

DELTA-MONTROSE ELECTRIC ASSOCIATION



A Touchstone Energy[®] Cooperative



BYLAWS

DELTA-MONTROSE ELECTRIC ASSOCIATION

BYLAWS

INTRODUCTION

The core mission of the Delta-Montrose Electric Association (the “**Cooperative**”) is to purchase, distribute and generate dependable electric power for consumers within the area served by the Cooperative (the “**Service Area**”). The activities of the Cooperative are governed by its Articles of Incorporation, these Bylaws, policies adopted by the Board and various state and federal laws and regulations. These Bylaws are available on the Cooperative’s website and in hard copy at the Cooperative’s Montrose office. These Bylaws are reviewed on a continuing basis and amendments will be made by the Board as necessitated by changing conditions. The effective date of any change is noted in the Bylaws.

These Bylaws are as amended and readopted on November 13, 2018.

Board of Directors

DELTA-MONTROSE ELECTRIC ASSOCIATION

STATEMENT OF NONDISCRIMINATION

DELTA-MONTROSE ELECTRIC ASSOCIATION receives federal financial assistance from the U.S Department of Agriculture (USDA). In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident. Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA’s TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to the U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW Washington, D.C. 20250-9410; by fax to (202) 690-7442; or by email to program.intake@usda.gov. USDA is an equal opportunity provider, employer, and lender.

INDEX

ARTICLE 1	GENERAL PROVISIONS.....	3
ARTICLE 2	MEMBERS	3
ARTICLE 3	MEETINGS OF MEMBERS.....	5
ARTICLE 4	DIRECTORS	6
ARTICLE 5	MEETINGS OF DIRECTORS	9
ARTICLE 6	OFFICERS	9
ARTICLE 7	MEMBERSHIP INTEREST AND CAPITAL STOCK.....	11
ARTICLE 8	NONPROFIT OPERATION	11
ARTICLE 9	PROPERTY	12

ARTICLE 10	MEMBERSHIP IN OTHER ORGANIZATIONS	12
ARTICLE 11	INDEMNIFICATION	13
ARTICLE 12	CHANGES TO BYLAWS	13

BYLAWS OF DELTA-MONTROSE ELECTRIC ASSOCIATION

ARTICLE 1 – General

Section 1.1 LAW AND ARTICLES. These Bylaws are subject to the Amended and Restated Articles of Incorporation of Delta-Montrose Electric Association, as may be amended from time to time (the “**Articles**”) and the Law. To the extent a Bylaw conflicts with Law or the Articles, then the Law or Articles control. “**Law**” includes applicable local, state, and federal constitutions, statutes, ordinances, regulations, holdings, rulings, orders, and similar documents or actions, whether legislative, executive, or judicial. As set forth in the Articles, the Cooperative is organized under Title 7, Article 55 of the Colorado Revised Statutes, and has determined to accept the benefits and to be bound by the provisions of Title 7, Article 56 of the Colorado Revised Statutes (the “**Colorado Cooperative Act**”).

Section 1.2 FISCAL YEAR. The fiscal year of the Cooperative shall begin the first day of January of each year and end on the thirty-first day of December of the same year.

Section 1.3 SEAL. The corporate seal of the Cooperative shall have the name of the Cooperative and the words, "Corporate Seal, Colorado."

ARTICLE 2 – MEMBERSHIP

Section 2.1 QUALIFICATIONS AND OBLIGATIONS. Any person, firm, association, corporation, cooperative or body politic or subdivision thereof or any other legal entity (“**Person**”) will become a member of this Cooperative (a “**Member**”) upon receipt of electric service from the Cooperative, provided that the Person has first:

- (a) completed a written membership application provided by the Cooperative (“**Membership Application**”), which may be electronic;
- (b) agreed to receive, purchase, or otherwise use electric energy generated, distributed, sold, or otherwise provided by the Cooperative; and
- (c) agreed to comply with and be bound by (1) the Articles; (2) these Bylaws; (3) the Membership Application; (4) the Cooperative’s service rules and regulations; (5) the Cooperative’s rate or price schedules; and (6) all rules, regulations, policies, programs, determinations, resolutions, or actions taken or approved by the Cooperative’s Board of Directors (collectively, the “**Governing Documents**”).

No Person may hold more than one membership in the Cooperative, and no membership in the Cooperative shall be transferable except as provided in these Bylaws or in the Governing Documents.

Section 2.2 JOINT MEMBERSHIP. Persons who qualify to be Members may hold a joint membership in the Cooperative (“**Joint Membership**”). A Joint Membership may consist of two or more Persons occupying the same location to or for which the Cooperative provides electric energy services, each of whom qualifies to be a Member. As provided by the Cooperative’s Board of Directors (the “**Board**”), a Member may convert the Member’s individual membership to a Joint Membership with a qualified Person. Qualified Persons become joint Members of the Cooperative (“**Joint Members**”) and consent to being Joint Members in the same manner as Members become Members and consent to being Members. Except as otherwise provided in these Bylaws, a Joint Member has and enjoys the rights, benefits, and privileges, and is subject to the obligations, requirements, and liabilities, of being a Member. Joint Members are jointly and severally liable for complying with the Governing Documents. Without limiting the generality of the foregoing, the effect of a Joint Membership shall be as follows:

- (a) the presence at a meeting of one or more Joint Members shall be regarded as the presence of one Member and waives notice of the meeting for all Joint Members;
- (b) notice to one or more Joint Members shall constitute notice to all Joint Members;
- (c) a waiver of notice signed by one or more Joint Members shall constitute a waiver of notice for all Joint Members;

- (d) if only one Joint Member votes on a matter; signs a petition, consent, waiver, or other document; or otherwise acts, then the vote, signature, or action binds the Joint Membership and constitutes one vote, signature, or action;
- (e) if more than one Joint Member votes on a matter; signs a petition, consent, waiver, or other document; or otherwise acts, then the first vote, signature, or action received by the Cooperative binds the Joint Membership and constitutes one vote, signature, or action;
- (f) only one of the Joint Members may be elected or appointed to serve as an Officer or Director;
- (g) upon the death or withdrawal of one Person who is a party to the Joint Membership, such Joint Membership shall be terminated and a new membership shall be established with the remaining Joint Members and any patronage capital will be assigned to the new Member in accordance with the policies and procedures of the Cooperative. Notwithstanding the foregoing, the withdrawn Joint Member or the estate of the deceased Joint Member shall not be released from any debts due the Cooperative until the account is brought current and such Joint Membership is terminated by the Cooperative;
- (h) except as set forth in subsection (g) above, the suspension or termination of a Joint Member constitutes the suspension or termination of all Joint Members; and
- (i) patronage capital refunds may be paid to any one of the Joint Members and it is the responsibility of the Joint Members to allocate such refunds among the Joint Members.

Section 2.3 MEMBERSHIP FEE. No membership fee or capital subscription shall be charged or collected to become a Member of the Cooperative.

Section 2.4 EVIDENCE OF MEMBERSHIP. The Cooperative shall maintain a written or electronic record of current Members in a form permitting the Cooperative to (a) list in alphabetical order the names and addresses of all Members, and (b) indicate whether or not the Member is entitled to vote ("**Membership List**"). Except as otherwise provided by these Bylaws or by the Colorado Cooperative Act, a Person may not inspect, copy, or receive a copy of all or part of the Membership List or a similar list of Members. The Cooperative will not issue membership certificates.

Section 2.5 PURCHASE OF ELECTRIC SERVICE. Each Member shall, as soon as electric service is available, purchase from the Cooperative such electric service in accordance with the Governing Documents and applicable Law. Members shall pay for costs of such electric service at rates set by the Board and follow applicable electric service regulations or line extension policies. Production or use of electric service on a Member's premises, regardless of the source thereof, by means of facilities interconnected with the Cooperative's facilities shall be subject to the Governing Documents. Amounts paid for electric service in excess of the cost of service are furnished by Members as capital and each Member shall be credited with the capital so furnished. Each Member shall pay to the Cooperative a minimum amount as established by the Board, regardless of the amount of electrical service consumed. Each Member shall pay all amounts owed to the Cooperative as and when the same become due and payable.

Section 2.6 TRANSFER OF MEMBERSHIP. A Member is prohibited from transferring its membership in the Cooperative.

Section 2.7 SUSPENSION OF MEMBERSHIP.

- (a) The Cooperative may suspend a Member for the following reasons ("**Suspension Reasons**"):
 - (i) As provided in the Governing Documents;
 - (ii) As determined by the Board for good cause;
 - (iii) The Member is no longer qualified to be a Member;
 - (iv) The Member does not timely pay an undisputed amount due the Cooperative; or
 - (v) The member violates or does not timely comply with the Governing Documents.
- (b) A Member is suspended upon the Cooperative: (i) providing the Member written notice of the Member's possible suspension and the applicable Suspension Reason at least fifteen (15) days before the possible suspension; (ii) notifying the Member that the Member has a right to, and allowing the Member an opportunity to, comment upon the Suspension Reason orally or in writing for up to five (5) days after the Cooperative provides the notice; and (iii) determining to suspend the Member.
- (c) Upon a Member's suspension: (i) other than the Cooperative's obligation to retire and pay Capital Credits, and other than the Cooperative's obligations regarding dissolution, the Cooperative's duties, obligations, and liabilities imposed by the Governing Documents for the Member cease and the Cooperative may cease Providing a Cooperative Service to the Member; and (ii) other than the Member's right to receive retired and paid Capital Credits, and other than the Member's rights upon the Cooperative's dissolution, the Member forfeits and relinquishes rights provided in the Governing Documents, but remains subject to obligations imposed by the Governing Documents. In particular, a suspended Member may not receive notice, nominate, vote, remove, demand, request, petition, consent, or otherwise act as provided in the Governing Documents.
- (d) Unless the Cooperative determines otherwise, a Member's suspension is lifted upon the Member rectifying the applicable Suspension Reason. The Cooperative may lift a Member suspension for good cause determined by the Board.

Section 2.8 TERMINATION OF MEMBERSHIP.

- (a) A Member may withdraw from membership in compliance with the Governing Documents.
- (b) The Board may, by the affirmative vote of not less than two-thirds of the Directors, expel any Member who fails to comply with any of the provisions of the Governing Documents, but only if such Member is given written notice by the Cooperative that such failure makes the Member liable to expulsion and such failure continues for at least ten (10) days after such notice was given. Any expelled Member may be reinstated by majority vote of the Board.
- (c) Upon the withdrawal, death, cessation of corporate existence or expulsion, the membership of such Member shall terminate. Termination of membership shall not release a Member or the Member's estate from any debts or obligations due to the Cooperative.

ARTICLE 3 – MEETINGS OF MEMBERS

Section 3.1 ANNUAL MEMBER MEETINGS. The Cooperative shall annually hold a meeting of Members ("**Annual Member Meeting**"). The Annual Member Meetings shall be held at a place within the Service Area and at a date and time designated by the Board. The primary purposes of the Annual Member Meeting are the election of directors and such other business as the Board may designate. At the Annual Member Meeting: (1) the President may provide or have provided a written or oral report regarding the activities of the Cooperative; and (2) the Treasurer may provide or have provided a written or oral report regarding the financial condition of the Cooperative and any subsidiary of the Cooperative. Failure to hold an Annual Member Meeting does not affect an action taken by the Cooperative.

Section 3.2 SPECIAL MEETINGS. Special meetings of Members ("**Special Member Meetings**") may be called by (1) resolution of the Board or (2) by the Secretary upon written request describing the specific purpose of such meeting signed by at least ten percent (10%) of all Members (a "**Member Petition**"). The Board or the Secretary shall determine the date, time and location (any place within the Service Area) of a Special Member Meeting. Upon a Member Petition, the Secretary shall hold such requested Special Member Meeting within sixty days of receipt of such petition. Costs for Special Member Meetings, convened in accordance with the foregoing, shall be borne by the Cooperative. Special Member Meetings and Annual Member Meetings are collectively referred to in these Bylaws as "**Member Meetings**."

Section 3.3 NOTICE OF MEMBERS' MEETINGS. As directed by the President, Secretary, or any other Officer or Member properly calling the Member Meeting, the Cooperative shall deliver written notice of a Member Meeting personally or by mail, either with or without other documents, to all Members. This notice will indicate the date, time, and location of the meeting and must be delivered at least ten (10) days, but no more than forty-five (45) days, before the meeting. For a Special Member Meeting, this notice must state the purpose of the meeting. Additionally, the date of each Annual Member Meeting shall be posted on the Cooperative's web site and otherwise publicized no less than six (6) months before the date of the Annual Member Meeting. The ballot mailing deadline shall be posted on the Cooperative's web site at least three (3) months before the deadline and shall remain posted until after the election. A mailed notice of a Member Meeting is delivered when deposited in the United States mail with prepaid postage affixed and addressed to a Member at the Member's address on the records of the Cooperative. The failure of a Member to receive notice of a Member Meeting does not affect an action taken at the Member Meeting.

Section 3.4 FIXING OF RECORD DATE. For purpose of determining members entitled to notice of or to vote at any Member Meeting, or in order to make a determination of Members for any other purpose, the Board may fix in advance a date as the record date for any such determination of Members, such date in any case to be not more than seventy (70) days, and, in case of a Member Meeting, not less than ten (10) days, prior to the date on which the particular action requiring such determination of Members is to be taken. If no record date is fixed for the determination of Members entitled to notice of or to vote at a Member Meeting, the date on which notice of the meeting is mailed shall be the record date for such determination of Members. Any such record date shall apply to an adjournment of the Member Meeting, unless the Board fixes a new record date, which it shall do if the meeting is adjourned to a date more than one hundred twenty (120) days after the date fixed for the original Member Meeting. The record date for determining Members entitled to demand a Special Member Meeting shall be the date of the earliest of any submitted Membership Petition for which the meeting is called. After fixing the record date, the Cooperative will prepare a Membership List for such Member Meeting.

Section 3.5 QUORUM. At all Member Meetings, a quorum of Members is fifty (50) Members entitled to vote on a matter, voting in person or by Mail Ballot ("**Member Quorum**"). Further, Members voting by Mail Ballot shall be counted toward the Member Quorum with respect to the matter voted upon in the Mail Ballot. If less than the Member Quorum is present at a Member Meeting, a majority of those Members present may adjourn the meeting from time to time without further notice. The registration records will constitute proof of a Member Quorum.

Section 3.6 ORDER OF BUSINESS. The Order of Business for all meetings of Members shall be determined by the President of the Board of Directors. All Member Meetings are open to the Members, consumers and news media.

Section 3.7 VOTING. Each eligible Member shall be entitled to one (1) vote upon each matter submitted to a vote at a Member Meeting. At all Member Meetings at which there is Member Quorum, all questions shall be decided by a vote of a majority of the Members voting thereon, except as otherwise provided by Law, the Articles and these Bylaws. Voting by proxy or by cumulative voting is prohibited.

Section 3.8 MAIL BALLOT. A Member may vote or act by mail on any matter in conjunction with a Member Meeting by the Cooperative delivering or providing access to a written mail ballot ("**Mail Ballot**") to each Member entitled to vote on the matter. A Member submitting a completed Mail Ballot may not vote at the Member Meeting regarding a matter described in the Mail Ballot. The Cooperative will count as a Member's vote a properly completed Mail Ballot received on, or before, the time and date stated in the Mail Ballot. Except as may otherwise provided by the Board, a Member may not revoke a completed Mail Ballot received by the Cooperative. A Member's failure to receive a Mail Ballot does not affect a vote or action taken by Mail Ballot.

ARTICLE 4 – DIRECTORS

Section 4.1 GENERAL POWERS. The business and affairs of the Cooperative shall be managed by the Board which shall:

- (a) exercise all the powers of the Cooperative except such as are by Law, the Articles or these Bylaws conferred upon or reserved to the Members.
- (b) appoint a Chief Executive Officer who will reside within the Service Area. The Chief Executive Officer shall be the principal administrative officer of the Cooperative and shall be accountable to the Board for the operations of the Cooperative. The Chief Executive Officer shall perform such duties as the Board may from time to time require and shall have such authority as the Board from time to time vests in such Chief Executive Officer.
- (c) make diligent effort to see that electric service is extended to Persons within the Service Area who desire such service and meet all reasonable requirements established by the Cooperative as a condition of such service.

Section 4.2 POLICIES, RULES AND REGULATIONS. The Board shall have power to make and adopt such policies, rules and regulations, not inconsistent with Law, the Articles, or these Bylaws, as it may deem advisable for the management of the business and affairs of the Cooperative.

Section 4.3 QUALIFICATIONS. To become and remain a member of the Board (a "**Director**"), a person must comply with the following qualifications (the "**Director Qualifications**"):

- (a) be an individual at least 21 years of age;
- (b) be a Member of the Cooperative in his or her individual capacity and not as an authorized representative of a Member and meet the residency requirements in the current policy set by the Board as of the deadline date for submitting a petition as a candidate and maintain residency during the term of office;
- (c) may not have been an employee of the Cooperative for a period of three years immediately before becoming a Director;
- (d) if such person is a former employee of the Cooperative, must be eligible for re-hire under the Cooperative's standard employment policies;
- (e) while serving as a Director may not be employed by the Cooperative in any position and may not be employed by the Cooperative, or an entity controlled by the Cooperative or in which the Cooperative owns a majority interest ("**Cooperative Subsidiary**"), for a period of three years after leaving the Board;
- (f) while serving on the Board may not be a relative of an employee of the Cooperative or Cooperative Subsidiary (for purposes of this section, "relative" is defined as a spouse, sibling, parent, child or the spouse of a sibling, parent or child);
- (g) while a Director, and during the five (5) years immediately before becoming a Director, not be convicted of, or plead guilty or no contest to, a felony or to any crime involving fraud or dishonesty, computer misuse, gambling, immorality, weapons, financial matters of any kind;
- (h) while a Director, and during the three (3) years immediately before becoming a Director, not have filed a petition for bankruptcy or commenced proceedings relating to bankruptcy or had commenced against him or her proceedings relating to foreclosure;
- (i) while serving on the Board may not be a party to any contract for profit with the Cooperative differing in any way from the business relations accorded all Members of the Cooperative; and
- (j) must comply with Cooperative's Conflict of Interest Policy.

Appointment of a Director to serve as a representative of the Cooperative on the boards of the Colorado Rural Electric Association (“CREA”), Tri-State Generation and Transmission Association (“Tri-State”), CoBank or other such entity shall not disqualify a Person from serving on the Board.

Section 4.4 NUMBER OF DIRECTORS. Within the limits specified in the Articles, the number of Directors shall be determined from time to time by resolution of the Board of Directors.

Section 4.5 DISTRICTS, NOMINATIONS AND ELECTIONS.

- (a) **Districting.** The Cooperative shall be divided into two (2) regions, and such regions are defined as (i) the territory within the Service Area north of the Delta/Montrose County line (“**North Region**”) and the territory within the Service Area south of the Delta/Montrose County line (“**South Region**”) (the North Region and South Region are collectively referred to as the “**Director Regions**”). Additionally, based upon geographic consideration determined by the Board, the Cooperative shall divide the Service Area into a reasonable number of districts that equitably represent the Members (“**Director Districts**”). The Cooperative shall be governed by one Director elected from each of the Director Regions and Director Districts. A description of the current Director Districts and Director Regions by map shall be available for inspection at the Cooperative’s headquarters. The Director Regions shall remain unchanged. As necessary based upon geographic, population, membership, subdivision, economic development, permanent or full residency, seasonal or partial residency, or other equitable considerations determined by the Board, the Board, by resolution, may revise the Director Districts to ensure that the Director Districts equitably represent the Members. Within thirty (30) days following a Director District revision, and at least thirty (30) days before the next Annual Member Meeting, the Cooperative must notify, in writing, Members affected by the Director District revision. A Director District revision may not: (1) increase an existing Director’s Director Term; or (2) unless the affected Director consents in writing, shorten an existing Director’s Director Term.
- (b) **Term.** Each Director shall serve a staggered term of three (3) years (“**Director Term**”), with not more than one-third of the terms of the total Directors expiring each year and with not more than one term of the Directors representing the North or South Region expiring in the same year.
- (c) **Candidate Notices.** Information on Director Qualifications, the procedure for becoming a candidate and the schedule for elections shall be posted on the Cooperative’s web site and shall be communicated to each Member in writing by depositing in the mail no later than sixty (60) days before petitions to become a candidate are due.
- (d) **Petitions for Candidacy.** Elections for open positions of the Board are held at the Annual Member Meeting. An individual may become a candidate for election to a Director District or Director Region by meeting the Director Qualifications, and by meeting the following requirements (the “**Candidate Requirements**”):
 - i. The candidate must be a Member of the Cooperative and must reside within the applicable Director District or Director Region for a period of at least 45 days before the date of the Annual Member Meeting; and
 - ii. Must submit to the Cooperative a written petition of candidacy signed by at least fifteen (15) Members not less than forty-five (45) days and not more than seventy-five (75) days prior to the date of the Annual Member Meeting. Such petition for candidacy shall designate the name of the nominee Member, the term for which nominated and the Director District or Region to be served.

The Cooperative shall verify that each candidate is in compliance with the Candidate Requirements. A candidate may not run for both a Director District and Region during the same election.

- (e) **Candidate Access to Membership List.** Once the Secretary has verified all candidates for an upcoming election, all candidates (including incumbents running for reelection) shall, upon request, receive a Membership List with the same details. All candidates shall use such list only for the purposes of the election and shall return or destroy them immediately after the election.
- (f) **Election Process.** Each Member of the Cooperative shall be entitled to vote in the election of Directors, either by ballot at the Annual Member Meeting or by Mail Ballot (collectively, the “**Ballots**”), but not both, except that election by voice vote by and from the Members at the Annual Member Meeting may be allowed to elect a Director in any Director District or Region if only one candidate has been nominated for election in that particular Director District or Region. The Ballots shall identify the candidates and the applicable Director District or Region. The order of names on the Ballots shall be determined randomly in a manner that does not automatically assign the top line to the incumbent. Members shall be entitled to vote for candidates in all Districts and Regions. A Mail Ballot shall be voted by the Member, placed in a special envelope provided for the purpose so as to conceal the marking on the ballot, deposited in a return envelope which must be signed by the voting Member, and mailed back to the Cooperative. The Board may by appropriate resolution designate an impartial organization to hold the Mail Ballots until the Annual Member Meeting. In the alternative, the Mail Ballots shall be collected and stored in a manner that protects the privacy of their content.

- (g) **Election Count.** The Board shall, when practicable, arrange for an independent third party to oversee the counting of Ballots. All candidates for the Board shall be given the opportunity to be present to observe the counting of the Ballots; except that, if the Cooperative has contracted with an independent third party to collect and count Ballots, such Ballots must be delivered to the Cooperative under seal promptly after the count and, upon the request of any candidate, made available to the candidate for inspection. The eligibility for each Member voting will be verified against the Cooperative's records prior to the time votes are counted. The eligible candidate receiving the highest number of votes shall be declared the duly elected Director of the particular Director District or Region for which he or she was a candidate.

Section 4.6 COMPENSATION. The Cooperative may provide reasonable compensation for time actually spent by its Directors in service to the Cooperative. Directors may be reimbursed for expenses actually and necessarily incurred in carrying out the business of the Cooperative, or may be granted a reasonable per diem allowance in lieu of maintaining a detailed accounting for such expenses. The Board shall determine the manner, method, and amount of such reasonable compensation, reimbursement, insurance or other benefits.

Section 4.7 COMMITTEES. The Board by resolution adopted by a majority of the Directors may designate and appoint one or more committees, each of which shall consist of two or more Directors (each a "**Committee**"). Committees shall have the power to act for the Board only to the extent authorized by appropriate resolution.

Section 4.8 REMOVAL OF DIRECTORS.

(1) Recall by Members.

- (a) The Members may remove Directors only for cause. The term "cause" means a criminal act involving a breach of moral turpitude, breach of a fiduciary duty, malfeasance, misfeasance or nonfeasance that adversely affects the Cooperative's interests, or that the Director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the Cooperative. "Cause" does not mean conflict, disagreement, decisions of a discretionary nature or good faith acts of a Director exercised in his or her best business judgment.
- (b) Removal of a Director by a vote of the Members shall be initiated by written petition submitted to the Board and signed by at least ten percent (10%) of the Members stating the alleged causes or reasons for removal ("**Removal Petition**"). No single petition shall seek removal of more than one Director. Within thirty-five (35) days after receipt of the Removal Petition, the Board shall hold a Board Meeting to determine if cause has been stated. The Director named in the Removal Petition shall be informed in writing by the Board of such Board Meeting and shall have the opportunity, in person and by counsel, to be heard and to present evidence before the Board votes to determine if cause has been stated. A designated representative of the Members seeking removal shall have the same opportunity to be heard and to present evidence to the Board at such Board Meeting. In determining if cause has been stated, the Board will only consider whether the Removal Petition states a prima facie case of cause and the ruling by the Board will not be determinative of whether sufficient cause exists. Sufficiency of cause for removal is a matter to be determined by the Members.
- (c) If the Board determines cause does not exist, the Removal Petition will be dismissed. If a majority of the Directors (not including any Directors subject to a Removal Petition) determines that cause has been stated, then the Board shall schedule the removal vote at a Regular or Special Member Meeting to occur within ninety (90) days of the Removal Petition.
- (d) At such Regular or Special Member Meeting, the Director may be removed upon an affirmative vote of a majority of the Members present and voting in person or by Mail Ballot in accordance with these Bylaws. If the vote is in favor of recall, the Director shall be immediately removed from the Board and a vacancy shall be declared.
- (2) **Removal by Board.** A Director may be removed by action of the Board for failure to maintain the Director Qualifications by majority vote of the Board (not including a Director up for removal) at a Board Meeting. The affected Director shall be given an opportunity to be heard at either the open or executive session of a Board Meeting as determined by the Board. If the reasons for removal are based on failure to meet the Director Qualifications, the Director may be removed and a vacancy shall be declared. If the reasons given for removal are for cause as defined in Section 4.8(1)(a) above, the Board may certify the question of removal to a special vote of the Members as provided in subsection 4.8(1) above and no Removal Petition shall be required.

Section 4.9 RESIGNATION OF DIRECTORS. A Director may resign at any time. To resign, a Director must sign and deliver a written notice of resignation to the Board, President, or Secretary. Except as a later date is otherwise provided in a written notice of resignation, a Director's resignation is effective when the Board, President, or Secretary receives the written notice of resignation. If a Director's resignation is effective at a later date, and if the successor Director does not take office until the effective date of the Director's resignation, then the pending Director vacancy may be filled before the effective date of the Director's resignation.

Section 4.10 VACANCIES. Vacancies occurring in the Board shall be filled by a majority vote of the remaining Directors, and Directors thus elected shall serve the remainder of such unexpired term. Vacancies in the Board created by an increase in the number

of Directors shall be filled in a like manner but shall serve only until the next Annual Member Meeting. Vacancies shall be filled within four (4) months of the date of the vacancy.

Section 4.11 TERM LIMITS. As set forth in the Articles, no Director shall serve more than four consecutive three-year terms on the Board. Any person appointed or elected to fill a vacancy on the Board and who serves at least one-half of a three-year term of office shall be considered to have served a full term in that position for purposes of this section 4.11. Terms are considered consecutive unless they are at least two years apart.

ARTICLE 5 – MEETINGS OF DIRECTORS

Section 5.1 REGULAR MEETINGS. A regular meeting of the Board (“**Regular Board Meeting**”) shall be held on or before twenty-one (21) days following the Annual Member Meeting for the purpose of electing officers and other delegates on behalf of the board and for the transaction of such other business as may properly come before the Board. Regular Board Meetings shall also be held monthly at such time and place within the Service Area as designated by the Board.

Section 5.2 SPECIAL MEETINGS. Special meetings of the Board (“**Special Board Meetings**”) may be called by the President or any three Directors. The person(s) calling the Special Board Meeting shall fix the time and place for the holding of such Special Board Meeting. The person(s) calling a Special Board Meeting will provide at least two (2) days’ notice of the date, time, place, and purpose of any such Special Board Meeting. Directors may waive such notice as set forth in the Law. Special Board Meetings and Regular Board Meetings are collectively referred to as “**Board Meetings**” in these Bylaws.

Section 5.3 COMMITTEE MEETINGS. Regular meetings of any Committee may be held without notice at such times and places (within the Service Area) as the Committee may fix from time to time (“**Committee Meetings**”).

Section 5.4 QUORUM AND VOTING. A majority of the Directors of the Board shall constitute a quorum for the transaction of business at any Board Meeting (“**Board Quorum**”). If Board Quorum is not present at a Board Meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice to permit the Secretary to notify any absent Directors of the time and place of the adjourned meeting. The act of a majority of the Board Quorum shall be the act of the Board, except as otherwise provided under the Law or in these Bylaws. A Director may not vote by proxy. A Director may participate in any Board Meeting by any means of communication by which all Directors participating may hear each other and communicate simultaneously; provided, however, electronic attendance shall not exceed four Regular Board Meetings during any calendar year unless additional electronic attendance is approved by the Board.

Section 5.5 PUBLIC MEETINGS.

- (a) All Board Meetings of the Cooperative are declared to be open meetings and open to the Members, consumers and news media at all times. At any Board Meeting, the Board may, by a two-thirds affirmative vote of the Directors present, go into executive session for consideration of documents or testimony given in confidence. The Board shall not make any final policy decisions or adopt or approve any resolution, rule, regulation or formal action, any contract or any action calling for the payment of money at any executive session which is closed to the Members, consumers, or news media. Prior to the time the Board convenes an executive session, the Board shall announce the general topic of such executive session.
- (b) At every Board Meeting, Members of the Cooperative shall be given an opportunity to address the Directors on any matter concerning the policies and business of the Cooperative. The Board, by resolution or policy, may place reasonable, view-point neutral restrictions on the amount and duration of such public comment.
- (c) Written minutes shall be made of all Board Meetings. The minutes shall be posted on the web site of the Cooperative as soon as they have been approved and shall remain posted until at least six months after the date of the Board Meeting. Upon request by a Director, that Director’s vote on any issue shall be noted in the minutes.

Section 5.6 NOTICE OF MEETING – AGENDA. The date, time, location and agenda of every Board Meeting shall be posted on the Cooperative’s web site and shall be posted in every service office maintained by the Cooperative no less than ten (10) days before the Regular Board Meetings and as soon as the meeting is scheduled in the case of Special Board Meetings. Copies of the agendas shall be available at each service office for Members and consumers. If a Board Meeting is postponed or cancelled, notice of the postponement or cancellation shall immediately be posted on the web site.

ARTICLE 6 - OFFICERS OF THE BOARD AND COOPERATIVE

Section 6.1 NUMBER. The officers of the Board (“**Officers**”) shall be a President, Vice-President, Secretary, Treasurer, and such other officers as may be determined by the Board from time to time. One individual may simultaneously hold more than one office, but the offices of President and Secretary may not be held concurrently.

Section 6.2 ELECTION AND TERM OF OFFICE. The Board shall elect both Officers and representatives to each of the board of directors of any other cooperatives that the Cooperative has been allotted such representation (1) at the first Regular Board Meeting following each Annual Member Meeting, or as soon after each Annual Member Meeting as reasonably possible and convenient; (2) by an affirmative vote of a majority of Directors; and (3) by written ballot after nomination. The elections for the Officers and the representatives of the CREA Board of Directors, the Western United Electric Board of Directors and the Tri-State Board of Directors shall be by secret ballot. All candidates for an office shall be nominated from the floor by voice nomination and a Director may nominate himself or herself. No second is required in the nomination of a candidate. Only candidates who have been so nominated shall be eligible to run for the office. If there are only two candidates nominated for the office, then the candidate who receives the highest number of votes cast shall be elected to the office. If there are more than two candidates for the office, then, after the initial ballot count, a run-off election shall be held by written ballot between the two candidates receiving the highest number of votes. When nominations for one office have been completed, votes shall be cast for that office and the results announced before the chair calls for nominations for the next office. Each Officer shall take office immediately upon being elected and shall hold that office until his or her successor has been duly elected. The highest Officer present from the previous election shall chair the organizational meeting until the office of President is elected.

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

- (a) shall preside, or designate another individual to preside, at all Board and Member Meetings;
- (b) on the Cooperative's behalf, may sign a document properly authorized or approved by the Board or Members; and
- (c) shall appoint Directors to the various Committees; and
- (d) shall perform all other duties, shall have all other responsibilities, and may exercise all other authority, prescribed by the Board.

Section 6.4 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, and have the powers, of the President. The Vice President shall also perform all other duties, shall have all other responsibilities, and may exercise all other authority, prescribed by the Board.

Section 6.5 SECRETARY. Except as otherwise provided by the Board or these Bylaws, the Secretary shall be responsible for:

- (a) preparing, or supervising the preparation of, minutes of Board and Member Meetings;
- (b) maintaining and authenticating the Cooperative's records;
- (c) ensuring that all notices are duly given in accordance with these Bylaws or as required by Law; and
- (d) in general, performing all other duties, having all other responsibilities and exercising all other authority, prescribed by the Board.

Section 6.6 TREASURER. Except as otherwise provided by the Board or these Bylaws, the Treasurer shall perform all duties, shall have all responsibility, and may exercise all authority, prescribed by the Board

Section 6.7 BONDS OF OFFICERS. At the Cooperative's expense, the Cooperative may purchase a bond covering any Officer and shall purchase a bond covering any Officer or employee of the Cooperative that is charged with responsibility for the custody of any of its funds or property.

Section 6.8 OFFICER RESIGNATION AND REMOVAL. At any time, an Officer may resign by delivering to the Board an oral or written resignation. Except as a later effective date is otherwise provided in the Officer resignation, an Officer resignation is effective when received. If an Officer resignation states a future effective date, and if, as appropriate, the Board accepts the future effective date, then, as appropriate, the Board may fill the vacant Officer position before the future effective date, but the successor Officer may not take office until the future effective date. At any time, the Board may remove an Officer for any reason.

Section 6.9 VACANCIES. The Board shall fill a vacancy in any office of the Board for the unexpired portion of such term in the same manner as described in Section 6.2 of these Bylaws.

Section 6.10 CHIEF EXECUTIVE OFFICER OF THE COOPERATIVE. The chief executive officer ("CEO") shall be selected by and serve at the pleasure of the Board and shall continue to serve the Cooperative until a successor is selected and qualified unless the CEO shall retire, resign, die, become disqualified or be dismissed by the Board. The Board shall approve the compensation of the CEO. The CEO, subject to the Governing Documents and to the direction and control of the Board, shall be responsible for the general management of the Cooperative. The CEO is authorized to employ, prescribe the duties of, set the compensation of and suspend or dismiss, at the CEO's discretion, other officers and employees of the Cooperative in accordance with the resolutions or policies of the Board.

ARTICLE 7 – CAPITAL STOCK

Section 7.1 VOTING COMMON STOCK. The Cooperative shall not issue voting common stock. The property rights and interests of each Member shall be determined by the Member's tariff rate class in accordance the Capital Credit Policy (defined below). No Member shall have a direct interest in or claim upon the property of the Cooperative.

Section 7.2 NON-VOTING PREFERRED STOCK. To the extent authorized by the Articles, the Cooperative may issue non-voting preferred stock in one or more series as may be established by the Board ("**Preferred Stock**") to any Person, whether or not such Person is qualified to be a Member. Prior to the issuance of any series of Preferred Stock (each, a "**Series**"), the Board shall establish either in the resolution authorizing such Series or by amendment to these Bylaws, the number of authorized shares and the terms of such Series including, without limitation, (a) entitlement to dividends, if any, (b) preferences, if any, with respect to dividends or other distributions, (c) redemption terms and conditions, (d) restrictions on transfer, and (e) any other terms, conditions or restrictions permitted by Law, the Articles and these Bylaws. Under no circumstances will any Series of Preferred Stock be entitled to voting rights.

Section 7.3 DIVIDENDS ON NON-VOTING PREFERRED STOCK. Dividends payable on shares of non-voting preferred stock of the Cooperative may be declared by the Board at any Regular or Special Meeting of the Board, not to exceed an amount that would cause the Cooperative to fail to be consistent with operating on a cooperative basis under federal tax law including Section 501(c)12 of the Internal Revenue Code.

ARTICLE 8 – NONPROFIT OPERATION

Section 8.1 NONPROFIT AND COOPERATIVE OPERATION. The Cooperative shall operate on a nonprofit and cooperative basis for the mutual benefit of all Members.

Section 8.2 PATRONAGE CAPITAL IN CONNECTION WITH FURNISHING ELECTRIC SERVICE. A "**Patron**" is defined as a member or non-member receiving electric service from the Cooperative. In the furnishing of electric service, the Cooperative's operation shall be so conducted that all Patrons will through their patronage furnish capital for the Cooperative.

- (a) **Capital Credit Allocation.** All amounts in excess of operating costs and expenses are received from the Patrons as patronage capital. The Cooperative is obligated to allocate by credits to a capital account for each Patron all amounts received in excess of operating costs and expenses (a "**Capital Credit**"). The books and records of the Cooperative shall be kept in such a manner that at the end of each fiscal year, the amount of capital, if any, so furnished by each Patron is clearly reflected and credited in an appropriate record to the capital account of each Patron, and the Cooperative shall within a reasonable time after the close of the fiscal year notify each Patron of the amount of its Capital Credit. Consistent with this Bylaw, the allocation of Capital Credits is in the discretion of the Board and the Board will determine the manner, method, and timing of allocating Capital Credits in a written policy of Board (the "**Capital Credit Policy**"). All amounts received by the Cooperative from its operations in excess of costs and expenses insofar as permitted by law shall be: (i) used to offset any losses incurred during the current or any prior fiscal year and (ii) to the extent not needed for that purpose, allocated to its Patrons on a patronage basis and any amount so allocated shall be included as part of the capital credited to the account of Patrons. Each Patron's Capital Credits shall be assignable only on the books of the Cooperative pursuant to written instructions from the Patron unless the Board, acting under policies of general application, shall determine otherwise. The Board has the authority to pay Capital Credits at a discounted rate under terms set by the Board.
- (b) **Retirement of Capital Credits.** If at any time prior to dissolution or liquidation of the Cooperative the Board determines that the financial condition of the Cooperative will not be impaired, the Board may retire and pay full or in part any Capital Credits in accordance with the Capital Credit Policy. 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. Notwithstanding any other provision of these Bylaws, the Board shall have the power upon the death of any natural Patron, to retire such Patron's Capital Credits upon such terms and conditions as the Board acting under policies of general application, and in accordance with the Capital Credit Policy; provided, that the financial condition of the Cooperative will not be impaired.
- (c) **Capital Credit Recoupment and Offset.** Regardless of a statute of limitation or other time limitation, after retiring Capital Credits allocated to a Patron or former Patron, the Cooperative may recoup, offset, or setoff an amount owed to the Cooperative by the Patron or former Patron, including any interest at the Colorado legal rate and any late payment fees, by reducing the amount of retired Capital Credits allocated to the Patron or former Patron by the amount owed to the Cooperative.
- (d) **Security Interest in Capital Credits.** By becoming Members of the Cooperative, all Members are deemed to have granted a first lien on all Capital Credits, capital investments, patronage funds and other property or funds of the Member held by the Cooperative to secure the payment of all indebtedness of the Member to the Cooperative. This first lien is deemed to be

perfected by possession of the collateral by the Cooperative under the Uniform Commercial Code, or, at the election of the Cooperative notice of the lien may be made through the filing of a financing statement with the office of the Secretary of State. The Articles, these Bylaws, and the Governing Documents shall constitute a security agreement under the Uniform Commercial Code. The amount of any lien may, at the sole option of the Cooperative, be setoff at any time against any funds to be paid to a Member.

Section 8.3 UNCLAIMED FEES AND CREDITS. Within a reasonable time after the Board declares a retirement of Capital Credits, or the Cooperative otherwise determines that a Patron is entitled to Capital Credits held for the Patron by the Cooperative the Cooperative shall mail to each such Patron, at the last address shown on the books of the Cooperative, the Patron's share of the Capital Credits. If a Capital Credit remains unclaimed more than three (3) years following such mailing (referred to in this Section as "**Unclaimed Capital Credits**"), then thirty-five days following Notice to the Patron of the Unclaimed Capital Credits the Cooperative may recover and use the Unclaimed Capital Credits for educational, charitable, alternative or renewable energy purposes, or for any other activities approved by the Board in the Cooperative's donations & contributions policy (collectively, the "**Charitable Fund**"). For purposes of this Section 8.3, the term "Notice" means publishing a list of the Patrons with Unclaimed Capital Credits one time in a newspaper of general circulation in Montrose and Delta Counties and by posting the names of such Patrons on the Cooperative's web page for a period of time to be established by the Board. If the Patron does not claim such Capital Credits within such thirty-five day notice period, all rights of the Patron to the Unclaimed Capital Credits shall be extinguished and forever barred. A Patron may donate to the Charitable Fund his or her Capital Credits and in such event no Notice need be provided and such donated accounts will be transferred immediately upon retirement of the Capital Credit.

Section 8.4 PATRON AGREEMENT. Each Patron and former Patron agrees that:

- (a) Subject to section 8.5 of these Bylaws, the terms and provisions of the Articles and these Bylaws shall constitute and be a contract between the Cooperative and each Patron, and both the Cooperative and the Patron are bound by such contract, as fully as though each Patron had individually signed a separate instrument containing such terms and provisions;
- (b) Capital Credits are not securities under state or federal Law;
- (c) The Patron's right to Capital Credits vests, accrues, becomes redeemable, and becomes payable only upon the cooperative retiring the Capital Credits; and
- (d) As required by Law, each Patron will report and pay the appropriate entity any tax or similar amount on allocated or retired Capital Credits.

Section 8.5 NON-MEMBER PATRONS. As a condition of using any services or products of the Cooperative, and except as otherwise provided by the Board: (1) to the same extent as a Member, a Patron who is not a Member ("**Non-Member Patron**") must abide by and be bound to the duties, obligations, liabilities, and responsibilities imposed by the Governing Documents upon Members; and (2) a Non-Member Patron has none of the rights granted by the Governing Documents to Members, other than the rights to be allocated Capital Credits and be paid retired Capital Credits.

ARTICLE 9 – PROPERTY

Section 9.1 DISPOSITION OF PROPERTY. The Cooperative may not sell, lease or otherwise dispose of all or substantially all of its property not in the usual and regular course of its business unless such sale, lease, or other disposition is (a) recommended to the Members by a two thirds majority vote of the Directors, and (b) authorized at a Member Meeting by the affirmative vote of not less than two-thirds of all the Members of the Cooperative, and unless the notice of such proposed sale, lease, or other disposition shall have been contained in the notice of the Member Meeting; provided, however, the Board, without authorization by the Members, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages, or a deed or deeds of trust upon, or the pledging or encumbering of any or all the property, assets, rights, privileges, licenses, franchises and permits of the Cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the Board shall determine, to secure any indebtedness of the Cooperative.

Section 9.2 DISTRIBUTION UPON DISSOLUTION. Upon dissolution, after all debts and liabilities of the Cooperative are paid, and all capital furnished through patronage are retired, the remaining property and assets of the Cooperative shall be distributed among the Members and former Members in the proportion which the aggregate patronage of each bear to the total patronage of all Members during the ten years next preceding the date of the filing of the certificate of dissolution.

ARTICLE 10 – MEMBERSHIP IN OTHER ORGANIZATIONS

If determined by the Board to be in the best interests of the Cooperative and its Members, the Cooperative may form one or more wholly-owned profit or nonprofit subsidiary business organizations, or may participate with third parties in the ownership of

independent profit or nonprofit business organizations, in order to provide services or products to its Members and other Persons. The services or products may be in fields other than that of providing electric facilities or electric power.

ARTICLE 11 – INDEMNIFICATION

Section 11.1 INDEMNIFICATION OF INDIVIDUALS. The Cooperative shall, to the full extent permitted by Law, indemnify each of its Directors, Officers (whether a current or former Director or Officer) and employees (each an “Indemnification Individual”) against all expenses actually and necessarily incurred by an Indemnification Individual, including, but not limited to, judgments, costs and counsel fees, in connection with the defense of any litigation, including any civil, criminal, or administrative action, suit, investigation or proceeding, to which such Indemnification Individual may have been made a party because the Indemnification Individual is or was a Director, Officer or employee of the Cooperative and was acting in the normal course of his or her assigned duties. Any indemnification under this article shall be made by the Cooperative only as authorized in each specific case upon a determination that indemnification of such individual is proper in the circumstances. Such determination shall be made (a) by a majority vote of Board Quorum excluding any Directors who are also parties to such action, suit, investigation or proceeding; or (b) if such Board Quorum is not obtainable, or even if obtainable, should such disinterested Directors so determine, by independent legal counsel in a written opinion.

Section 11.2 ADVANCE FOR EXPENSES. Expenses incurred in defending a civil or criminal action, suit, investigation or proceeding may be paid by the Cooperative in advance of the final disposition of such action, suit, investigation or proceeding as authorized by the Board if (a) the Indemnification Individual provides the Cooperative a written: (i) affirmation of the Indemnification Individual’s good faith belief that the Indemnification Individual has met the standards of conduct set forth in C.R.S. 7-109-102; and (ii) undertaking of the Indemnification Individual to repay the advance if it is ultimately determined that the Indemnification Individual did not meet such standards in sub clause (i); and (b) a majority of the Board (excluding any Directors currently a party to any such indemnification proceeding) determines that the facts then known to them would not preclude indemnification for the Indemnification Individual under this Bylaw.

Section 11.3 INSURANCE. The Cooperative may purchase and maintain insurance on behalf of any individual who is or was a Director, Officer, employee or other agent of the Cooperative against any liability, including judgment, settlement or otherwise, or reasonable expenses, including reasonable attorney fees, asserted against or incurred by the Cooperative or the individual in his or her individual capacity, or arising from the individual’s status with the Cooperative, whether or not the Cooperative would have the power to indemnify against such liability under these Bylaws, or otherwise.

ARTICLE 12 – CHANGES TO BYLAWS

These Bylaws may be repealed, modified or amended by the affirmative vote of a majority of the total number of Directors at any Regular or Special Board Meeting. Prior to adoption of changes to the Bylaws, the Cooperative shall provide notice of the Board Meeting in accordance with the provision of these Bylaws and such notice shall contain a copy or summary of the proposed amendments to the Bylaws.