

**BYLAWS & ARTICLES OF INCORPORATION**  
**ADAMS ELECTRIC COOPERATIVE, INC.**

Table of Contents  
[As Amended 10/22/19]

<u>Article I – General</u>	<u>Page Nos.</u>
Section 1.01 - Usage .....	1
Section 1.02 - Defined Terms .....	1
Section 1.03 - Law and Articles .....	3
 <u>Article II - Cooperative Membership</u>	
Section 2.01 - Qualifications for Membership .....	3
Section 2.02 - Disqualifications from Membership .....	4
Section 2.03 - Membership .....	5
Section 2.04 - Membership Procedures .....	5
Section 2.05 - Membership Agreement .....	7
Section 2.06 - Joint Membership .....	8
Section 2.07 - Provision of Cooperative Service .....	10
Section 2.08 - Cooperative Service .....	13
Section 2.09 - Grant of Property Rights .....	13
Section 2.10 - Membership Suspension .....	14
Section 2.11 - Member Termination .....	15
Section 2.12 - Membership List .....	16
Section 2.13 - Property Interest Upon Dissolution .....	17
 <u>Article III - Member Meetings and Member Voting</u>	
Section 3.01 - Annual Member Meetings .....	17
Section 3.02 - Special Member Meetings .....	17
Section 3.03 - Agenda, Attendance and Action at Member Meetings .....	18
Section 3.04 - Member Action Without a Member Meeting .....	19
Section 3.05 - Notice of Member Meetings .....	19
Section 3.06 - Record Date .....	20
Section 3.07 - Member Meeting List .....	20
Section 3.08 - Member Waiver of Notice .....	21
Section 3.09 - Member Voting .....	21
Section 3.10 - Member Voting by Mail Ballot .....	22
Section 3.11 - Member Voting by Member proxy .....	23
Section 3.12 - Member Quorum .....	25
Section 3.13 - Credentials and Election Committee .....	25
Section 3.14 - Member Protest .....	27
 <u>Article IV - Board of Directors</u>	
Section 4.01 - Director Zones .....	28
Section 4.02 - General Powers .....	29
Section 4.03 - Specific Powers .....	29
Section 4.04 - Director Qualifications .....	30
Section 4.05 - Director Nominations .....	32
Section 4.06 - Zone Member Meetings .....	33
Section 4.07 - Director Elections .....	34
Section 4.08 - Director Term .....	34
Section 4.09 - Director Resignation .....	35
Section 4.10 - Director Removal .....	35
Section 4.11 - Director Vacancy .....	36
Section 4.12 - Director Compensation .....	37
Section 4.13 - Director Standard of Care and Justifiable Reliance .....	37

Section 4.14 - Personal Liability of Directors .....	39
Section 4.15 - Notation of Dissent .....	39
Section 4.16 - Exercise of Powers Generally .....	39
Section 4.17 - Close Relative .....	41

#### Article V - Board Meetings and Director Voting

Section 5.01 - Regular Board Meetings .....	41
Section 5.02 - Special Board Meetings .....	41
Section 5.03 - Conduct of Board Meetings .....	41
Section 5.04 - Notice of Board Meetings .....	42
Section 5.05 - Waiver of Notice .....	43
Section 5.06 - Board Meeting Quorum .....	43
Section 5.07 - Voting Rights of Directors .....	44
Section 5.08 - Board Action by Written Consent .....	44
Section 5.09 - Committees .....	44

#### Article VI - Cooperative Officers

Section 6.01 - Required Officers .....	46
Section 6.02 - Election and Term of Office .....	46
Section 6.03 - President .....	46
Section 6.04 - Vice President .....	47
Section 6.05 - Secretary .....	47
Section 6.06 - Treasurer .....	48
Section 6.07 - CEO/General Manager .....	48
Section 6.08 - Other Officers .....	48
Section 6.09 - Cooperative Officer Resignation and Removal .....	49
Section 6.10 - Vacancy in Elected Office .....	49
Section 6.11 - Cooperative Officer Standard of Care .....	49
Section 6.12 - Conflict of Interest Transaction .....	50
Section 6.13 - Bonds of Cooperative Officers .....	50
Section 6.14 - Cooperative Officer Compensation .....	50
Section 6.15 - Reports .....	50

#### Article VII - Cooperative Operation

Section 7.01 - Nonprofit and Cooperative Operation .....	51
Section 7.02 - Allocating Capital Credits .....	51
Section 7.03 - Notification of Allocation and Assignment of Capital Credits .....	53
Section 7.04 - Retiring Capital Credits .....	53
Section 7.05 - Patron Agreement .....	55
Section 7.06 - Non-Member Patrons and Non-Member Non-Patrons .....	55
Section 7.07 - Reasonable Reserves .....	56

#### Article VIII - Indemnification of Cooperative Officials and Representatives

Section 8.01 - Third Party Actions .....	56
Section 8.02 - Derivative or Corporate Actions .....	56
Section 8.03 - Mandatory Indemnification .....	57
Section 8.04 - Indemnification Procedure .....	57
Section 8.05 - Advancing Indemnification Expenses .....	58
Section 8.06 - Supplementary Coverage .....	58
Section 8.07 - Insurance .....	59
Section 8.08 - Application to Employee Benefit Plans .....	59
Section 8.09 - Duration and Extent of Coverage .....	59

#### Article IX - Disposition of Cooperative Assets

Section 9.01 - Transfer of Cooperative Assets .....	59
Section 9.02 - Merger, Consolidation or Division .....	61

Section 9.03 - Dissolution .....	62
----------------------------------	----

#### Article X - Miscellaneous

Section 10.01 - Rules of Order .....	62
Section 10.02 - Seal .....	62
Section 10.03 - Fiscal Year .....	62
Section 10.04 - Governing Law .....	63
Section 10.05 - Titles and Headings .....	63
Section 10.06 - Partial Invalidity .....	63
Section 10.07 - Cumulative Remedies .....	63
Section 10.08 - Successors and Assigns .....	63
Section 10.09 - Waiver .....	63
Section 10.10 - Lack of Notice .....	63
Section 10.11 - Electronic Documents .....	64

#### Article XI - Amendment of Bylaws

Section 11.01 - Board Action Required .....	66
Section 11.02 - Notice of Bylaw Amendment .....	66
Section 11.03 - Amendment After Notice .....	66
Section 11.04 - Date Amendment Effective .....	66
Section 11.05 - Notification of Members .....	66

#### Articles of Incorporation

*[Filed 08/21/1940 with PA Department of State]*

Article I - Name .....	68
Article II - Purpose .....	68
Article III - Incorporators .....	68
Article IV - Directors .....	69
Article V - Address and Principal Office .....	69
Article VI - Duration .....	69
Article VII - Membership .....	69
Article VIII - Miscellaneous .....	70

### **BYLAWS**

#### **ARTICLE I – GENERAL**

**Section 1.01 - Usage.** Except as otherwise provided and unless the context clearly indicates otherwise, within these Bylaws, as currently existing or as later amended (**Bylaws**), of Adams Electric Cooperative, Inc. (**Cooperative**):

- A. words and phrases shall be given their customary and ordinary meaning;
- B. the singular use of a word includes the plural use and the plural use of a word includes the singular use;
- C. 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;
- D. the present tense of a word includes the past and future tenses, and the future tense of a word includes the present tense;
- E. the words “shall” and “must” are words of obligation, with “shall” meaning **“has a duty to”** and “must” meaning **“is required to”**;
- F. the word “may” is a word of discretion, meaning **“has discretion to,” “is permitted to,” “is authorized to,”** or **“is entitled to”**;
- G. the words “may ... only” are words of limited discretion and prohibition;
- H. 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”;

- I. 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;
- J. the words “except as otherwise provided” and “subject to” are words of limitation and exception; and
- K. the words “include,” “includes,” and “including” mean “**include without limitation,**” “**includes without limitation,**” and “**including without limitation.**”

## Section 1.02 - Defined Terms.

- A. These Bylaws define certain words, phrases and terms. In general, “**Defined Terms**” are:
  - 1. defined in a full sentence or part of a sentence;
  - 2. capitalized, bold-faced, italicized and enclosed within quotation marks when defined;
  - 3. capitalized, bold-faced and enclosed within parenthesis when defined in part of a sentence; and
  - 4. capitalized when otherwise used in these Bylaws
- B. Except as otherwise provided in these Bylaws and unless the context clearly indicates otherwise, Defined Terms have the meaning specified in the appropriate Bylaw.
- C. The following Defined Terms are defined in the Bylaw Sections noted in parentheses:
  - Annual Member Meeting (3.01); Applicant (2.04); Appraisal (9.01); Articles (1.03); Assets (2.04);
  - Board (2.01); Board Audit Committee (5.09); Board Committee (5.09); Board Executive Committee (5.09); Board Meeting (5.03); Bylaw Amendment (11.01); Bylaw Provision (10.06); Bylaws (1.01);
  - Credentials and Election Committee (3.13); Capital Credits (7.02); CEO/General Manager (6.07); Close Relative (4.17); Conflict of Interest Transaction (6.12); Cooperative (1.01); Cooperative Equipment (2.04); Cooperative Office (3.13); Cooperative Officers (6.09); Cooperative Official (2.05) Cooperative proxy Manager (3.11); Cooperative Purpose (2.09); Cooperative Service (2.01); Cooperative Service Area (4.01); Cooperative Subsidiary (4.04);
  - Defined Terms (1.02); Derivative or Corporate Action (8.02); Directors (4.02); Director Zones (4.01); Director Qualifications (4.04); Director Quorum (5.06); Director Removal Petition (4.10); Director Term (4.08); Director Written Consent (5.08); Disinterested Director (4.16);
  - Electing Members (4.07); Entity (2.01);
  - Governing Documents (2.04);
  - Indemnification Advance (8.05); Indemnification Expenses (8.01); Indemnification Proceeding (8.01); Indemnification Standard of Conduct (8.01);
  - Joint Members (2.06); Joint Membership (2.06);
  - Law (1.03); Location (2.02);
  - Mail Ballot (3.10); Mail Ballot With Member Meeting (3.10); Mail Ballot Without Member Meeting (3.10); Member (2.03); Member Committee (5.09); Member Demand (3.02); Member Equipment (2.04); Member Meeting (3.03); Member Meeting Issues (3.13); Member Meeting List (3.07); Member Meeting Waiver of Notice (3.08); Member Petition Nomination (4.05);
  - Member Property (2.07); Member Protest (3.14); Member proxy (3.11); Member proxy Appointment (3.11); Member Quorum (3.12); Member Voting Documents (3.13); Membership Application (2.04); Membership List (2.12); Membership Procedures (2.04);
  - New Entity or Entities (9.02); Non-Member Non-Patron (7.06); Non-Member Patron (7.06); Non-Operating Loss (7.02);
  - Occupies (2.02); Other Officers (6.08); Operating Earnings (7.02); Operating Losses (7.02); Patron (7.01); Person (2.01); Plan of Asset Transfer (9.01); Plan of Merger, Consolidation or Division (9.02); Provided (2.01);
  - Reasonable Reserves (7.07); Record Date (3.06); Regular Board Meeting (5.01);
  - Removing Members (4.10); Required Officers (6.01);
  - Special Board Meeting (5.02); Special Member Meeting (3.02); Suspension Reasons (2.10);
  - Total Membership (3.02); Transfer (9.01);

Uses (2.01);  
Written Ballot (3.09); and  
Zone Member Meetings (4.06).

### Section 1.03 - Law and Articles.

- A. These Bylaws are subject to Law and the Articles of Incorporation of the Cooperative (**Articles**).
  - **“Law”** includes all applicable:
    - 1. local, state and federal constitutions, statutes, ordinances, regulations, holdings, rulings, orders, and similar documents or actions, whether legislative, executive or judicial; and
    - 2. legally binding contracts enforceable by or against the Cooperative, including legally binding contracts between the Cooperative and an Applicant or Member.
- B. If, and to the extent that, a Bylaw conflicts with Law or the Articles, then the Law or Articles control.

## **ARTICLE II -- COOPERATIVE MEMBERSHIP**

**Section 2.01 - Qualifications for Membership.** Except as otherwise provided in these Bylaws, an individual or Entity may become and remain a Member of the Cooperative only if:

- A. the individual or Entity is a person with the capacity to enter legally binding contracts (**Person**); and
- B. the Person consumes, receives, purchases or otherwise uses (**Uses**), or requests or agrees to Use when available a Cooperative Service generated, transmitted, distributed, sold, supplied, furnished or otherwise provided (**Provided**) by the Cooperative.
  - An **“Entity”** includes a domestic or foreign:
    - 1. cooperative;
    - 2. business or nonprofit corporation;
    - 3. sole proprietorship;
    - 4. unincorporated association;
    - 5. limited liability company;
    - 6. partnership;
    - 7. trust;
    - 8. estate;
    - 9. individuals having a joint or common economic interest; and
    - 10. local, regional, state, federal or national government, including an agency or division of any such government.
  - A **“Cooperative Service”** is:
    - 1. electric energy Provided, from whatever source, by the Cooperative; and
    - 2. as determined by the Cooperative's Board of Directors (**Board**), a good or service Provided by the Cooperative reasonably related to the Cooperative Providing electric power or energy.

### Section 2.02 - Disqualifications from Membership.

- A. **Debts.** Except as otherwise provided in these Bylaws, a Person may not become or remain a Member of the Cooperative or receive a Cooperative Service if the Person:
  - 1. is indebted to the Cooperative for a Cooperative Service Provided to him or to a Location Occupied by him;
  - 2. Occupied the Location of a former or current Member (*other than a landlord, Joint Tenant or similarly related Person*) indebted to the Cooperative for a Cooperative Service Provided to or for that Location at the time the Cooperative Provided such Cooperative Service to that former or current Patron; or
  - 3. Occupies a Location previously Occupied by an Entity owned or controlled by the Person seeking to become or remain a Member of the Cooperative, which Entity owes the

Cooperative for a Cooperative Service Provided to or for the Location.

■ **“Occupies”** shall include:

1. residing at;
2. engaging in a business at;
3. owning; or
4. controlling.

■ A **“Location”** includes a:

1. residence;
2. office;
3. building;
4. premise;
5. structure; and
6. facility.

- B. **Single Membership.** A Person may not hold more than one membership in the Cooperative:
1. either individually or through an Entity not considered legally separate from that Person; or
  2. by Occupying more than one Location to or for which the Cooperative Provides a Cooperative Service.

### Section 2.03 - Membership.

- A. Except as otherwise provided in these Bylaws or by the Board, a qualified Person becomes a **“Member”** of the Cooperative and consents to being a Member upon:
1. Using, requesting or agreeing to Use a Cooperative Service Provided by the Cooperative;
  2. after such Use, request or agreement, receiving either a bill for Cooperative Service Provided by the Cooperative or a separate written notice from the Cooperative that the Person is a Member; and
  3. failing to notify the Cooperative in writing within thirty (30) days after receiving such bill or written notice that the Person does not consent to being a Member.
- B. To remain a Member, the qualified Person must complete the Membership Procedures and Use a Cooperative Service, after which the Board may approve that Person's membership retroactive to the date when he first began Using the Cooperative Service.
- C. The Board may refuse, suspend, or terminate Cooperative membership to or of a qualified Person:
1. unable or unwilling to complete the Membership Procedure; or
  2. for other good cause as determined by the Board.
- D. If an individual Member, other than a Joint Member, dies without the Cooperative's knowledge, and if a Close Relative of the deceased Member Uses a Cooperative Service at the Location previously Occupied by the deceased Member, then, until the Cooperative learns of the deceased Member's death or terminates the deceased Member's membership, the deceased Member's membership is transferred to the Close Relative.
- E. Except as otherwise provided in these Bylaws or by prior written Board approval, no Cooperative membership, nor any of the rights or privileges associated with a Cooperative membership, may be sold, purchased, assigned, disposed of, acquired or otherwise transferred.

### Section 2.04 - Membership Procedures.

- A. Except as otherwise provided in these Bylaws or by prior written approval of the Board, a qualified Person seeking to become or remain a Member (**Applicant**) must, to the Cooperative's satisfaction, complete the procedures set forth in this Bylaw (**Membership Procedures**) within a reasonable time after the Applicant initially Uses or requests or agrees to Use a Cooperative Service.
- B. Each Applicant must complete and sign a written **“Membership Application”** provided by the Cooperative in which he agrees to:
1. comply with the Governing Documents,
  2. ensure that Member Equipment connected to Cooperative Equipment, and any act or

- omission involving any Member Equipment connected to any Cooperative Equipment, comply with the Governing Documents,
  - 3. be a Member,
  - 4. at 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 all:
    - a. Cooperative Services Provided to the Applicant or Provided to or for a Location Occupied by the Applicant, and
    - b. dues, assessments, fees, deposits, contributions, and other amounts required by the Governing Documents, and
  - 5. the use of dues, assessments, contributions, or other amounts paid by the Applicant to the Cooperative to pay for periodical subscriptions received by the Applicant from the Cooperative or from an Entity in which the Cooperative is a Member or owner.
- C. An Applicant must also:
- 1. submit to the Cooperative all information requested by the Cooperative, including the Applicant's photographic identification satisfactory to the Cooperative, a federal tax identification number and, when requested by the Cooperative, a sales tax exemption certificate;
  - 2. complete any additional or supplemental document or contract required by the Board for the Cooperative Service which the Applicant is Using or requesting or agreeing to Use; and
  - 3. except as otherwise provided in these Bylaws or by the Board, pay the Cooperative any:
    - a. dues, assessments, fees, deposits, contributions, and other amounts required by the Governing Documents; and
    - b. all outstanding amounts owed to the Cooperative by the Applicant.
- D. Except as otherwise provided in these Bylaws or as required by Law, the Cooperative will not release, disclose or disseminate personally identifiable, proprietary or confidential information which it obtains about a Member through the Membership Procedures.
- **“Governing Documents”** are the written Membership Application signed by an Applicant or Member and the following documents and actions, all as currently existing or as later adopted or amended:
- 1. All Law regarding or affecting:
    - a. the Cooperative's property, property rights and other assets (**Assets**),
    - b. the Cooperative's operations,
    - c. the Cooperative's Members and Patrons, and
    - d. the Provision and Use of Cooperative Services, Cooperative Equipment, and Member Equipment connected to Cooperative Equipment;
  - 2. the Articles;
  - 3. these Bylaws, a copy of which shall be available at the Cooperative's office;
  - 4. the Cooperative's service rules and regulations;
  - 5. the Cooperative's rate or price schedules; and
  - 6. all rules, regulations, requirements, guidelines, procedures, policies, programs, determinations, resolutions or actions taken, adopted, promulgated or approved by the Board.
- **“Cooperative Equipment”** are the products, equipment, structures, facilities and other goods owned, controlled, operated or furnished by the Cooperative.
- **“Member Equipment”** are the products, equipment, structures, facilities and other goods owned, controlled, operated, or furnished by an Applicant or Member, and located on property owned, controlled, operated, or furnished by an Applicant or Member, including Member-owned generation equipment interconnected with the Cooperative's Equipment.

## Section 2.05 – Membership Agreement.

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



4. the Articles and these Bylaws are a contract between the Cooperative and the Member to which the Member agrees to be bound as fully as though the Cooperative and the Member had individually signed a separate instrument containing all such terms and provisions.
- B. Each new Member shall be provided with a copy of the Articles and the Bylaws, which shall be called to the attention of Members by posting them in a conspicuous place in the Cooperative's offices.
- C. In the event a Member fails to comply with the Governing Documents:
  1. the Member shall pay the Cooperative for such damages, costs or expenses, including attorney fees and legal expenses, incurred by the Cooperative caused by or associated with the Member's noncompliance; and
  2. the Cooperative may:
    - a. suspend or terminate the Member or any Cooperative Service Provided to the Member, as provided in these Bylaws, and
    - b. bring and maintain a legal action, regardless of the availability or adequacy of money damages:
      - (i) to enjoin the Member from violating the Governing Documents, and
      - (ii) to order the Member to comply with the Governing Documents.
- D. A Member shall upon request by the Cooperative, submit a claim or dispute between the Member and the Cooperative about the Governing Documents, the Cooperative's Provision of a Cooperative Service, or the Member's Use of a Cooperative Service to arbitration in accordance with the rules and procedures prescribed by the American Arbitration Association, and comply with the final arbitration award.
- E. A Member shall indemnify, save 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, Cooperative Officer, employee, agent, or other representative of the Cooperative (**Cooperative Official**) caused by the Member's negligence, gross negligence, or willful misconduct in the Use of a Cooperative Service, or by the unsafe or defective condition of a Location Occupied by the Member to which the Cooperative Provides a Cooperative Service.
- F. A Member shall not generally be 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 2.06 - Joint Membership.** A "**Joint Membership**" in the Cooperative may be held by individuals Occupying the same Location who receive Cooperative Services Provided for their Use by the Cooperative, each of whom is qualified to be or become a Member.

- A. Creation. To become or remain "**Joint Members**" of the Cooperative, qualified individuals must jointly complete the Membership Procedures within a reasonable time after initially Using, or requesting or agreeing to Use, the first Cooperative Service Used or to be Used by those individuals. Qualified individuals become Joint Members of the Cooperative and consent to being Joint Members in the same manner as individual Members become Members and consent to being Members. As provided by the Board, a Member may convert his individual membership to a Joint Membership with another individual qualified to be or become a Joint Member.
- B. Rights and Obligations.
  1. 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.
  2. Joint Members are jointly and severally liable for complying with the Governing Documents. The estate of a deceased Joint Member or a Joint Member who no longer qualifies to be a Joint Member shall be jointly and severally liable to the Cooperative for debts to the Cooperative incurred before conversion or the cessation of the Joint Membership that are not paid by the surviving or remaining Joint Members or the Person continuing to Use a Cooperative Service at the Location previously Occupied by the deceased Joint Member or the individual no longer qualified to be a Joint Member.



3. Except as otherwise provided in these Bylaws, a membership under these Bylaws includes a Joint Membership and a Member includes a Joint Member.
4. For a Joint Membership:
  - a. notice of a meeting provided to a Joint Member constitutes notice to all Joint Members;
  - b. waiver of notice of a meeting signed by a Joint Member constitutes waiver of notice by all Joint Members;
  - c. the presence of a Joint Member or all Joint Members at a Member Meeting constitutes the presence of one Member at that Member Meeting;
  - d. the presence of a Joint Member at a meeting waives notice of the meeting for all Joint Members;
  - e. the presence of a Joint Member at a meeting may revoke a Member proxy Appointment executed by that Joint Member;
  - f. if only one Joint Member votes on a matter, signs a document or otherwise acts, then his vote, signature, or action binds the Joint Membership and constitutes one vote, signature or action;
  - g. if more than one Joint Member votes on a matter, signs a document or otherwise acts, then their votes, signatures, or actions constitute but one vote, signature, or action divided prorata based upon the number of voting Joint Members;
  - h. except upon the failure to Occupy the same Location, the suspension or termination of a Joint Member constitutes the suspension or termination of all Joint Members; and
  - i. a qualified Joint Member may be a Director, even if another Joint Member is not qualified to be a Director, but if more than one Joint Member is qualified to be a Director, then only one Joint Member may serve as a Director.
- C. Termination.
  1. Joint Members shall notify the Cooperative in writing of a failure to Occupy the same Location.
  2. Upon determining or discovering the failure of the Joint Members to Occupy the same Location:
    - a. if one Joint Member remains qualified to be a Member and continues to Use a Cooperative Service at the same Location, then the Cooperative shall convert the Joint Membership to a Membership for that remaining individual;
    - b. if more than one Joint Member remains qualified to be a Joint Member and continues to Use a Cooperative Service at the same Location, then the Cooperative shall convert that Joint Membership to a Joint Membership for those qualified remaining individuals; or
    - c. if none of the Joint Members remain qualified to be a Member but one or more of them continue to Use a Cooperative Service at the same Location, then the Joint Membership shall terminate.

## **Section 2.07 - Provision of Cooperative Service.**

- A. Procedures for Service. A Member shall comply with a reasonable procedure required by the Cooperative for Providing a Cooperative Service. Based upon different costs to Provide a Cooperative Service to different groups of Members, the Cooperative may charge each group a different rate or price for Providing that Cooperative Service.
1. Interruption of Cooperative Service. The Cooperative shall Provide Cooperative Services to Members in a reasonable manner. The Cooperative, however, does not insure, guarantee, or warrant that it will provide adequate, continuous, or non-fluctuating electric energy or other Cooperative Service. Nor shall the Cooperative be liable for interruptions of Cooperative Service caused by accidents, breakdowns, acts of God, legal process or other acts or conditions reasonably beyond the Cooperative's control. The Cooperative shall not be liable for damages (*direct or consequential*), costs or expenses, including attorney fees or legal expenses, resulting from the Cooperative Providing inadequate, noncontinuous, or fluctuating electric energy or other Cooperative Service, unless the damages, costs, or expenses are caused by the Cooperative's gross negligence or willful misconduct. The Cooperative's responsibility and liability for Providing a Cooperative

Service terminates upon delivery of the Cooperative Service to the Member.

2. **Safe and Protected Operation of Cooperative.**

- a. A Member shall take action or cease from taking action as required by the Cooperative to safely, reliably, and efficiently operate the Cooperative and Provide a Cooperative Service, which action or cessation of action involves:
  - (i.) a Location Occupied by the Member to or for which the Cooperative Provides a Cooperative Service;
  - (ii.) real or personal property in which the Member possesses a legal or equitable right or interest (**Member Property**);
  - (iii.) Cooperative Equipment; or
  - (iv.) Member Equipment.
- b. A Member shall protect Cooperative Equipment and Member Equipment connected to Cooperative Equipment and install and maintain such protective devices, and implement and follow such protective procedures, as may be required by the Cooperative. As necessary to safely, reliably, and efficiently operate and Provide a Cooperative Service, the Cooperative may temporarily suspend, terminate or limit the 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.

3. **Wiring Standards.** Cause the Location Occupied by the Member to which the Cooperative Provides a Cooperative Service, beyond the point of the Cooperative's delivery of electric energy, to become and remain wired in accordance with the specifications of National Electrical Code Standard 70 adopted by the National Fire Protection Association, Inc., the Law, and the service rules and regulations of the Cooperative, including providing for adequate over current protection in each phase of all motor installations, and indemnify and save the Cooperative and Cooperative Officials harmless against death, injury, loss or damage resulting from any defect in, or improper use or maintenance of, the wiring and Member Equipment connected thereto beyond the point of the Cooperative's delivery of electric energy.

4. **Notice of Interruptions.** A Member shall give immediate notice to the Cooperative of any interruptions or irregularities in electric energy or other Cooperative Services Provided, including the discovery of any trouble with, defect in, or accident involving Cooperative Equipment or Member Equipment attached to Cooperative Equipment.

B. **Member Equipment Connected to Cooperative Equipment.**

1. Before and while Member Equipment is connected to Cooperative Equipment, the Member shall:
  - a. comply with, and shall ensure that the Member Equipment, the connection, and any act or failure to act regarding the Member Equipment and the connection comply with, the Governing Documents, including the terms, conditions, requirements and procedures:
    - (i) of the Cooperative's electric service installation guide regarding the Member Equipment and the connection, and
    - (ii) of the Law pertaining to obtaining certificates of electrical inspection;
  - b. 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;
  - c. grant the Cooperative the right to inspect the Member Equipment and the connection to determine whether they comply with the Governing Documents;
  - d. grant 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; and
  - e. pay the Cooperative for income not received or accrued because of the connection.
2. If Member Equipment is connected to Cooperative Equipment, then:
  - a. the Member is, but the Cooperative is not, responsible for designing, installing, operating, maintaining, inspecting, repairing, replacing and removing the Member

- Equipment;
  - b. the Cooperative is not liable for damage to, or for the performance of, the Member Equipment;
  - c. the Cooperative is not liable for damage to Member Property;
  - d. 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;
  - e. the Member is liable for, and must indemnify the Cooperative against, damage to and for the nonperformance of, the Cooperative Equipment caused by the Member Equipment or the connection; and
  - f. the Member is liable for and must indemnify and hold the Cooperative harmless from injury or death to any individual and damage to any property caused by, or resulting from, the Member Equipment or the connection.
- C. Suspension or Termination of Cooperative Service.**
1. The Cooperative may suspend or terminate the Provision of a Cooperative Service to a Member for a Suspension Reason after providing the Member reasonable notice and an opportunity to comment orally or in writing.
  2. The Cooperative may suspend or terminate the Provision of a Cooperative Service to a Member without providing a Member notice or an opportunity to comment, upon determining or discovering that:
    - a. Cooperative Equipment used to Provide the Cooperative Service has been tampered with, altered, interfered with, damaged or impaired;
    - b. Member Equipment connected to Cooperative Equipment adversely impacts the Cooperative's ability to safely, reliably, and efficiently operate the Cooperative or Provide a Cooperative Service;
    - c. Cooperative Equipment or Member Equipment connected to Cooperative Equipment is in an unsafe condition; or
    - d. Cooperative Equipment or Member Equipment connected to Cooperative Equipment poses an imminent hazard or danger.

## **Section 2.08 - Cooperative Service.**

- A. Use.** Except as otherwise provided in these Bylaws or by the Board, a Member shall Use the Cooperative Service Provided by the Cooperative. When Using a Cooperative Service, a Member shall comply with the Governing Documents.
- B. Payment.**
1. At prices, rates, or amounts determined by the Board, and pursuant to terms and conditions and at times and in such manner as specified by the Cooperative, a Member shall pay the Cooperative for:
    - a. Cooperative Services Provided to the Member or to or for a Location Occupied by the Member; and
    - b. all dues, assessments, fees, deposits, contributions, or other amounts required by the Governing Documents.
  2. Dues, assessments, contributions, or other amounts paid by a Member to the Cooperative may pay for periodical subscriptions received by the Member from the Cooperative or from an Entity in which the Cooperative is a member or owner.
  3. Unless required by Law or otherwise permitted by the Board, when determining the value or quantity of a Cooperative Service Provided to a Member or Provided to or for a Location Occupied by a Member, the Cooperative may not offset electric energy provided by the Member against the Cooperative Service Provided to the Member or Provided to or for a Location Occupied by the Member.
  4. 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:
    - a. the Member shall pay the Cooperative; and
    - b. 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.

C. Interest; Multiple Accounts. As 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. amounts paid by a Member may be applied by the Cooperative to all of the Member's accounts on a pro rata basis regardless of the Cooperative's accounting procedures.

D. Sale of Cooperative Service. Except as permitted by Law and 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.

## Section 2.09 - Grant of Property Rights.

A. 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 Property;
2. grant or convey to the Cooperative an easement, right of way, license, or other right or interest in Member Property for the construction, operation, maintenance and relocation of Cooperative Equipment, including communication wires and cables used in connection therewith or attached thereto by executing a document regarding such grant or conveyance:
  - a. pursuant to such reasonable terms and conditions as are specified by the Cooperative, and
  - b. without compensation from the Cooperative; and
3. be provided an opportunity to participate in any load management or energy conservation program that may be established by the Cooperative to more efficiently Use or conserve electric energy Provided by the Cooperative.

■ A **“Cooperative Purpose”** is, at any time:

1. purchasing, installing, constructing, inspecting, monitoring, operating, repairing, maintaining, removing, relocating, upgrading, or replacing Cooperative Equipment or Member Equipment connected to Cooperative Equipment;
2. providing a Cooperative Service to a Member or one or more other Members;
3. monitoring, measuring, or maintaining a Cooperative Service Provided to a Member or one or more other Members;
4. providing electric energy to a Person or one or more other Persons;
5. monitoring, measuring, or maintaining electric energy Provided to a Person or one or more other Persons;
6. authorizing, permitting, satisfying or facilitating an obligation incurred, or right granted, by the Cooperative regarding use of Cooperative Equipment;
7. safely, reliably, and efficiently operating the Cooperative or Providing a Cooperative Service; or
8. promoting the efficient use by Members of Cooperative Services through demand side load management and supply side energy conservation.

## Section 2.10 - Member Suspension.

A. The Cooperative may suspend a Member for the following reasons (**Suspension Reasons**):

1. for good cause as determined by the Board;
2. disqualification from Membership pursuant to these Bylaws;
3. failure to timely pay an undisputed amount due the Cooperative;
4. the Member requests suspension; or
5. a Member violation of, or failure to timely comply with, the Governing Documents.

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

1. upon the Member's request for suspension; or
2. after the Cooperative:
  - a. provides the Member with written notice of the possible suspension and the underlying Suspension Reason at least ten (10) days before the possible suspension, notifying the Member of his right and opportunity to comment upon the Suspension Reason at

- least ten (10) days after the Cooperative provides the notice, and
- b. makes a determination to suspend the Member.
- C. The Cooperative must provide any written suspension notice to the Member's most current address as shown on the Membership List.
- D. Except as otherwise provided in these Bylaws, upon a Member's suspension:
  - 1. the Cooperative may cease Providing a Cooperative Service to the Member and the Cooperative's duties, obligations, and liabilities to the Member imposed by the Governing Documents shall cease; and
  - 2. the Member forfeits and relinquishes the rights provided to Members in the Governing Documents but remains subject to obligations imposed by the Governing Documents. A suspended Member may not receive notice, nominate, vote, remove, demand, request, petition, consent, or otherwise act as provided in the Governing Documents.
- E. The suspension of a Member shall not affect the Cooperative's obligations to that Member in respect to:
  - 1. the retirement and payment of Capital Credits; and
  - 2. dissolution.
- F. Unless the Cooperative determines otherwise, a Member's suspension:
  - 1. shall be lifted Upon the Member rectifying the underlying Suspension Reason within ten (10) days of the date of the suspension; and
  - 2. may be lifted for good cause as determined by the Board.

#### **Section 2.11 - Member Termination.**

- A. Except as otherwise provided by the Board, after thirty (30) days, a suspended Member is terminated.
- B. 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; or
  - 3. the Cooperative learning that the Member has permanently ceased Using a Cooperative Service.
- C. Except as otherwise provided by the Board, a Member business existing as a partnership which continues to Use a Cooperative Service is not suspended upon the death of a partner or following any other alteration in the partnership. A partner leaving a Member business existing as a partnership remains liable to the Cooperative for amounts owed to the Cooperative by the Member at the time of such partner's departure.
- D. Termination of a Member does not release:
  - 1. the Member from debts, liabilities, or obligations owed to the Cooperative; or
  - 2. 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.
- E. After terminating a Member and deducting therefrom any amounts owed to the Cooperative by that Member, the Cooperative shall refund to the terminated Member his membership fee, without interest and service security deposit, with interest.

#### **Section 2.12 - Membership List.**

- A. The Cooperative shall maintain a record of current Members in a form (**Membership List**) permitting the Cooperative to:
  - 1. alphabetically list the names and addresses of all Members; and
  - 2. indicate the number of Members entitled to cast votes.
- B. As provided in these Bylaws or by the Board, a Member not in the status of suspension during the immediately preceding six (6) months may upon ten (10) days prior written notice or request to the Cooperative:
  - 1. inspect and copy the Membership List at a reasonable time and location determined by the Cooperative; or
  - 2. pay the Cooperative a reasonable charge determined by the Cooperative covering the



- labor and material cost of preparing and copying the Membership List, and the Cooperative must provide the Member a copy of the Membership List.
- C. A Member may inspect, copy, or receive a copy of the Membership List only if, as determined by the Cooperative:
1. the Member's written 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 stated purpose.
- D. 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 solicit Member votes;
  3. use the Membership List for a commercial purpose; or
  4. sell the Membership List.

**Section 2.13 - Property Interest Upon Dissolution.** Consistent with the Law, any Cooperative Assets remaining after all liabilities or obligations of the Cooperative have been satisfied or discharged upon the Cooperative's dissolution, including retirement of all capital furnished through patronage, shall be distributed pro rata among the members of the Cooperative at the time of the filing of the certificate of dissolution.

### **ARTICLE III -- Member Meetings and Member Voting**

#### **Section 3.01 - Annual Member Meetings.**

- A. The Cooperative shall annually hold a meeting of Members (**Annual Member Meeting**) within the Cooperative Service Area, at which Annual Member Meeting:
1. Director elections shall be held in accordance with these Bylaws;
  2. the Required Officers shall provide written and oral reports concerning the operations and the financial condition of the Cooperative and any Cooperative Subsidiary during and for the preceding fiscal year, including the amounts of Capital Credits retired; and
  3. other matters are brought before the meeting for consideration, vote or action of Members in accordance with these Bylaws.
- B. A copy or summary of the written reports provided at the Annual Member Meeting shall be mailed to Members or published in the periodical subscriptions received by Members from the Cooperative or from an Entity in which the Cooperative is a member or owner within sixty (60) days before or after the Annual Member Meeting.
- C. The Board must determine the date, time, and location of the Annual Member Meeting.
- D. The Cooperative's failure to hold an Annual Member Meeting shall not work a forfeiture or dissolution of the Cooperative or otherwise affect an action taken by the Cooperative.

#### **Section 3.02 - Special Member Meetings.**

- A. The Cooperative shall hold a special meeting of Members (**Special Member Meeting**) within the Cooperative Service Area upon receiving:
1. a written or oral request from the Board or President;
  2. a written request signed by at least four (4) Directors of the Board; or
  3. a written demand signed by Members not in the status of suspension (**Member Demand**), dated within thirty (30) days of the first signature, totaling at least ten (10%) percent of the Total Membership, each page of which Member Demand must request and describe the purpose of the meeting.
- The "**Total Membership**" consists of all Members on the Membership List.
- B. The Board shall determine the date, time, and location of a Special Member Meeting.
- C. If the Cooperative does not notify Members of a Special Member Meeting within sixty (60) days of receiving a Member Demand, then a Member signing the Member Demand may set a reasonable time, place, and location for the Special Member Meeting and notify Members of

the Special Member Meeting.

### **Section 3.03 - Agenda, Attendance and Action at Member Meetings.**

- A. Except as otherwise provided in these Bylaws:
  - 1. the Board at or before an Annual or Special Member Meeting  
**(Member Meeting):**
    - a. shall determine the agenda, program, or order of business for the Member Meeting, and
    - b. may limit attendance at the Member Meeting solely to Members;
  - 2. the President, unless otherwise provided by the Board at or before a Member Meeting:
    - a. shall preside at the Member Meeting,
    - b. may remove an individual from the Member Meeting for unruly, disruptive or similar behavior and
    - c. may exercise such power as may be reasonably necessary to efficiently and effectively conduct the Member Meeting; and
  - 3. Members attending the Member Meeting may consider, vote, or act only upon a matter about which:
    - a. the Board and Members received notice in advance of the Member Meeting,
    - b. Members are authorized to consider, vote or act, and
    - c. in the case of a Special Member Meeting, the notice of the meeting has described.
- B. Members not in the status of suspension may raise or discuss a matter at a Member Meeting if:
  - 1. at least ten (10) percent of the Total Membership sign one or more written requests to raise or discuss the matter; and
  - 2. the Cooperative receives such written requests at least sixty days before the Member Meeting.

**Section 3.04 - Member Action Without a Member Meeting.** Except as otherwise permitted by Law and these Bylaws, Members may not act without a Member Meeting.

### **Section 3.05 - Notice of Member Meetings.**

- A. As directed by the Board, President, Directors or Members properly calling the Member Meeting, the Cooperative shall deliver written notice of a Member Meeting personally, by mail or in such other manner as may be permitted by Law to all Members entitled to attend the meeting. This notice must indicate the date, time, and location of the meeting and must be delivered at least ten (10) days, but no more than thirty (30) days, before the meeting. In making such computation, the date of the meeting shall not be counted.
- B. Written notice of a Special Member Meeting must state the purpose of the meeting and describe any matter to be considered or voted or acted upon at the meeting, including any matter that Members have properly and timely requested be raised and discussed at the meeting.
- C. No matter, the carrying of which requires by Law the affirmative vote of at least a majority of the Total Membership, shall be acted upon at a Member Meeting unless the written notice provided of the meeting contains a description of the matter to be considered or voted or acted upon at the meeting.
- D. Except as otherwise provided in these Bylaws, a mailed notice is delivered when deposited in the United States mail in a sealed envelope with prepaid postage affixed and addressed to a Member at the Member's address shown on the Membership List. A mailed notice of a Member Meeting may be included:
  - 1. with the bills for Cooperative Service sent to Members; or
  - 2. in the periodical subscription approved by the Board pursuant to Section 4.03(H) of these Bylaws, sent to Members containing information about the Cooperative.
- E. 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 fifteen (15) days following the



- Record Date for the original Member Meeting; and
- 2. the new date, time, or location was announced at the Member Meeting prior to adjournment.
- F. The good faith, inadvertent, and unintended failure of a Member to receive notice of a Member Meeting or adjournment thereof shall not affect an action taken at the Member Meeting.

### Section 3.06 - Record Date.

- A. The “**Record Date**” is the date for determining the names of those Members from the Total Membership who are 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.
- B. The Board may fix the Record Date, but the Record Date must not be more than thirty (30) days before the date:
  - 1. the first Member signs a member petition, request, demand, consent, appointment or similar document;
  - 2. a ballot, notice, or similar document is due or required; or
  - 3. of a Member Meeting.
- C. Unless otherwise provided by the Board, the Record Date:
  - 1. for signing a member petition, request, demand, consent, appointment, or similar document is the date 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. for voting at a Member Meeting is the date of the Member Meeting.
- D. The Record Date for determining the Members from the Membership List entitled to notice of, or to vote at, a Member Meeting is effective for a Member Meeting adjourned to a date not more than fifteen (15) days after the Record Date for determining the Members entitled to notice of the original Member Meeting.
- E. A Member suspended after the Record Date may not sign a document, receive the ballot or other document, or vote.

### Section 3.07 - Member Meeting List.

- A. The Cooperative shall prepare and maintain an alphabetical list of the names and addresses of Members entitled to receive notice of and to vote at a Member Meeting (**Member Meeting List**). The Cooperative shall make the Member Meeting List available at and during the Member Meeting for inspection by a Member entitled to vote at the meeting.
- B. Except as otherwise provided by the Board:
  - 1. a Member may not copy or receive a copy of the Member Meeting List; and
  - 2. a Person may not inspect a Member Meeting List.
- C. A Member may inspect the Member Meeting List only if, as determined by the Cooperative:
  - 1. he is a Member acting in good faith and for a proper purpose related to the Member Meeting; and
  - 2. the Member Meeting List is directly connected with the Member's purpose.
- D. An individual who provides written evidence satisfactory to the Cooperative that he is a duly authorized agent of a Member entitled to inspect the Member Meeting List may inspect the Member Meeting List on that Member's behalf.

### Section 3.08 - Member Waiver of Notice.

- A. 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 waiver of notice (**Member Meeting Waiver of Notice**) either before or after the Member Meeting.
- B. Unless a Member objects to the holding of a Member Meeting, or to the transaction of business at that Member Meeting, the Member's attendance in person, representation by Member proxy

or Mail Ballot vote on a matter considered at such Member Meeting waives the Member's objection to lack of notice, or to defective notice, of the Member Meeting.

### Section 3.09 - Member Voting.

- A. 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 by him, the Member may cast one (1) vote on each matter for which he is entitled to vote. An individual voting for an Entity Member must present evidence requested by and satisfactory to the Cooperative that he is authorized to vote for the Entity Member.
- B. Except as otherwise provided by Law or in these Bylaws, Members approve a matter if:
  - 1. A Member Quorum is present in person or voting by Mail Ballot, Member proxy or as may otherwise be permitted by Law; and
  - 2. A majority of Members vote in favor of the matter, whether:
    - a. present in person,
    - b. voting by Mail Ballot,
    - c. represented by properly appointed Member proxy, or
    - d. voting as may otherwise be permitted by Law.
- C. Except as otherwise required by Law or provided in these Bylaws, matters are approved by majority vote of the Members. Members must approve an amendment to this bylaw to increase such general majority vote rule.
- D. The individual presiding over the Member vote may require the Members present in person to vote by voice at a Member Meeting. 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, Members present in person shall be required to vote by **"Written Ballot"** or in any other reasonable manner as determined by the individual presiding over the Member vote.
- E. Members may not cumulate votes. Agreements signed by Members providing the manner in which a Member will vote are not valid.

### Section 3.10 - Member Voting by Mail Ballot.

- A. Except as otherwise provided in these Bylaws, a Member may vote or act by mail only as provided in this bylaw and in a manner determined by the Board.
  - 1. A Member may vote or act by mail without a Member Meeting only on an action that may be taken at a Member Meeting, by the Cooperative delivering a Mail **Ballot (Mail Ballot Without Member Meeting)** to each Member entitled to vote on the matter. A proposed action is approved if:
    - a. the number of completed Mail Ballots Without Member Meeting timely received by the Cooperative equals or exceeds the Member Quorum; and
    - b. the number of votes favoring the proposed action equals or exceeds the number of votes required to approve the action at a Member Meeting at which the total number of votes cast equaled the total number of votes cast by Mail Ballot Without Member Meeting.
  - 2. A Member may vote by mail in conjunction with a Member Meeting by the Cooperative delivering a Mail Ballot **(Mail Ballot with Member Meeting)** to each Member entitled to vote on the matter.
    - a. A Member submitting a completed Mail Ballot with Member Meeting may not vote at the Member Meeting regarding a matter described in the Mail Ballot with Member Meeting submitted by that Member.
    - b. Completed Mail Ballots with Member Meeting received before the Member Meeting shall be counted by the Cooperative in determining whether a Member Quorum exists at the Member Meeting.
    - c. The Cooperative must count as a Member's vote a properly completed Mail Ballot with Member Meeting received on, or before, the time and date stated in the Mail Ballot

with Member Meeting.

B. A Mail Ballot Without Member Meeting or a Mail Ballot with Member Meeting (collectively, **Mail Ballot**) must:

1. set forth and describe the proposed action, identify Director-nominees, and include the language of any motion, resolution, proposed bylaw Amendment, written statement or other matter upon or about which Members are requested asked to vote or act;
2. state the date of a Member Meeting at which Members are scheduled to vote or act on the matter;
3. provide an opportunity to vote for or against, or to abstain from voting on, the matter;
4. instruct the Member how to complete and return the Mail Ballot; and
5. state the time and date by which the Cooperative must receive the completed Mail Ballot.

C. Material soliciting approval of a matter by Mail Ballot must:

1. contain, or be accompanied by, a copy or summary of the matter;
2. state the Member Quorum required to vote on the matter;
3. for all matters other than the election of Directors, state the percentage of Member votes necessary to approve the matter; and
4. state the time and date by which the Cooperative must receive a completed Mail Ballot.

D. Except as otherwise provided by the Board, a Member may not revoke a completed Mail Ballot received by the Cooperative.

E. A Member's failure to receive a Mail Ballot does not affect a vote or action taken on which voting by Mail Ballot was authorized.

### Section 3.11 - Member Voting by Member Proxy.

A. Member Proxy. In a manner determined by the Board consistent with this bylaw provision, a Member entitled to vote may appoint an individual to vote for him as provided in these Bylaws (**Member Proxy**). The Cooperative must accept votes properly taken by a Member proxy on behalf of a Member entitled to vote as the Member's vote.

1. A Member proxy may be executed by either Joint Member.
2. A Member may not authorize a Member proxy to designate a substitute Member proxy to vote for the appointing Member.

B. Member Proxy Appointment. To appoint a Member proxy (**Member Proxy Appointment**):

1. the Member must sign and date a form:
  - a. appointing the Member proxy, and
  - b. specifying the Member Meeting at which, or the dates during which, the Member proxy may vote for the Member; and
2. the Member Proxy Appointment must be received by the Secretary of the Cooperative or his designee (**Cooperative Proxy Manager**):
  - a. at least one (1) hour before the Member Meeting at which the Member proxy will vote on that matter for the Member, unless the matter requires the affirmative vote of at least a majority of the Total Membership, or
  - b. at least three (3) business days before the Member Meeting at which the Member proxy will vote on that matter for the Member, when a matter requires the affirmative vote of at least a majority of the Total Membership.

C. Validity.

1. Except as otherwise provided by Law, a Member proxy Appointment is:
  - a. valid for only sixty (60) days after the date of its execution;
  - b. valid for a Member Meeting properly adjourned and reconvened on, or at, another date, time or location; and
  - c. limited regarding the matters, or the manner of voting or acting on a matter, upon which the Member proxy may vote or act for the appointing Member to those matters authorized by Board resolution.
2. A Member proxy Appointment may not be procured through fraud or other improper means. As determined by the Credentials and Election Committee, a Member proxy Appointment procured through fraud or other improper means is invalid.

D. Member Proxy Appointment Revocation. A Member proxy Appointment is revoked if, before

the Member proxy votes for a Member:

1. the Cooperative proxy Manager receives a more recently dated Member proxy Appointment or Mail Ballot signed by the Member who appointed the Member proxy;
2. the Cooperative proxy Manager receives a Member proxy Appointment or Mail Ballot signed by the Member who appointed the Member proxy bearing the same date as the Member proxy Appointment;
3. the Cooperative proxy Manager receives a written revocation of the Member proxy Appointment signed by the Member appointing the Member proxy and dated after the Member proxy Appointment;
4. the Member appointing the Member proxy personally attends and votes at the Member Meeting specified in, or occurring during the dates specified in, the Member proxy Appointment, including a Member Meeting properly adjourned and reconvened; or
5. the Cooperative proxy Manager receives notice of the death or legal incapacity of the Member appointing the Member proxy.

E. Voting at Member Meeting. Member proxy voting shall be limited to:

1. matters on which such voting is either specifically required by Law or has been authorized by Board resolution;
2. the terms and limitations of the Member proxy Appointment, if the Member has either limited the Member proxy's authority for the Member or has directed the Member proxy to vote for the Member in a specified way;
3. the casting of votes for no more than three (3) Members by a Member proxy on any matter, except those matters requiring the affirmative vote of at least a majority of the Total Membership, when a Member proxy may be authorized by the Board to cast votes for an unlimited number of Members; and
4. if a Member not a Joint Member does not attend a Member Meeting, then, unless the Member has cast a Mail Ballot or made a Member Proxy Appointment, the Member's spouse Occupying a Location with the Member may attend the Member Meeting and vote by Member proxy for the absent Member without a formal Member Proxy Appointment.

### Section 3.12 - Member Quorum.

- A. One hundred and fifty (150) members entitled to vote that are present in person, by Member proxy or as otherwise authorized by Law, shall constitute a **"Member Quorum"** for the transaction of business at all Member Meetings. For all matters for which Mail Ballot voting is authorized by these Bylaws and in a manner determined by the Board, Members voting by Mail Ballot shall be counted as if present.
- B. To increase the Member Quorum, the Members must approve an amendment to the Articles based on the Board's approval of an amendment to this Bylaw Provision.
- C. If less than a Member Quorum is present in person at a Member Meeting, then a majority of Members attending in person or represented by Member Proxies may adjourn the Member Meeting without further notice to a date no more than fifteen (15) days after such meeting.

### Section 3.13 - Credentials and Election Committee.

- A. Not later than December 31 of the year preceding each Annual Member Meeting, the Board shall appoint a Credentials and Election Committee (**C&E Committee**) consisting of not less than nine (9) nor more than thirteen (13) members not in the status of suspension, at least one of whom shall be from each Director Zone to better assure equitable representation. Except as otherwise provided in these Bylaws, a majority of those members appointed to serve on the C&E Committee shall constitute a quorum to conduct business in accordance with the provisions of this Bylaw Section 3.13.
- B. A C&E Committee member must not be an existing, or a Close Relative of an existing, Cooperative Official or Director nominee.
- C. After it has been appointed, the C&E Committee shall:
  1. elect a chairperson and secretary;
  2. determine whether the Director-nominees meet the Director Qualifications, including any

- such nominees nominated from the floor at a Zone Meeting pursuant to these Bylaws;
3. establish the order in which the names of the Director-nominees from the three director zones in which the incumbent Directors' terms will expire shall be placed on the ballots cast by members at the Annual Member Meeting;
  4. not less than twenty (20) days before the Annual Member Meeting, prepare and post at all Cooperative Offices the names of the Director-nominees from those Director Zones in which elections are to be conducted at the Annual Member Meeting in the order in which those names will appear on the ballot;
  5. report on Member registration and voting, and the tabulation of Member votes cast by Written and Mail Ballots, including votes cast by properly appointed Member Proxies authorized by Law or Board resolution to be taken;
  6. report and certify to the Members attending the Annual Member Meeting the results of the tabulation of Member votes cast for Director-nominees for those Director Zones in which elections were conducted at the Annual Member Meeting; and
  7. consider and decide **Annual Member Meeting Issues** involving:
    - a. director nominations, including nominations from the floor at a Zone Member Meeting when required, pursuant to Bylaw Section 4.06B.2.,
    - b. member registration and voting conducted at the Annual Member Meeting,
    - c. tabulation of Member votes at the Annual Member Meeting, and
    - d. claims of improper conduct alleged to have affected the results of votes cast for the election of Directors at the Annual Member Meeting.
- D. The C&E Committee may, in good faith,
1. either accept, and give effect to, a Mail Ballot, Written Ballot, Member proxy Appointment, Member Meeting Waiver of Notice, or other voting document authorized by these Bylaws, signed, or purported to have been signed, by or on behalf of, a Member (collectively, **Member Voting Documents**) if:
    - a. the name signed on the Member Voting Document corresponds to a Member's name, or
    - b. the Committee reasonably believes the Member Voting Document is valid and authorized; or
  2. reject, and not give effect to, a Member Voting Document:
    - a. if it has a reasonable basis for doubting the validity of the signature on the Member Voting Document, or
    - b. the validity of the signatory's authority to sign on behalf of the Member.
- E. The C&E Committee shall not be liable to a Member for accepting or rejecting a Member Voting Document.
- F. No decision shall be made by the C&E Committee concerning a Zone or Annual Member Meeting Issue:
1. unless a quorum of the members of the C&E Committee is present at a Committee meeting duly called by the chairperson, but if a quorum is not present, a majority of those members of the C&E Committee present may adjourn the meeting from time-to-time without further notice; and
  2. the decision is made upon the majority vote of a quorum of C&E Committee members present.
- G. Unless otherwise provided in these Bylaws:
1. all decisions on Annual Member Meeting issues considered by the C&E Committee before, at or after the Annual Member Meeting shall be final; and
  2. Annual Member Meeting issues shall be deemed to have been waived if not:
    - a. presented to or decided by the C&E Committee at or before adjournment of the Annual Member Meeting; or
    - b. filed in writing with the Cooperative, addressed to the C&E Committee, within three (3) business days after such adjournment.
- H. Legal counsel shall be provided to the C&E Committee, at the Cooperative's expense.
- I. The Cooperative may reasonably compensate or reimburse C&E Committee members, as determined by the Board.
- J. The failure of the C&E Committee to comply with this Bylaw shall not, by itself, affect any vote,



Director Election, or other action taken at an Annual Member Meeting.

- **"Cooperative Office,"** unless otherwise specified, includes the headquarters office of the Cooperative, now located at 1338 Biglerville Road, Gettysburg, PA 17325 (Adams County); its Gettysburg-area business office, now located at 1380 Biglerville Road, Gettysburg, PA 17325; its Shippensburg-area business office, now located at 10 Duncan Road, Shippensburg, PA 17257; and its York-area business office, now located at 200 Trinity Road, York PA 17408.

### **Section 3.14 - Member Protest.**

- A. A Member directly and substantially implicated in, or affected by a decision about an Annual Member Meeting issue properly presented for the C&E Committee to consider and decide may comment upon or object to that decision by filing a written description of such comment or objection (**Member Protest**) with the Board within three (3) business days after adjournment of the Annual Member Meeting from which such Annual Member Meeting issue arose or, if the decision was made by the C&E Committee following such adjournment, within three (3) business days after the decision is reported to the protesting Member.
- B. As determined by the Board, the Board shall receive oral or written evidence from the protesting Member, or his legal counsel, at a Board Meeting held within thirty (30) days after receipt of the Member Protest. After considering such evidence, the Board shall rule on the Member Protest not later than thirty (30) days following such hearing.
- C. The Board's ruling on a Member Protest shall be final. If requested in writing at the hearing by the Member who filed the Member Protest or his legal counsel, a written report summarizing its ruling shall be prepared by the Board.
- D. The failure of the Board to comply with this Bylaw shall not, by itself, affect any vote, Director election, or other action taken at a Member Meeting.

## **ARTICLE IV -- Board of Directors**

### **Section 4.01 - Director Zones.**

- A. Based upon geographic, population, membership and other equitable considerations, the general area in which Cooperative Services are Provided (**Cooperative Service Area**) has been divided into nine (9) **"Director Zones,"** covering the following municipalities:
  - Zone 1 - ADAMS COUNTY - Townships of Cumberland, Franklin, Freedom, Hamiltonban, Highland, and Liberty, and Boroughs of Arendtsville, Carroll Valley, Fairfield, and Gettysburg.
  - Zone 2 - ADAMS COUNTY - Townships of Butler, Hamilton, Huntington, Latimore, Menallen, Reading, and Tyrone and Boroughs of Bendersville, Biglerville and York Springs.
  - CUMBERLAND COUNTY - Townships of Dickinson and South Middleton.
  - Zone 3 - ADAMS COUNTY - Townships of Berwick, Conewago, Germany, Mt. Joy, Mt. Pleasant, Oxford, Straban, and Union, and Boroughs of Abbottstown, Bonneauville, Littlestown and New Oxford.
  - Zone 4 - YORK COUNTY - Townships of Conewago, Dover, Fairview, Franklin, Jackson, Monaghan, Newberry, Paradise, Warrington, and Washington, and Borough of Dover.
  - Zone 5 - YORK COUNTY - Townships of Heidelberg, Manheim, North Codorus, Penn, and West Manheim, and Boroughs of Glen Rock and Jefferson.
  - Zone 6 - YORK COUNTY - Townships of Chanceford, Codorus, East Hopewell, Fawn, Hopewell, Lower Chanceford, Lower Windsor, North Hopewell, Peach Bottom, Shrewsbury, Springfield, Windsor and York and Boroughs of Cross Roads, Fawn Grove, Felton, Jacobus, Loganville, New Freedom, Railroad, Red Lion, Shrewsbury, Stewartstown and Winterstown.
  - Zone 7 - FRANKLIN COUNTY - Townships of Greene, Letterkenny, Lurgan, Shippensburg, Southampton, and St. Thomas and Boroughs of Orrstown and Shippensburg.
  - Zone 8 - CUMBERLAND COUNTY - Townships of Hopewell, North Newton, Southampton, South Newton, and Upper Mifflin, and Boroughs of Newburg and Shippensburg. - PERRY

COUNTY - Township of Toboyne.

Zone 9 - CUMBERLAND COUNTY - Townships of Lower Frankford, Lower Mifflin, North Middleton, Upper Frankford, and West Pennsboro, and Borough of Newville.

- B. If a Member Uses a Cooperative Service in more than one Director Zone Location, the Location of that Member's Cooperative Service Use shall be determined as follows:
  - 1. if the Member is an individual residing within the Cooperative Service Area, that Member Uses a Cooperative Service in the Director Zone Location in which the Member resides; and
  - 2. if the Member is an individual not residing within the Cooperative Service Area, or if the Member is an Entity, that Member Uses a Cooperative Service in the Director Zone Location in which the Member first Used, and continues to Use, a Cooperative Service.
- C. As determined by the Board, the Director Zones may be revised based upon geographic, population, membership and other equitable considerations.
  - 1. The Cooperative must notify, in writing, the Members affected by any such revision within thirty (30) days after any revision of Director Zones and at least thirty (30) days before the next Annual Member Meeting.
  - 2. A revision of Director Zone shall be effective on the date the Cooperative releases written notice of the revision.
  - 3. Revision of a Director Zone may not increase or, unless the affected Director consents in writing, shorten the Term of an existing Director.

#### **Section 4.02 - General Powers.**

- A. The business and affairs of the Cooperative shall be managed under the direction of the Board, consisting of nine (9) Cooperative Members (**Directors**).
- B. The Board shall exercise all Cooperative powers, except such as are conferred upon or reserved to the Members by the Governing Documents, and shall reasonably administer and enforce these Bylaws, or ensure that these Bylaws are reasonably administered and enforced.
- C. To the extent the Governing Documents authorize an individual to exercise a power that the Board would otherwise exercise, the individual exercising the power has, and is subject to, the same duties, responsibilities, and standards of care as the Board.

**Section 4.03 - Specific Powers.** Without limiting the generality and scope of Section 4.02 of these Bylaws and without limiting any other authority provided and attributed to the Board by these Bylaws, the Governing Documents, or Law, and except as may otherwise be provided in, or limited by, these Bylaws, the Board is authorized and empowered to:

- A. Make, adopt, amend, abolish and promulgate such rules, regulations, rate schedules, contracts, security deposits and any other types of deposit, payments or charges, including without limitation contributions in aid of construction, not inconsistent with Law or the Governing Documents, as it may deem advisable for the management, administration, and regulation of the business and affairs of the Cooperative;
- B. select and fix the compensation of the CEO/General Manager;
- C. select, retain and employ legal counsel, certified public accountants, engineers and consultants as may from time to time be necessary, useful or appropriate for the Cooperative;
- D. prescribe the general investment policies of the Cooperative and approve the investment of Cooperative funds;
- E. appoint representatives or delegations to act for the Cooperative, specifying at the time of appointment their powers and functions;
- F. by Board resolution adopted by a majority of a quorum of Directors at a Board Meeting, designate a Cooperative Officer to enter into any contract or execute and deliver any instrument in the name and on behalf of the Cooperative, which authority may be general or confined to specific instances;
- G. approve the Cooperative joining, and paying membership dues to belong to, associations with purposes tending to benefit the Cooperative; and
- H. permit the CEO/General Manager to expend Cooperative funds for publicity and subscriptions to publications related to the business of the Cooperative.



#### Section 4.04 - Director Qualifications.

A. To become a Director and to remain a Director, the individual must be a Member and must comply with all of the following qualifications and requirements (collectively, **Director Qualifications**):

1. be a natural person with the capacity to enter into legally binding contracts;
2. not have been or be lawfully convicted of, or have pleaded or plead guilty to, any felony, or any crime involving the Cooperative as a victim;
3. be willing and able to acquaint himself or herself with the business workings and affairs of the Cooperative, including without limitation, unless for good cause as determined or otherwise provided by the Board, obtaining a Credentialed Cooperative Director designation, Director's Certificate, or similar certification from the National Rural Electric Cooperative Association within three (3) years of becoming a Director;
4. be an unsuspended Member for at least one (1) year immediately before becoming a Director, and while serving as a Director;
5. for at least one (1) full calendar year immediately prior to the calendar year in which the individual would become a Director if so elected, and also for such time as he or she serves as a Director, maintain a primary residence in the Director Zone from which he or she is nominated and for which he or she serves as Director;
6. unless for good cause as determined or otherwise provided by the Board, not miss three (3) consecutive meetings of the Board or fail to attend at least fifty (50%) percent of the Board Meetings during any one calendar year.
7. annually complete and sign a conflict of interest certification and disclosure form approved by the Board;
8. not be an employee of the Cooperative;
9. for the ten (10) years immediately before becoming a Director, not have been an employee of the Cooperative, or an employee of a subsidiary of the Cooperative, a legal Entity controlled by the Cooperative, a legal Entity controlled by a subsidiary of the Cooperative, or other legal Entity in which the Cooperative or any subsidiary of the Cooperative has an ownership interest of ten percent (10%) or more (each, a **Cooperative Subsidiary**);
10. while serving as a Director, and during the ten (10) years immediately before becoming a Director, not be or have been a Close Relative of an individual who is or was employed by the Cooperative or by a Cooperative Subsidiary and who does or did receive more than ten (10%) percent of their annual gross income, other than any insurance and retirement benefits, directly or indirectly from the Cooperative or a Cooperative Subsidiary;
11. while serving as a Director and during the ten (10) years immediately before becoming a Director, not advance or have sought to advance any pecuniary interest of their own or of a Close Relative by competing with the Cooperative or a Cooperative Subsidiary, or by Providing a good or service similar to either a Cooperative Service Provided by the Cooperative or to any goods or services provided by a Cooperative Subsidiary;
12. while serving as a Director and during the ten (10) years immediately before becoming a Director, not have a Close Relative who advances or sought to advance either their own pecuniary interests or those of the Director or Director-nominee by competing with the Cooperative or a Cooperative Subsidiary, or by Providing a good or service similar to either a Cooperative Service Provided by the Cooperative or to any goods or services provided by a Cooperative Subsidiary;
13. not be employed by, or financially interested in, a business primarily engaged in selling plumbing, appliances, fixtures, supplies or other goods and services in substantial quantity to the Cooperative or to a substantial number of its Members;
14. while serving as a Director, and for the ten (10) year period immediately before becoming a Director, not be or have been an employee of any Entity with which the Cooperative, as determined or otherwise provided by the C&E Committee, has or had a significant or material business relationship. As illustrative examples only, and not to be deemed an exclusive or inclusive list, such Entities as statewide industry association, national industry association, Allegheny Electric Cooperative, Inc., National Information Solutions

- Cooperative (NISC), primary lenders such as National Rural Utilities Cooperative Finance Corporation or CoBank, Touchstone Energy, and primary insurance carriers.
15. not be appointed or elected to, or be or become a candidate for, elected public office;
  16. while serving as a Director, not be employed by another Director;
  17. while serving as a Director, not be employed by, or receive more than ten (10%) percent of his or her annual gross income from, any Entity regarding which another Director controls or owns more than ten (10%) percent, or of which another Director is a director or officer thereof;
  18. while serving as a Director and during the one (1) year immediately before becoming a Director, not be employed by, or in direct or indirect control of, or own more than ten (10%) percent of, and neither serve as a director of, or officer of, or receive more than ten (10%) percent of annual gross income from, an Entity that:
    - a. advances the Entity's pecuniary interest by competing with or Providing a good or service similar to a Cooperative Service or a good or service provided by a Cooperative Subsidiary, or
    - b. receives more than ten (10%) percent of its annual gross revenue directly or indirectly from the Cooperative or a Cooperative Subsidiary;
  19. not be determined by the Board to have some other substantial conflict of interest with the Cooperative or a Cooperative Subsidiary; and
  20. meet any other reasonable qualifications and requirements as determined by the Board.

**B. *Disqualification of Director.***

1. If the C&E Committee determines pursuant to Section 3.13 (C)(2) of these Bylaws, that a Director-nominee does not comply with all the Director Qualifications, it shall disqualify such nominee.
2. If, after being elected or appointed, a Director is found by the Board not to be in compliance with the Director Qualifications, then, except for good cause shown, a majority of Disinterested Directors shall disqualify the non-compliant Director, who will cease being a Director:
  - a. after the non-compliant Director is notified in writing of the basis for, and is provided an opportunity to comment about, the Board's disqualification finding; and
  - b. the Director fails to bring himself into compliance with the Director Qualifications within thirty (30) days after the Board notifies the Director of its disqualification finding.
3. A Board action shall not be affected by the failure of one or more Directors to comply with Director Qualifications if a majority of the elected or appointed Directors voting in the affirmative were in compliance with the Director Qualifications at the time of such Board action.

**Section 4.05 - Director Nominations.**

- A. A Member who meets the Director Qualifications shall be nominated for a Director position scheduled for election by Members at the next Annual Member Meeting in accordance with this Bylaw.
- B. A Director-nomination shall be made as follows:
  1. by timely submitting a written petition to the C&E Committee. The petition must be on a Cooperative-prescribed form that informs potential Director-nominees about the Director Qualification requirements and is signed by at least fifteen (15) Members not in the status of suspension (Member Petition Nomination). To be considered timely submitted, a Member Nomination Petition must be actually and physically received at a Cooperative Office before the close of the last business day of the Cooperative in January, immediately preceding the Annual Member Meeting. A Member Petition Nomination not actually and physically received at a Cooperative Office by such deadline shall be disregarded, regardless of whether it was mailed, postmarked, or otherwise placed or scheduled for delivery to a Cooperative Office prior to that deadline;
  2. if a Member Petition Nomination is not timely submitted for a Director Zone in which a Director election is scheduled to be held at the next Annual Member Meeting, the C&E

- Committee shall nominate not less than two (2) Members who meet the Director Qualification requirements for that Director Zone before the last day of February immediately preceding the Annual Member Meeting;
3. if the C&E Committee fails to nominate at least two (2) Members who meet the Director Qualification requirements before the last day of February for a Director Zone for which no Member Petition Nomination was received before the end of January immediately preceding the Annual Member Meeting, the Secretary of the Board, at the request of the secretary of the C&E Committee, shall notify the Electing Members of that Director Zone that Director-nominees who meet Director Qualification requirements may be nominated from the floor for that Director Zone at the Zone Meeting.
- C. At least ten (10) days before the Annual Member Meeting at which Directors are scheduled to be elected, the Secretary of the Cooperative shall notify Electing Members of:
    1. the Director positions scheduled for election; and
    2. the names and corresponding Director Zones for each Director-nominee validated by the C&E Committee.
  - D. The Cooperative shall notify Members about the procedure for filing Member Petition Nominations at least thirty (30) days before the deadline for filing such petitions.

#### **Section 4.06 - Zone Member Meetings.**

- A. Member Meetings for Director Zones (Zone Member Meetings) shall be held not less than thirty (30) nor more than one hundred twenty (120) days before each Annual Member Meeting, if and as required by this Bylaw Provision.
- B. A Zone Member Meeting must be held:
  1. to allow the Director-nominees from the Director Zones whose names will be listed on the Annual Member Meeting ballot to be introduced to Members in attendance; and
  2. to solicit nominations from the floor of qualified Director-candidates for that Director Zone from Electing Members if no valid Member Petition Nominations from qualified Members from a Director Zone in which the Director's Term is set to expire at the next Annual Member Meeting are received by the C&E Committee before the last business day of the Cooperative in January preceding the Annual Member Meeting, and the C&E Committee has failed to nominate at least two (2) qualified Director-nominees from that Director Zone before the last day of February.
- C. The Board may schedule combined Zone Member Meetings.

#### **Section 4.07 - Director Elections.**

- A. At each Annual Member Meeting, Members not in the status of suspension (**Electing Members**) shall elect a Director from each of the three (3) Director Zones in which the incumbent Director's Term will expire.
- B. Three (3) Directors shall be elected at each Annual Member Meeting based on the following staggered Director election cycle:
  1. one (1) Director each from Director Zones 3, 4 and 9, whose Director terms shall expire at the Annual Member Meeting in 2020;
  2. one (1) Director each from Director Zones 1, 5 and 8, whose Director terms shall expire at the Annual Member Meeting in 2021;
  3. one (1) Director each from Director Zones 2, 6 and 7, whose Director terms shall expire at the Annual Member Meeting in 2022;
  4. each successive year thereafter and on the same staggered Director election cycle, one Director each from the same Director Zones.
- C. If three (3) Directors are not elected on the day designated for the Annual Member Meeting or at any adjournment thereof, based on such staggered Director election cycle, a Special Member Meeting shall be called within a reasonable time thereafter for the purpose of electing those three Directors.
- D. Election of Directors shall be by secret Written Ballot and Mail Ballot. If there is no competition for the Director position or positions to be filled and there is no objection by Members, the

- secret Written Ballot may be dispensed with at the Annual Member Meeting and voting conducted by the Electing Members in any other appropriate manner, including voice vote.
- E. The nominee from each Director Zone who receives a plurality of all the votes cast for a Director Zone shall be certified as the duly elected Director for that Director Zone.
  - F. No votes will be counted for any candidate for Director who was not nominated in accordance with these Bylaws.
  - G. If a tie vote results after counting and recounting all properly cast ballots, the tie shall be resolved by a drawing of lots. The drawing of lots shall be conducted by, supervised by, and done in a manner and by a method approved by and acceptable to the C&E Committee, in its sole judgment and discretion and, if so desired and requested by the C&E Committee, with input and guidance from the general legal counsel and/or in-house legal counsel of the Cooperative.

**Section 4.08 - Director Term.** Except as otherwise provided in these Bylaws:

- A. A Director's term shall be for three years or until his successor is elected and qualified (Director Term).
  - 1. The term of a qualified Director who has consented to being elected as a Director begins immediately following adjournment of the Annual Member Meeting at which the Director is elected.
  - 2. The term of a qualified Director ends immediately following adjournment of the Annual Member Meeting at which his qualified successor Director is elected.
- B. Except as otherwise provided in these Bylaws, if a qualified Director from a Director Zone in which the incumbent Director's term is set to expire at an Annual Member Meeting is not elected, then that Director position becomes vacant immediately following such Annual Member Meeting.
- C. The length of an existing Director's Director Term may not be increased or decreased unless the affected Director consents in writing.

**Section 4.09 - Director Resignation.**

- A. A Director may resign at any time.
- B. To resign, a Director must sign and deliver a written notice of resignation to the Board, President, or Secretary.
- C. Unless a later date is specified in the written notice of resignation, a Director's resignation is effective when the Board, President, or Secretary receives the written notice of resignation.

**Section 4.10 - Director Removal.**

- A. *By Board.* The Board may remove:
  - 1. a Director who fails to meet the Director Qualifications; and
  - 2. except as otherwise provided in these Bylaws, a Director designated or appointed by the Board for any reason.
- B. *By Members.* Members not in the status of suspension Using a Cooperative Service at a Location within the Cooperative Service Area (**Removing Members**) may remove a Director for whom they have voted, For Cause.
  - 1. Removal by Members of a Director **"For Cause"** shall be justified if the conduct or inaction of a Director constitutes gross negligence, fraud or criminal conduct which has significantly and adversely affected the business and affairs of the Cooperative.
  - 2. To request removal of a Director For Cause, Removing Members 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. 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 (10%) percent of the Electing Members of the Cooperative.
  - 3. 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 affected Director; and
  - b. the Board shall meet to review the Director Removal Petition.
- 4. If the Board determines that the Director Removal Petition complies with this Bylaw, then the Cooperative shall give notice of a Member Meeting to be held 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. evidence may be presented, and a Member vote taken, regarding removing the Director; and
  - c. members may elect a successor Director.
- 5. If a Member Quorum is present in person at the Member Meeting, then before a Member vote is taken:
  - a. evidence must be presented supporting the basis for removing the Director named in the Director Removal Petition;
  - b. the Director named in the Director Removal Petition may be represented by legal counsel, and must have the opportunity to refute, and present evidence opposing, the basis for removing the Director; and
  - c. after the Director named in the Director Removal Petition has completed his presentation and the Members have been provided an opportunity for discussion, the Removing Members must vote whether to remove the Director.
- 6. If a majority of the Removing Members present vote to remove the Director, then the Director is removed effective the time and date of the Removing Member vote.
- 7. At the Member Meeting, the Removing Members may elect a new Director to succeed the removed Director without complying with the Director Nomination or notice provisions of these Bylaws. The successor Director elected by the Removing Members:
  - a. must comply with the Director Qualifications; and
  - b. will serve the unexpired Director Term of the removed Director.
- 8. A Director Removal Petition or Director removal does not affect prior Board actions involving the Director removed.
- 9. Members may not vote to remove a Director by Mail Ballot or Member Proxy without the prior approval of the Board.

#### **Section 4.11 - Director Vacancy.**

- A. Except as otherwise provided in these Bylaws, the Board, by an affirmative vote of the majority of remaining Directors, shall fill a vacant Director position within a reasonable time after a Director position becoming vacant, including a vacant Director position resulting from an increase in the number of Directors.
- B. A Director elected, designated, or appointed by the Board to fill a vacant Director position shall serve the unexpired Term of the Director who last held the vacant Director position.
- C. 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.
- D. An individual elected, designated, or appointed to fill a vacant Director position must comply with the Director Qualifications.
- E. A vacant Director position or Director vacancy does not include a Director position vacated due to an expired Director Term.

#### **Section 4.12 - Director Compensation.**

- A. A Director shall not receive any salary for his or her services as such, except payment of fixed fees as determined or approved by resolution or policy of the Board for:
  - 1. work, time, and effort in fulfilling the oversight and governance role as a Director of the Cooperative, including without limitation, reviewing material for, preparing for, and attending regular and special Board Meetings and Board committee meetings; strategic planning; risk management; policy adoption; compliance oversight; Member and external relations; rate setting; and email, telephonic, and other communications relating to Cooperative business;



- and
- 2. a function, meeting, or event involving or relating to:
  - a. the Cooperative;
  - b. training, education, conferences, or seminars for or relating to the Cooperative's business and industry; or
  - c. Otherwise as involving or relating to the improvement of the Director's ability to serve as a Director.
- B. A Director may also receive an advancement or reimbursement of any travel and out-of-pocket expenses actually, necessarily, and reasonably incurred to attend a Board Meeting or to perform other authorized Cooperative business.
- C. No Director shall receive compensation for serving the Cooperative in any other capacity, nor shall any Close Relative of a Director receive compensation for serving the Cooperative, unless:
  - 1. the Members have voted to specifically authorize the payment and amount of compensation; or
  - 2. the Board has certified the service by the Director or such Close Relative as an emergency measure.

#### **Section 4.13 - Director Standard of Care and Justifiable Reliance.**

- A. A Director shall stand in a fiduciary relationship to the Cooperative and shall perform his duties as a Director, including his duties as a member of any Board Committee on which he may serve:
  - 1. in good faith;
  - 2. in a manner he reasonably believes to be in the best interests of the Cooperative;
  - 3. with such care, including reasonable inquiry, skill and diligence, as an individual of ordinary prudence would use under similar circumstances when becoming informed in connection with the Director's decision-making function or devoting attention to the Director's oversight function; and
  - 4. by disclosing or causing to be disclosed to other Directors or Board Committee members information not known by them, but known by the Director to be material to the Board's discharge of its decision-making or oversight functions, except that such disclosure is not required if the Director reasonably believes that the disclosure would violate a duty imposed under Law, a legally enforceable obligation of confidentiality, or a professional ethics rule.
- B. Unless he has actual knowledge concerning the matter in question that would cause his reliance to be unwarranted, when discharging his duties, a Director shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:
  - 1. one or more Cooperative Officials whom the Director reasonably believes to be reliable and competent in the matters presented;
  - 2. legal counsel, public accountants or other persons retained by the Cooperative as to matters which the Director reasonably believes to be within the professional or expert competence of such persons and as to which such persons merit confidence; and
  - 3. a Board Committee of which the Director is not a member if the Director reasonably believes the Board Committee merits confidence.
- C. The duty of the Board, Board Committees and individual Directors under this Bylaw Provision is solely to the Cooperative and may be enforced directly by the Cooperative or may be indirectly enforced by a Member, as such, by an action in the right of the Cooperative, but may not be enforced directly by a Member or by any other individual or group.

#### **Section 4.14 - Personal Liability of Directors.**

- A. *General Rule.* A Director shall not be personally liable, as such, for monetary damages for any action taken unless:
  - 1. The Director has breached or failed to perform the duties of his office as provided in Section 4.13 of these Bylaws; and
  - 2. The breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

B. *Exceptions.* Subsection A above shall not apply to:

1. The responsibility or liability of a Director pursuant to any criminal statute; or
2. The liability of a Director for the payment of taxes pursuant to Federal, State or local law.

#### **Section 4.15 - Notation of Dissent.**

- A. A Director who is present at a meeting of the Board, or of a Board Committee, at which meeting action on any Cooperative matter is taken on which the Director is generally competent to act, shall be presumed to have consented to the action taken unless his dissent is entered in the minutes of the meeting or he files his or her written dissent to the action with the secretary of the meeting before the adjournment thereof or transmits the dissent in writing to the Secretary of the Cooperative immediately after the adjournment of the meeting.
- B. The right to dissent shall not apply to a Director who voted in favor of the action.
- C. A Director may assert that minutes of the meeting incorrectly omitted his dissent if, promptly upon receipt of a copy of such minutes, he notifies either the secretary of the meeting or Secretary of the Cooperative in writing of the asserted omission or inaccuracy.

#### **Section 4.16 - Exercise of Powers Generally.**

- A. *General Rule.* In discharging the duties of their respective positions, the Board, Board Committees and individual Directors may, in considering the best interests of the Cooperative, in addition to all other pertinent factors, to the extent they deem appropriate consider the following:
1. the effects of the action under consideration upon:
    - a. any groups affected thereby, including Members, employees, suppliers, customers and creditors of the Cooperative, and
    - b. communities in the Cooperative Service Area or in which Cooperative Offices are located;
  2. the short-term and long-term interests of the Cooperative, including benefits that may accrue to the Cooperative from its long- term plans and the possibility that those interests may be best served by the continued independence of the Cooperative;
  3. the resources, intent and conduct (*past, stated and potential*) of a Person seeking to acquire control of the Cooperative; and
  4. all other pertinent factors.
- B. *Consideration of Interests and Factors.* The Board, Board Committees and individual Directors shall not be required, in considering the best interests of the Cooperative or the effects of any action, to regard any corporate interest or the interests of any particular group affected by such action as a dominant or controlling interest or factor. Consideration of the interests and factors described in subsection A above shall not be deemed to constitute a violation of Section 4.13 of these Bylaws (*relating to standard of care and justifiable reliance*).
- C. *Specific Applications.* In exercising the powers vested in the Cooperative, and in no way limiting the discretion of the Board, Board Committees and individual Directors pursuant to subsections A and B above, the fiduciary duty of Directors shall not be deemed to require them to act as the Board, Board Committee or an individual Director solely because of the effect such action might have on an acquisition or potential or proposed acquisition of control of the Cooperative or the consideration that might be offered or paid to Members in such an acquisition.
- D. *Presumption.* Absent breach of fiduciary duty, lack of good faith or self-dealing, any action by the Board, a Board Committee or an individual Director shall be presumed to be in the best interests of the Cooperative.
1. In assessing whether the standard set forth in Section 4.13 of these Bylaws has been satisfied, there shall not be any greater obligation to justify, or higher burden of proof with respect to, any action by the Board, any Board Committee or any individual Director relating to or affecting an acquisition or potential or proposed acquisition of control of the Cooperative than is applied to any other action by the Board, any Board Committee or any individual Director.
  2. Notwithstanding the preceding provision of this subsection D, any action by the Board, any



Board Committee or any individual Director relating to or affecting an acquisition or potential or proposed acquisition of control to which a majority of the Disinterested Directors shall have assented shall be presumed to satisfy the standard set forth in Section 4.13 of these Bylaws, unless it is proven by clear and convincing evidence that the Disinterested Directors did not assent to such act in good faith after reasonable investigation.

**E. *Disinterested Director.***

1. As used in subsection D above and for no other purpose a ***“Disinterested Director”*** means a Director of the Cooperative who:
  - a. has no direct or indirect financial or other interest in the Person acquiring or seeking to acquire control of the Cooperative; and
  - b. is not an affiliate or associate of, or nominated or designated as a Director by, a Person acquiring or seeking to acquire control of the cooperative.
2. A Director shall not be deemed to be other than a Disinterested Director solely by reason of any or all of the following:
  - a. receipt by the Director of fees or other Director compensation as provided in these Bylaws; or
  - b. any interest the Director may have in retaining the status or position of Director.

**F. *Limitation on Standing.*** Subsections A and B above do not impose upon the Board, Board Committees or individual Directors, any legal or equitable duties, obligations or liabilities or create any right or cause of action against, or basis for standing to sue the Board, Board Committees or individual Directors.

**Section 4.17 - Close Relative.**

- A. The term ***“Close Relative”*** means an individual who:
1. through blood, law or marriage, is a parent, husband, wife, son, daughter, brother, half brother, sister, half-sister, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law; or
  2. resides at the same Location as you.
- B. A qualified individual 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.

**Section 4.18 – Employment of Former Director.** A former Director of the Cooperative shall not become, and is prohibited from becoming, an employee of the Cooperative or a Cooperative Subsidiary for the ten (10) year period immediately following the individual's service as a Director, and this restriction and prohibition shall apply regardless of the reason the individual is no longer a Director, whether due to resignation, removal, failure to comply with the Director Qualifications, lost election, service term expiration, other inability to serve, or otherwise.

**ARTICLE V -- Board Meetings and Director Voting**

**Section 5.01 - Regular Board Meetings.**

- A. A regular meeting of the Board shall be held, without prior notice, at the location of the Annual Member Meeting immediately after the adjournment thereof.
- B. Regular meetings of the Board shall be held (**Regular Board Meetings**) on such dates and at such times and locations as determined by the Board.

**Section 5.02 - Special Board Meetings.**

- A. A special meeting of the Board may be called by the Board, President or any three (3) Directors (**Special Board Meeting**).
- B. A Special Board Meeting shall be held on the date and at the time and location specified in the notice of meeting.

### **Section 5.03 - Conduct of Board Meetings.**

- A. *Place of Meeting.* Except as otherwise provided in these Bylaws, a Regular Board Meeting or Special Board Meeting (**Board Meeting**) shall be held at a Cooperative office within the Cooperative Service Area, unless, by unanimous action of Directors, the Board consents to:
1. hold such meeting at another location in, or out of, a state in which the Cooperative Provides a Cooperative Service; or
  2. conduct the meeting with absent Directors participating, and deemed present in person, by telephone conference call or through such other means of communication as will allow all Directors participating in the Board Meeting to reasonably and verifiably identify themselves, and approximately simultaneously and approximately instantaneously communicate with each other during the meeting.
- B. *Presiding Officer.* If a Director Quorum is present at a Board Meeting, then, in descending order of priority, the following Cooperative Officers may preside at the Board Meeting: President; Vice President; Secretary; and Treasurer.
1. If no Cooperative 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.
- C. *Meeting Rules.* The Board may promulgate or approve rules, policies, and procedures regarding:
1. attendance at, participation in, or presentation during Board Meetings by individuals other than Directors;
  2. the right to access, inspect or copy minutes, records, or other documents relating to a Board Meeting by individuals other than Directors; and
  3. the conduct of Board Meetings.

### **Section 5.04 - Notice of Board Meetings.**

- A. *Regular Board Meetings.*
1. Except as otherwise provided in these Bylaws, Regular Board Meetings may be held without further notice after the Board by resolution or other action schedules the dates, times and places of such meetings.
  2. A Director not in attendance at a Board Meeting when action is taken to schedule Regular Board Meetings shall be provided a copy of the meeting schedule adopted by the Board at least five (5) days before the date of the next Regular Board Meeting.
  3. A Director not in attendance at a Board Meeting when action is taken to change the date, time, or location of a scheduled Regular Board Meeting shall be given notice of the changed meeting date, time or place not less than five (5) days before the date of the changed meeting date.
  4. The President may, for good cause and pursuant to a policy established by the Board, change the date, time or place of a Regular Board Meeting by giving not less than five (5) days' notice thereof to all Directors.
  5. Written notice of the date, time and place of any Special Board Meeting called by the Board, President or Directors shall be given by or at the direction of the Secretary to each Director at least five (5) days before the Special Board Meeting, either personally or by mail, or upon a default in duty by the Secretary, by the President or the Directors calling the meeting.
  6. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Director at his address as it appears on the Membership List of the Cooperative, with postage thereon prepaid.
- B. *Purpose of Meeting Not Required.* Neither the business to be transacted at, nor the purpose of, a Regular Board Meeting or a Special Board Meeting need be specified in the notice of the meeting.

### **Section 5.05 - Waiver of Notice.**

*A. Written Waiver.*

1. A written waiver of notice of a Board Meeting signed and delivered by a Director to the Cooperative and filed with the Board Meeting minutes shall be deemed the equivalent of giving notice pursuant to Section 5.04 of these Bylaws.
2. Unless otherwise required by the Governing Documents, neither the business to be transacted at, nor the purpose of, a Board Meeting must be specified in the waiver of notice of the meeting.

*B. Waiver by Attendance.* Attendance of a Director at a Board Meeting shall constitute a waiver of notice of the meeting, unless the attending Director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of business at the meeting because the meeting was not lawfully called or convened.

**Section 5.06 - Board Meeting Quorum.**

*A. Majority in Office.*

1. A majority of the Directors in office immediately before a Board Meeting begins shall constitute a quorum for the transaction of business at that meeting (**Director Quorum**).
2. If a Director Quorum is present when a matter is voted or acted upon at a Board Meeting then the acts of a majority of the Directors present shall be the acts of the Board, unless the vote of a greater number of Directors is required.

*B. Adjournment for Lack of Director Quorum.* In the absence of a Director Quorum, a majority of the Directors present at a Board Meeting may adjourn the meeting from time to time, notice of which adjourned meeting shall be provided by the Secretary to absent Directors.

*C. Effect of Interested Director.*

1. 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.
2. Interested Directors may be counted in determining the presence of a Director Quorum only at a meeting of the Board which authorizes a contract or transaction in accordance with Section 6.12 of these Bylaws.

**Section 5.07 - Voting Rights of Directors.**

*A.* Every Director shall be entitled to one vote.

*B.* If the Law or Governing Documents requires the presence of, or vote or other action by, a specified percentage of Directors, such requirement shall be satisfied by the presence of, or vote or other action by, Directors entitled to cast such specified percentage of the votes which all Directors are entitled to cast.

**Section 5.08 - Board Action By Written Consent.**

*A.* Without a Board Meeting, the Board may take an action required or permitted to be taken at a Board Meeting if the action is taken by all Directors and evidenced by one or more written consents:

1. describing the action taken;
2. signed by each Director; and
3. filed with the Secretary of the Cooperative to file with the Board Meeting minutes (**Director Written Consent**).

*B.* Unless a different effective date is provided in the Director Written Consent, action taken by Director Written Consent is effective when the last Director signs the Director Written Consent.

*C.* A Director Written Consent has the effect of, and may be described as, a Board Meeting vote.

**Section 5.09 - Committees.**

*A. Board Executive Committee.*

1. Except as otherwise provided by Law or the Governing Documents, an executive committee consisting of the President, Vice President, Secretary and Treasurer of the

Board (**Board Executive Committee**) may only exercise Board authority regarding a matter:

- a. when it is impracticable for the Board to timely meet to consider a matter, or the Board by resolution has specifically delegated Board authority to it concerning such matter; and
  - b. it makes a full report to the Board concerning the Board authority it exercised regarding the matter at the next Board Meeting following its exercise of such Board authority.
2. The Board Executive Committee may make recommendations to the Board but shall not exercise Board authority about the following matters:
- a. actions requiring Member approval;
  - b. election, appointment, disqualification, or removal of a Director, or filling a Director vacancy;
  - c. adoption, amendment or repeal of these Bylaws;
  - d. amendment or repeal of any Board resolution that by its terms is amendable or repealable only by the Board;
  - e. taking action on a matter committed by these Bylaws or Board resolution to another committee;
  - f. retirement and payment of Capital Credits; and
  - g. approval of the Cooperative's dissolution or merger, or the sale, pledge, or Transfer of all, or substantially all, of the Cooperative Assets.

**B. Board Audit Committee.**

1. The Board shall establish a **"Board Audit Committee,"** which shall be responsible:
    - a. to make recommendations to the Board regarding the selection and compensation of any registered public accounting firm retained by the Cooperative for the purposes of preparing and issuing audit reports and performing other related work;
    - b. for oversight of the work of any registered public accounting firm hired by the Cooperative for such purposes, including:
      - i. resolving disagreements between management and the auditor regarding financial reporting, and
      - ii. directly receiving reports submitted by the registered public accounting firm to the Cooperative; and
    - c. establishing procedures for:
      - i. the receipt, retention, and treatment of complaints received by the Cooperative about accounting, internal accounting controls, or auditing matters, and
      - ii. the confidential, anonymous submission by employees of the Cooperative of concerns regarding questionable accounting or auditing matters.
  2. The members of the Board Audit Committee must:
    - a. be Directors;
    - b. not accept any consulting, advisory, or other compensation from the Cooperative other than in the capacity as a Member, Director, or member of a Board Committee; and
    - c. not exercise Board authority.
  3. The Board Audit Committee may engage independent counsel and other advisers, as it determines necessary to carry out its duties. The Cooperative shall provide appropriate funding to compensate any advisers employed by the Board Audit Committee.
- c. **Other Committees.** The Board, by resolution adopted by a majority of a Director Quorum, may establish other committees:
1. of the Board (*in addition to the Executive Committee and Audit Committee*), which shall include two or more Directors appointed by the President, (collectively, the **Board Committees**); and
  2. of volunteer Members (*in addition to the C&E Committee*) to which the President shall appoint at least one Director to serve as a liaison to the Board (collectively, the **Member Committees**).
- D. A Board or Member Committee shall have such power and authority as provided in the Bylaw or Board resolution establishing the committee. Except as otherwise provided in these Bylaws, Board or Member Committees and the Directors and Members serving on such committees shall:
1. serve at the pleasure of the Board; and
  2. not exercise Board authority.

- E. Bylaw Provisions pertaining to Board Meetings, the conduct of Board Meetings, waiver of Board Meeting notice, Director Written Consent, Director Quorum and voting shall apply to all Board Committees and the Directors serving on Board Committees.
- F. Except as otherwise provided in these Bylaws:
  - 1. one or more Directors may be appointed as alternate members of a Board Committee to replace Directors who are absent or disqualified from acting at a Board Committee meeting; and
  - 2. If no Director is appointed to serve as an alternate member of a Board Committee, then those Directors present at a Board Committee meeting who are not disqualified from acting at that meeting, whether or not they constitute a quorum, may by unanimous vote appoint another Director to act at the Board Committee meeting in the place of the absent or disqualified Member.

## **ARTICLE VI -- Cooperative Officers**

### **Section 6.01 - Required Officers.**

- A. The Cooperative shall elect the following ***“Required Officers”***:
  - 1. President;
  - 2. Vice President;
  - 3. Secretary; and
  - 4. Treasurer.

### **Section 6.02 - Election and Term of Office.**

- A. The Required Officers shall be elected from the Board by the affirmative vote of a majority of a Director Quorum, by secret ballot, without prior nomination, at the first Regular Board Meeting held after each Annual Member Meeting, or as soon after such Annual Member Meeting as reasonably possible or convenient.
- B. Subject to his prior removal by the Board, each Required Officer shall hold office until his qualified successor shall have been duly elected and qualified.

### **Section 6.03 – The President:**

- A. shall preside at all Board Meetings and, unless determined otherwise by the Board, at all Member Meetings;
- B. shall, with the Secretary, sign deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized to be signed by the Board or the Members, except in cases in which the signing thereof shall have been expressly delegated by the Board or by these Bylaws to another Cooperative Official, or shall by Law or the Governing Documents be required otherwise to be signed; and
- C. in general, shall perform all the duties, have all other responsibilities, and exercise all other authority incident to the office of President, and such other duties, responsibilities and authority as the Board from time to time may prescribe.

### **Section 6.04 – The Vice President:** Unless otherwise determined by the Board or required by the Governing Documents, the Vice President:

- A. shall perform the duties, and have the powers, of the President upon the President's death, absence or inability to act; and
- B. shall perform such other duties, have such other responsibilities, and exercise such other authority as from time to time may be assigned by the Board.

### **Section 6.05 – The Secretary:**

- A. shall be responsible for preparation of the minutes of Member and Board Meetings;
- B. shall keep and maintain on file complete and accurate copies of the Articles and Bylaws and all

amendments thereto, which copies shall at all times be available for inspection by any Member, and shall furnish a copy of the Bylaws and all amendments thereto to each Member at the expense of the Cooperative;

- C. shall maintain the Membership List;
- D. may sign, in attestation of the signature of any Cooperative Officer or Cooperative Official designated by the Board to sign Cooperative contracts or other instruments, and affix the corporate seal of the Cooperative to all such documents, the execution of which, on behalf of the Cooperative, shall have been authorized by resolution of the Board;
- E. shall be responsible for the safekeeping of corporate books and records of the Cooperative and shall authenticate the same;
- F. shall give notices of Member and Board Meetings as provided in these Bylaws or as otherwise required by Law;
- G. shall receive Director Removal Petitions from Removing Members pursuant to Section 4.10 of these Bylaws and give notice to Members of the Member Meeting called by the Board pursuant thereto after first determining that the petition complies with the following requirements:
  - 1. all invalid signatures (*e.g., duplicate signatures, signatures of Non-Members*) have been eliminated,
  - 2. the number of remaining signatures constitute at least ten (10%) percent of the Members of the Cooperative as of the date the petition was received, and
  - 3. the time between the first signature and the date when the petition was received by the Cooperative is not greater than sixty (60) days; and
- H. in general, shall perform all other duties, have all other responsibilities, and exercise all other authority incident to the office of Secretary, and such other duties, responsibilities and authority as the Board may from time to time prescribe.

#### **Section 6.06 – The Treasurer:**

- A. shall have responsibility for the custody of all funds and securities of the Cooperative;
- B. shall receive and issue receipts for all monies due and payable to the Cooperative from any source whatsoever, and shall deposit or invest all such monies in the name of the Cooperative in such bank or banks or in such financial institutions or securities as shall be selected in accordance with the Bylaws; and
- C. in general, shall perform all other duties, have all other responsibilities, and exercise all other authority incident to the office of Treasurer, and such other duties, responsibilities and authority as the Board may from time to time prescribe.

#### **Section 6.07 - CEO/General Manager**

- A. The Board may employ a **“CEO/General Manager”** to manage the business affairs and operations of the Cooperative.
- B. A CEO/General Manager hired by the Board shall perform such duties, exercise such responsibilities and have such authority as are conferred upon him by the Board.
- C. To better assure that the business affairs and operations of the Cooperative are being conducted in a businesslike and efficient manner, consistent with the Cooperative's Purpose, the Board shall periodically and systematically appraise the performance of the CEO/General Manager.
- D. The CEO/General Manager shall not be required to be a member of the Cooperative.

#### **Section 6.08 - Other Officers**

- A. The Board may elect or appoint **“Other Officers.”**
- B. Though the same individual may simultaneously serve as more than one Other Officer, no individual serving as more than one Other Officer may execute, acknowledge, or verify a document in more than one capacity.
- C. Other Officers:
  - 1. may be Directors, Cooperative employees or other individuals;



2. must be elected or appointed by the affirmative vote of a majority of a Director Quorum;
3. may be elected by secret Written Ballot and without prior nomination;
4. may assist Required Officers; and
5. shall perform all duties, shall have all responsibilities, and may exercise all authority, prescribed by the Board.

#### **Section 6.09 - Cooperative Officer Resignation and Removal**

- A. *Resignation.* At any time, a Required Officer, CEO/General Manager or Other Officer (collectively, **Cooperative Officers**) may resign by delivering an oral or written resignation to the Cooperative or Board.
1. Except as a later effective date is otherwise provided in the resignation, a Cooperative Officer resignation is effective when received by the Cooperative or Board.
  2. If a Cooperative Officer specifies a resignation effective at a later date, the Board may fill the vacancy before the later effective date, but the successor Cooperative Officer may not take office until the later effective date unless otherwise provided in these Bylaws.
- B. *Removal.* The Board may at any time remove a Cooperative Officer when it determines the best interests of the Cooperative will be served thereby.

**Section 6.10 - Vacancy in Elected Office.** A vacancy in any Required Office, whether created by resignation from the Required Office, resignation or removal from the Board, sickness or death, shall be filled by the Board for the unexpired portion of the term of the Required Officer.

#### **Section 6.11 - Cooperative Officer Standard of Care**

- A. Except as otherwise provided in these Bylaws, a Cooperative Officer shall perform his duties as such Cooperative Officer:
1. in good faith;
  2. in a manner he reasonably believes to be in the best interests of the Cooperative; and
  3. with such care, including reasonable inquiry, skill and diligence, as an individual of ordinary prudence would use under similar circumstances.
- B. A Cooperative Officer who performs his duties in accordance with subsection A above shall not be liable by reason of having been a Cooperative Officer.

#### **Section 6.12 - Conflict of Interest Transaction**

- A. A **“Conflict of Interest Transaction”** is a contract or other transaction with the Cooperative in which a Cooperative Officer has a direct or indirect interest. A Cooperative Officer 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 Cooperative has a material interest or is a general partner; or
  2. of which the Cooperative Officer is a director, officer, or trustee.
- B. Regardless of the presence or vote of a Cooperative Officer interested in such 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 interest of the Cooperative Officer are:
1. disclosed or known to the Board or Board Committee, and a majority of more than one Director or Board Committee member with no interest in the Conflict of Interest Transaction votes to approve such transaction; or
  2. disclosed or known to the Members, and the majority of Members who vote to approve the transaction does not include Members voting under the control of the Cooperative Officer interested in the Conflict of Interest Transaction.
- C. A Conflict of Interest Transaction that is fair when entered into:
1. is not voidable; or
  2. cannot be asserted as a basis for imposing liability on a Cooperative Officer interested in the Conflict of Interest Transaction.



**Section 6.13 - Bonds of Cooperative Officers.** At the Cooperative's expense, the Cooperative may purchase a bond covering any Cooperative Officer.

**Section 6.14 - Cooperative Officer Compensation.** Except as otherwise provided in Section 4.12 of these Bylaws or other Bylaw Provisions, the Cooperative may reasonably compensate, reimburse or provide benefits to a Cooperative Officer.

**Section 6.15 - Reports.** Cooperative Officers shall submit such reports at each Annual Member Meeting as shall be required by the Governing Documents or the Board.

## **ARTICLE VII -- Cooperative Operation**

**Section 7.01 - Nonprofit and Cooperative Operation.** The Cooperative:

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

**Section 7.02 - Allocating Capital Credits.** The Cooperative shall allocate Capital Credits as provided in this Bylaw. The Cooperative must allocate Capital Credits in the Patron's name as shown in the Cooperative's records, regardless of the Patron's marital status.

A. 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 and timely paid for by the Patron, 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.

B. Allocating Losses.

1. Operating Losses. For each Cooperative Service Provided during a fiscal year, the Cooperative shall either:

- a. 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 Losses from Providing the Cooperative Service during the fiscal year; or
- b. offset the Cooperative's Operating Losses from Providing the Cooperative Service during the fiscal year:
  - (i.) against the Cooperative's Operating Earnings from providing the Cooperative Service during the last fiscal year or the next fiscal year, or
  - (ii.) 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 years, and third against the Cooperative's non-Operating Earnings during any future fiscal years.

- **"Operating Losses"** 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 that fiscal year, all as determined under federal cooperative tax law.

2. Non-Operating Losses. For each fiscal year, the Cooperative shall either:

- a. 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 nonoperating loss; or
- b. offset the Cooperative's nonoperating loss against the Cooperative's non-Operating

Earnings during any fiscal years.

- **“Non-Operating Loss”** means the amount by which the Cooperative's nonoperating expenses during a fiscal year exceed the Cooperative's non-operating revenues during the fiscal year.

C. Capital Credits.

1. For each amount allocated to a Patron, the Patron shall contribute a corresponding amount to the Cooperative as capital.
2. Except as otherwise permitted by Law, the Cooperative must credit all capital contributions from a Patron to a capital account for the Patron.
3. The Cooperative shall maintain books and records clearly reflecting the capital contributed by each Patron.
4. 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 pre-existing legal obligation and the Patron contributed the corresponding amount to the Cooperative as capital.
5. The term **“Capital Credits”** means the amounts allocated to a Patron and contributed by the Patron to the Cooperative as capital.
6. Consistent with this Bylaw, the allocation of Capital Credits shall be at the discretion of the Board, which must determine the manner, method, and timing of allocating Capital Credits.
7. The Cooperative may use or invest unretired Capital Credits as determined by the Board.
8. 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.

D. Different and Separate Allocations.

1. As reasonable and fair, the Cooperative may allocate Capital Credits to classes of similarly situated Patrons under different manners, methods, and timing, provided the Cooperative allocates Capital Credits to similarly situated Patrons under the same manner, method, and timing.
2. 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.

E. 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 the surviving Joint Member, or to each surviving Joint Member an equal portion of, the Capital Credits 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 7.03 - Notification of Allocation and Assignment of Capital Credits.

A. Allocation. Within eight and one-half (8½) months after the end of each fiscal year, the Cooperative shall notify each Patron in writing of the stated dollar amount of Capital Credits allocated to the Patron for the preceding fiscal year.

B. Assignment. 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 assignment or transfer must be approved by resolution of the Board or pursuant to Board policy.

**Section 7.04 - 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 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 Retirements. The Cooperative may specially retire and pay some or all Capital Credits allocated:
  1. to an individual Patron or former individual Patron after the death of the individual:
    - a. after receiving a written request from the deceased individual's legal representative, and
    - b. according to the terms and conditions agreed upon by the Cooperative and the deceased individual's legal representative;
  2. to an Entity Patron or former Entity Patron during or after the Entity's dissolution, liquidation or other cessation of existence, or after the Entity's reorganization, transfer, merger, or consolidation:
    - a. after receiving a written request from the Entity or the Entity's legal representative, and
    - b. according to terms and conditions agreed upon by the Cooperative and the Entity or the Entity's legal representative; and
  3. as permitted by Law, to a Person formerly a Patron with a minimal Capital Credit balance according to terms and conditions established in the Cooperative's policy for retirement of Capital Credits.
- C. 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 legal interest, compounded annually, and late payment fees, by reducing the amount of retired Capital Credits paid to the Patron or former Patron by the amount owed to the Cooperative.
- D. Retirement at Board's Discretion.
  1. 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.
  2. 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.
  3. The manner, method, and timing of retiring and paying Capital Credits may be determined only by the Board.
- E. Different and Separate Retirements.
  1. 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.
  2. If the Cooperative has 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 only after the Entity retires and pays the Capital Credits or similar amounts to the Cooperative.
- F. Discounted Payments.
  1. The Cooperative may establish, at the Board's sole discretion, a voluntary program to retire some or all Capital Credits before the time it anticipates normally retiring and paying Capital Credits allocated to Patrons or former Patrons.
  2. If the Board determines that establishing such a voluntary program is in the best interests of the Cooperative, the Cooperative:
    - a. must pay the net present value of the allocated amount of retired Capital Credits agreed upon by the Cooperative and the Patrons or former Patrons; and
    - b. the amount of Capital Credits not paid must be retained in the name of the Patron or

former Patron and paid to the Patron or former Patron upon the Cooperative's dissolution, liquidation, or other cessation of the Cooperative's existence.

- G. Unclaimed Capital Credits. As allowed by Law, the Cooperative may retain Capital Credits retired and paid to a Patron or former Patron, but not claimed by the Patron or former Patron within five (5) years of retirement and payment.

**Section 7.05 - Patron Agreement.** Each Patron and former Patron agrees that:

- A. Capital Credits are not securities under state or federal Law;
- B. 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
- C. As required by Law, each Patron will:
  - 1. report to the appropriate Entity all allocated or retired Capital Credits; and
  - 2. pay the appropriate Entity any tax or similar amount on allocated or retired Capital Credits.

**Section 7.06 - Non-Member Patrons and Non-Member Non-Patrons.** As a condition of Using a Cooperative Service, and except as otherwise provided by the Board:

- A. 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;
- B. 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:
  - 1. be allocated Capital Credits, and
  - 2. be paid retired Capital Credits; and
- C. a Non-Member Non-Patron has none of the rights granted by the Governing Documents to Members.

**Section 7.07 - Reasonable Reserves.**

- A. Notwithstanding any contrary Bylaw Provision, the Cooperative may accumulate and retain amounts exceeding those needed to meet current losses and expenses in order to meet the Cooperative's reasonable needs (**Reasonable Reserves**).
- B. The Cooperative must keep records necessary to determine, at any time, each Patron's rights and interest in Reasonable Reserves.

**ARTICLE VIII -- Indemnification of Cooperative Officials and Representatives**

**Section 8.01 - Third Party Actions.**

- A. The Cooperative may indemnify any individual who was or is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative (*other than an action by or in the right of the Cooperative*) (**Indemnification Proceeding**), by reason of the fact that he is or was a Cooperative Official, or is or was serving as a representative of another Entity at the request of the Cooperative, against expenses (*including attorneys' fees*), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action or proceeding (**Indemnification Expenses**) if the conduct of the individual seeking indemnification meets the "**Indemnification Standard of Conduct**," as follows:
  - 1. he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Cooperative; and
  - 2. with respect to any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.
- B. The termination of any Indemnification Proceeding by judgment, order, settlement or conviction,

or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the Indemnification Party did not comply with the Indemnification Standard of Conduct.

#### **Section 8.02 - Derivative or Corporate Actions.**

- A. Except as otherwise restricted in these Bylaws, the Cooperative may indemnify any individual who was or is a party or is threatened to be made a party to any threatened, pending or completed action by or in the right of the Cooperative to procure a judgment in favor of the Cooperative **(Derivative or Corporate Action)**, by reason of the fact that he is or was a Cooperative Official, or is or was serving as a representative of another Entity at the request of the Cooperative, against Indemnification Expenses incurred by him in connection with the defense or settlement of the action if the conduct of the individual seeking indemnification meets the Indemnification Standard of Conduct.
- B. Indemnification shall not be made under this Bylaw Provision in respect of any claim, issue or matter as to which the individual seeking indemnification has been adjudged to be liable to the Cooperative unless and only to the extent that the Court of Common Pleas of Adams County or the court in which the Derivative or Corporate Action was brought determines upon application that, despite such adjudication of liability but in view of all the circumstances of the case, the individual seeking indemnification is fairly and reasonably entitled to receive those Indemnification Expenses that said Court of Common Pleas or other court deems appropriate.

**Section 8.03 - Mandatory Indemnification.** An individual seeking indemnification by reason of the fact that he is or was a Cooperative Official, or is or was serving as a representative of another Entity at the request of the Cooperative, who has been successful on the merits or otherwise in defense of any Indemnification Proceeding or Derivative or Corporate Action, or in defense of any claim, issue or matter therein, shall be entitled to receive Indemnification Expenses incurred by him in connection therewith.

#### **Section 8.04. Indemnification Procedure.**

- A. Unless ordered by a court, any indemnification under Sections 8.01 or 8.02 of these Bylaws shall be made by the Cooperative only as authorized in that specific case upon a determination that indemnification of the representative is proper in the circumstances because he has met the Indemnification Standard of Conduct.
- B. The Board shall make the determination:
  - 1. by majority vote of a Director Quorum of Disinterested Directors; or
  - 2. if a Director Quorum of Disinterested Directors is not obtainable, or, if obtainable and a majority vote of a Director Quorum of Disinterested Directors so directs, by independent legal counsel in a written opinion; or
  - 3. by such other body as may be provided in these Bylaws; or
  - 4. by the Members.

#### **Section 8.05 - Advancing Indemnification Expenses.**

- A. Indemnification Expenses incurred in defending any action or proceeding referred to in this Bylaw Article may be paid by the Cooperative in advance of the final disposition of the action or proceeding **(Indemnification Advance)** upon receipt of an undertaking by or on behalf of the representative to repay such Indemnification Advance if it is ultimately determined that the representative is not entitled to be indemnified by the Cooperative as authorized in this Bylaw Article or otherwise.
- B. Except as otherwise provided in these Bylaws, Indemnification Advances made under this Bylaw Article shall be authorized by the Board. Section 6.12 of these Bylaws shall not be applicable to Indemnification Advances made under this Bylaw Article.

#### **Section 8.06 - Supplementary Coverage.**

- A. General Rule. Indemnification Expenses and Indemnification Advances provided by or granted



pursuant to this Bylaw Article shall not be deemed exclusive of any other rights to which an individual seeking Indemnification Expenses or Indemnification Advances may be entitled under any other Bylaw Provision, agreement, vote of Members or Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding that office.

1. Section 6.12(B) of these Bylaws shall be applicable to any Bylaw Provision, contract or transaction authorized by the Directors under this Bylaw Article.
  2. The Cooperative may create a fund of any nature, which may, but need not be, under the control of a trustee, or otherwise secure or insure in any manner its indemnification obligations, whether arising under or pursuant to this Bylaw Article or otherwise.
- B. When Indemnification Cannot be Made. Indemnification pursuant to subsection A above shall not be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness.
- C. Grounds. Indemnification pursuant to subsection A above under any other Bylaw Provision, agreement, vote of Members or Directors or otherwise may be granted for any action taken or any failure to take any action and may be made whether or not the Cooperative would have the power to indemnify the individual under any other provision of Law except as provided in this Bylaw Provision and whether or not the indemnified liability arises or arose from any threatened, pending or completed Derivative or Corporate Action.

**Section 8.07 - Insurance.** Unless otherwise restricted in these Bylaws, the Cooperative shall have the power to purchase and maintain insurance on behalf of any individual who is or was a Cooperative Official or is or was serving as a representative of another Entity at the request of the Cooperative, against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the Cooperative would have the power to indemnify him against that liability under the Bylaw Provisions contained in this Article.

**Section 8.08 - Application to Employee Benefit Plans.** For purposes of this Bylaw Article:

- A. The reference in this Bylaw Article to “another Entity” shall include employee benefit plans and the reference to “serving at the request of the Cooperative” shall include any service as a representative of the Cooperative that imposes duties or involves services by the Cooperative with respect to an employee benefit plan, its participants or beneficiaries.
- B. Excise taxes assessed on an individual with respect to any employee benefit plan pursuant to applicable law shall be deemed to be fines.
- C. Action with respect to an employee benefit plan taken or omitted in good faith by a Cooperative Official in a manner he reasonably believed to be in the interest of the participants and beneficiaries of the plan shall be deemed to be action in a manner that is not opposed to the best interests of the Cooperative.

**Section 8.09 - Duration and Extent of Coverage.** Indemnification Expenses and Indemnification Advances provided by or granted pursuant to the Bylaw Provisions contained in this Article shall, unless otherwise provided when authorized or ratified, continue as to an individual who has ceased to be a Cooperative Official, and shall accrue to the benefit of the heirs and personal representatives of that individual.

## **ARTICLE IX -- Disposition of Cooperative Assets**

**Section 9.01 - Transfer of Cooperative Assets.**

- A. Unless it complies with Section 9.01(B) below, the Cooperative shall not sell, lease, lease-sell, exchange, dispose of, convert or otherwise transfer (collectively, **Transfer**) all or substantially all its Assets except:
  1. to secure indebtedness;
  2. pursuant to condemnation or threat of condemnation;
  3. pursuant to an existing legal obligation;
  4. in connection with a consolidation or merger pursuant to Section 9.02 of these Bylaws;



5. its ownership in an Entity;
  6. to an Entity operating on a cooperative basis and Providing a Cooperative Service;
  7. to a Cooperative Subsidiary;
  8. those that in the judgment of the Board are no longer necessary or useful in operating and maintaining the Cooperative's system and facilities and in any one year are valued in the aggregate at not more than ten (10%) percent of the value of Cooperative Assets at the time of the Transfer; or
  9. those acquired for resale to Members.
- B. Except as otherwise provided in these Bylaws, the Cooperative may not Transfer all or substantially all of its Assets unless:
1. the Board appoints, at the expense of the proposed Transferee, three (3) independent appraisers, each of whom, within a reasonable time of appointment, evaluates and renders an appraisal valuing the Cooperative Assets specified in the proposed Transfer (**Appraisal**);
  2. the proposed Transferee provides to the Cooperative any information requested by the Cooperative;
  3. the Board provides a copy of the proposed **"Plan of Asset Transfer"** to all other domestic electric cooperative corporations operating in the Commonwealth of Pennsylvania, with a written notice giving each of them not less than thirty (30) days after they receive such notice and copy of the proposed Plan to submit competing proposals, said written notice to specify the actual minimum period within which such competing proposals must be submitted;
  4. the Board has adopted a resolution for consideration of and action by the Members at a Special Member Meeting to be duly convened:
    - a. recommending either consideration of a proposed Plan of Asset Transfer, detailing in the resolution the terms and conditions of such Plan, or
    - b. authorizing the Board to fix any or all of the terms and conditions of a Plan of Asset Transfer, including the consideration to be received by the Cooperative therefor;
  5. notice of the Special Member Meeting is given within thirty (30) days after expiration of the notice period set by the Board under subsection B(3) above, stating:
    - a. that one of the purposes of the meeting shall be to consider and take action on a proposed Plan of Asset Transfer, and
    - b. Providing detailed explanations for those proposed Plans of Asset Transfer presented for consideration and action by the Members;
  6. a Plan of Asset Transfer presented for consideration and action by the Members is approved by the affirmative vote of two-thirds (b) of the Total Membership; and
  7. the Cooperative allocates to the Members as Capital Credits the excess consideration received for Transferred Assets above the amount paid by the Cooperative for those Assets, in proportion to the value or quantity of Cooperative Services Used by the Members during the period in which the Cooperative owned the Cooperative Assets Transferred.
- C. After a Plan of Asset Transfer has been authorized by the Members, the Board, in its discretion, may abandon such proposed Transfer, subject to the rights of third parties under any contracts relating thereto, without further action or approval by the Members.
- D. Transfers subject to this Bylaw Provision include:
1. any conversion of the Cooperative to another business form or Entity; and
  2. merger, consolidation or division with another Entity not a Pennsylvania electric cooperative corporation.

## Section 9.02 - Merger, Consolidation or Division.

- A. The Cooperative may consolidate with or merge into one or more Pennsylvania electric cooperative corporations, or may divide, but only if:
1. all surviving or resulting corporations are Pennsylvania electric cooperative corporations; and
  2. the Board complies with the provisions of Section 9.02 (B) below.
- B. The Board may approve any proposed plan for the Cooperative to consolidate with or merge into, one or more Pennsylvania electric cooperative corporations, or to divide (**Plan of Merger, Consolidation or Division**) by adopting a resolution stating:

1. the terms and conditions of the proposed consolidation, merger or division;
  2. the name(s) of each Entity consolidating with or merging into the Cooperative;
  3. the name(s) of the new or surviving consolidated, merged or divided Entity or Entities (**New Entity or Entities**);
  4. how the membership or ownership rights of the members of each existing Entity to be consolidated, merged or divided are proposed to be converted into memberships or ownership rights in, or payments from, the New Entity or Entities;
  5. the number of directors for each surviving or resulting New Entity or Entities, which must equal or exceed five (5);
  6. the date of the New Entity's or Entities' annual meeting(s);
  7. the names of the directors for New Entity or Entities who will serve until the first annual meeting(s) of New Entity or Entities; and
  8. such other information as may be required by Law.
- C. The Board shall send Members written notice of a Special Member Meeting to be convened for the purpose of considering and taking action on the proposed Plan of Consolidation, Merger or Division.
1. A copy of the Board resolution approving such Plan shall be included with such written notice.
  2. If material is included with such written notice soliciting Member approval of the proposed Plan, it must be accompanied either by a copy of the Plan or a summary thereof and copies of the articles of incorporation and bylaws of each surviving or resulting New Entity or Entities.
- D. After Board approval, such written notice to Members and the convening of such Special Member Meeting, adoption by the Members of the proposed Plan of Consolidation, Merger or Division shall require the affirmative vote of two-thirds (b) of the Total Membership.
- E. After a Plan of Consolidation, Merger or Division has been approved by the Members, the Board, at its discretion but before the articles of consolidation, merger or division are filed, may abandon the Plan, subject to the rights of third parties under any contracts relating thereto, without further action or approval by the Members.

### **Section 9.03 - Dissolution.**

- A. The Cooperative may dissolve only when authorized by the affirmative vote of two-thirds (b) of its Total Membership.
- B. Any Cooperative Assets remaining after all liabilities or obligations of the Cooperative have been satisfied or discharged upon dissolution shall be distributed in accordance with Section 2.13 of these Bylaws.

## **ARTICLE X -- Miscellaneous**

**Section 10.01 - Rules of Order.** Except as the Board at any time otherwise provides and as otherwise provided in the Governing Documents, including these Bylaws, the Current Edition of *Robert's Rules of Order Newly Revised* governs all:

- A. Member Meetings;
- B. Board Meetings;
- C. Member Committee Meetings; and
- D. Board Committee Meetings.

**Section 10.02 - Seal.** Any corporate seal of the Cooperative shall have inscribed thereon the name of the Cooperative and the words "*Corporate Seal, Pennsylvania.*"

**Section 10.03 - Fiscal Year.** The Board may determine and modify the fiscal year of the Cooperative. Unless otherwise provided by the Board, the Cooperative's fiscal year shall correspond to the calendar year.

**Section 10.04 - Governing Law.** These Bylaws shall be governed by, and interpreted under, the laws of the Commonwealth of Pennsylvania.

**Section 10.05 - Titles and Headings.** Titles and headings of the Articles, Sections, and subsections of these Bylaws are for convenience and reference and do not affect the interpretation of a Bylaw Article, Section, or subsection.

**Section 10.06 - Partial Invalidity.** When reasonably possible, every Bylaw article, section, subsection, paragraph, sentence, clause, or provision (**Bylaw Provision**) must be interpreted in a manner so as to make that Bylaw Provision 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 10.07 - Cumulative Remedies.** The rights and remedies provided in these Bylaws are cumulative. The assertion by the Cooperative or a Member of any right or remedy provided in these Bylaws does not preclude the Cooperative or that Member from asserting other rights or remedies provided in these Bylaws.

**Section 10.08 - Successors and Assigns.**

A. 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 accrue 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.

B. The binding nature of the duties, obligations, and liabilities imposed by these Bylaws upon the successors and assigns of the Cooperative or of a Member does not relieve the Cooperative or that Member of the duties, obligations, and liabilities imposed by these Bylaws.

**Section 10.09 - 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 10.10 - 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.

**Section 10.11 - Electronic Documents.**

A. 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 authorized 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 gives or confirms this consent and agreement;
2. an Electronic Document sent to or received from a 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.

- B. 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.

## **ARTICLE XI -- Amendment of Bylaws**

**Section 11.01 - Board Action Required.** Except as otherwise provided in these Bylaws, these Bylaws may be adopted, amended, or repealed (**Bylaw Amendment**) only by the affirmative vote of two-thirds (b) of a Director Quorum at a Board Meeting.

**Section 11.02 - Notice of Bylaw Amendment.** Notice of a Board Meeting at which Directors will consider a proposed Bylaw Amendment must:

- A. state that the purpose, or one of the purposes, of the Board Meeting is to consider the proposed Bylaw Amendment; and
- B. contain, or be accompanied by, a copy or summary of the proposed Bylaw Amendment.

**Section 11.03 - Amendment After Notice.** After notice of a proposed Bylaw Amendment, the proposed Bylaw Amendment may not be amended to either enlarge the scope of the proposed Amendment or to propose a new Amendment.

**Section 11.04 - Date Amendment Effective.** Except as otherwise provided in a Bylaw Amendment, the Amendment is effective as of the date of the next Member or Board Meeting after the vote approving the Amendment.

**Section 11.05 - Notification of Members.** The Cooperative must notify Members of Amended Bylaws.

**ARTICLES OF INCORPORATION**

**Approved and filed in the Department of State on August 21, 1940.**

**ARTICLES OF INCORPORATION**  
**OF**  
**ADAMS ELECTRIC COOPERATIVE, INC.**

To the Department of State:  
Commonwealth of Pennsylvania:

In compliance with the requirements of the "Electric Cooperative Corporation Act", approved June 21, 1937, the undersigned, all of whom are natural persons of the age of twenty-one years or more and residents of this Commonwealth, desiring that they may be incorporated as an electric cooperative corporation, do hereby certify:

**ARTICLE I**

The name of the corporation is ADAMS ELECTRIC COOPERATIVE, INC.

**ARTICLE II**

The purpose for which the corporation is organized is to engage in rural electrification by any one or more of the following methods:

1. The furnishing of electric energy to members in rural areas who are not receiving central station services;
2. Assisting in the wiring of the premises of members in rural areas, or the acquisition, supply or installation of electrical or plumbing equipment therein; and,
3. The furnishing of electric energy, wiring facilities, electrical or plumbing equipment or services to any other corporation organized under the "Electric Cooperative Corporation Act" or to the members thereof.

**ARTICLE III**

The names and addresses of the incorporators who shall serve as directors and manage the affairs of the corporation until its first annual meeting of the members or until their successors are elected and qualified are as follows:

<u>Name</u>	<u>Address</u>
Carl Black	Gardners, R. D., Adams County, Pa.
Cecil Dunbar	Fairfield, R. D., Penna.
A. C. Keefer	McKnightstown, Penna.
Ray Kohler	New Oxford, R. D., Penna.
C. E. Rohrbaugh	Fairfield, R. D., Penna.
Howard S. Schwartz	Gettysburg, R. D., Penna.
Edgar J. Smith	York Springs, R. D., Penna.
Mervin I. Weikert	Gettysburg, R. D., Penna.
Roy C. Wolf	Gettysburg, R. D., Penna.

**ARTICLE IV**

The number of directors to be elected at annual meetings of the members is nine (9).

**ARTICLE V**

The address of the principal office of the corporation shall be North Washington Street, Gettysburg, County of Adams, Commonwealth of Pennsylvania, and the name and address of its agent upon whom process may be served is G. Marion Stambaugh, North Washington Street, Gettysburg, Adams County, Commonwealth of Pennsylvania.



## **ARTICLE VI**

The duration of the corporation is perpetual.

## **ARTICLE VII**

Section 1. Any person, firm, corporation or body politic in a rural area proposed to be served by the corporation, who or which is not receiving central station service, may become a member of the corporation by:

- (a) paying the membership fee specified in the bylaws of the corporation;
- (b) agreeing to purchase from the corporation electric energy as specified in the bylaws of the corporation; and
- (c) agreeing to comply with and be bound by these articles of incorporation and the bylaws of the corporation and any amendments thereto and such rules and regulations as may from time to time be adopted by the Board of Directors;

provided, however, that no person, firm, corporation or body politic shall become a member unless and until he or it has been accepted for membership by the Board of Directors or by the members of the corporation.

Section 2. The bylaws of the corporation may fix other terms and conditions upon which persons shall be admitted to and retain membership in the corporation not inconsistent with these articles of incorporation or the act under which the corporation is organized.

## **ARTICLE VIII**

Section 1. The private property of the members of the corporation shall be exempt from execution for the debts of the corporation and no member shall be individually liable or responsible for any debts or liabilities of the corporation.

Section 2. The Board of Directors shall have the power to make such rules and regulations not inconsistent with law, these articles of incorporation or the bylaws of the corporation as it may deem advisable for the management, administration and regulation of the business and affairs of the corporation.

Section 3. As long as the total number of members does not exceed one thousand (1,000), at least fifteen per centum (15%) of the total number present in person or represented by proxy shall constitute a quorum for the transaction of business at all meeting of the members, provided at least five per centum (5%) of the total number of members are present in person. In case the total number of members shall exceed one thousand (1,000), then at least one hundred fifty (150) of the members present in person or represented by proxy shall constitute a quorum for the transaction of business at all meetings of the members. If less than a quorum is present at any meeting, a majority of those present in person or represented by proxy may adjourn the meeting from time to time without further notice.

IN WITNESS WHEREOF the incorporators have hereunto signed their names this 16th day of August, A.D., 1940.

*/s/ Carl Black*

*/s/ Cecil Dunbar*

*/s/ A. C. Keefer*

*/s/ Ray Kohler*

*/s/ C. E. Rohrbaugh*

*/s/ Howard S. Schwartz*

*/s/ Edgar J. Smith*

*/s/ Mervin I. Weikert*

*/s/ Roy C. Wolf*

COMMONWEALTH OF PENNSYLVANIA

(ss: COUNTY OF ADAMS)

Before me, a Notary Public in and for the county aforesaid, personally came the above named Carl Black, Cecil Dunbar, A. C. Keefer, Ray Kohler, C. E. Rohrbaugh, Howard S. Schwartz, Edgar J. Smith, Mervin I. Weikert and Roy C. Wolf who duly acknowledged the foregoing instrument to be their act and deed for the purposes therein specified.

Witness my hand and seal of office the 16th day of August, A.D., 1940.

*/s/ Mary Ramer*

Notary Public - Gettysburg, PA.

My Comm. Expires March 5, 1941

(SEAL)

**Approved and filed in the Department of State on the 21st day of August, A.D., 1940.**

*/s/ Gene D. Smith*

Deputy Secretary of the Commonwealth

Charter Bk. No. 385 Page 36