

**RESTATED BYLAWS  
OF  
NORVAL ELECTRIC COOPERATIVE, INC.**

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## **ARTICLE I. MEMBERSHIP**

### **Section 1.1-Eligibility**

Any person, firm, association, corporation, limited liability entity, partnership, or body politic shall become a member of NorVal Electric Cooperative, Inc. (Cooperative) upon receipt of retail energy services from the Cooperative. By acceptance or use of any such services provided by the Cooperative, each person or entity consents to being admitted as a member of the Cooperative and agrees to:

- a. comply with and be bound by the Articles of Incorporation and Bylaws of the Cooperative and any rules, regulations, and policies adopted by the Board of Directors (herein "Board");
- b. to purchase retail energy services from the Cooperative as an end user of such services, in accordance with the rates, terms, and conditions specified by the Cooperative; and membership shall terminate upon disconnection or cessation of such services; and
- c. provide at no charge to the Cooperative such reasonable grants of easements and rights-of-way on, over, under, and across all lands owned, leased, or otherwise controlled by the member, and in accordance with such reasonable terms and conditions as the Cooperative requires for purposes of:
  1. furnishing energy services to such member and to other members;
  2. construction, operation, maintenance, and relocation of the Cooperative's facilities; and
  3. satisfaction or facilitation of any obligation incurred or right granted by the Cooperative to subsidiaries or affiliated entities regarding the use of the Cooperative's property, including any easements or rights-of-way hereunder.

Purchasers of the Cooperative's services at wholesale rates or otherwise for resale shall not be eligible for membership or patronage credits with respect to such purchased services.

Persons or entities receiving services on a contract basis may waive the benefits of membership, including any membership right to vote or to accumulate patronage or capital credits, on written forms to be provided by the Cooperative or under the terms of the contract but such persons or entities waiving the benefits of membership shall remain subject to the member obligations of these Bylaws, including the provisions of this Section, and failure to comply with any of the member obligations may result in termination of services by the Cooperative to the person or entity.

### **Section 1.2-Termination of Membership**

The Board may, by the affirmative vote of not less than two-thirds (2/3) of all the directors, expel any member who fails to comply with any of the provisions of the Articles of Incorporation and

Bylaws of the Cooperative or any rules, regulations, or policies adopted by the Board, but only if such member has been given written notice by the Cooperative that such failure makes the member liable to expulsion and such failure has continued for at least ten (10) days after such notice was given.

If a member fails or ceases to receive retail energy services from the Cooperative, or upon the withdrawal, death, cessation of existence, or expulsion of a member, the membership of such member shall terminate. Termination of membership in any manner does not release a member or such member's estate from any debts and obligations due the Cooperative, including but not limited to unpaid charges for services, facilities extension, construction charges, and unpaid interest on any such amounts at the rate from time to time established by the Board.

### **Section 1.3-Definitions and Classifications**

The Cooperative may have one or more classes of members in order to recognize differences in contribution to margin of different classes. If the Board establishes more than one class of membership, it shall determine the definitions, types, qualifications, and rights of each class and make this information available to the membership.

No member may hold more than one (1) membership of each class in the Cooperative. Membership in the Cooperative shall be non-transferable, except as provided for in these Bylaws.

Each time-sharing or interval ownership premise is considered as a single member. The corporation, partnership, or individual owning or in control of the property will be deemed to hold the membership.

Memberships will be freely transferable on the books of the Cooperative between any persons or participants in the same household or legal entity, upon request of the persons or the entity in writing.

Up to two (2) natural persons may apply for a joint membership and, subject to their compliance with the requirements of Section 1.1 of these Bylaws, may be accepted for such membership. The term "member" as used in these bylaws includes a husband and wife holding a joint membership and any provisions relating to the rights and liabilities of membership apply equally with respect to the holders of a joint membership. Without limiting the generality of the foregoing, the effect of the following actions by or regarding the holders or participants in a joint membership is as follows:

- a. the presence at a meeting of either participant in a joint membership is regarded as the presence of the joint member and constitutes a joint waiver of notice of the meeting;
- b. the vote of either participant, either separately or jointly, constitutes the vote of the joint membership;
- c. a waiver of notice signed by either participant in a joint membership constitutes a joint waiver;
- d. notice to either participant in a joint membership constitutes notice to all;
- e. expulsion of either participant in a joint membership terminates the joint

- membership;
- f. withdrawal of either participant in a joint membership terminates the joint membership;
  - g. either participant in a joint membership may be elected or appointed as a director, provided that the participant so elected meets the qualifications for such office, but only one (1) participant in a joint membership may be elected, appointed, or serve as a director at a time;
  - h. upon the death of either person who is a participant in a joint membership, the joint membership shall terminate subject to the retirement of capital provisions of Article VIII of these Bylaws.

#### **Section 1.4-Purchase of Services**

Each person who applies for membership shall subscribe to one or more retail energy services of the Cooperative as soon as service becomes available. The member shall pay for such service monthly in accordance with rates established in tariffs or rate schedules as fixed by the Board. It is expressly understood that amounts in excess of cost received by the Cooperative for all retail energy services are furnished by members as capital from the moment of receipt, and each member shall be credited with the capital so furnished as provided in Article VIII of these Bylaws. However, the Cooperative is not obligated to furnish such credits for services, which are not billed and collected by the Cooperative, even when such services are partially rendered over the facilities of the Cooperative. Each member shall pay the above amounts owed to the Cooperative as and when the same shall become due and payable.

## **ARTICLE II. RIGHTS AND LIABILITIES OF THE COOPERATIVE AND THE MEMBERS**

#### **Section 2.1-Service Obligations**

The Cooperative will use reasonable diligence to furnish adequate and dependable services, but it cannot and does not guarantee uninterrupted services, nor will it always be able to provide every service desired by each individual member.

#### **Section 2.2-Non-liability for Debts of the Cooperative**

The private property of the members shall be exempt from execution or other liability for the debts of the Cooperative and no member shall be liable or responsible for any debts or liabilities of the Cooperative.

### **Section 2.3-Property Interest of Members Upon Dissolution**

Upon dissolution, after:

- a. all debts and liabilities of the Cooperative shall have been paid;
- b. all accumulated capital furnished through patronage shall be retired as provided in these Bylaws; and
- c. any unpaid membership fees have been repaid; the remaining property and assets of the Cooperative shall be distributed, as nearly as practicable as determined by the Board, among the members and former members with unpaid capital credit balances at the date of dissolution in the proportion which each member or each former member's individual unpaid credit balance at the date of dissolution bears to the total unpaid capital credit balance of all members and former members at the date of dissolution, unless otherwise provided by law.

## **ARTICLE III. MEETINGS OF MEMBERS**

### **Section 3.1-Annual Meeting**

The Board shall fix the date of the annual meeting on a day certain in the month of October of each year to be held at a location within the established service area as determined by the Board and designated in the notice of the meeting. It shall be the responsibility of the Board to make adequate plans and preparations for the annual meeting. Failure to hold the annual meeting at the designated time shall not constitute a forfeiture or dissolution of the Cooperative.

### **Section 3.2-Special Meetings**

Special meetings of the members may be called by resolution of the Board, or upon a written request signed by any three (3) directors, by the President, or by not less than ten (10) percent of all the members, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. Special meetings of the members may be held at any place within one of the counties served by the Cooperative as designated by the Board and shall be specified in the notice of the special meeting.

### **Section 3.3-Notice of Members' Meetings**

Written or printed notice stating the place, day, and hour of the meeting, and in the case of a special meeting or an annual meeting at which business requiring special notice is to be transacted, the purpose or purposes for which the meeting is called or a description of the business or issues upon which the membership will be voting, shall be delivered not less than ten (10) days nor more than twenty-five (25) days before the date of the meeting, either personally or by mail, by or at the direction of the Secretary, or upon a default in duty by the Secretary, by the persons calling the meeting, to each member. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail, addressed to the member at the address appearing on the records of the Cooperative, with postage thereon prepaid. The



incidental or unintended failure of any member to receive notice of an annual or special meeting of the members shall not invalidate any action, which may be taken by the members at any such meeting.

### **Section 3.4-Postponement of a Meeting of the Members**

In the event of inclement weather or the occurrence of a catastrophic event, the meeting of the members may be postponed by the President, Vice President, or the Board. Notice of the postponed meeting shall be given by the President, Vice President, or Board in any media of general circulation or broadcast serving the area.

### **Section 3.5-Quorum**

Business may not be transacted at any meeting of the members unless there are present in person five percent (5%) of the total members of the Cooperative or at least fifty members present, whichever is fewer. If less than a quorum is present at any meeting, a majority of those present in person may recess the meeting from time to time without further notice.

### **Section 3.6 Voting at Meetings**

Each member shall be entitled to only one (1) vote upon each matter submitted to a vote at a meeting of the members. Matters submitted to a vote of the members at the annual or a special meeting must be included in the notice provided under Section 3.3 above in advance of the meeting of members. All questions shall be decided by a vote of the majority of the members voting thereon in person, except as otherwise provided by law, the Articles of Incorporation, or these Bylaws. Voting on behalf of a member who is not a natural person (such as a corporation, limited liability company or partnership, church, governmental entity, or other legal entity), shall be allowed upon presentation to the Cooperative, either prior to or upon registration at each member meeting, satisfactory evidence that the person representing the same is the officer, director, or other official designee recognized and authorized to vote on behalf of such member/entity who is not a natural person.

### **Section 3.7-Proxies**

A member may vote by proxy executed in writing by the member. Such proxy shall be filed with the Secretary before or at the time of the meeting. No proxy shall be valid after sixty days from the date of its execution. No proxy shall be valid unless it shall designate the particular meeting at which it is to be voted and no proxy shall be voted at any meeting other than the one so designated or any adjournment of such meeting. A member may give his proxy only to an adult relative living in the same house with such member, and no person may hold more than one proxy at any meeting. The presence of a member at a meeting shall revoke a proxy theretofore executed by him and such member shall be entitled to vote at such meeting in the same manner and with the same effect as if he had not executed a proxy.

### **Section 3.8-Order of Business**

The order of business at the annual meeting of the members and, so far as possible at all other meetings of the members, shall be conducted under policies established by the Board and under an agenda essentially as follows, except as otherwise determined by the members at such meeting:

- a. report on the number of members present in person in order to determine the existence of a quorum;
- b. reading of the Notice of the Meeting and proof of the timely publications or mailing thereof, or the waiver or waivers of Notice of Meeting, as the case may be;
- c. reading of unapproved minutes of previous meetings of the members and the taking of necessary action thereon unless minutes presented for approval shall have been furnished by a timely mailing or have been distributed at the meeting to all active members present. In such case, the President may entertain a motion from the floor to dispense with the reading of such minutes;
- d. audit report of outside auditors, or a summary thereof;
- e. presentation and consideration of reports of officers, board members, and committees;
- f. election of directors;
- g. unfinished business;
- h. new business; and
- i. adjournment.

## **ARTICLE IV. BOARD OF DIRECTORS**

### **Section 4.1-General Powers**

The business and affairs of the Cooperative shall be managed by a board of directors which shall exercise all of the powers of the Cooperative except such as are by law, the Articles of Incorporation, or these Bylaws conferred upon or reserved to the members. The number of directors shall be set by resolution of the Board at not less than seven nor more than fourteen directors.

### **Section 4.2-Election Process and Tenure of Office**

Directors shall be elected by a secret ballot at each annual meeting when there is competition for the board seat(s) to be filled. Directors shall be elected by and from the members to serve a three (3) year term, or, until their successors shall have been elected and shall have qualified. The terms of directors shall be staggered to insure continuity insofar as reasonably practical based upon the expiration of terms, attrition, and the number of directors set by resolution. Directors shall be nominated and elected as provided hereinafter.

### **Section 4.3-Board Election Districts**

To facilitate geographical representation on the Board of Directors, the Cooperative shall be divided into districts, each of which shall contain approximately the same number of members proportionate to the number of directors to be elected from each district. The initial number of directors shall be fourteen (14). The Board of Directors is authorized, in its discretion, from time to time to not fill vacancies occurring on the Board of Directors as provided for in section 4.8 of these bylaws to facilitate the goal of reducing the total number of directors to the number authorized by the resolution of the Board subject to the limitations in 4.1 and 4.2 above.

Commencing upon January 1, 2009, and not less frequently than every six (6) years thereafter, the Board shall review the composition of the districts and, if it should be found that gross inequities in geographic representation have developed which can be corrected by redefining district boundaries, the Board shall reconstitute the district boundaries so that each district contains approximately the same number of members. Further, the Board shall reconstitute the districts in the event that additional service areas are brought into the Cooperative or in the event that the number of members are increased or decreased because of the Board's modification of its definition of "energy services" under Article VIII of these Bylaws.

### **Section 4.4-Qualifications to be Nominated, Elected, and Remain a Director**

Any member is eligible to be nominated, elected, and remain a director of the Cooperative if said member:

- a. is a bona fide resident within the district of the Cooperative for which said member is nominated or elected, and purchases energy services from the Cooperative in that same district; or
- b. is an officer or participant of an entity or organization that is not a natural person, if:
  1. such officer or participant of a entity is a bona fide resident within the district for which such person is or may become a director; and
  2. such entity member actually purchases energy services from the Cooperative in that same district;
- c. has not been an employee of the Cooperative or any of its subsidiaries within three (3) years prior to the date of the election or appointment as a director; and,
- d. is not in any material way financially interested in a competing enterprise or a business engaged in selling energy services, energy supplies, or maintaining energy facilities. The Board may, by policy or in particular circumstances, determine which interests in a competing enterprise are material.

In the event that a director of the Cooperative is absent from three consecutive meetings of the board without adequate reason, the remaining directors may determine that the director's position is deemed vacant.

Nothing in this Section shall affect, in any manner whatsoever, the validity of any action taken at

any meetings of the Board.

#### **Section 4.5-Nominations for Director**

**Nominations by Committee:** It shall be the duty of the Board to appoint, not less than forty-five (45) days nor more than one hundred twenty (120) days before the date of a meeting of the members at which directors are to be elected, a nominating committee consisting of not less than two (2) nor more than five (5) members from each district from which directors are to be elected. No director, close relative of a director, or employee may serve on a nominating committee. The nominating committee shall prepare and deliver to the principal office of the Cooperative at least forty-five (45) days before the meeting, a list of nominations for directors, which shall include at least one (1) candidate for each board position to be filled by the election. The Secretary shall post the list of nominations by nominating committee at a conspicuous place at the Cooperative's principal office in Glasgow, Montana.

**Nominations from the Floor:** At any meeting at which the members may or are required to elect directors, and after announcing all nominations made by the nominating committee and by petition as above provided, the chairperson of the meeting or the chairperson's designee shall invite additional nominations from the floor and shall determine and announce, after each such nomination from the floor, the district in which each such nominee from the floor is qualified and the names of the other nominees from that district whom the nominee from the floor will oppose in such election. Any member, present in person at such meeting, may nominate from the floor another qualified member for election as director. The member making a nomination from the floor shall designate the district from which the nominee is nominated. No member may nominate from the floor more than one person.

**List of Nominees:** The Secretary shall mail, either with the notice of the annual member meeting or separately, but at least ten (10) days before the date of the annual member meeting, a statement of the number of directors to be elected from each district, the names and addresses of the nominees, and the district from which each is nominated.

#### **Section 4.6-Election of Directors**

Voting in contested elections of directors shall be by the members at large by pre-printed ballot. The ballot shall list the names of the candidates nominated by the nominating committee, providing space for candidates nominated from the floor, with such names or spaces arranged by districts.

Each member of the Cooperative present at the meeting shall be entitled to vote for one (1) candidate from each contested election for directors. The candidate from each contested election for director receiving the highest number of votes at the meeting shall be considered elected as director. In the event only one (1) candidate has been nominated for a position on the Board, the provision for election by ballot may be suspended by a majority of the members voting at such meeting and the candidate shall be elected by acclamation of the members present.

#### **Section 4.7-Removal of Director by Members and Resignations**

Any member may bring charges against a director, which shall specify malfeasance or nonfeasance of the duties and responsibilities of the director's position. Such charges shall be in writing and filed with the Secretary together with a petition signed by at least ten (10) percent of the members and may request the removal of such director by reason thereof.

Such director shall be informed in writing of the charges at least ten (10) days prior to the meeting of the members at which the charges are to be considered and shall have an opportunity at the meeting to be heard in person or by counsel to present evidence in respect to the charges; and the person or persons bringing the charges against such director shall have the same opportunity. The question of the removal of such director shall be considered and voted upon by the entire membership. No director shall be removed from the Board by members unless by affirmative vote of the majority of the entire membership. The voting will be done by ballot and mailed out to all members. Ballots can either be returned in person at the Cooperative headquarters or mailed to the Cooperative headquarters.

A director may resign at any time by written notice delivered to the Board of Directors, the President, or Secretary of the Cooperative. A resignation is effective when the notice is delivered unless the notice specifies a future date.

#### **Section 4.8-Vacancies**

Subject to the provisions of these Bylaws with respect to the filling of vacancies caused by the removal of directors by the members, a vacancy occurring in the Board may be filled by the affirmative vote of a majority of the remaining directors for the unexpired portion of the term. The member elected as a director to fill the vacancy must have the qualifications provided in Section 4.4 as the same pertains to the director whose position the new director succeeds.

#### **Section 4.9-Compensation and Benefits of Directors**

Directors shall, as determined by resolution of the Board, receive a fixed sum for each day or portion thereof spent on Cooperative business, such as attendance at meetings, conferences, training programs, or performing committee assignments when authorized by the Board. If authorized by the Board, directors may also be reimbursed for expenses actually and necessarily incurred in carrying out such Cooperative business, or granted a reasonable per diem allowance by the Board in lieu of detailed accounting for some of these expenses.

Directors who elect to participate may be extended various forms of liability and accident insurance as well as participation in benefits provided to employees, except for benefits based on salary.

No director shall receive compensation for service to the Cooperative in any other capacity, nor shall any close relative of a director receive compensation for serving the Cooperative, unless the payment and amount of compensation shall be specifically authorized by a vote of the members or the service by the director or the director's close relative shall have been certified by the Board as an emergency measure. The Board shall determine and adopt by policies of general application a definition of "close relative" under this subsection.

#### **Section 4.10-Policies, Rate Schedules, and Contracts**

The Board shall have the power to make, adopt, amend, abolish, and promulgate such policies, rate classifications, rate schedules, contracts, membership fees, security deposits or any other types of deposits, payments, or charges including contributions in aid of construction, consistent with applicable law, the Articles of Incorporation, or the Bylaws, as it may deem advisable for the management, administration, and regulation of the business and affairs of the Cooperative, or cause such to be submitted for any appropriate governmental-regulatory approval.

#### **Section 4.11-Accounting Systems and Audits**

The Board shall cause to be established and maintained a complete accounting system of the Cooperative's financial operations and condition which, among other things, and subject to applicable laws, rules and regulations of any regulatory body, shall conform to such accounting system as may from time to time be designated by the Administrator of Rural Utilities Service (RUS) of the United States of America. The Board shall also, after the close of each fiscal year, cause to be made a full, complete, and independent audit of the Cooperative's accounts, books and records reflecting financial operations during, and financial condition as of the end of such year. A full and accurate summary of such audit reports shall be submitted to the members at, or prior to, the succeeding annual meeting of the members. The Board may authorize special audits, complete or partial, at any time and for any specified period of time.

### **ARTICLE V. MEETINGS OF THE BOARD**

#### **Section 5.1-Regular Meetings**

A regular meeting of the Board shall be held without notice, immediately after, and at the same place as, the annual meeting of the members if this is deemed convenient by a majority of the Board as constituted after the annual meeting.

Regular monthly meetings of the Board shall also be held at such time and place in the Cooperative service area as designated by the Board. Such regular monthly meetings may be held without notice other than a resolution of the Board fixing the time and place thereof.

Regular or special meetings may be conducted through the use of telecommunications conference or other communications equipment by means of which all persons participating in the meetings can communicate with each other. Such participation will constitute attendance and presence in person at the meeting.

#### **Section 5.2-Special Meetings**

Special meetings of the Board may be called by the President or by any three (3) directors, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. The President or directors calling the meeting shall fix the time and place for the holding of the meeting.

### **Section 5.3-Notice of Board Meetings**

Written or telephonic notice of the time, place, and purpose of any meeting of the Board shall be delivered to each director personally, by mail, or other means of telecommunication, at the direction of the Secretary, or upon default in duty by the Secretary, by the President, or one of the directors calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail, addressed to the director at the director's address as it appears on the records of the Cooperative, with first-class postage thereon prepaid, at least five (5) business days before the date set for the meeting.

### **Section 5.4-Quorum**

A majority of the Board shall constitute a quorum, provided, that if less than such majority of the Board is present at said meeting, a majority of the Board present may adjourn the meeting from time to time; and provided further, that the Secretary shall notify any absent directors of the time and place of such adjourned meeting. The act of a majority of the directors present and voting at a meeting at which a quorum is present shall be the act of the Board.

### **Section 5.5-Unanimous Consent in Writing**

Unless otherwise prohibited by law, board actions may be taken without a meeting and without a vote if unanimous consent of the Board is obtained in writing setting forth the action taken in detail and the detail is signed by all directors entitled to vote.

## **ARTICLE VI. OFFICERS**

### **Section 6.1-Number and Titles**

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

### **Section 6.2-Election and Term Of Office**

The officers shall be elected by ballot if there is a contest, and if not, by voice vote or any other method designated by the person presiding. They shall be elected annually by and from the Board at the first meeting of the Board held immediately after the annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently possible.

Each officer shall hold office until the first meeting of the Board following the next succeeding annual meeting of the members, or until a successor shall have been elected and shall have qualified. Except as otherwise provided in these Bylaws, a vacancy in any office shall be filled by the Board for the unexpired portion of the term.

### **Section 6.3-Removal of Officers and Agents by the Board**

Any officer or agent elected or appointed by the Board may be removed by the Board for cause related to the performance of the duties of the officer's or agent's position whenever, in its judgment, the best interests of the Cooperative will be served thereby. The officer against whom such charges have been brought shall be informed in writing of the charges at least ten (10) days prior to the Board meeting at which the charges are to be considered and shall have an opportunity at the meeting to be heard in person or by counsel and to present evidence in respect of the charges. Further, the person or persons bringing the charges against the officer or agent shall have the same opportunity.

### **Section 6.4-President**

The President shall be responsible for:

- a. being the principal executive officer of the Cooperative and unless otherwise determined by the Board, shall preside at all meetings of the members and the Board;
- b. sign any deeds, mortgages, deeds of trust, notes, bonds, contracts, or other instruments authorized by the Board to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Cooperative, or shall be required by law to be otherwise signed or executed; and
- c. in general perform all duties incident to the Office of President and such other duties as may be prescribed by the Board from time to time.

### **Section 6.5-Vice President**

In the absence of the President, or in the event of the President's inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall also perform such other duties as from time to time may be assigned to the Vice President by the Board.

### **Section 6.6-Secretary**

The Secretary shall be responsible for:

- a. keeping the minutes of the meetings of the members and of the Board in books prepared for that purpose;
- b. seeing that all notices are duly given in accordance with these Bylaws or as required by law;
- c. the safekeeping of the corporate books, records, and the Seal of the Cooperative and affixing the Seal of the Cooperative to all documents, the execution of which on behalf of the Cooperative under its seal is duly authorized in accordance with the provisions of these Bylaws;



- d. keeping a register of the names and post office addresses of all members;
- e. keeping on file at all times a complete copy of the Articles of Incorporation and Bylaws of the Cooperative containing all amendments thereto and at the expense of the Cooperative, furnishing a copy of these Bylaws and of all amendments thereto to each member; and
- f. in general performing all duties incident to the Office of Secretary and such other duties as from time to time may be assigned to the Secretary by the Board; provided, however, that the Secretary shall have authority, with the approval of the Board, to delegate to the General Manager the authority to appoint employees of the Cooperative to actually carry out the responsibilities set forth in this section.

### **Section 6.7-Treasurer**

The Treasurer shall be responsible for:

- a. custody of all funds and securities of the Cooperative;
- b. the receipt of and the issuance of receipts for all monies due and payable to the Cooperative and for the deposit of all such monies in the name of the Cooperative in such financial institutions as shall be selected in accordance with the provisions of these Bylaws; provided, however, that the Treasurer shall have authority, with the approval of the Board, to delegate to the General Manager the authority to appoint employees of the Cooperative to actually carry out the responsibilities set forth in this section; and
- c. in general performing all duties incident to the Office of Treasurer and such other duties as from time to time may be assigned to the Treasurer by the Board; provided, however, with respect to the duties and responsibilities of the Treasurer, the Cooperative shall indemnify and hold the Treasurer harmless against any and all losses, claims and/or damages which may be asserted against the Treasurer, in the Treasurer's official capacity, unless such claim is a result of an act personally committed or omitted by the Treasurer resulting in loss to the Cooperative.

### **Section 6.8-General Manager**

The Board shall appoint a General Manager. The General Manager shall perform such duties as the Board may from time to time require and shall have authority as the Board may from time to time vest in the General Manager.

### **Section 6.9-Bonds**

The Board shall require the Treasurer and any other officer, agent, or employee of the Cooperative charged with responsibility for the custody of any of its funds or property to give bond in such sum and with such surety as the Board shall determine. The Board, in its discretion, may also require any other officer, agent, or employee of the Cooperative to give

bond in such amount and with such surety as it shall determine. The costs of all such bonds shall be borne by the Cooperative.

### **Section 6.10-Compensation**

The powers, duties, and compensation of officers, agents, and employees shall be fixed or approved by the Board, subject to the Section 4.9 of these Bylaws with respect to compensation of directors.

### **Section 6.11-Reports**

The officers of the Cooperative shall submit, at each annual meeting of the members, reports covering the business of the Cooperative for the previous fiscal year. Such reports shall set forth the condition of the Cooperative at the close of such fiscal year.

## **ARTICLE VII. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS**

### **Section 7.1-Indemnification of Parties to Legal Proceeding**

The Cooperative shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigation (other than an action by, or in the right of the Cooperative) by reason of the fact that such person is or was a director, officer, employee, or agent of the Cooperative or who is or was serving at the request of the Cooperative as a director, officer, employee, or agent of another cooperative, association, corporation, partnership, joint venture, trust, or other enterprise, against expenses, (including attorney's fees) adjustments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding; provided such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Cooperative, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct of such person was unlawful.

The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon pleas of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Cooperative, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct of such person was unlawful.

### **Section 7.2-Indemnification of Parties to Actions by or in Right of the Cooperative**

The Cooperative shall indemnify any person who was or is a party, or is threatened to be made a party to, any threatened, pending, or completed action or suit by, or in the right of, the Cooperative to procure a judgment in its favor by reason of the fact that such person is, or was,

a director, officer, employee, or agent of the Cooperative, or is, or was, serving at the request of the Cooperative as a director, officer, employee, or agent of another cooperative, association, corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorney's fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if such person acted in good faith, and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Cooperative.

No indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of the duty of such person to the Cooperative, unless, and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity of such expenses as the court shall deem proper.

### **Section 7.3-Indemnification of Person Successfully Defending**

To the extent that a director, officer, employee, or agent of the Cooperative has been successful, on the merits or otherwise, in the defense of any action, suit, or proceeding referred to in Sections 7.1 and 7.2, in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by such person in connection therewith.

### **Section 7.4-Indemnification Determinations**

Any indemnification under Sections 7.1 and 7.2 (unless ordered by a court) shall be made by the Cooperative only as authorized in the specific case, upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in Sections 7.1 and 7.2. Such determination shall be made:

- a. by a majority vote of the Board consisting of directors who were not parties to such action, suit, or proceedings; or
- b. by the members.

### **Section 7.5-Expenses Advanced**

Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Cooperative in advance of the final disposition of such action, suit, or proceeding, as authorized by the Board in the specific case, upon receipt of a firm commitment by or on behalf of the director, officer, employee, or agent to repay such amount, unless it shall ultimately be determined that the director, officer, employee, or agent is entitled to be indemnified by the Cooperative as authorized in this Article.

### **Section 7.6-Rights of Persons Indemnified**

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of

members, or disinterested directors, or otherwise, both as to action in their official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent, and shall inure to the benefit of the heirs, executors, and administrators of such a person.

#### **Section 7.7-Insurance Coverage**

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

### **ARTICLE VIII. NON-PROFIT OPERATION**

#### **Section 8.1-Interest or Dividends on Capital Prohibited**

The Cooperative shall at all times be operated on a Cooperative non-profit basis for the mutual benefit of its members. No interest or dividends shall be paid or payable by the Cooperative on any capital furnished by its members.

#### **Section 8.2-Patronage Capital in Connection with Furnishing Retail Energy Services**

In the furnishing of retail energy services, the Cooperative's operations shall be so conducted that all members will, through their patronage, furnish capital for the Cooperative. Because of the rapid changes in the energy services industry, the Board of Directors is given discretion to determine or define which services offered or marketed by the Cooperative to its end consumers or members are "retail energy" services under these Bylaws for purposes of allocating margins or patronage or furnishing capital to the Cooperative. In order to induce patronage and to insure that the Cooperative will be operated on a non-profit basis, the Cooperative is obligated to account on a patronage basis to all its members for all amounts received and receivable from the furnishing of retail energy services in excess of operating costs and expenses properly chargeable against the furnishing of such services. All such amounts in excess of operating costs and expenses for retail energy services at the moment of receipt by the Cooperative are received with the understanding that they are furnished by the members as capital.

The Cooperative is obligated to pay by credits to a capital account for each member all such amounts in excess of operating costs and expenses derived from retail energy services. The books and records of the Cooperative shall be set up and kept in such manner that at the end of each fiscal year the amount of capital, if any, so furnished by the member for retail energy services is clearly reflected and credited in an appropriate record to the capital account of each member, and the Cooperative shall notify each member annually of the amount of capital so credited to the member's account. All such amounts credited to the capital account of any

member shall have the same status as though it had been paid to the member in cash in pursuance of a legal obligation to do so and the member had then furnished the Cooperative corresponding amounts for capital.

If, at any time prior to dissolution or liquidation of the Cooperative, the Board shall determine that the financial condition of the Cooperative will not be impaired thereby, the capital then credited to members' accounts may be retired in full or in part. All allocations and retirements of capital shall be at the discretion and direction of the Board as to kind, timing, method, type of assignment, and distribution.

In the event of dissolution or liquidation of the Cooperative, after all outstanding indebtedness of the Cooperative shall have been paid, outstanding capital credits shall be first retired without priority before any payments are made on account of property rights of members as provided under Section 2.3 of these Bylaws.

Capital credited to the account of each member shall be assignable only on the books of the Cooperative, pursuant to written instruction from the assignor and only to successors in interest, or successors in occupancy, in all or in a part of such members' premises served by the Cooperative, unless the Board, acting under policies of general application, shall authorize other types of assignments. With Board approval and in the sole discretion of the Board, members may assign their capital credits back to the Cooperative and the Cooperative is also authorized to negotiate capital credit settlement arrangements with bankrupt or insolvent members.

Upon the death of a member, former member, or a participant in a joint membership the accrued capital of the membership shall be paid in the following manner:

- a. Upon the written request of the legal representative of the deceased member or former member's estate, the Board, in its discretion, shall have the power to retire capital credited to any such member or former member immediately upon such terms and conditions as the Board, acting under policies of general application, and the legal representative of such member or former member's estate shall agree upon; provided, however, that the financial condition of the Cooperative will not be impaired thereby.
- b. Subject to the Board's discretion as expressed in (a) above, for joint memberships as described in Section 1.3 of these Bylaws, upon the death of a participant in a joint membership, the deceased participant's share of the accrued capital as of the date of death credited to the joint membership shall be eligible for retirement and payable to the person or persons entitled to said deceased participant's share by law. For joint memberships in which the participants are husband and wife, the deceased spouse's one-half share shall be eligible for retirement and payable to the surviving spouse. The Cooperative may require indemnification and hold harmless agreements on forms acceptable to the Cooperative from applicants or persons seeking payment of the deceased participant's share prior to payment.

Upon the termination or dissolution of any entity which otherwise qualified for membership under these Bylaws, the accrued capital credited to the entity shall be paid to the persons or entities authorized by the entity which was terminated or dissolved under state law or, in the event the terminated or dissolved entity fails to designate or authorize persons or entities in

writing entitled to the accrued capital, then the Board shall pay the terminated or dissolved entity's accrued capital in accordance with policies of general application adopted by the Board. In addition, the Cooperative may require indemnification and hold harmless agreements on forms acceptable to the Cooperative from applicants or persons seeking payment of the entity's share prior to such payment.

When the accrued capital of a former member of the Cooperative comes to a total amount of less than a fixed sum determined by the Board, the same shall be retired in full with such retirements made only when and at the same time that a general retirement to other members is made. During a general capital credit retirement, no checks shall be issued for less than a fixed amount determined by the Board, and the amount of such unretired capital credits will be retired in the first following year, when the total amount of capital credits qualifying for retirement exceeds that amount set by the Board, including the amount carried over.

The members of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the Articles of Incorporation and Bylaws shall constitute and be a contract both between the Cooperative and each member, and further, between all the members themselves individually. Both the Cooperative and the members are bound by such contract, as fully as though each member had individually signed a separate instrument containing such terms and provisions with the Cooperative and each of its members. The provisions of this Article of the Bylaws shall be called to the attention of each member of the Cooperative by posting in a conspicuous place in the Cooperative's office or by publication distributed by the Cooperative to its members.

### **Section 8.3-Unclaimed Capital Credits**

Capital credits which have been declared and are payable to a member or former member and remain unclaimed by a member or former member or the member's heirs, devisees, or assigns for a period in excess of that prescribed by the applicable Montana law for abandoned property shall be allocated and utilized by the Board of Directors in accordance with applicable Montana law.

## **ARTICLE IX. DISPOSITION AND PLEDGING OF PROPERTY**

### **Section 9.1-Disposition of Property**

The Cooperative may not sell or otherwise dispose of all or substantially all of its total assets unless such sale or other disposition is:

- a. authorized at a meeting of the then total members by the affirmative vote cast in person, of at least two-thirds (2/3) of the total members of the Cooperative, and
- b. proceeded by a notice of meeting at which such sale or other disposition is to be voted on.

### **Section 9.2-Pledging of Property**

In pursuit of the Cooperative's business purposes, and notwithstanding the foregoing provisions of Section 9.1, or any other provision of law, the Board, without authorization of the members of the Cooperative, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages, a deed or deeds of trust upon, or the pledging or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises, and permits of the Cooperative, whether acquired, and wherever situated, as well as the revenues and income there from, all upon such terms and conditions as the Board shall determine, to secure any indebtedness of the Cooperative to the United States of America or any instrumentality or agency thereof, or to any other financing source within the United States.

### **Section 9.3-Pledging or Disposing of Property to another Cooperative**

Upon the authorization of a majority of Cooperative members, voting at a meeting of the members, the Board may sell, lease, or otherwise dispose of all or substantially all of its property to another cooperative or foreign corporation doing business in the State of Montana pursuant to the act under which the Cooperative is incorporated.

## **ARTICLE X. FINANCIAL TRANSACTIONS**

### **Section 10.1-Contracts**

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

### **Section 10.2-Checks, Drafts, Etc.**

All checks, drafts, or other orders for the payment of money, and all notes, bonds, or other evidences of indebtedness issued in the name of the Cooperative shall be signed by such officer(s), agent(s), or employee(s) of the Cooperative and in such manner, as shall from time to time be determined by resolution of the Board.

### **Section 10.3-Deposits**

All funds of the Cooperative shall be deposited from time to time to the credit of the Cooperative in such institutions as the Board may select.

### **Section 10.4-Fiscal Year**

The fiscal year of the Cooperative shall begin on the first day of January of each year and shall end on the thirty-first day of December of the same year.

## **ARTICLE XI. MISCELLANEOUS**

### **Section 11.1-Membership in Other Organizations**

The Cooperative may become a member or purchase stock in other profit or non-profit organizations, associations, partnerships, or joint ventures when the Board finds that the general or long-term interests of its membership will be served by such investments or participation.

### **Section 11.2-Waiver of Notice**

Any member or director may waive in writing any notice of a meeting required to be given by these Bylaws. The attendance of a member or director at any meeting shall constitute a waiver of notice of such meeting by such member or director, except in case a member or director shall attend a meeting for the express purpose of objecting to the transaction of any business, on the grounds that the meeting has not been lawfully called or convened.

## **ARTICLE XII. AMENDMENTS**

These Bylaws may be altered, amended, repealed, or rewritten by the affirmative vote of not less than three-fourths (3/4) of the directors in attendance, at any regular or special board meeting, but only if the notice of such meeting shall have contained a copy of the proposed alteration, amendment, or repeal, or an accurate summary explanation thereof; provided, however, that the provisions of Section 9.1 relating to a major disposition of the Cooperative's property, may be altered, amended, or repealed only by the affirmative vote of not less than two-thirds (2/3) of members of the Cooperative voting in person. When the Board effects Bylaw changes or revisions for Sections other than 9.1, the specific changes or revisions shall become effective ninety (90) days after they are promulgated to the membership at large.