Qualifications.** Except as otherwise provided in these Bylaws, an individual or Entity may become and remain a member of the Cooperative only if:

- 1) the individual, which includes a sole proprietorship, or Entity is a person with the capacity to enter legally binding contracts ("Person");
- 2) the Person consumes, receives, purchases, or otherwise uses ("Uses"), or requests or agrees to Use a Cooperative Service;
- 3) the person has a dwelling, structure, apparatus, or point of delivery that is located in an area in which the cooperative is authorized to provide electric energy, and
- 4) the person uses or agrees to use a Cooperative Service at the dwelling, structure, apparatus, or point of delivery.

A "Cooperative Service" includes 1) electric energy and 2) any other good or service transmitted, distributed, sold, supplied, furnished, made available or provided by the Cooperative ("Provided") as determined by the Cooperative's Board of Directors ("Board").

An "Entity" includes a domestic or foreign: cooperative; business or nonprofit corporation; unincorporated association; limited liability company; partnership; trust; estate; persons having a joint or common economic interest; and local, regional, state, federal, or national government, including an agency or division of government.

Except as otherwise provided in these Bylaws, a Person may not become or remain a member of the Cooperative if the Person resides at, engages in a business at, owns, controls, or otherwise occupies ("Occupies") a residence, office, building, premise, structure, facility, or other location ("Location"):

- 1) Occupied by a second Person, other than a landlord, tenant, or similarly related Person, who:

- a) is a Member, other than a Joint Member; or
  - b) owes the Cooperative for a Cooperative Service Provided to or for the Location, if the first Person Occupied the Location when the Cooperative Provided the Cooperative Service; or
- 2) previously Occupied by an Entity owned or controlled by the Person, which Entity owes the Cooperative for a Cooperative Service Provided to or for the Location.

A Person, either individually or through an Entity not considered legally separate from the Person, may not hold more than one (1) membership in the Cooperative. Persons Occupying a Location to or for which the Cooperative Provides a Cooperative Service may not hold more than one (1) membership in the Cooperative.

**Section 2.2 - Membership Procedure**. Except as otherwise provided in these Bylaws or by the Board, a qualified Person seeking to become a Member ("Applicant") must complete the procedures stated in this Bylaw to the Cooperative's satisfaction ("Membership Procedures") within a reasonable time of initially Using, or requesting or agreeing to Use, the first Cooperative Service Used or to be Used by the Applicant.

To become a Member, an Applicant must complete a membership application provided by the Cooperative in which the Applicant agrees to:

- 1) comply with the Governing Documents;
- 2) ensure that Member Equipment connected to Cooperative Equipment, and any act or omission involving Member Equipment connected to Cooperative Equipment, comply with the Governing Documents;
- 3) become a Member;
- 4) pay prices, rates, or amounts determined by the Board, and pursuant to the terms, conditions, time, and manner specified by the Cooperative, pay the Cooperative for
  - a) Cooperative Services Provided to the Applicant or Provided to or for a Location Occupied by the Applicant;
  - b) dues, assessments, fees, deposits, contributions, and other amounts required by the Governing Documents; and
  - c) interest, late payment fees, and collection costs, including attorney and collection fees, related to amounts owed, but not timely paid, to the Cooperative; and
- 5) unless opted out, receive any newsletter, magazine, or other communication that may be offered by the Cooperative.

To remain a Member of the Cooperative, a Member shall timely perform Member's obligations as provided in the Membership agreement, including the obligations in Section 2.2 items (1) through (5) above.

The "Governing Documents" are the membership application as well as any other agreements signed by an Applicant or Member and the following documents, all as currently existing or as later adopted or amended:

- 1) the Articles;
- 2) these Bylaws;
- 3) the Cooperative's tariffs including service rules and regulations;
- 4) the Cooperative's rate or price schedules; and
- 5) all applicable rules, regulations, requirements, guidelines, procedures, policies, programs, determinations, resolutions, or other actions taken, adopted, promulgated, or approved by the Board.

"Assets" are the Cooperative's property and property rights.

"Cooperative Equipment" is a product, equipment, structure, facility, or other good owned, controlled, operated, or furnished by the Cooperative. "Member Equipment" is a product, equipment, structure, facility, or other good:

- 1) owned, controlled, operated, or furnished by an Applicant or Member; and
- 2) located on property owned, controlled, operated, or furnished by an Applicant or Member.

To become a Member, an Applicant must:

- 1) give the Cooperative all personal information requested by the Cooperative, such as the Applicant's photographic identification, social security number, and/or federal tax identification number; and
- 2) complete any additional or supplemental document, contract, or action required by the Board for the Cooperative Service which the Applicant is Using or requesting or agreeing to Use. It is the Cooperative's policy not to release, disclose, or disseminate personally identifiable, proprietary, or confidential information regarding a Member except as required by Law or otherwise provided in these Bylaws.

Except as otherwise provided in these Bylaws or by the Board, an Applicant shall pay the Cooperative:

- 1) dues, assessments, fees, deposits, contributions, and other amounts required by the Governing Documents; and
- 2) outstanding amounts owed to the Cooperative by the Applicant.

**Section 2.3 - Membership.** Except as otherwise provided in these Bylaws or by the Board, a qualified Person becomes a member of the Cooperative ("Member") and consents to being a Member upon Using, or requesting or agreeing to Use, a Cooperative Service, completing the Membership Procedure and paying any applicable membership fee. The Cooperative shall issue membership certificates to Members in a manner, method, and form determined by the Board.

The Cooperative's Bylaws are available on the Cooperative's website. Upon written request of an Applicant or Member, a copy of the Bylaws will be furnished to the Member or Applicant.

If the Board determines that a qualified Person is unwilling or unable to complete the Membership Procedure, then the Board may refuse, suspend, or terminate the Person's membership in the Cooperative. For other good cause determined by the Board, the Board may refuse a qualified Person membership in the Cooperative.

Except as otherwise provided in these Bylaws or by the Board in advance and in writing, a Cooperative membership, and a right or privilege associated with the Cooperative membership, may not be sold, purchased, assigned, disposed of, acquired, or otherwise transferred.

**Section 2.4 - Member Classes.** The Cooperative may create different classes of membership ("Member Classes") in the Cooperative.

**Section 2.5 - Membership Agreement.** A Member shall:

- 1) comply with the Governing Documents;
- 2) provide and maintain a current mailing address and telephone number with the Cooperative; and
- 3) pay the Cooperative for the Cooperative's damages, costs, or expenses, including attorney fees and legal expenses, caused by or associated with the Member's failure to comply with the Governing Documents.

If a Member fails to comply with the Governing Documents, then, the Cooperative may suspend or terminate the Member or a Cooperative Service Provided to the Member. Regardless of whether money damages are available or adequate, the Cooperative may:

- 1) bring and maintain a legal action to enjoin the Member from violating the Governing Documents; and
- 2) bring and maintain a legal action to order the Member to comply with the Governing Documents.

The Articles and these Bylaws are contracts between the Cooperative and a Member. By becoming a Member, the Member acknowledges that:

- 1) every Member is a vital and integral part of the Cooperative;
- 2) the Cooperative's successful operation depends upon each Member complying with the Governing Documents; and
- 3) Members are united in an interdependent relationship.

If requested by the Cooperative, a Member shall:

- 1) submit a claim or dispute between the Member and the Cooperative in which the amount at issue is greater than \$50,000 to mediation according to the rules and procedures prescribed by the American Arbitration Association; and
- 2) indemnify the Cooperative for, and hold the Cooperative harmless from, liabilities, damages, costs, or expenses, including reasonable attorney fees and legal expenses, incurred by the Cooperative, or by a Cooperative Director, Officer, employee, agent, or representative ("Cooperative Official"), and caused by the Member's negligence, gross negligence, or willful misconduct, or by the unsafe or defective condition of a Location Occupied by the Member.

In general, a Member is not liable to third parties for the Cooperative's acts, debts, liabilities, or obligations solely because of membership in the Cooperative. A Member may become liable to the Cooperative as provided in the Governing Documents or as otherwise agreed to by the Cooperative and the Member.

**Section 2.6 - Joint Membership.** Persons who qualify to be Members may hold a joint membership in the Cooperative ("Joint Membership"). A Joint Membership may consist only of all individuals joined in a legally recognized relationship and Occupying the same Location to or for which the Cooperative Provides or will Provide a Cooperative Service, each of whom qualifies to be a Member. Individuals joined in a legally recognized relationship may include husband and wife, parent and child, and siblings who are joint owners.

- A) Creating a Joint Membership. To become or remain joint members of the Cooperative, qualified Persons must jointly complete the Membership Procedures within a reasonable time of initially Using, or requesting or agreeing to Use, the first Cooperative Service Used or to be Used by the Persons. If a husband and wife complete the Membership Procedures, then the husband and wife are joint members.

Qualified Persons become joint members of the Cooperative ("Joint Members") and consent to being Joint Members in the same manner as Members become Members and consent to being Members. As provided by the Board, a Member may convert the Member's individual membership to a Joint Membership with a qualified Person. While a Joint Member, a qualified Person may become or remain a separate, non-joint Member by using a Cooperative Service at a Location different from the Joint Membership Location.

- B) Rights and Obligations of Joint Members. Except as otherwise provided in these Bylaws, a Joint Member has and enjoys the rights, benefits, and privileges, and is subject to the obligations, requirements, and liabilities, of being a Member. Joint Members are jointly and severally liable for

complying with the Governing Documents. As used in these Bylaws, and except as otherwise provided in these Bylaws, a membership includes a Joint Membership and a Member includes a Joint Member. For a Joint Membership:

- 1) notice of a meeting provided to a Joint Member constitutes notice to all Joint Members;
- 2) waiver of notice of a meeting signed by a Joint Member constitutes waiver of notice for all Joint Members;
- 3) the presence of a Joint Member or all Joint Members at a meeting constitutes the presence of one Member at the meeting;
- 4) the presence of a Joint Member at a meeting waives notice of the meeting for all Joint Members;
- 5) the presence of a Joint Member at a meeting shall not revoke a Mail Ballot previously executed by the Joint Member;
- 6) if only one Joint Member votes on a matter, signs a petition, consent, waiver, or other document; or otherwise acts, then the vote, signature, or action binds the Joint Membership and constitutes one vote, signature, or action;
- 7) if more than one Joint Member votes on a matter, signs a petition, consent, waiver, or other document; or otherwise acts, then the first vote, signature or action received by the Cooperative binds the Joint Membership and constitutes one (1) vote, signature or action;
- 8) except upon the cessation of the legally recognized relationship, the suspension or termination of a Joint Member constitutes the suspension or termination of all Joint Members; and
- 9) a Joint Member qualified to be a member of the Board ("Director") may be a Director, regardless of whether another Joint Member is qualified to be a Director, but if more than one (1) Joint Member is qualified to be a Director, then only one (1) Joint Member may be a Director.

- C) Terminating a Joint Membership. Joint Members shall notify the Cooperative in writing of a cessation of the legally recognized relationship.

Upon determining or discovering the cessation of the legally recognized relationship:

- 1) if one (1) Joint Member remains qualified to be a Member and continues to Use a Cooperative Service at the same Location, then the Joint Membership converts to a membership comprised of this Person;
- 2) if more than one (1) Joint Member remains qualified to be a Joint Member and continues to Use a Cooperative Service at the same Location, then the Joint Membership converts to a membership comprised of these Persons;
- 3) if all Joint Members remain qualified to be Joint Members and continue to Use a Cooperative Service at the same Location, then the Joint Membership converts to a membership of Persons determined by Cooperative; and
- 4) if no Joint Member remains qualified to be a Member and continues to Use a Cooperative Service at the same Location, then the Joint Membership terminates.

**Section 2.7 - Provision of Cooperative Service.** A Member shall comply with any reasonable procedure required by the Cooperative regarding the Provision of a Cooperative Service. The Cooperative may establish rate classes and determine rates and charges for each rate class.

- A) Interruption of Cooperative Service. The Cooperative shall use reasonable diligence to Provide Cooperative Services. The Cooperative, however, does not ensure, guarantee, or warrant that it will provide adequate, continuous, or non-fluctuating electric energy or other Cooperative Service. The Cooperative is not liable for damages, costs, or expenses, including attorney fees or legal expenses, caused by the Cooperative Providing inadequate, non-continuous, or fluctuating electric energy or other Cooperative Service, except to the extent the damages, costs, or expenses are caused by the Cooperative's gross negligence or willful misconduct. The Cooperative's responsibility and liability for Providing electric energy terminates at the point the

Cooperative's conductors touch the conductors of the Member ("Point of Delivery"). In case of emergency, or as requested by government or emergency officials or representatives, the Cooperative may interrupt the Provision of Cooperative Services to Member.

B) Safe and Protected Operation of Cooperative. A Member shall take or omit an act as required by the Cooperative to safely, reliably, and efficiently operate the Cooperative and Provide a Cooperative Service, which act involves:

- 1) a Location Occupied by the Member and to or for which the Cooperative Provides a Cooperative Service;
- 2) real or personal property in which the Member possesses a legal or equitable right or interest ("Member Property");
- 3) Cooperative Equipment; or
- 4) Member Equipment connected to Cooperative Equipment.

A Member shall:

- 1) protect Cooperative Equipment and Member Equipment connected to Cooperative Equipment; and
- 2) install and maintain a protective device, and implement and follow a protective procedure, required by the Cooperative.

As necessary to safely, reliably, and efficiently operate the Cooperative and Provide a Cooperative Service, the Cooperative may temporarily suspend or terminate Provision of a Cooperative Service. A Member shall not tamper with, alter, interfere with, damage, or impair Cooperative Equipment. Except as otherwise provided by the Board, the Cooperative owns all Cooperative Equipment.

C) Member Equipment Connected to Cooperative Equipment. Except as otherwise provided by the Board, before Member Equipment is connected to Cooperative Equipment, the Cooperative must approve the connection. Before and while Member Equipment is connected to Cooperative Equipment, the Member:

- 1) shall comply with, and shall ensure that the Member Equipment, the connection, and any act or omission regarding the Member Equipment and the connection comply with, the Governing Documents, including terms, conditions, requirements, and procedures required by the Cooperative regarding the Member Equipment and the connection;
- 2) shall ensure that the Member Equipment and the connection do not adversely impact the Cooperative's ability to safely, reliably, and efficiently operate the Cooperative or Provide a Cooperative Service;
- 3) grants the Cooperative the right to inspect the Member Equipment and the connection to determine whether they comply with the Governing Documents; and
- 4) grants the Cooperative the right to disconnect or temporarily operate Member Equipment that does not comply with the Governing Documents or that adversely impacts the Cooperative's ability to safely, reliably, and efficiently operate the Cooperative or Provide a Cooperative Service.

If Member Equipment is connected to Cooperative Equipment, then:

- 1) the Member is, but the Cooperative is not, responsible for designing, installing, operating, maintaining, inspecting, repairing, replacing, and removing the Member Equipment;
- 2) the Cooperative is not liable for damage to, or for the performance of, the Member Equipment;
- 3) the Cooperative is not liable for damage to Member Property;
- 4) the Member is responsible for knowing the concerns, risks, and issues associated with operating the Member Equipment and connecting the Member Equipment to Cooperative Equipment;

- 5) the Member is liable for damage to, and for the nonperformance of, the Cooperative Equipment caused by the Member Equipment or the connection; and
- 6) the Member is liable for, and indemnifies the Cooperative against, injury or death to any Person and damage to any property caused by, or resulting from, the Member Equipment or the connection.

D) Suspension or Termination of Cooperative Service.

- 1) Cooperative Service including delivery of electric energy may be disconnected, suspended, or terminated after proper notice for any of these reasons:
  - a) failure to pay a bill for electric utility service or make deferred payment arrangements by the date of disconnection;
  - b) failure to comply with the terms of a deferred payment agreement;
  - c) violation of the Cooperative's rules on using service in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the Member and the Member is provided with a reasonable opportunity to remedy the situation;
  - d) failure to pay a deposit that is required to establish or maintain satisfactory credit; or
  - e) failure of the guarantor to pay the amount guaranteed, when the Cooperative has a written agreement, signed by the guarantor, that allows for disconnection of the guarantor's service.
- 2) Cooperative Service including delivery of electric energy may be disconnected, suspended or terminated without prior notice for any of the following reasons:
  - a) where a known dangerous condition exists for as long as the condition exists. Where reasonable, given the nature of the hazardous condition, the Cooperative shall post a notice of disconnection and the reason for the disconnection at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;
  - b) where service is connected without authority by a person who has not made application for service;
  - c) where service was reconnected without authority after termination for nonpayment; or
  - d) where there has been tampering with the Cooperative's equipment or evidence of theft of service.

**Section 2.8 - Use of Cooperative Service.** Except as otherwise provided in these Bylaws or by the Board, a Member shall:

- 1) Use a Cooperative Service Provided by the Cooperative; and
  - 2) participate in a Cooperative program, activity, or event regarding the Member's Use of a Cooperative Service. In Using a Cooperative Service, a Member shall comply with the Governing Documents including any applicable service rules and regulations.
- A) Payment for Cooperative Service. At prices, rates, or amounts determined by the Board, and pursuant to terms, conditions, time, and manner specified by the Cooperative, a Member shall pay the Cooperative for:
- 1) Cooperative Services Provided to the Member or Provided to or for a Location owned, leased, rented or Occupied by the Member; and
  - 2) dues, assessments, fees, deposits, contributions, or other amounts required by the Governing Documents.

If another Person Provides a Member a good or service related to a Cooperative Service Provided to the Member, then, before paying the other Person:

- 1) the Member shall pay the Cooperative; and
- 2) the Cooperative shall apply amounts received from or on behalf of the Member for or toward Cooperative Services Provided to the Member or Provided to or for a Location Occupied by the Member.

Except as otherwise provided by the Board:

- 1) a Member shall pay interest, compounded periodically, and late payment fees for amounts owed, but not timely paid, to the Cooperative;
  - 2) a Member shall pay all costs, including reasonable attorneys' fees and collection fees, required to collect or obtain payment of amounts owed, but not timely paid, to the Cooperative; and
  - 3) regardless of the Cooperative's accounting procedures, the Cooperative may apply amounts paid by a Member that are not designated for a particular account to all of the Member's accounts on a pro rata basis.
- B) Sale of Cooperative Service. Except as otherwise provided by the Board, a Member may not sell, lease, or otherwise transfer a Cooperative Service Provided by the Cooperative or a right to a Cooperative Service Provided by Cooperative. All electricity Provided by the Cooperative shall be consumed by the Member in the Cooperative's retail service area as established by the Public Utility Commission of Texas.

**Section 2.9 - Grant of Property Rights.** As required by the Cooperative for a "Cooperative Purpose", a Member shall:

- 1) provide the Cooperative safe and reliable access to or use of Member's real property; and
- 2) pursuant to terms and conditions specified by the Cooperative, and without compensation from the Cooperative, grant and convey to the Cooperative a written easement, right-of-way, license, or other right or interest in Member Property, and execute and acknowledge before a notary public a document effecting this grant and conveyance in recordable form.

A "Cooperative Purpose" is, at any time and in a manner determined by the Cooperative:

- 1) purchasing, installing, constructing, inspecting, monitoring, operating, repairing, maintaining, removing, relocating, upgrading, or replacing Cooperative Equipment;
- 2) clearing, trimming, removing, or managing any trees, bushes, brush, or other vegetation by any means including the use of herbicides;
- 3) providing a Cooperative Service to a Member or one (1) or more other Members;
- 4) monitoring, measuring, or maintaining a Cooperative Service Provided to a Member or one (1) or more other Members;
- 5) providing electric energy to a Person or one (1) or more other Persons;
- 6) monitoring, measuring, or maintaining electric energy Provided to a Person or one (1) or more other Persons;
- 7) authorizing, permitting, satisfying, or facilitating an obligation incurred, or right granted, by the Cooperative regarding use of Cooperative Equipment; or
- 8) safely, reliably, and efficiently operating the Cooperative or Providing a Cooperative Service.

**Section 2.10 - Member Suspension.** The Cooperative may suspend a Member for the following reasons ("Suspension Reasons"):

- 1) as provided in the Governing Documents;
- 2) as determined by the Board for good cause;
- 3) the Member is no longer qualified to be a Member;
- 4) the Member does not timely pay an undisputed amount due the Cooperative;
- 5) the Member violates or does not timely comply with the Governing Documents;

- 6) the Member ceases Using a Cooperative Service; or
- 7) the Member requests suspension.

Except as otherwise provided in these Bylaws or by the Board, a Member is suspended upon:

- 1) the Member's request for suspension; or
- 2) the Cooperative:
  - a) providing the Member written notice of the Member's possible suspension and the underlying Suspension Reason at least ninety (90) days before the possible suspension;
  - b) notifying the Member that the Member has a right to, and allowing the Member an opportunity to, comment upon the Suspension Reason orally or in writing at least ninety (90) days after the Cooperative provides the notice; and
  - c) determining to suspend the Member.

The Cooperative must provide any written suspension notice to the Member's most current address shown on the Membership List.

Upon a Member's suspension:

- 1) other than the Cooperative's obligation to retire and pay Capital Credits, and other than the Cooperative's obligations regarding dissolution, the Cooperative's duties, obligations, and liabilities imposed by the Governing Documents for the Member cease and the Cooperative may cease Providing a Cooperative Service to the Member; and
- 2) other than the Member's right to receive retired and paid Capital Credits, and other than the Member's rights upon the Cooperative's dissolution, the Member forfeits and relinquishes rights provided in the Governing Documents, but remains subject to obligations imposed by the Governing Documents. In particular, a suspended Member may not receive notice, nominate, vote, remove, demand, request, petition, consent, or otherwise act as provided in the Governing Documents.

Unless the Cooperative determines otherwise, a Member's suspension is lifted upon the Member rectifying the underlying Suspension Reason within ninety (90) days of the suspension. The Cooperative may lift a Member suspension for good cause determined by the Board.

**Section 2.11 - Member Termination.** Except as otherwise provided in these Bylaws, a Member is terminated upon:

- 1) the Cooperative learning of the Member's death, legal dissolution, or legal cessation of existence;
- 2) the Member requesting termination;
- 3) the Cooperative learning that the Member has permanently ceased Using a Cooperative Service. Except as otherwise provided by the Board, a partnership Member continuing to Use a Cooperative Service is not suspended upon the death of a partner or following any other alteration in the partnership. A partner departing a partnership Member remains liable to the Cooperative for amounts owed to the Cooperative by the Member at the time of the partner's departure; or
- 4) upon approval by the Board.

Termination of a Member does not:

- 1) release the Member from debts, liabilities, or obligations owed to the Cooperative; or
- 2) release the Cooperative from the obligation to retire and pay Capital Credits to the former Member or obligations to the former Member regarding the Cooperative's dissolution. Upon a Member's termination from the Cooperative, and after deducting amounts owed to the Cooperative, the Cooperative must return to the Member any amount provided in the Governing Documents.

**Section 2.12 - Membership List.** The Cooperative shall maintain a record of current Members including an alphabetic list of the names and addresses of all Members ("Membership List").

Except as otherwise provided by these Bylaws or the Board, a Person may not inspect, copy, or receive a copy of the Membership List or a similar list of Members.

A Member, Member's agent, or Member's attorney, however, may inspect, copy, or receive a copy of the Membership List only if, as determined by the Cooperative:

- 1) the Member's notice or request is made in good faith and for a proper purpose;
- 2) the Member describes with reasonable particularity the purpose for which the Member will use the Membership List; and
- 3) the Membership List is directly connected with the Member's purpose.

Except as otherwise provided by the Board, a Member may not:

- 1) use the Membership List for a purpose unrelated to the Member's interest as a Member;
- 2) use the Membership List to solicit money or property unless the money or property is used solely to communicate with other members for a proper purpose.;
- 3) use the Membership List for a commercial purpose; or
- 4) sell the Membership List.

Nothing in this Section shall preclude the Cooperative from providing the membership list to a Person or Entity for the purpose of mailing Cooperative communications to the Members, counting Member ballots, or other similar activities authorized by the Cooperative or its chief executive officer.

## **Article 3 - Member Meetings and Member Voting**

**Section 3.1 - Annual Member Meeting.** The Cooperative shall annually hold a meeting of Members ("Annual Member Meeting") at such place, date and time as shall be determined by the Board in advance of the meeting. The Cooperative's failure to hold an Annual Member Meeting does not affect an action taken by the Cooperative. At the Annual Member Meeting the Cooperative may present information and conduct other activities as it deems appropriate.

### **Section 3.2 - Special Member Meetings.**

The Cooperative shall hold a special meeting of Members ("Special Member Meeting") upon receiving:

- 1) a written or oral request from the President of the Board;
- 2) a resolution of the Board;
- 3) written requests signed by a majority of Directors; or
- 4) a petition signed by at least ten percent (10%) of the total number of unsuspended Members ("Total Membership").

The Board shall determine the date, time, and location and manner of a Special Member Meeting.

**Section 3.3 - Agenda, Attendance, and Action at Member Meetings.** Except as otherwise provided in these Bylaws, before or at an Annual, or Special Member Meeting ("Member Meeting"), the Cooperative:

- 1) shall determine the agenda, program, or order of business for the Member Meeting; and
- 2) may limit attendance at the Member Meeting to any or all of the following: Members or Members and one (1) guest per Member or Members and one (1) Person Occupying a Location with Members or Members and one (1) legal representative per Member.

By a majority vote of unsuspended Members attending a Member Meeting, Members may modify an agenda, program, or order of business determined by the Cooperative.

Except as otherwise provided by the Board, the President or one (1) or more other individuals designated by the President:

- 1) shall preside at the Member Meeting;
- 2) may remove a Person from the Member Meeting for unruly, disruptive, or similar behavior; and
- 3) may exercise power reasonably necessary for efficiently and effectively conducting the Member Meeting.

Except as otherwise provided by the Board or in the Bylaws, Members attending the Annual Member Meeting may consider, vote, or act only upon a matter for which:

- 1) the Members were notified; and
- 2) the power to act is conferred upon the members by Law, the Articles, or these Bylaws.

Members attending a Special Member Meeting may consider, vote, or act only upon a matter described in the notice of the Special Member Meeting.

Notwithstanding the location provisions of 3.1 and 3.2 of these Bylaws, an Annual Meeting or Special Member Meeting does not need to be held at a specific geographic location, and instead may be held remotely by electronic, telephonic, internet or videoconferencing technology if:

- 1) each person entitled to participate in the meeting has notice and advance instructions to participate in the meeting; and
- 2) is provided access to the meeting in a manner or using a method by which each person participating in the meeting has the opportunity to communicate in the meeting.

**Section 3.4 - Member Action Without a Meeting.** Except as otherwise provided in these Bylaws, Members may not act without a Member Meeting.

**Section 3.5 - Notice of Member Meetings.** Written notice of each meeting of the members shall be delivered to each Member of record, either personally or by mail, not earlier than the thirtieth (30<sup>th</sup>) day or later than the tenth (10<sup>th</sup>) day before the date of the meeting. The notice must be delivered by or at the direction of the president, the secretary, or the officers or other persons calling the meeting. The notice must state the time and place of the meeting and, in the case of a special meeting, each purpose for which the meeting is called. A Member may waive notice of meetings in writing. A notice that is mailed is considered to be delivered when the notice is deposited in the United States mail in a sealed envelope with postage prepaid addressed to the Member at the member's address as it appears on the Membership List.

The good faith, inadvertent, and unintended failure of a Member to receive notice of a Member Meeting does not affect an action taken at the Member Meeting.

Except as otherwise provided in these Bylaws, the Cooperative shall notify Members of a Member Meeting adjourned to another date, time, or location unless:

- 1) the meeting is adjourned to another date occurring within one hundred and twenty (120) days following the Record Date for the original Member Meeting; and
- 2) the new date, time, or location is announced at the Member Meeting prior to adjournment.

**Section 3.6 - Record Date.** A "Record Date" is the date for determining the Total Membership and the Members entitled to:

- 1) sign a Member petition, request, demand, consent, appointment, or similar document;
- 2) receive a ballot, notice of a Member Meeting, or similar document; or
- 3) vote or otherwise act. If a Member is suspended after the Record Date, then the Member may not sign a document, receive a document, or vote or otherwise act.

The Board may fix the Record Date, but the Record Date must not be more than seventy (70) days before the:

- 1) date the first Member signs a Member petition, request, demand, consent, appointment, or similar document;
- 2) date a ballot, notice, or similar document is due or required; or
- 3) date of a Member Meeting.

Except as otherwise provided by the Board, the Record Date:

- 1) for signing a Member petition, request, demand, consent, appointment, or similar document is the date the Cooperative receives the signed document;
- 2) for receiving a ballot, notice, or similar document is the date thirty (30) days before the document is due or required; and
- 3) voting at a Member Meeting is the date of the Member Meeting.

The Record Date for determining the Total Membership and the Members entitled to notice of, or to vote at, a Member Meeting is effective for a Member Meeting adjourned to a date not more than one hundred and twenty (120) days after the original Member Meeting.

**Section 3.7 - Member Waiver of Notice.** A Member may waive notice of a Member Meeting, or of a matter to be considered, or voted or acted upon, at a Member Meeting, by signing and delivering to the Cooperative a written or electronic waiver of notice ("Member Meeting Waiver of Notice") either before the Member Meeting or within thirty (30) days after the Member Meeting. Unless a Member objects to holding a Member Meeting, or to transacting business at the Member Meeting, the Member's attendance in person or by Mail Ballot at the Member Meeting waives the Member's objection to lack of notice, or to defective notice, of the Member Meeting.

Unless a Member objects to considering, or voting or acting upon, a matter at a Member Meeting, the Member's attendance in person or by Mail Ballot on the matter considered at the Member Meeting waives the Member's objection to considering, or voting or acting upon, the matter at the Member Meeting.

**Section 3.8 - Member Voting Electronically or by Mail Ballot.**

- A) Authorization. The Board of Directors may authorize voting by mail or electronically on any matter submitted to a vote by the Members. A Member may vote electronically or by mail only as provided in these Bylaws and in a manner determined by the Board. When electronic or mail ballot voting is authorized by the Board of Directors, voting shall be upon ballot forms or other medium furnished or made available to the member at the time notice of any Members meeting is given to the Members.
- B) Electronic or Mail Ballot Voting. A Member may vote electronically or by mail on any matter including director election in conjunction with a Member Meeting if and to the extent the Cooperative issues a mail ballot ("Mail Ballot") or makes electronic voting available to each Member entitled to vote on the matter. A Member submitting a completed Mail Ballot or Electronic Ballot may not vote in any other manner at the Member Meeting regarding a matter described in the Mail Ballot or Electronic Ballot. The Cooperative may count completed Mail Ballots and Electronic Ballots received before the Member Meeting in determining whether a Member Quorum exists at the Member Meeting. The Cooperative must count as a Member's vote a properly completed Mail Ballot or Electronic Ballot received on, or before, the time and date stated in the Mail Ballot or Electronic Ballot.

- C) Contents of Electronic or Mail Ballot. A Mail Ballot or Electronic Ballot ("Electronic Ballot") shall:
- 1) describe briefly a proposed action, and may include the language of a motion, resolution, or other written statement, upon which a Member is asked to vote or act;
  - 2) state the date of a Member Meeting at which the proposed action is to be considered;
  - 3) provide an opportunity to vote for or against, and may provide an opportunity to abstain from voting on, the matter;
  - 4) instruct the Member how to complete and return the Electronic or Mail Ballot; and
  - 5) state the time and date by which the Cooperative must receive the completed Electronic or Mail Ballot.

Except as otherwise provided by the Board, a Member may not revoke a completed Electronic or Mail Ballot received by the Cooperative. A Member's failure to receive an Electronic or Mail Ballot does not affect a vote or action taken by Mail Ballot.

### **Section 3.9 - Member Quorum.**

- A) Except as provided in subsections B), C) and D) of this Section 3.9, the quorum for the transaction of business at a meeting of the members is one hundred and fifty (150) members, present in person ("Member Quorum"). If voting electronically or by mail is allowed, members voting electronically or by mail are counted as present in person for purposes of determining whether there is a quorum present. A quorum is required before any business may be transacted at any meeting of the members. The Board may amend this Bylaw to increase or decrease the Member Quorum.
- B) No proposal to amend the Cooperative's Articles of Incorporation may be acted upon unless at least five percent (5%) of the Total Membership are present in person by Electronic or Mail Ballot, if allowed.
- C) The Cooperative's Articles of Incorporation may require more than one hundred and fifty (150) members to be present to take action upon a particular matter specified by the Articles, in which case such higher quorum requirement must be met.
- D) If less than a quorum is present at a Member Meeting, a majority of those present in person may adjourn the meeting to another time and date not less than forty five (45) days nor more than sixty (60) days later and to any place in one of the counties in Texas within which the Cooperative serves; PROVIDED, that the Secretary of the Cooperative shall notify all members of the time, date and place of such adjourned meeting by delivering notice as provided in Section 3.5 of these Bylaws.

**Section 3.10 - Member Voting.** If a Member presents identification or proof of Cooperative membership as reasonably required by the Cooperative, and if the Member is not suspended on the Record Date and remains unsuspended after the Record Date, then, regardless of the value or quantity of Cooperative Services Used, the Member may cast one (1) vote on each matter for which the Member is entitled to vote. An individual voting as a representative of a non-natural person Entity may cast one vote for each Entity represented; however, in no event may any one individual cast more than three (3) votes in any single event for which a vote is taken. The manner of voting shall be determined by the Board of Directors.

To vote on behalf of an Entity Member, an individual must present evidence requested by and satisfactory to the Cooperative that the individual is authorized to vote for the Entity Member.

Except as otherwise provided in these Bylaws, Members approve a matter if:

- 1) a Member Quorum is present in person or by Electronic or Mail Ballot; and

- 2) a majority of Members voting in person or by Electronic or Mail Ballot, who are entitled to vote on the matter, vote in favor of the matter.

With respect to Director elections, for each Director position, the Director nominee receiving the greatest number of votes shall be elected.

At a Member Meeting, the individual presiding over the Member vote may require the Members to vote by voice or holding up a voting card. If the individual presiding over the Member vote determines, in good faith, that a voice vote is not sufficient to accurately determine the vote results, then the Members shall vote by holding up a voting card or written ballot ("Written Ballot"), or by any other reasonable manner determined by the individual presiding over the voting. Members may not cumulate votes. Agreements signed by Members providing the manner in which a Member will vote are not valid.

**Section 3.11 - Member Voting by Member Proxy.** A member may not vote by proxy at a Member Meeting unless voting by proxy is authorized by the Board of Directors.

**Section 3.12 - Accepting and Rejecting Member Voting Documents.** For a Mail Ballot, Electronic Ballot, Member Meeting Waiver of Notice, or other document allegedly executed by, or submitted on behalf of, a Member (collectively, "Member Voting Document"):

- 1) the Cooperative may accept, and give effect to, the Member Voting Document if:
  - a) the name signed on the Member Voting Document corresponds to a Member's name, and the Cooperative acts in good faith; or
  - b) the Cooperative reasonably believes the Member Voting Document is valid and authorized in accordance with voting requirements for Mail Ballots or Electronic Ballots;
- 2) the Cooperative may reject, and not give effect to, the Member Voting Document if the Cooperative:
  - a) acts in good faith; and
  - b) has a reasonable basis for doubting the validity of the Electronic Ballot, signature on the Member Voting Document or the validity of the signatory's authority to sign or submit a Voting Document on behalf of the Member; and
- 3) the Cooperative, and a Cooperative Member or Official, are not liable to a Member for accepting or rejecting a Member Voting Document as provided in this Bylaw.

If the Cooperative delegates evaluation of Member Voting Documents to an independent third party, the independent third party may determine if a Mail Ballot, Electronic Ballot or Member Meeting Waiver of Notice should be counted or otherwise given effect and the decision of the independent third party shall be binding on the Cooperative and all Members.

**Section 3.13 - Credentials and Election Committee.** The Board may but is not required to establish a Credentials and Elections Committee ("C&E Committee") and specify the duties of the C&E Committee by resolution.

## **Article 4 - Board of Directors**

**Section 4.1 - Director Districts.** Based upon geographic, population, membership, or other equitable considerations determined by the Board, the Board shall divide the area in which the Cooperative Provides Cooperative Service ("Cooperative Service Area") into three (3) districts that equitably represent the Members ("Director Districts"). Each Director District shall be represented by three (3) directors. The Director Districts are described as follows: District No. 1 shall consist of the County of Medina, Texas; District No. 2 shall consist of the counties of Uvalde, Zavala, Frio, Real, Edwards, Kinney and Atascosa, Texas; and District No. 3 shall consist of the counties of LaSalle, Webb, Duval, McMullen, Dimmit, Jim Hogg, Zapata, Starr and Brooks, Texas.

Every year ending with a 5 or a 0, the Board shall, not less than ninety (90) days prior to July, review the Director Districts. If the Board determines that the boundaries or number of Director Districts should be altered, or that one (1) or more Director Districts or at-large directorships should be established, or that the number of district directors should be increased or reduced, so as to correct any substantially inequitable factors regarding representation, based on location of the membership as indicated by the cooperative records, the number or geographic location of districts or the number of directors, then the Board shall amend these Bylaws accordingly and may, after such amendments become effective, appoint any additional directors provided for by such amendments, and may fix their respective initial terms, not to exceed three (3) years. No such amendment shall become effective so as to expand a director's term beyond the time it would otherwise expire or, unless he consents thereto in writing, to cause the vacancy of any director's office prior to the time his term would otherwise expire. The Board shall cause all such amendments and the names, addresses and initial terms of any newly appointed additional directors to be noticed in writing to the members not less than ten (10) days prior to July 1.

**Section 4.2 - Board.** The Cooperative shall have a Board that equitably represents the Members and is composed of nine (9) Members or individuals authorized by Entity Members that are:

- 1) Reside and Use a Cooperative Service at a Location within a Director District;
- 2) nominated by the Members who are Using a Cooperative Service at a Location within the same Director District; and
- 3) elected by the Total Membership.

A Director may only be nominated from one Director District and that Director District being the district in which the Director is qualified to serve. Refer to Section 4.3 Director Qualifications.

The Cooperative shall endeavor to maintain at least one (1) Member or individual authorized by an Entity Member who has, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an Entity, or from a position involving the performance of similar functions gained:

- 1) an understanding of generally accepted accounting principles and financial statements;
- 2) experience in the preparation or auditing of financial statements of generally comparable Entities and the application of such principles in connection with the accounting for estimates, accruals, and reserves;
- 3) experience with internal accounting controls;
- 4) an understanding of audit committee functions; ("Financial Expert").

The Board may not be composed of more than three (3) individuals authorized by Entity Members. An Entity Member may not authorize more than one (1) Director.

Except as otherwise provided in the Bylaws or Articles of Incorporation, the business and affairs of the Cooperative shall be managed by its Board of Directors, as follows:

- 1) Cooperative powers must be exercised by the Board, or under the Board's authority;
- 2) Cooperative affairs must be managed under the Board's direction; and
- 3) The Board shall reasonably administer and enforce these Bylaws or shall ensure that these Bylaws are reasonably administered and enforced.

To the extent the Governing Documents authorize a Person to exercise a power that the Board would otherwise exercise, the Person exercising the power has, and is subject to, the same duties, responsibilities, and standards of care of the Board.

**Section 4.3 - Director Qualifications.** A Director or Director Candidate must comply with this Bylaw.

The "Nomination Date" is the date, approved by the Board, when the Member Petition Nomination deadline is established.

A) General Director Qualifications. To become or remain a Director, a Person must comply with the following general qualifications ("General Director Qualifications"):

- 1) be an individual not less than 18 years old and a citizen of the United States;
- 2) have the capacity to enter legally binding contracts;
- 3) while a Director, and during the five (5) years immediately before the Nomination Date, not:
  - a) be convicted of a felony or a crime of theft involving moral turpitude; or
  - b) plead guilty to a felony or a crime of theft involving moral turpitude;
  - c) have been determined to be of unsound mind, or incompetent to handle his or her own affairs by a court of law;
- 4) except as otherwise provided by the Board for good cause, receive a Credentialed Cooperative Director designation, Director's Certificate, or similar Certification from the National Rural Electric Cooperative Association within one (1) year of becoming a Director;
- 5) except as otherwise provided by the Board for good cause, attend (in person or via web or teleconference) at least nine (9) Board Meetings during each twelve (12) month period; and
- 6) be able to read, write and speak the English language.

B) Membership Related Director Qualifications. To become or remain a Director, an individual must comply with the following membership qualifications ("Membership Director Qualifications"):

- 1) while a Director and during the five (5) years immediately before the Nomination Date:
  - a) be an unsuspended Member;
  - b) be a Member in good standing of the Cooperative. In good standing is defined as a Member that has paid all bills to the Cooperative for which service he/she is legally responsible or liable without having been issued more than three (3) termination notices or issued a disconnect order. Verification criteria are:
    - i. for preceding months one through thirteen (1-13), payment codes on the members account will be used, where a termination notice is indicated by a code "DQ1" and a disconnect order is indicated by a code "CUT".
    - ii. for preceding months fourteen through twenty-four (14-24), members payment history will be used, where a termination notice was issued if payment was received nineteen (19) or more days after billing date, and a disconnect order was issued if payment was received twenty-nine (29) or more days after billing date.
  - c) Maintain Residency and Use a Cooperative Service at, Location(s) within the Director District from which the Director is nominated or elected; and
    - i. A Director or Nominee will declare a Residence by executing a Declaration Form, by the Nomination Date.
    - ii. The residence must be either the location where the Member claims the homestead property tax exemption, or the address indicated on a current valid driver's license.
- 2) while a Director:
  - a) be a Member;
  - b) be authorized by an Entity Member that, while a Director and during the one (1) year immediately before the Nomination Date, is unsuspended, and maintains Residency at a Location within the Director District from which the Director is nominated or elected and within the Director District where the Entity is using a Cooperative service;
- 3) be designated or appointed by the Board.

C) Conflict of Interest Director Qualifications. To become or remain a Director, an individual must comply with the following conflict of interest qualifications ("Conflict of Interest Director Qualifications"):

- 1) annually complete and sign a conflict of interest certification and disclosure form approved by the Board including disclosure of all accounts for which he or she is legally responsible or liable;
  - 2) while a Director,
    - a) not be a Close Relative of a Cooperative employee;
    - b) not hold an elected position of a body politic, political office or entity to which remuneration or salary is paid, not including reimbursement of expenses;
    - c) not be in any way employed by or receive more than ten percent (10%) of his or her annual gross income, other than insurance or retirement income, directly or indirectly from a competing enterprise or business engaged in the generation, marketing or selling of electric energy
  - 3) while a Director and during the one (1) year immediately before the Nomination Date,
    - a) not receive more than ten percent (10%) of his or her annual gross income, other than insurance or Director compensation or retirement income, directly or indirectly from the Cooperative or a Cooperative Subsidiary;
    - b) have a Close Relative that receives more than ten percent (10%) of his or her annual gross income, other than insurance or Director compensation or retirement income, directly or indirectly from the Cooperative or a Cooperative Subsidiary;
    - c) not advance or have a Close Relative that advances the individual's pecuniary interest by Providing a good or service similar to a good or service Provided by the Cooperative or a Cooperative Subsidiary;
  - 4) while a Director and during the five (5) years immediately before the Nomination Date,
    - a) not be an employee of the Cooperative or an employee of an entity controlled by the Cooperative or in which the Cooperative owns a majority interest ("Cooperative Subsidiary");
    - b) not be an employee of another Cooperative or an employee of an entity controlled by another Cooperative or in which another Cooperative owns a majority interest ("Cooperative Subsidiary");
    - c) not be an employee of a company which sells goods or services to the Cooperative, another Cooperative or an entity controlled by the Cooperative or another Cooperative or in which the Cooperative or another Cooperative owns a majority interest ("Cooperative Subsidiary");
    - d) not be employed by or be a Close Relative of a person who is or has been employed by a labor union which represents, or has represented, or has endeavored to represent any employees of the Cooperative.
  - 5) while a Director and during the seven (7) years immediately before the Nomination Date not have filed bankruptcy or been adjudicated to be bankrupt or be affiliated with any business enterprise that has filed bankruptcy or been adjudicated to be bankrupt.
- D) Director Disqualification. After being elected, designated, or appointed, if a Director does not comply with all General Director Qualifications, Membership Director Qualifications, and Conflict of Interest Director Qualifications collectively, ("Director Qualifications"), then, except as otherwise provided by the Board for good cause, the Board may disqualify the Director ("Director Disqualification") and the individual is no longer a Director if:
- 1) the Board notifies the Director in writing of the basis for, and provides the Director an opportunity to comment regarding, the Board's proposed disqualification; and
  - 2) within ten (10) days after the Board notifies the Director of the proposed disqualification, the Director neither complies with nor meets the Director Qualification.

If a majority of Directors authorized by these Bylaws complies with the Director Qualifications and approves a Board action, then the failure of a Director to comply with the Director Qualifications does not affect the Board action.

**Section 4.4 - Director Nominations.** For each Director position, nominations for Director may be made by submission of a Member petition. Incumbent Directors may be nominated as provided in this Section.

- A) Statement of Intent. Eligible Incumbent Directors shall indicate their intention of accepting or declining nomination by executing an Incumbent Director Statement of Intent form during the January board meeting of the current election year.
- B) Member Petition Nominations. Nominating Members may nominate, through petition, individuals to run for election for a Director position ("Member Petition Nominations").

For purposes of determining if a Member is entitled to execute a Member Petition ("Nominating Members"), the following rules shall apply:

- 1) A Member must not be suspended.
- 2) A Member may only sign a Member Petition for one (1) Director District in any calendar year. By signing a Member Petition the Member forfeits the right to sign a subsequent Petition.
- 3) A Member must Use a Cooperative service in the Director District for which a Member Petition is being signed.
- 4) .Only one (1) representative of the Member account may sign a petition.

Nominating Members make Member Petition Nominations by completing and submitting a Cooperative-approved Member Petition in the format prescribed by the Cooperative ("Member Petition"). Petitions must be received by the Nomination Date and must :

- 1) identify the name of the Member Petition Nominee;
- 2) identify the Director position for which the Member Petition Nominee will run; and
- 3) contain the names, service addresses, and telephone numbers, and valid signatures signed prior to the Nomination Date, of at least thirty (30) Nominating Members.

A "Nominee" is a member who has submitted a Petition but has not yet been certified by the Board Certification Committee.

- C) Certification Committee. The Cooperative's Certification Committee shall consist of the Cooperative's Board of Directors, exclusive of any director who is up for election. The Cooperative's Certification Committee shall:
  - 1) determine the validity of all Member Petitions; and
  - 2) determine if each individual nominated to serve as a Director is qualified to serve as Director. The Certification Committee shall conduct its review not less than one hundred and fifty (150) days before a meeting of Members at which Directors are to be elected. If the Cooperative's Certification Committee fails to act within the time allowed, a petition shall be deemed to be valid.
  - 3) certify a Nominee as a "Candidate", and
  - 4) certify Candidates as elected without a Member election if a Candidate is unopposed by:
    - a) an incumbent Director or,
    - b) a Candidate nominated by a Member Petition.
- D) Nominations from the Floor Prohibited. Members, including Nominating Members, may not nominate from the floor of a Member Meeting an individual to run for election to a Director position scheduled for election at the Member Meeting.

- E) Notice of Director Candidates. At least ten (10) days before a Member Meeting at which Members are scheduled to elect Directors, the Cooperative shall notify Members of the:
- 1) Director positions scheduled for election by Members; and
  - 2) names and corresponding Director positions of all Candidates..

**Section 4.5 - Director Elections.** At each Member Meeting at which a Director is to be elected, the Members shall elect the Director from the Candidates approved by the Certification Committee. A Candidate shall become a Director if he or she receives the highest number of votes cast in the election by Members voting by Electronic or Mail Ballot ("Electing Members"). In the event of a tie, the incumbent Director shall be elected; provided, however, if neither of the candidates is an incumbent, the election shall be decided by a coin toss.

The Board may but is not required to allow voting by Members present at the meeting by voice vote or written ballot distributed at the meeting.

**Section 4.6 - Director Terms.** Except as otherwise provided in these Bylaws, a Director's term is three (3) years or until a successor Director is elected, designated, or appointed ("Director Term"). A Director's term begins at the beginning of the first Board Meeting held after the Director is elected, designated, or appointed and consents to serve. A Director's term ends at the beginning of the first Board Meeting held after a successor Director is elected, designated, or appointed and consents to serve.

The Cooperative shall stagger Director Terms by dividing the total number of authorized Directors into groups of approximately equal number. Members must annually elect an approximately equal number of Directors.

**Section 4.7 - Director Resignation.** A Director may resign at any time. To resign, a Director must sign and deliver a written notice of resignation to the Board, President, or Secretary. Except as a later date is otherwise provided in a written notice of resignation, a Director's resignation is effective when the Board, President, or Secretary receives 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.

**Section 4.8 - Director Removal.**

- A) Removal by the Board. Except as otherwise provided in these Bylaws, the Board may remove a Director designated or appointed by the Board for any reason.
- B) Removal by Members. As provided in this Bylaw, and for taking or omitting a negligent, fraudulent, or criminal act significantly and adversely affecting the Cooperative, the Members may remove a Director.
- 1) Director Removal Petition - For each Director for whom removal is requested, the Members seeking removal of a Director must deliver to the President or Secretary a dated written petition ("Director Removal Petition"):
    - a) identifying the Director on each page;
    - b) explaining, on each page, the basis for the Director's removal; and
    - c) as Members existed on the Director Removal Petition date, containing 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 the Members.

Within thirty (30) days after the President or Secretary receives a Director Removal Petition:

- a) the Cooperative shall forward a copy of the Director Removal Petition to the involved Director; and
  - b) the Board shall meet to review the Director Removal Petition.
- 2) Member Meeting - If the Board determines that the Director Removal Petition complies with this Bylaw, then the Cooperative shall notice and hold a Member Meeting within sixty (60) days following the Board's determination. Notice of the Member Meeting must state that:
- a) a purpose of the Member Meeting is to consider removing a Director;
  - b) statements may be presented, and a Member vote taken, regarding removing the Director; and
  - c) Members may elect a successor Director.

If a Member Quorum is present in person at the Member Meeting, then for the Director named in a Director Removal Petition:

- a) before a Member vote, statements 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 statements opposing, the basis for removing the Director; and
- c) after the Director's presentation and Member discussion, the Members must vote whether to remove the Director.

If a majority of Members entitled to vote at the meeting vote to remove the Director, then the Director is removed effective the time and date of the Member vote. At the Member Meeting, the Members may elect a new Director to succeed the removed Director without complying with the Director Nomination or notice provisions of these Bylaws. A successor Director elected by the ("Removing Members") must comply with the Director Qualifications and serves the unexpired Director Term of the removed Director. A Director Removal Petition or Director removal does not affect a Board action.

Members may not remove a Director for lawfully opposing a Transfer of Cooperative Assets or a Cooperative dissolution. The Board may not remove a Director for lawfully opposing a Transfer of Cooperative Assets or a Cooperative dissolution.

**Section 4.9 - Director Vacancy.** Except as otherwise provided in these Bylaws:

- 1) by an affirmative vote of the majority of remaining Directors, the Board may fill a vacant Director position, or a Director position resulting from increasing the number of Directors;
- 2) a Director elected, designated, or appointed by the Board to fill a vacant Director position serves for the remainder of the unexpired term or such shorter term as the Board may determine; and
- 3) a Director elected, designated, or appointed by the Board to fill a Director position resulting from increasing the number of Directors serves for a three (3) year term or such shorter term as the Board may determine.

If a Director vacancy will occur at a later specified date, then the Board may fill the vacancy before the vacancy occurs and the new Director takes office when the vacancy occurs. An individual elected, designated, or appointed to fill a vacant Director position must comply with the Director Qualifications.

**Section 4.10 - Director Compensation.** A Director is not an employee of the Cooperative. As determined or approved by the Board, the Cooperative may pay or reimburse Directors a fixed fee and expenses for attending a:

- 1) Board Meeting;
- 2) function, meeting, or event involving or relating to the Cooperative; or

3) function, meeting, or event involving, relating to, or reasonably enhancing the Director's ability to serve in, the role of Director. The Board must determine or approve the manner, method, and amount of any Director fee or expense.

**Section 4.11 – Director Conduct.** In general:

- A) Director Standard of Conduct. A Director is not a trustee regarding the Cooperative or property held or administered by the Cooperative, including property potentially subject to restrictions imposed by the property's donor or transferor. A Director shall discharge the Director's duties, including duties as a Board Committee member:
- 1) in good faith;
  - 2) in a manner the Director reasonably believes to be in the Cooperative's best interests;
  - 3) when becoming informed in connection with the Director's decision-making function or devoting attention to the Director's oversight function, with the care that an individual in a like position would reasonably believe appropriate under similar circumstances; and
  - 4) in a manner in which the Director discloses or causes to be disclosed to other Directors or Board Committee members information not known by them, but known by the Director to be material to discharging their decision-making or oversight functions, except that disclosure is not required to the extent that the Director reasonably believes that disclosure would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.
- B) Director Reliance on Others. Unless a Director has knowledge making reliance unwarranted, then in discharging the Director's duties, including duties as a Board Committee member, the Director may rely:
- 1) on the performance by any of the following individuals listed in (a) or (c) to whom the Board has formally or informally delegated the authority or duty to perform one or more of the Board's delegable functions; and
  - 2) upon information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the following individuals:
    - a) one or more Cooperative Officers or employees whom the Director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;
    - b) legal counsel, public accountants, or other individuals retained by the Cooperative regarding matters involving skills or expertise the Director reasonably believes are matters within the individual's professional or expert competence and as to which the individual merits confidence; and
    - c) a Board Committee of which the Director is not a member if the Director reasonably believes the Board Committee merits confidence.

**Section 4.12 - Close Relative.** The term "Close Relative" means an individual who:

- 1) through blood, law, or marriage, is a spouse, child, stepchild, father, stepfather, mother, stepmother, brother, stepbrother, half-brother, sister, stepsister, half-sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law; or
- 2) resides in the same residence (collectively, "Close Relative").

An individual qualified and elected, designated, or appointed to a position does not become a Close Relative while serving in the position because of a marriage or legal action to which the individual was not a party.

## **Article 5 - Board Meetings and Director Voting**

**Section 5.1 - Regular Board Meetings.** The Board shall regularly meet at the date, time, and location determined by the Board ("Regular Board Meeting"). Except as otherwise provided in these Bylaws, the Board may hold Regular Board Meetings without notice other than the notice provided in a Board resolution establishing the date, time and place of a Regular Board Meeting. For good cause, the President may change the date, time, or location of a Regular Board Meeting. A Director not attending a 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 (5) days before the next Regular Board Meeting. All Directors are entitled to receive notice of a President's change in a Regular Board Meeting date, time, or location at least five (5) days before the changed Regular Board Meeting.

**Section 5.2 - Special Board Meetings.** The Board, the President, or at least six (6) Directors may call a special meeting of the Board ("Special Board Meeting") by providing each Director at least five (5) days prior written notice indicating the date, time, and location and purpose of the Special Board Meeting.

**Section 5.3 - Conduct of Board Meetings.** Except as otherwise provided in these Bylaws, a Regular Board Meeting or Special Board Meeting ("Board Meeting") may be:

- 1) held in, or out of, a state in which the Cooperative Provides a Cooperative Service; and
- 2) conducted with absent Directors participating, and deemed present in person, through a means of communication by which all Directors participating in the Board Meeting may simultaneously hear and communicate with each other during the Board Meeting.

If a Director Quorum is present at a Board Meeting, then:

- 1) in descending priority, the following Officers may preside at the Board Meeting: President, Vice-President, Secretary, Treasurer; and
- 2) if no Officer is present or desires to preside at a Board Meeting, then the Directors attending the Board Meeting must elect a Director to preside over the Board Meeting.

The Board may promulgate or approve rules, policies, and procedures regarding:

- 1) attendance at, participation in, or presentation during Board Meetings by Persons other than Directors;
- 2) the right to access, inspect, or copy minutes, records, or other documents relating to a Board Meeting by Persons other than Directors; or
- 3) the conduct of Board Meetings.

**Section 5.4 - Waiver of Board Meeting Notice.** At any time, a Director may waive notice of a 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. 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:

- 1) at the beginning of the Board Meeting, or promptly upon arrival, objects to lack of, or defective, notice of the Board Meeting or a matter being considered at the Board Meeting; and
- 2) does not vote for, or assent to, an objected matter.

**Section 5.5 - Board Action by Written Consent.** The Board may take action at a Board Meeting. No action shall be taken by "Director Written Consent".

**Section 5.6 - Director Quorum and Voting.** A quorum of Directors is a majority of the Directors in office immediately before a Board Meeting begins ("Director Quorum"). If a Director Quorum is present when 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 voting is the act of the Board. An interested Director is not

counted in determining whether a Director Quorum is present to vote or act upon a matter in which the Director is interested as provided in Section 5.8. A Director may not vote by proxy. An agreement signed by Directors providing the manner in which a Director must vote is not valid.

**Section 5.7 - Committees.** The Board may create a committee of the Board ("Board Committee") and appoint Directors to serve on the Board Committee. A Board Committee must consist of two (2) or more Directors and serves at the Board's discretion. The Board may create a committee of the Members ("Member Committee") and appoint Members, including Directors, to serve on the Member Committee. The Board may appoint one (1) or more Directors or Members, respectively, as alternate members of any Board or Member Committee to replace any absent or disqualified Committee member during the Committee member's absence or disqualification.

- A) Creation and Appointment of Committees. Except as otherwise provided in these Bylaws, at least a majority of Directors currently in office must approve the:
  - 1) creation of a Board Committee or Member Committee;
  - 2) appointment of Directors to a Board Committee; and
  - 3) appointment of Members to a Member Committee.
  
- B) Conduct of Committee Meetings. To the same extent as the Board and Directors, the Bylaws addressing Regular Board Meetings, Special Board Meetings, Conduct of Board Meetings, Waiver of Board Meeting Notice, Board Action by Written Consent, and Director Quorum and Voting apply to Board Committees and Directors serving on Board Committees, and to Member Committees and Members serving on Member Committees.
  
- C) Committee Authority. A Member Committee may act as specified by the Board, but may not exercise Board authority. Except as otherwise provided in this Bylaw, the Board may authorize a Board Committee to exercise Board authority. Although a Board Committee may recommend, a Board Committee may not act, to:
  - 1) retire and pay Capital Credits;
  - 2) approve the Cooperative's dissolution or merger, or the sale, pledge, or Transfer of all, or substantially all, Cooperative Assets;
  - 3) elect, appoint, disqualify, or remove a Director, or fill a Board or Board Committee vacancy; or
  - 4) adopt, amend, or repeal Bylaws.

**Section 5.8 - Conflict of Interest Transaction.** A conflict of interest transaction is a transaction with the Cooperative in which a Director has a direct or indirect interest ("Conflict of Interest Transaction").

- A) Indirect Interest. A Director has an indirect interest in a transaction with the Cooperative if at least one party to the transaction is another Entity:
  - 1) in which the Director has a material interest or is a general partner; or
  - 2) of which the Director is a director, officer, or trustee.
  
- B) Approval of Conflict of Interest Transaction. Regardless of the presence or vote of a Director interested in a Conflict of Interest Transaction, a Conflict of Interest Transaction may be approved, and a Board Quorum or Member Quorum satisfied, if the Conflict of Interest Transaction's material facts, and the Director's interest, are:
  - 1) disclosed or known to the Board or Board Committee, and a majority of more than one (1) Director or Board Committee member with no interest in the Conflict of Interest Transaction votes to approve the Conflict of Interest Transaction; or
  - 2) disclosed or known to the Members, and a majority of Members not voting under the control of a Director or Entity interested in the Conflict of Interest Transaction votes to approve the Conflict of Interest Transaction.

- C) Fair Conflict of Interest Transaction. A Conflict of Interest Transaction that is fair when entered is not:
- 1) voidable; or
  - 2) the basis for imposing liability on a Director interested in the Conflict of Interest Transaction.

## **Article 6 - Officers, Indemnification, and Insurance**

**Section 6.1 - Required Officers.** The Board shall elect from its membership the following officers: President, Vice-President, Secretary, and Treasurer ("Required Officers"). The Board shall elect Required Officers:

- 1) at the first Regular Board Meeting following each Annual Member Meeting, or as soon after each Annual Member Meeting as reasonably possible and convenient;
- 2) by affirmative vote of a majority of Directors in office;
- 3) following self-declaration of a Directors interest to serve as an officer;
- 4) by voting for each officer position individually beginning with President.

A Required Officer must be a Director. One Director may simultaneously be Secretary and Treasurer. Except as otherwise provided by Law, this Director may not execute, acknowledge, or verify a document in more than one capacity. Subject to removal by the Board, a Required Officer holds office until the Required Officer's successor is elected. The Board shall fill a vacant Required Officer's position for the unexpired portion of the Required Officer's term. A Required Officer may delegate duties and responsibilities to a non-Director Cooperative Official.

San Miguel Electric Cooperative and South Texas Electric Cooperative directors shall be elected in the manner outlined above for the Required Officers.

**Section 6.2 - President.** Except as otherwise provided by the Board or these Bylaws, the President:

- 1) shall preside, or designate another individual to preside, at all Board and Member Meetings;
- 2) on the Cooperative's behalf, may sign a document properly authorized or approved by the Board or Members; and
- 3) shall perform all other duties, shall have all other responsibilities, and may exercise all other authority, prescribed by the Board.

**Section 6.3 - Vice-President.** Except as otherwise provided by the Board or these Bylaws, the Vice-President:

- 1) upon the President's death, absence, disability, improper refusal, or inability to act, shall perform the duties, and have the powers, of the President; and
- 2) shall perform all other duties, shall have all other responsibilities, and may exercise all other authority, prescribed by the Board.

**Section 6.4 - Secretary.** Except as otherwise provided by the Board or these Bylaws, the Secretary:

- 1) shall be responsible for preparing minutes of Board and Member Meetings;
- 2) shall be responsible for authenticating the Cooperative's records;
- 3) may affix the Cooperative's seal to a document authorized or approved by the Board or Members; and
- 4) shall perform all other duties, shall have all other responsibilities, and may exercise all other authority, prescribed by the Board.

**Section 6.5 - Treasurer.** Except as otherwise provided by the Board or these Bylaws, the Treasurer shall perform all duties, shall have all responsibility, and may exercise all authority, prescribed by the Board.

**Section 6.6 - Chief Executive Officer.** The Board shall appoint a CEO, who may be, but shall not be required to be, a member of the Cooperative. The CEO shall:

- 1) sign with the Secretary, certificates of membership, the issue of such shall have been authorized by the Board of Directors or the members, and may sign any deeds, mortgages, deeds of trust, notes, bonds, contracts, or other instruments authorized by the Board of Directors to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed;
- 2) perform all duties incident to the office of CEO and such other duties as may be prescribed by the Board of Directors from time to time;
- 3) have the power and authority to hire, assign, promote, discharge or discipline other employees of the Cooperative.

The Board shall set forth and maintain, and shall from time to time review and as appropriate revise, a written description of the CEO's duties and authorities.

**Section 6.7 - Officer Resignation and Removal.** At any time, a Required Officer (collectively, "Officer" or "Cooperative Officer") may resign. To resign, an Officer must deliver to the Cooperative an oral or written resignation. Except as a later effective date is otherwise provided in the Officer resignation, an Officer resignation is effective when received by the Cooperative. 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. At any time, the Board may remove an Officer if the Board determines that the removal will serve the best interests of the Cooperative.

**Section 6.8 - Officer Standard of Conduct.** An Officer shall discharge the Officer's duties:

- 1) in good faith;
- 2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- 3) in a manner the Officer reasonably believes to be in the Cooperative's best interests.

**Section 6.9 - Officer Contract Rights.** The election or appointment of an Officer, does not create a contract between the Cooperative and the Officer.

**Section 6.10 - Authority to Execute Documents.** On the Cooperative's behalf, two (2) Required Officers may sign, execute, and acknowledge a document properly authorized or approved by the Board. The Board may authorize additional Cooperative Officials or other individuals to sign, execute, and acknowledge a document on the Cooperative's behalf.

**Section 6.11 - Officer Compensation.** Except as otherwise provided by the Board or in a Bylaw addressing Director compensation or reimbursement, the Cooperative may reasonably compensate and reimburse, an Officer.

**Section 6.12 - Bonds.** At the Cooperative's expense, the Cooperative may purchase a bond covering a Cooperative Official.

**Section 6.13 - Indemnification.** Cooperative indemnification of a governing person, former governing person, or delegate ("Indemnification of a Governing Person") shall be governed by Title 1, Chapter 8 of the Texas Business Organizations Code. The Cooperative shall:

- 1) indemnify a governing person, former governing person, or delegate to the maximum extent indemnification is consistent with the provisions of Title 1, Chapter 8 of the Texas Business Organizations Code or any successor provisions dealing with the same subject matter; and
- 2) before the final disposition of a pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative, and whether formal or informal proceeding, pay for, or reimburse a governing person, former governing person, or delegate, for his or her reasonable indemnification expenses as determined by the Board.
- 3) The provisions of this Section are for the benefit of, and may be enforced by each governing person, former governing person, or delegate of the Cooperative as a contract for valuable consideration and constitute a continuing offer to all present and future directors and officers of the Cooperative. The Cooperative, by the adoption of this Section, agrees that each present and future governing persons, former governing persons, or delegates has relied upon and will continue to rely upon the provisions of this Section in accepting, serving or continuing to serve as a governing person, former governing person, or delegate.
- 4) No amendment, modification or repeal of this Section or any provision hereof shall in any manner terminate, reduce or impair the right of a governing person, former governing person, or delegate of the Cooperative to be indemnified by the Cooperative, nor the obligation of the Cooperative to indemnify any such director or officer, under and in accordance with the provisions of this Section as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

**Section 6.14 - Insurance.** Regardless of indemnification authority or requirement, the Cooperative may purchase and maintain insurance on behalf of an individual who is or was a governing person, former governing person, or delegate as defined in Chapter 8 of the Texas Business Organizations Code. This insurance is against a liability, including judgment, settlement or otherwise, or reasonable expenses, including reasonable attorney fees, asserted against or incurred by the Cooperative or a governing person, former governing person, or delegate in his or her individual capacity, or arising from the individual's status, as a governing person, former governing person, or delegate with the Cooperative.

## **Article 7 - Cooperative Operation**

**Section 7.1 - Nonprofit and Cooperative Operation.** The Cooperative:

- 1) shall operate on a nonprofit and cooperative basis for the mutual benefit of all Members; and
- 2) may not pay interest or dividends on capital furnished by Patrons.

**Section 7.2 - Allocating Capital Credits.** The Cooperative shall allocate "Capital Credits" as provided in this Bylaw. The Cooperative must allocate Capital Credits in a Patron's name as shown in the Cooperative's records, regardless of the Patron's marital status.

- A) **Patron.** The term "Patron" means, during a fiscal year:
  - 1) a Member; and
  - 2) any other Person Using a Cooperative Service to whom the Cooperative is obligated to allocate Capital Credits, which obligation existed before the Cooperative received payment for the Cooperative Service.
- B) **Allocating Earnings.** For each Cooperative Service Provided during a fiscal year, the Cooperative shall equitably allocate to each Patron, in proportion to the quantity or value of the Cooperative Service Used by the Patron during the fiscal year, the Cooperative's operating earnings from Providing the Cooperative Service during the fiscal year. Operating earnings mean the amount by

which the Cooperative's operating revenues from Providing a Cooperative Service exceed the Cooperative's operating expenses of Providing the Cooperative Service, all as determined under federal cooperative tax law. For each fiscal year, the Cooperative shall allocate to each Patron, in proportion to the quantity or value of Cooperative Services Used by the Patron during the fiscal year, the Cooperative's non-operating earnings as determined by the Board, use, retain, or equitably allocate the Cooperative's non-operating earnings. Non-operating earnings mean the amount by which the Cooperative's non-operating revenues during a fiscal year exceed the Cooperative's non-operating expenses during the fiscal year, less any amount needed to offset an operating loss.

- C) Allocating Losses. For each Cooperative Service Provided during a fiscal year, the Cooperative shall:
- 1) equitably allocate to each Patron, in proportion to the quantity or value of the Cooperative Service Used by the Patron during the fiscal year, the Cooperative's operating loss from Providing the Cooperative Service during the fiscal year; or
  - 2) offset the Cooperative's operating loss from Providing the Cooperative Service during the fiscal year:
    - a) against the Cooperative's operating earnings from providing the Cooperative Service during the most recent past fiscal year(s) or the next succeeding future fiscal year(s); or
    - b) first against the Cooperative's non-operating earnings during the current fiscal year, second against the Cooperative's unallocated non-operating earnings during any past fiscal year(s), and third against the Cooperative's non-operating earnings during any future fiscal year(s). Operating loss means the amount by which the Cooperative's operating expenses of Providing a Cooperative Service during a fiscal year exceed the Cooperative's operating revenues from Providing the Cooperative Service during the fiscal year, all as determined under federal cooperative tax law. For each fiscal year, the Cooperative shall:
      - i) allocate to each Patron, in proportion to the quantity or value of Cooperative Services Used by the Patron during the fiscal year, the Cooperative's non-operating loss; or
      - ii) offset the Cooperative's non-operating loss against the Cooperative's non-operating earnings during any fiscal year(s). Non-operating loss means the amount by which the Cooperative's non-operating expenses during a fiscal year exceed the Cooperative's non-operating revenues during the fiscal year.
- D) Capital Credits. For each amount allocated to a Patron, the Patron shall contribute a corresponding amount to the Cooperative as capital. The Cooperative must credit all capital contributions from a Patron to a capital account for the Patron. The Cooperative shall maintain books and records reflecting the capital contributed by each Patron. At the time of receipt by the Cooperative, each capital contribution is treated as though the Cooperative paid the amount allocated to the Patron in cash pursuant to a preexisting legal obligation and the Patron contributed the corresponding amount to the Cooperative as capital. The term "Capital Credits" means the amounts allocated to a Patron and contributed by the Patron to the Cooperative as capital. Consistent with this Bylaw, the allocation of Capital Credits is in the discretion of the Board and the Board must determine the manner, method, and timing of allocating Capital Credits. The Cooperative may use or invest unretired Capital Credits as determined by the Board.
- To secure a Patron's obligation to pay amounts owed to the Cooperative, including any compounded interest and late payment fee, and in return for the Cooperative providing a Cooperative Service to the Patron, the Cooperative has a security interest in Capital Credits allocated to the Patron. The Patron authorizes the Cooperative to perfect this security interest by filing a financing statement.
- E) Different and Separate Allocations. As may be reasonable, the Cooperative may allocate Capital Credits to classes of similarly situated Patrons in different manners, methods, and timing, provided the Cooperative allocates Capital Credits to similarly situated Patrons in the same

manner, method, and timing. If the Cooperative is a member, patron, or owner of an Entity from which the Cooperative Uses a good or service in Providing a Cooperative Service and from which the Cooperative is allocated a capital credit or similar amount, then, as determined by the Board and consistent with this Bylaw, the Cooperative may separately identify and allocate to the Cooperative's Patrons this capital credit or similar amount allocated by the Entity.

- F) Joint Memberships. Upon receiving written notice and sufficient proof of the termination, conversion, or alteration of a Joint Membership:
- 1) through the death of a Joint Member, the Cooperative shall assign and transfer to each surviving Joint Member an equal portion of Capital Credits allocated, or to be allocated, to the Joint Membership; or
  - 2) other than through the death of a Joint Member, and except as otherwise provided by a court or administrative body of competent jurisdiction, and except as otherwise provided by the Joint Members, the Cooperative shall assign and transfer to each Joint Member an equal portion of Capital Credits allocated, or to be allocated, to the Joint Membership.

**Section 7.3 - Notification and Assignment of Capital Credits.** Within a reasonable time after the end of each fiscal year, the Cooperative shall notify each Patron in writing of the dollar amount of Capital Credits allocated to the Patron for the preceding fiscal year. Except as otherwise provided by the Board or these Bylaws, to assign or transfer a Patron's Capital Credits:

- 1) the Cooperative must receive a written request signed by the Patron to assign or transfer the Capital Credits;
- 2) the Patron and the assignee or transferee must comply with all reasonable requirements specified by the Cooperative; and
- 3) the Board must approve the assignment or transfer.

**Section 7.4 - Retiring Capital Credits.** The Cooperative may retire and pay Capital Credits allocated to Patrons and former Patrons as provided in this Bylaw. If the Cooperative retires and pays Capital Credits, then the Cooperative must retire and pay Capital Credits in a Patron's name as shown in the Cooperative's records, regardless of the Patron's marital status.

- A) General Capital Credit Retirements. At any time before the Cooperative's dissolution, liquidation, or other cessation of existence, the cooperative may generally retire and pay some or all Capital Credits allocated to Patrons and former Patrons.
- B) Special Capital Credit Retirements. The Cooperative may specially retire and pay some or all Capital Credits allocated to an individual Patron or former Patron:
- 1) after the death of the individual;
  - 2) after receiving a written request from the deceased individual's legal representative; and
  - 3) according to the terms and conditions agreed upon by the Cooperative and the deceased individual's legal representative.
- C) Capital Credit Recoupment and Offset. Regardless of a statute of limitation or other time limitation, after retiring Capital Credits allocated to a Patron or former Patron, the Cooperative may recoup, offset, or setoff an amount owed to the Cooperative by the Patron or former Patron, including any compounded interest and late payment fee, by reducing the allocated amount of retired Capital Credits paid to the Patron or former Patron by the amount owed to the Cooperative.
- D) Capital Credit Retirement Discretion. The Cooperative may retire and pay Capital Credits only if the Board determines that the retirement and payment will not adversely impact the Cooperative's financial condition. Consistent with this Bylaw, the retirement and payment of Capital Credits are in the sole discretion of the Board and are not affected by previous retirements and payments.

The manner, method, and timing of retiring and paying Capital Credits may be determined only by the Board.

- E) Different and Separate Capital Credit Retirements. As reasonable and fair, the Cooperative may retire and pay Capital Credits to classes of similarly situated Patrons and former Patrons under different manners, methods, and timing, provided the Cooperative retires and pays Capital Credits to similarly situated Patrons and former Patrons under the same manner, method, and timing. If the Cooperative separately identified and allocated Capital Credits representing capital credits or similar amounts allocated to the Cooperative by an Entity in which the Cooperative is or was a member, patron, or owner, then the Cooperative may retire and pay these Capital Credits before or after the Entity retires and pays the capital credits or similar amounts to the Cooperative.
- F) Discounted Capital Credit Payments. As determined by the Board, before the time the Cooperative anticipates normally retiring and paying Capital Credits, the Cooperative may retire some or all Capital Credits of a deceased Patron and pay the net present value of the retired Capital Credits. If the Cooperative retires and pays the net present value of Capital Credits to a Patron or former Patron before the time the Cooperative anticipates normally retiring and paying the Capital Credits, then the amount of Capital Credits not paid must be used or retained as permanent, unallocated equity.

**Section 7.5 - Patron Agreement**. Each Patron and former Patron agrees that:

- 1) Capital Credits are not securities under state or federal Law;
- 2) the Patron's right to Capital Credits vests, accrues, becomes redeemable, and becomes payable only upon the Cooperative retiring the Capital Credits as provided in these Bylaws, and not upon the Cooperative allocating the Capital Credits; and
- 3) as required by Law, each Patron will:
  - a) report to the appropriate Entity all allocated or retired Capital Credits; and
  - b) pay the appropriate Entity any tax or similar amount on allocated or retired Capital Credits.

**Section 7.6 - Non-Member Patrons and Non-Member Non-Patrons**. As a condition of Using a Cooperative Service, and except as otherwise provided by the Board:

- 1) to the same extent as a Member, a Patron who is not a Member ("Non-Member Patron") and a Person Using a Cooperative Service who is not a Member or Patron ("Non-Member Non-Patron") must abide by and be bound to the duties, obligations, liabilities, and responsibilities imposed by the Governing Documents upon Members;
- 2) a Non-Member Patron or Non-Member former Patron has none of the rights granted by the Governing Documents to Members, other than the rights to:
  - a) be allocated Capital Credits; and
  - b) be paid retired Capital Credits; and
- 3) a Non-Member Non-Patron has none of the rights granted by the Governing Documents to Members.

**Section 7.7 - Reasonable Reserves**. Regardless of a 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 must keep records necessary to determine, at any time, each Member's rights and interest in Reasonable Reserves.

## **Article 8 - Disposition of Cooperative Assets**

**Section 8.1 - Transfer of Cooperative Assets**. Except for a sale, lease, exchange, disposition, conversion, or other transfer ("Transfer") of Cooperative Assets:

- 1) to secure indebtedness;
- 2) pursuant to condemnation or threat of condemnation;
- 3) pursuant to an existing legal obligation;
- 4) associated with a Consolidation or Merger;
- 5) consisting of the Cooperative's ownership in an Entity;
- 6) to an Entity operating on a cooperative basis and Providing electric energy, or
- 7) to a Cooperative Subsidiary,

the Cooperative may Transfer during a twelve (12) month period, all or substantially all of the Cooperative's Assets only if:

- 1) at the expense of the Person seeking to purchase, lease, or acquire the Cooperative's Assets, the Board appoints three (3) independent appraisers, each of whom, within a reasonable time of appointment, evaluates and renders an appraisal valuing the Cooperative's Assets specified in the proposed Transfer ("Appraisal");
- 2) the Person seeking to purchase, lease, or acquire the Cooperative's Assets provides to the Cooperative any information requested by the Cooperative,
- 3) within a reasonable time of receiving the Appraisals, the Cooperative invites any other Entity operating on a cooperative basis, Providing electric 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;
- 4) the Board approves the proposed Transfer;
- 5) other than by Member Written Consent or Mail Ballot, at least a majority of the Total Membership approves the proposed Transfer;
- 6) notice of a Member Meeting at which Members will consider the proposed Transfer states that one of the purposes of the Member Meeting is to consider the Transfer, and includes a copy or summary of the proposed Transfer; and
- 7) in proportion to the value or quantity of Cooperative Services Used by Members during the period in which the Cooperative owned a Cooperative Asset, the Cooperative allocates to Members as Capital Credits any consideration received for the Cooperative's Assets that exceeds the amount paid for the Cooperative Assets.

A Transfer must be authorized at a meeting of the Members by the affirmative vote of not less than two-thirds (2/3) of all of the Members of the Cooperative.

Except as otherwise provided by the Members, after the Members approve a Transfer, the Board may abandon the Transfer. To secure indebtedness by the Cooperative or a Cooperative Subsidiary, the Board may Transfer, mortgage, pledge, dedicate to repayment, or encumber any Cooperative Asset. As used in this Bylaw, a Transfer includes the conversion of the Cooperative to another form of business.

**Section 8.2 - Merger or Consolidation.** The Cooperative may consolidate or merge only with an Entity operating on a cooperative basis that Provides electric energy ("Consolidate" or "Merge"). To Consolidate or Merge, the Cooperative must comply with this Bylaw.

- A) Board Approval. To Consolidate or Merge, the Board must approve an agreement or plan to Consolidate or Merge ("Consolidation Agreement" or "Merger Agreement") stating the:
  - 1) terms and conditions of the Consolidation or Merger;
  - 2) name of each Entity Consolidating or Merging with the Cooperative;
  - 3) name of the new or surviving Consolidated or Merged Entity ("New Entity");
  - 4) 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;
  - 5) number of directors of the New Entity, which must equal or exceed three (3);
  - 6) date of the New Entity's annual meeting;

- 7) names of New Entity directors who will serve until the New Entity's first annual meeting; and
  - 8) other information required by Law.
- B) Member Approval. To Consolidate or Merge, after the Board approves a Consolidation or Merger Agreement, a majority of the Members voting by Electronic Ballot or Mail Ballot, must approve the Consolidation or Merger Agreement.
- C) Notice. The Cooperative shall notify Directors of a Board Meeting, and Members of a Member Meeting, at which Directors or Members may consider a Consolidation or Merger Agreement. This notice 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 and any provision which would require Director or Member approval if contained in a proposed Articles or Bylaws Amendment.
- D) Other Requirements. The New Entity directors named in the Consolidation or Merger Agreement must sign and file articles of Consolidation or Merger in a manner, and stating the information, required by Law. The Cooperative shall comply with all other requirements for Consolidation or Merger specified by Law. After a Consolidation or Merger Agreement is approved, and before articles of Consolidation or Merger are filed, the Board or Members may abandon the Consolidation or Merger.

**Section 8.3 - Distribution of Cooperative Assets Upon Dissolution.** 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 as provided in these Bylaws, the remaining property and assets of the Corporation shall be distributed among the members and former members in the proportion which the aggregate patronage of each bears to the total patronage of all such members unless otherwise provided by law.

## **Article 9 - Miscellaneous**

**Section 9.1 - Electronic Documents.** If a Member or Director owns, controls, or has reasonable access to the applicable or necessary hardware and software, then, regardless of a contrary Bylaw, as determined by the Board, and as allowed by Law:

- 1) the Member or Director consents and agrees to:
  - a) use, accept, send, and receive an electronic signature, contract, record, notice, vote, communication, and other document regarding a transaction, business, or activity with, for, or involving the Cooperative ("Electronic Document");
  - b) electronically conduct an action, transaction, business, or activity with, for, or involving the Cooperative; and
  - c) electronically give or confirm this consent and agreement; and
- 2) an Electronic Document sent to or received from the Member or Director satisfies a requirement imposed by the Governing Documents that the underlying signature, contract, record, notice, vote, communication, or other document be in writing;
- 3) electronically sending an Electronic Document to, or receiving an Electronic Document from, the Member or Director satisfies a requirement imposed by the Governing Documents that the underlying signature, contract, record, notice, vote, communication, or other document be sent or received personally or by mail; and
- 4) the Member or Director electronically taking an action provided in these Bylaws satisfies a requirement imposed by the Governing Documents regarding the form or manner of taking the action. An Electronic Document electronically sent to a Member or Director or former Member at the Member or Director or former Member's last known electronic address is considered sent and received on the date sent by the Cooperative. An Electronic Document electronically received from a Member or Director or former Member is considered sent and received on the date received by the Cooperative.

**Section 9.2 - Bylaw Amendment.** These Bylaws may be altered, amended or repealed ("Amended") by the affirmative vote of not less than two-thirds (2/3<sup>rd</sup>) of the total number of directors, at any regular or special Board meeting, but only if the notice of such meeting shall have contained a copy of the proposed alteration, amendment or repeal or an accurate summary explanation thereof.

Except as otherwise provided in a Bylaw Amendment, the Amendment is effective immediately after the vote approving the Amendment. The Cooperative must notify Members of Amended Bylaws.

**Section 9.3 - Rules of Order.** Except as otherwise provided by the Board at any time, and except as otherwise provided in the Governing Documents, the latest edition of Robert's Rules of Order governs all:

- 1) Member Meetings;
- 2) Board Meetings;
- 3) Member Committee meetings; and
- 4) Board Committee meetings.

**Section 9.4 - Fiscal Year.** The Board may determine and modify the Cooperative's fiscal year. Except as otherwise provided by the Board, the Cooperative's fiscal year is the calendar year.

**Section 9.5 - Notice.** In these Bylaws:

A) Notice and Communication Type. Except as otherwise provided in these Bylaws, notice may be:

- 1) oral or written or Electronic; and
- 2) communicated:
  - a) in person;
  - b) by telephone, facsimile, electronic communication or transmission, 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) Magazine Notice. If addressed or delivered or transmitted to an address shown in the Membership List or Cooperative records, then a written or electronic 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:

- 1) residing at the address; or
- 2) having the same address shown in the Membership List.

C) Notice Effective Date. If communicated in a comprehensible manner, then except as otherwise provided in these Bylaws:

- 1) oral notice is effective when communicated; and
- 2) 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, then five (5) days after deposit in the United States Mail, or if correctly addressed and mailed with other than first class, registered, or certified postage affixed, then thirty (30) days after deposit in the United States Mail; or
  - c) 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. Written notice is correctly addressed to a Member if addressed to the Member's address shown in the Membership List.

**Section 9.6 - Governing Law.** These Bylaws must be governed by, and interpreted under, the laws of the state in which the Cooperative is incorporated.

**Section 9.7 - Titles and Headings.** Titles and headings of Bylaw articles, sections, and subsections are for convenience and reference and do not affect the interpretation of a Bylaw article, section, or subsection.

**Section 9.8 - Partial Invalidity.** When reasonably possible, every Bylaw article, section, subsection, paragraph, sentence, clause, or provision (collectively, "Bylaw Provision") must be interpreted in a manner by which the Bylaw Provision is valid. The invalidation of a Bylaw Provision by an Entity possessing proper jurisdiction and authority, which invalidation does not alter the fundamental rights, duties, and relationship between the Cooperative and Members, does not invalidate the remaining Bylaw Provisions.

**Section 9.9 - Cumulative Remedies.** The rights and remedies provided in these Bylaws are cumulative. The Cooperative or a Member asserting a 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 9.10 - Entire Agreement.** Between the Cooperative and a Member, the Governing Documents:

- 1) constitute the entire agreement; and
- 2) supersede and replace a prior or contemporaneous oral or written communication or representation.

**Section 9.11 - Successors and Assigns.** Except as otherwise provided in these Bylaws:

- 1) the duties, obligations, and liabilities imposed upon, and the rights granted to, the Cooperative by these Bylaws are binding upon, and inure to the benefit of, the Cooperative's successors and assigns; and
- 2) the duties, obligations, and liabilities imposed upon a Member by these Bylaws are binding upon the Member'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 or a Member does not relieve the Cooperative or Member of the duties, obligations, and liabilities imposed by these Bylaws.

**Section 9.12 - Waiver.** The failure of the Cooperative or a Member to assert a right or remedy provided in these Bylaws does not waive the right or remedy provided in these Bylaws.

**Section 9.13 - Lack of Notice.** The failure of a Member or Director to receive notice of a Meeting, action, or vote does not affect, or invalidate, an action or vote taken by the Members or Board.