

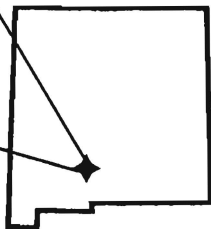
Sierra

Electric

Cooperative



*Owned By Those
We Serve*



One of America's Consumer-Owned
Rural Electric Companies

BY-LAWS
Revised April 1, 2013

STATEMENT OF NONDISCRIMINATION

Revised March 2016

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1. Mail: US Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, DC 20250-9410
2. Fax: (202) 690-7442; or
3. Email: program.intake@usda.gov

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**BY-LAWS
OF
SIERRA ELECTRIC COOPERATIVE, INC.**

**ARTICLE I
MEMBERSHIP**

SECTION 1.01 ELIGIBILITY

Any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof, or body politic (each hereinafter referred to as “person,” “applicant,” “him” or “his”) shall be eligible to become a member of, and/or, at one or more premises owned or directly occupied or used by him, to receive electric service from, Sierra Electric Cooperative, Inc. (hereinafter called the Cooperative).

SECTION 1.02 APPLICATION FOR MEMBERSHIP; RENEWAL OF PRIOR APPLICATION

Application for Membership, in and by which the applicant shall agree to purchase electric power and energy from the Cooperative and to be bound by and to comply with all of the other provisions of the Cooperative Articles of Incorporation and By-laws, and all rules, regulations and rate schedules established pursuant thereto, as all the same then exist or may thereafter be adopted or amended (the obligations embraced by such agreement being hereafter called “membership obligations”), shall be made in writing on such form as is provided therefor by the Cooperative. With respect to any particular classification of service for which the Board of Trustees shall require it, such application shall be accompanied by a supplemental contract, executed by the applicant on such form as is provided therefor by the Cooperative.

The membership application shall be accompanied by any membership fee provided for in Section 1.03 (together with any service security deposit, service connection deposit or fee, facilities extension deposit, or contribution in aid of construction that may be required by the Cooperative), which fee (and such service security deposit, service connection deposit or fee, facilities extension deposit, or contribution in aid of construction, if any) shall be refunded in the event the application is not approved. Any former member of the Cooperative may, by the sole act of paying a new membership fee and any outstanding account plus accrued interest thereon at the New Mexico legal rate on judgments in effect when such account first became overdue, compounded annually (together with any service security deposit, service connection deposit or fee, facilities extension deposit, or contribution in aid of construction that may be required by the Cooperative), renew and reactivate any prior application for membership to the

same effect as though the application had been newly made on the date of such payment.

SECTION 1.03 MEMBERSHIP FEE; SERVICE SECURITY AND FACILITIES EXTENSION DEPOSITS; CONTRIBUTION IN AID OF CONSTRUCTION

The membership fee shall be as fixed from time to time by the Board of Trustees. The membership fee (together with any service security deposit, or service connection deposit or fee, facilities extension deposit, or contribution in aid of construction, or any combination thereof, if required by the Cooperative) shall entitle the member to one service connection. A service connection deposit or fee, in such amount as shall be prescribed by the Cooperative (together with a service security deposit, or facilities extension deposit or a contribution in aid of construction, if required by the Cooperative), shall be paid by the member for each additional service connection requested by him.

SECTION 1.04 JOINT MEMBERSHIP

Married persons and other natural persons joined in a legal relationship and principally residing together will be considered as a joint membership unless specifically requested otherwise, in writing, by both persons. A husband and wife, and other natural persons joined in a legal relationship and principally residing together, by specifically so requesting in writing, may convert into joint membership or, if one of them is already a member, may automatically convert such membership into a joint membership. The words “member,” “applicant,” “person,” “his” and “him,” as used in these By-laws, shall include both genders and persons holding a joint membership, unless otherwise clearly distinguished in the text; and all provisions relating to the rights, powers, terms, conditions, obligations, responsibilities and liabilities of membership shall apply equally, severally and jointly to them. Without limiting the generality of the foregoing –

- (a) the presence at a meeting of either or both shall constitute the presence of one member and a joint waiver of notice of the meeting;
- (b) the vote of either or both shall constitute one joint vote;
- (c) notice to, or waiver of notice signed by, either or both shall constitute, respectively, suspension or termination of joint membership;
- (d) suspension or termination in any manner of either shall constitute, respectively, suspension or termination of joint membership;
- (e) either, but not both concurrently, shall be eligible to serve as a trustee of the Cooperative, but only if both meet the qualifications required therefor.

SECTION 1.05 ACCEPTANCE INTO MEMBERSHIP

Upon complying with the requirements set forth in Section 1.02, as determined by the Board of Trustees or its delegatee, any applicant shall automatically be accepted into the membership in, and become eligible to receive electric service from, the Cooperative, unless the Board of Trustees or its delegatee shall determine that such applicant is not willing or is not able to satisfy and abide by the Cooperative's terms and conditions of membership or of the applicable class of service or that such application, should be rejected for other good cause: PROVIDED, that any person whose application, for sixty (60) days or longer has been submitted to but not accepted by or on behalf of the Board of Trustees may, by filing written request therefor with the Cooperative at least thirty (30) days prior to the next meeting of the members, have his application submitted to and approved or disapproved by the vote of the members at such meeting, at which the applicant shall be entitled to be present and be heard. The membership shall be effective on the date the applicant began using, receiving or purchasing service provided by the Cooperative. If an application is not accepted, the Cooperative shall return any membership fee paid.

SECTION 1.06 EXCESS PAYMENTS TO BE CREDITED AS PATRON-FURNISHED CAPITAL

All amounts paid for electric service in excess of the cost thereof shall be furnished by patrons as capital, and each patron shall be credited with the capital so furnished as provided in Article IX of these By-laws.

SECTION 1.07 WIRING OF PREMISES; RESPONSIBILITY THEREFOR; RESPONSIBILITY FOR METER TAMPERING OR BYPASSING AND FOR DAMAGE TO COOPERATIVE PROPERTIES; EXTENT OF COOPERATIVE RESPONSIBILITY; INDEMNIFICATION

Each member shall cause all premises receiving electric service pursuant to his membership to become and to remain wired in accordance with the specifications of the National Electric Code, any applicable state code or local government ordinances, and of the Cooperative. Each member shall be responsible for and shall indemnify the Cooperative and its employees, agents and independent contractors against death, injury, loss or damage resulting from any defect in or improper use or maintenance of such premises and all wiring and apparatuses connected thereto or used thereon. Each member shall make available to the Cooperative a suitable site, as determined by the Cooperative, whereon to place the Cooperative's physical facilities for the furnishing and metering of electric service and shall permit the Cooperative's authorized employees, agents and independent contractors to have access thereto for meter reading and for inspection, maintenance, replacement, relocation or repair of such facilities at all reasonable times. As part of the consideration for such service, each member shall be

the Cooperative's bailee of such facilities and shall accordingly resist from interfering with, impairing the operation of or causing damage to such facilities, and shall use his best efforts to prevent others from so doing. Each member shall also provide such protective devices to his premises, apparatuses or meter base as the Cooperative shall from time to time require in order to protect the Cooperative's physical facilities and their operation and to prevent any interference with or damage to such facilities. In the event such facilities are interfered with, impaired in their operation or damaged by the member, or by any other person where the member's reasonable care and surveillance should have prevented such, the member shall indemnify the Cooperative and its employees, agents and independent contractors against death, injury, loss or damage resulting therefrom, including but not limited to, the Cooperative's cost of repairing, replacing or relocating any such facilities and its loss, if any, of revenues resulting from the failure or defective functioning of its metering equipment. The Cooperative shall, however, in accordance with its applicable service rules and regulations, indemnify the member for any overcharges for service that may result from a malfunctioning of its metering equipment or any error occurring in the Cooperative's billing procedures. In no event shall the responsibility of the Cooperative extend beyond the point of delivery.

SECTION 1.08 MEMBER TO GRANT EASEMENTS TO COOPERATIVE AND TO PARTICIPATE IN REQUIRED COOPERATIVE LOAD MANAGEMENT PROGRAMS

Each member shall, upon being requested to do so by the Cooperative, execute and deliver to the Cooperative grants of easement or right-of-way over, on and under such lands owned or leased by or mortgaged to the member, if any such rights are so enjoyed by that member, and in accordance with such reasonable terms and conditions, as the Cooperative shall require for the furnishing of electric service to him or other members or for the construction, operation, maintenance or relocation of the Cooperative's electric facilities. If the grant of an easement or right-of-way would materially either reduce the value of such lands or impair the member's use and enjoyment of such lands, the member may propose a reasonable alternative which the Cooperative may, in its discretion, agree to so long as service may be provided to that or other members without undue additional costs. Each member shall participate in any required program that may be established by the Cooperative to enhance load management, to conduct load research, or to more efficiently utilize or conserve electric power or energy.

SECTION 1.09 SUBSCRIPTION TO ENCHANTMENT MAGAZINE

The Board of Directors shall be empowered and authorized to subscribe to *enchantment Magazine* on behalf of and for circulation to the individual consumers of the Cooperative at an annual subscription rate which shall not be less than \$4.00 nor more

than \$8.00 and such subscription shall be paid for each member by the Cooperative from any funds accruing in favor of each member so as to reduce such funds in the same manner as would any other expense of the Cooperative.

ARTICLE II MEMBERSHIP SUSPENSION AND TERMINATION

SECTION 2.01 SUSPENSION; REINSTATEMENT

Upon his failure, after the expiration of the initial time limit prescribed either in a specific notice to him or in the Cooperative's generally publicized applicable rules and regulations, to pay any amounts due the Cooperative or to cease any other noncompliance with his membership obligation, a person's membership shall automatically be suspended; and he shall not during such suspension be entitled to cast a vote at any meeting of the members. Payment of all amounts due the Cooperative, including any additional charges required for such reinstatement, and/or cessation of any other noncompliance with his membership obligations within the final time limit provided in such notice or rules and regulations shall automatically reinstate the membership, in which event the member shall thereafter be entitled to vote at the meetings of its members.

SECTION 2.02 TERMINATION BY EXPULSION; RENEWED MEMBERSHIP

Upon failure of a suspended member to be automatically reinstated to membership, as provided in Section 2.01, he may, without further notice, but only after due hearing if such is requested by him, be expelled by action of the Board of Trustees at any subsequently held regular or special meeting of the Board. Any person so expelled may, by delivering written notice to that effect to the Cooperative at least ten (10) days prior to the next meeting of the members, appeal to and be present and heard at such meetings, which may vote approval of such expulsion or disapproval thereof, in which latter event such person's membership shall be reinstated retroactively to the date of his expulsion. After any final effective expulsion of a member, he may not again become a member except upon new application therefor duly approved as provided in Section 1.05. The Board of Trustees, acting upon principles of general application in such cases, may establish such additional terms and conditions for renewed membership as it determines to be reasonably necessary to assure the applicant's compliance with all his membership obligations.

SECTION 2.03 TERMINATION BY WITHDRAWAL OR RESIGNATION

A member may withdraw from membership upon such generally applicable conditions as the Board of Trustees shall prescribe and upon either (a) ceasing to (or, with approval of the Board of Trustees, resigning his membership in favor of a new applicant who also shall) own or directly occupy or use all premises being furnished electric service pursuant to his membership, or (b) except when the Board of Trustees specifically waives such conditions, abandoning totally and permanently the use of central station electric service on such premises.

SECTION 2.04 TERMINATION BY DEATH OR CESSATION OF EXISTENCE; CONTINUATION OF MEMBERSHIP IN REMAINING OR NEW PARTNERS

Except as provided in Section 2.06, the death of an individual human member shall automatically terminate his membership. The cessation of the legal existence of any other type of member shall automatically terminate such membership; PROVIDED, that upon the dissolution for any reason of a partnership, or upon the death, withdrawal or addition of any individual partner, such membership shall continue to be held by such remaining and/or new partner or partners as continue to own or directly occupy or use the premises being furnished electric service pursuant to such membership in the same manner and to the same effect as though such membership had never been held by different partners: PROVIDED FURTHER, that neither a withdrawing partner nor his estate shall be released from any debts then due the Cooperative.

SECTION 2.05 EFFECT OF TERMINATION

Upon the termination in any manner of a person's membership, he or his estate, as the case may be, shall be entitled to refund of his membership fee (and to his service security deposit, if any, theretofore paid the Cooperative), less any amounts due the Cooperative; but neither he nor his estate, as the case may be, shall be released from any debts or other obligations then remaining due the Cooperative. Notwithstanding the suspension or expulsion of a member, as provided for in Section 2.01 and 2.02, such suspension or expulsion shall not, unless the Board of Trustees shall expressly so elect, constitute such release of such person from his membership obligations as to entitle him to purchase from any other person any central station electric power and energy for use at the premises to which such service has theretofore been furnished by the Cooperative pursuant to such membership.

SECTION 2.06 JOINT MEMBERSHIP CONVERSIONS AND TERMINATIONS

Upon the death, dissolution of marriage or legal separation of either spouse holding a joint membership, or upon the legal conclusion of the relationship or failure to principally reside in the same location of other natural persons holding a joint membership,

- (a) if one or more joint member(s) continue to use, receive or purchase the Cooperative’s service at the same location, then the joint membership converts to a membership in the name of the person continuing to legally use, receive or purchase the service at the same location; or
- (b) if both joint members continue to legally use, receive or purchase the Cooperative’s service at the same location, the joint membership converts to a membership in the name of the person determined by the Cooperative; or
- (c) if no joint member continues to legally use, receive or purchase the Cooperative’s service at the same location, then the joint membership terminates.

The interest of any patronage capital belonging to the joint membership shall be passed to and be recorded in the name of the surviving spouse in the case of community property between joint members in the absence of a probated will, according to any probated will, pursuant to any enforceable contractual terms between other natural persons having had a legal relationship and otherwise in accordance with applicable law. Termination or conversion of a joint membership shall not relieve any person, or his estate, personal representative and heirs, from any debts due the Cooperative.

SECTION 2.07 BOARD ACKNOWLEDGMENT OF MEMBERSHIP TERMINATION; ACCEPTANCE OF MEMBERS RETROACTIVELY

Upon the termination of a person’s membership for any reason, the Board of Trustees, as soon as practicable after such termination is made known to it, shall, by appropriate action, formally acknowledge such termination effective as of the date on which the Cooperative ceased furnishing electric service to such person. Upon discovery that the Cooperative has been furnishing electric service to any person other than a member, it shall immediately request that they apply for membership and service.

**ARTICLE III
MEETINGS OF MEMBERS**

SECTION 3.01 ANNUAL MEETING

For the purpose of electing trustees, hearing and passing upon reports covering the previous fiscal year, and transacting such other business as may properly come before the meeting, the annual meeting of the members (including by Trustee Districts) shall

be held on the first Monday of the month of April of each year at such place in one of the counties in New Mexico within which the Cooperative serves, and beginning at such hour, as the Board of Trustees shall from year to year fix: PROVIDED, that, for cause sufficient to it, the Board of Trustees may fix a different date for such annual meetings not more than thirty (30) days prior or subsequent to the day otherwise established for such meeting in this Section. It shall be the responsibility of the Board of Trustees to make adequate plans and preparations for and to encourage member attendance at the annual meeting. Failure to hold the annual meeting at the designated time and place shall not work a forfeiture of dissolution of the Cooperative.

SECTION 3.02 SPECIAL MEETING

A special meeting of the members whether generally or within a particular Trustee District may be called by the Board of Trustees, by the President, by any three (3) Trustees, or by petition signed by not less than ten (10%) percent of the members, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided in Section 3.03. Such a meeting shall be held at such place in one of the counties in New Mexico within which the Cooperative serves, on such date, not sooner than forty (40) days after the call for such meeting is made or a petition therefor is filed, and beginning at such hour as shall be designated by him or those calling or petitioning for the same.

SECTION 3.03 NOTICE OF MEMBER MEETINGS

Written or printed notice of the place, day and hour of the meeting and in the case of a special meeting or of an annual meeting at which business requiring special notice is to be transacted, the purpose or purposes of the meeting shall be delivered to each member (in the case of a special Trustee District meeting only within the particular Trustee District) not less than ten (10) days nor more than twenty-five (25) days prior to the date of the meeting either personally or by mail, by the Board of Trustees, the Secretary or legal Representative (and, in the case of a special meeting at the direction of him or those calling the meeting). Any such notice delivered by mail may be included with member service billings or as an integral part of the Cooperative's monthly newsletter. No matter, the carrying of which, as provided by law, requiring the affirmative votes of at least a majority of all the Cooperative's members shall be acted upon at any meeting of the members unless notice of such matter shall have been contained in the notice of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the Cooperative, with postage thereon prepaid and postmarked at least ten (10) days prior to the meeting date. In making such computation, the date of the meeting shall not be counted. The incidental and non-intended failure of any member to receive a notice deposited in the mail addressed to

the member at his address as shown on the Cooperative's books shall not invalidate any action which may be taken by the members at any such meeting, and the attendance in person of a member at any meeting of the members shall constitute a waiver of notice of such meeting unless such attendance shall be for the express purpose of objection to the transaction of any business or one or more items of business on the grounds that the meeting shall not have been lawfully called or convened. Any member attending any meeting for the purpose of making such objection shall notify the Secretary of his objection prior to or at the beginning of the meeting.

SECTION 3.04 QUORUM

Business may not be transacted at any meeting of the members unless there are present in person at least three (3%) percent of the Cooperative's members, except that, if less than a quorum is present at any meeting a majority of those present in person may, without further notice, adjourn the meeting to another time and date not less than forty (40) days later and to any place in one of the counties in New Mexico within which the Cooperative serves: PROVIDED, that, if a majority of those present in person so resolve, the Secretary shall notify any absent members of the time, date and place of such adjourned meeting by delivering notice thereof as provided in Section 3.03. At all meetings of the members, whether a quorum be present or not, the Secretary shall annex to the meeting minutes, or incorporate therein by reference, a list of those members who were registered as present in person.

SECTION 3.05 VOTING

Each member who is not in a status of suspension, as provided for in Section 2.01, shall be entitled to only one vote upon each matter submitted to a vote at any meeting of the members. Voting by members other than members who are natural persons shall be allowed upon the presentation to the Cooperative, prior to or upon registration at each member meeting, of satisfactory evidence entitling the person presenting the same to vote. At all meetings of the members, all questions shall be decided by a majority of the members voting thereon, except as otherwise provided by law or by the Cooperative's Articles of Incorporation or these By-laws. Members may not cumulate their votes or vote by proxy or mail.

SECTION 3.06 CREDENTIALS AND ELECTION COMMITTEE

The Board of Trustees shall, at least ten (10) days before any meeting of the members, appoint a Credentials and Election Committee. The Committee shall consist of three (3) members, one (1) from each Trustee District, who are not existing Cooperative employees, agents, officers, trustees, or known candidates for trustees, and who are not close relatives (as hereinafter defined) employees or members of the same household of existing Cooperative employees, agents, officers, trustees, or known candidates for

trustee. The Committee shall elect its own chairman and secretary prior to the member meeting. It shall be the responsibility of the Committee to establish or approve the manner of conducting member registration and any ballot or other voting, to pass upon all questions that may arise with respect to the registration of members in person, to count all ballots or other votes cast in any election or in any other matter, to rule upon the effect of any ballots or other vote irregularly or indecisively marked or cast, to rule upon all other questions that may arise relating to member voting and the election of trustees (including but not limited to the validity of petitions of nomination or the qualifications of candidates and the regularity of the nomination and election of trustees) and to pass upon any protest or objection filed with respect to any election or conduct affecting the results of any election. In the exercise of its responsibility, the Committee shall have available to it the advice of counsel provided by the Cooperative, if necessary. In the event a protest or objection is filed concerning any election, such protest or objection must be filed during, or within three (3) business days following the adjournment of the meeting in which the voting is conducted. The Committee shall thereupon be reconvened, upon notice from its chairman, not less than seven (7) days after such protest or objection is filed. The Committee shall hear such evidence as is presented by the protestor(s) or objector(s) who may be heard in person, by counsel, or both, and any opposing evidence; and the Committee, by a vote of a majority of those present and voting, shall, within a reasonable time, but not later than thirty (30) days after such hearing, render its decision, the result of which may be to affirm the election, to change the outcome thereof, or to set it aside. The Committee's decision (as reflected by a majority of those actually present and voting) on all matters covered by this Section shall be final.

SECTION 3.07 ORDER OF BUSINESS

The order of business at the annual meeting of the members and, insofar as practicable or desirable, at all other meetings of the members shall be essentially as follows:

Report on the number of members present in person in order to determine the existence of a quorum;

Reading of the notice of the meeting and proof of publication or mailing thereof, or the waiver or waivers of notice of the meeting as the case may be;

Reading of unapproved minutes or previous meetings of the members and the taking of necessary action thereof;

Presentation and consideration of reports of officers, trustees, and committees;

Election of trustees;

Unfinished business;

New Business; and

Adjournment.

Notwithstanding the foregoing, the Board of Trustees or the members themselves may from time to time establish a different order of business for the purpose of assuring the earlier consideration of, and action upon, any type of business other than adjournment of the meeting, to another time and place in the order of business except that no business may be transacted until and unless the existence of a quorum is first established.

ARTICLE IV TRUSTEES

SECTION 4.01 NUMBER AND GENERAL POWERS

The business and affairs of the Cooperative shall be managed by a Board of Trustees consisting of not less than five (5) nor more than nine (9) members. The Board shall exercise all of the powers of the Cooperative except such as are by law or by the Cooperative's Articles of Incorporation or By-laws conferred upon or reserved to the members. In exercising its powers, the Board shall not, and cannot, respond to any anonymous communications or correspondence regarding the business and affairs of the cooperative including that of any past or present employee(s) or trustee(s) of the Cooperative.

SECTION 4.02 QUALIFICATIONS

No person shall be eligible to become or remain a trustee of the Cooperative who:

- (a) is a close relative of an incumbent trustee or of an employee of the Cooperative; or
- (b) is not a member of the Cooperative and has not received service therefrom at his primary residential abode within the Trustee District for which he had been elected for at least 1 calendar year (not less than 365 days) prior to his nomination, or in case of no nomination, prior to his election: PROVIDED, that the operating or chief executive of any member which is not a natural person, such as a corporation, church, etc., or his designee, shall be eligible to become a trustee, from the Trustee District in which such member is located, if he or such designee (1) is a permanent and year-round resident within the same Trustee District as the member is located and served by the Cooperative and for which election or nomination for election as Trustee is sought, BUT PROVIDED FURTHER, that no more than one (1) such person may serve on the Board of Trustees at the same time; or
- (c) was an employee of the Cooperative within five (5) years prior to his nomination or election; or
- (d) is a commissioner, member or employee of a governmental department, board or agency which has licensing, certificating, ratemaking, inspection or similar

- regulatory authority with respect to the Cooperative, its activities or the use, receipt or purchase of its services at the place of consumption; or
- (e) is in any way employed by or financially interested in a competing enterprise, or a business selling electric energy or supplies to the Cooperative, or a business primarily engaged in selling electrical appliances, fixtures or supplies to, among others, the members of the Cooperative; or
 - (f) is the incumbent of or candidate for an elective public office in connection with which a salary or compensation in excess of one hundred dollars per annum (exclusive of per diem and expense reimbursement) is paid; or
 - (g) is a current or active employee of any electric utility be it this Cooperative, any other cooperative, an investor-owned electric utility, or a municipal electric utility.

Upon establishment of the fact that a nominee for trustee lacks eligibility under this Section or as may be provided elsewhere in these By-laws, it shall be the duty of the chairman presiding at the meeting at which such nominee would otherwise be voted upon to disqualify such nominee. Upon the establishment of the fact that any person being considered for, or already holding, a trusteeship or other position of trust in the Cooperative lacks eligibility under this Section, it shall be the duty of the Board of Trustees to withhold such position from such person, or to cause him to be removed therefrom, as the case may be. Nothing contained in this Section shall, or shall be construed to, affect in any manner whatsoever the validity of any action taken at any meeting of the Board of Trustees, unless such action is taken with respect to a matter which is affected by the provisions of this Section and in which one or more of the trustees have an interest adverse to that of the Cooperative.

SECTION 4.03 ELECTION

At each annual meeting of the members, which shall also constitute meetings of each Trustee District, trustees for each Trustee District shall be elected by secret ballot by the members residing in that Trustee District and, except as provided in the second proviso of Section 4.02 of these By-laws, from among those persons therein who are natural persons: PROVIDED, that, when the number of nominees does not exceed the number of trustees to be elected from a particular Trustee District, and if there is no objection, secret written balloting may be dispensed with respect to that particular election and voting may be conducted in any other proper manner. Campaigning shall not be permitted within or immediately outside the structure in which an election is to be conducted. Trustees shall be elected by a plurality of the votes cast unless the members, prior to the balloting, resolve that a majority of the votes cast shall be required to elect. Drawing by lot shall resolve, where necessary, any tie votes.

SECTION 4.04 TENURE

Trustees shall be so nominated and elected from and with respect to each Trustee District for three-year terms at succeeding annual meetings; one (1) trustee from each Trustee District shall be elected for three-year terms at the next succeeding annual member meeting, and one (1) trustee from each Trustee District shall be elected for a three-year term at the next succeeding annual member meeting, and so forth: PROVIDED, that the terms of no two (2) trustees from the same Trustee District shall coincide unless, there are more than three (3) trustees representing a Trustee District, as determined by the Board of Trustees pursuant to Section 4.05 of these By-laws, in which event the three-year terms shall continue to be staggered to the maximum extent possible. Upon their election, trustees shall, subject to the provisions of these By-laws with respect to the removal of trustees, serve until the annual meeting of the members of the year in which their terms expire or until their successors shall have been elected and shall have qualified. If for any reason an election of trustees shall not be held at an annual meeting of the members duly fixed and call pursuant to these By-laws, such election may be held at an adjournment of such meeting or at a subsequently held special meeting of the members within that Trustee District or at the next annual meeting of the members. Failure of an election for a given year shall allow the incumbents whose trusteeships would have been voted on to hold over only until the next member meeting at which a quorum is present.

SECTION 4.05 TRUSTEE DISTRICTS

The territory served by the Cooperative shall be divided into such number of Trustee Districts as the Board of Trustees shall determine from time to time. Trustee Districts shall constitute voting districts for the sole purpose of electing trustees from and by members residing therein and shall be represented by at least one (1) trustee and may be represented by multiple trustees as the Board of Trustees may determine from time to time. Notwithstanding the foregoing Trustee District boundaries, every year the Board of Trustees, not less than ninety (90) days prior to the earliest date on which the annual member meeting may be scheduled by these By-laws to be held, shall review the Districts and, if determining that they should be altered so as to correct any substantially inequitable factors regarding the residence of members, or the geographic location of Districts and/or the number of trustees to be elected from or with respect to such Districts, shall change and redescribe one or more Districts and/or the number of trustees to be elected from or with respect to such Districts accordingly, in which event all Districts as so changed shall be noticed in writing precisely to the members not later than five (5) days prior to the date on which the Committee on Nominations for such meeting shall first convene. After such notice, such Districts and/or the number of trustees to be elected with respect to or from such Districts may also be changed by amendment of these By-laws by the members from time to time: PROVIDED, that any

change so made by action of the Board shall be in full force and effect until at least the completion of the election of trustees at the annual meeting of the members first held in accordance with such changes effectuated by the Board of Trustees; AND PROVIDED FURTHER, that no such change, shall be so effectuated by the Board as to compel the vacancy of any trustee's office prior to the time such trustee's term would normally expire.

SECTION 4.06 NOMINATIONS

It shall be the duty of the Board of Trustees to appoint, not less than sixty (60) nor more than ninety (90) days prior to the date of a meeting of the members at which trustees are to be elected, a Committee on Nominations, consisting of at least three (3) members of the Cooperative who are not existing Cooperative employees, agents, officers, trustees or known candidates for trustee, who are not close relatives (as hereinafter defined) or members of the same household of such existing employee, agents, trustees or known candidates for trustee, and who are so selected that each of the Cooperative's Trustee Districts shall have representation thereon in proportion to the number of trustees to be elected from such Districts. The Committee shall prepare and post at the principal office of the Cooperative at least thirty (30) days prior to the meeting a list of nominations for trustees to be elected, listing separately the nominee(s) for each Trustee District from which a trustee must, pursuant to this Article, be elected at the meeting. Any fifteen (15) or more members of a specific district of the Cooperative, acting together, may make additional nominations in writing over their signatures, listing their nominee(s) in like manner, not less than sixty (60) days prior to the meeting, and the Secretary shall post such nominations at the same place where the list of nominations made by the Committee is posted. The Secretary shall mail to the members with the notice of the meeting, or separately, but at least ten (10) days prior to the date of the meeting, a statement of the names and addresses of all nominee(s) from each Trustee District in which one or more trustee must be elected, showing clearly those nominated by the Committee and those nominated by petition if any. Notwithstanding the provisions contained in this Section, failure to comply with any of such provisions shall not affect in any manner whatsoever the validity of any action taken by the Board of Trustees after the election of trustees.

SECTION 4.07 VOTING FOR TRUSTEES; VALIDITY OF BOARD ACTION

In the election of trustees, each member shall be entitled to cast the number of votes (but not cumulatively) which corresponds to the total number of trustees to be elected from his Trustees District, but no member may vote for more than the number of nominees from or with respect to any particular Trustee District than there are to be elected. Ballots marked in violation of the foregoing restriction with respect to one or more trustees Districts shall be invalid and shall not be counted with respect to such

District or Districts. Notwithstanding the provisions contained in this Section, failure to comply with any of the provisions shall not affect in any manner whatsoever the validity of any action taken by the Board of Trustees after the election of trustees.

SECTION 4.08 REMOVAL OF TRUSTEES

- (a) Any member may bring one or more charges(s) for cause against any one or more trustee(s) and may request the removal of such trustee(s) by reason thereof by filing with the Secretary such charge(s) in writing together with a petition signed by not less than fifteen (15%) percent of the total membership of the Cooperative, which petition calls for a special member meeting thereon and specifies the place, time and date thereof not less than forty (40) days after filing of such petition, or which requests that the matter be acted upon at the subsequent annual member meeting if such meeting will be held no sooner than forty (40) days after the filing of such petition. Each page of the petition shall, in the forefront, state the name(s) and address(es) of the member(s) filing such charge(s) and a verbatim statement of such charge(s) and the name(s) of the Trustees(s) against whom such charge(s) is (are) being made. The petition shall be signed by each member in the same name as he is billed by the Cooperative and shall state the signatory's address as the same appears on such billings. Notice of such charge(s) verbatim, of the trustee(s) against whom the charge(s) have been made and of the member(s) filing the charge(s) shall be contained in the notice of the meeting, or separately noticed to the members not less than ten (10) days prior to the member meeting at which the matter will be acted upon. Such trustee(s) shall be informed in writing of the charge(s) after they have been validly filed and at least twenty (20) days prior to the meeting of the members at which the charge(s) are to be considered, and shall have an opportunity at the meeting to be heard in person, by witnesses, by counsel or any combination of such, and to present evidence in respect of the charge(s); and the person(s) bringing the charge(s) shall have the same opportunity, but must be heard first. The question of removal of such trustee(s) shall, separately for each if more than one has been charged, be considered and voted upon at such meeting, and any vacancy created by such removal shall be filled by vote of the members residing within the affected Trustee District at such meeting without compliance with the foregoing provisions with respect to nominations, except that nominations within the affected Trustee District shall be made from the floor. A newly elected trustee shall be from the same Trustee District as was the trustee whose office he succeeds and shall serve the unexpired portion of the removed trustee's term.
- (b) A trustee shall be deemed to have been removed if that trustee shall have two unexcused absences in any twelve (12) month period. A trustee shall be removed if he is no longer eligible to remain a trustee in accordance with Section 4.02 or if

he is removed by the members or by reason of his failure to meet the meetings attendance requirement of this Section or other violations of the Board Policy Book.

SECTION 4.09 VACANCIES

Subject to the provisions of these By-laws with respect to the filling of vacancies caused by the removal of trustees by the members, a vacancy occurring in the Board of Trustees shall be filled by the Board of Trustees. A trustee thus appointed shall serve out the unexpired term of the trustee whose office was originally vacated and until a successor is elected and qualified: PROVIDED, that such a trustee shall be from the same Trustee District as was the trustee whose office was vacated.

SECTION 4.10 COMPENSATION; EXPENSES

Trustees shall, as determined by action of the Board of Trustees, receive, on a per diem basis, a fixed fee which may include insurance benefits, for attending Board of Trustees meetings. On approval of the Board of Trustees, trustees may receive on a per diem basis the same or a different fixed fee for their duly authorized attendance at other type meetings for their performance of other trustee duties. They shall also receive advancement or reimbursement of any travel and out-of-pocket expenses actually, necessarily and reasonably incurred in attending Board of Trustees meetings and in the performance of other authorized Cooperative business. No trustee or close relative of a trustee shall receive compensation for serving the Cooperative in any other capacity unless the payment and amount of such compensation shall be specifically authorized by a vote of the members with respect to an emergency: PROVIDED, that a trustee who is also an officer of the Board, and who as such officer performs regular or periodic duties of a substantial nature for the Cooperative in its fiscal affairs, may be compensated in such amount as shall be fixed and authorized in advance of such service by the unanimous vote of the remaining trustees.

SECTION 4.11 RULES, REGULATIONS, RATE SCHEDULES AND CONTRACTS

The Board of Trustees shall have the power to make, adopt, amend, abolish and promulgate such rules, regulations, rate schedules, contracts, security deposits and any other types of deposits, payments or charges, including contributions in aid of construction, not inconsistent with the Public Utility Act or other laws or the Cooperative's Articles of Incorporation or By-laws, as it may deem advisable for the management, administration and regulation of the business and affairs of the Cooperative.

SECTION 4.12 ACCOUNTING SYSTEM AND REPORTS

The Board of Trustees shall cause to be established and maintained a complete accounting system of the Cooperative's financial operations and condition, and shall, 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.

SECTION 4.13 "CLOSE RELATIVE" DEFINED

As used in these By-laws, "close relative" means a person who, by blood or in law, including step and adoptive kin, is either a spouse, child, grandchild, parent, grandparent, brother, sister, aunt, uncle, nephew, or niece of the principal or an adult natural person cohabitating with that person principally at the same residence, whether or not in a legal relationship one to another.

ARTICLE V MEETING OF TRUSTEES

SECTION 5.01 REGULAR MEETINGS

A regular meeting of the Board of Trustees shall be held, without notice, immediately after the adjournment of the annual meeting of the members, or as soon thereafter as conveniently may be, at such site as designated by the Board in advance of the annual member meeting. A regular meeting of the Board of Trustees shall also be held monthly at such date, time and place thereof, except when business to be transacted thereat shall require special notice: PROVIDED, that any trustee absent from any meeting of the Board at which such an action initially determines or makes any change in the date, time or place of a regular meeting shall be entitled to receive written notice of such determination or change at least five (5) days prior to the next meeting of the Board; AND PROVIDED FURTHER, that, if a policy therefore is established by the board, the President may change the date, time or place of a regular monthly meeting for good cause and upon at least five (5) day's notice thereof to all trustees.

SECTION 5.02 SPECIAL MEETINGS

Special meetings of the Board of Trustees may be called by Board action, by the President, or by any three (3) trustees, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided in Section 5.03. The Board, the President, or the trustees calling the meeting shall fix the date,

time and place for the meeting, which shall be held in one of the counties in New Mexico within which the Cooperative serves, unless all trustees consent to its being held in some other place in New Mexico or elsewhere. Special meetings may also be held via telephone conference call, without regard to the actual location of the trustees at the time of such a telephone conference meeting, if all the trustees at the time of such a telephone conference meeting consent thereto.

SECTION 5.03 NOTICE OF TRUSTEES MEETINGS

Written notice of the date, time, place and purpose or purposes of any special meeting of the Board and, when the business to be transacted thereat shall require such, of any regular meeting of the Board shall be delivered to each trustee not less than five (5) days prior thereto, either personally or by mail, by or at the direction of the Secretary or, upon a default in this duty by the Secretary, by him or those calling it in the case of a special meeting or by any trustee in the case of a meeting whose date, time and place have already been fixed by Board resolution. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the trustee at his address as it appears on the records of the Cooperative, with first class postage thereon prepaid, and postmarked at least five (5) days prior to the meeting date. The attendance of a trustee at any meeting of the Board shall constitute a waiver of notice of such meeting unless such attendance shall be for the express purpose of objecting to the transaction of any business, or of one or more items of business, on the grounds that the meeting shall not have been lawfully called or convened.

SECTION 5.04 QUORUM

The presence in person of a majority of the trustees in office shall be required for the transaction of business and the affirmative votes of a majority of the trustees present and voting shall be required for any action to be taken: PROVIDED, that a trustee who by law or these By-laws is disqualified from voting on a particular matter shall not, with respect to consideration of an action upon that matter, be counted in determining the number of trustees in office or present; AND PROVIDED FURTHER, that, if less than a quorum be present at a meeting, a majority of the trustees present may adjourn the meeting from time to time, but shall cause the absent trustee to be duly and timely notified of the date, time and place of such adjournment meeting.

SECTION 5.05 OPEN MEETINGS

Except when the Board, in its sole discretion, determines to meet in executive session, meetings of the Board of Trustees shall, subject to the physical limitations of the meeting space, be open for observance by members of the Cooperative and such other guests as the Board may allow. To the extent and upon such conditions as may be established by the Board, persons permitted to be present may be granted the

opportunity to present statements but shall not otherwise participate in the meeting. Nothing herein contained restricts, however, the authority of the presiding officer to eject, place time or subject matter restraints, schedule or otherwise control or apply sanctions necessary or convenient to the orderly conduct of the Board's business.

ARTICLE VI OFFICERS; MISCELLANEOUS

SECTION 6.01 NUMBER AND TITLE

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

SECTION 6.02 ELECTION AND TERM OF OFFICE

The four officers named in Section 6.01 shall be elected annually and without prior nomination, by and from the Board of Trustees at the first meeting of the Board held after the annual meeting of the members. If the election of such officers shall not be held at such meeting, it shall be held as soon thereafter as conveniently may be. Each such officer shall hold office until the meeting of the Board first held after the next succeeding annual meeting of the members or until his successor shall have been duly elected and shall have qualified, subject to the provisions of the By-laws with respect to the removal of trustees and to the removal of officers by the Board of Trustees. Any other officers may be elected by the Board from among such persons, and with such title, tenure, responsibilities and authorities, as the Board of Trustees may from time to time deem advisable.

SECTION 6.03 REMOVAL

Any officer, agent or employee elected or appointed by the Board of Trustees may be removed by the Board whenever in its judgment the best interests of the Cooperative will thereby be served.

SECTION 6.04 VACANCIES

A vacancy in any office elected or appointed by the Board of Trustees shall be filled by the Board for the unexpired portion of the term.

SECTION 6.05 PRESIDENT

The President shall –

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

SECTION 6.06 VICE PRESIDENT

In the absence of the President, or in the event of his 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; and shall perform such other duties as from time to time may be assigned to him by the Board of Trustees.

SECTION 6.07 SECRETARY

The Secretary shall –

- (a) keep, or cause to be kept, the minutes of meetings of the members and of the Board of Trustees in one or more books provided for that purpose;
- (b) see that all notices are duly given in accordance with these By-laws or as required by law;
- (c) be custodian of the corporate records and of the seal of the Cooperative and see that the seal of the Cooperative is affixed to all certificates of membership prior to the issue thereof and to all documents the execution of which, on behalf of the Cooperative under its seal, is duly authorized in accordance with the provisions of these By-laws or is required by law;
- (d) keep, or cause to be kept, a register of the name and post office address of each member, which address shall be furnished to the Cooperative by such member;
- (e) sign, with the President, certificates of membership the issue of which shall have been authorized by action of the Board of Trustees;
- (f) have general charge of the books of the Cooperative in which a record of the members is kept;
- (g) keep on file at all times a complete copy of the Cooperative's Articles of Incorporation and By-laws, together with all amendments thereto and make available upon request to any member; and

- (h) in general, perform all duties incident to the office of the Secretary and such other duties as from time to time may be assigned to him by the Board of Trustees.

SECTION 6.08 TREASURER

The Treasurer shall –

- (a) have charge and custody of and be responsible for all funds and securities of the Cooperative;
- (b) receive and give receipts for monies due and payable to the Cooperative from any source whatsoever, and deposit or invest all such monies in the name of the Cooperative in such bank or banks or in such financial institutions or securities as shall be selected in accordance with the provisions of these By-laws; and
- (c) in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board of Trustees.

SECTION 6.09 DELEGATION OF SECRETARY'S AND TREASURER'S RESPONSIBILITIES

Notwithstanding the duties, responsibilities and authorities of the Secretary and of the Treasurer hereinbefore provided in Section 6.07 and 6.08, the Board of Trustees by action may, except as otherwise limited by law, delegate, wholly or in part, the responsibility and authority for, and the regular or routine administration of, one or more of each such officer's such duties to one or more agents, other officers or employees of the Cooperative who are not trustees. To the extent that the Board does so delegate with respect to any such officer, that officer as such shall be released from such duties, responsibilities and authorities.

SECTION 6.10 GENERAL MANAGER; EXECUTIVE VICE PRESIDENT

The Board of Trustees may appoint a General Manager, who may be, but who shall not be required to be, a member of the Cooperative, and who also may be designated Executive Vice President. Such officer shall perform such duties as the Board of Trustees may from time to time require and shall have such authority as the Board of Trustees may from time to time vest in him. The General Manager appointed by the Board of Trustees shall serve at its pleasure.

SECTION 6.11 BONDS

The Board of Trustees 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 of Trustees shall determine. The Board of Trustees in its discretion may also require any other officer, agent or employee of the Cooperative to give such bond in such amount

and with such surety as it shall determine. The cost of all such bonds shall be borne by the Cooperative.

SECTION 6.12 COMPENSATION; INDEMNIFICATION

The compensation, if any, of any officer, agent or employee who is also a trustee or close relative of a trustee shall be determined as provided in Section 4.10 of these By-laws, and the powers, duties and compensation of any other officers, agents and employees shall be fixed or a plan therefore approved by the Board of Trustees. The Cooperative shall indemnify trustees, officers, including the General Manager (and/or, if so titled, the Executive Vice President), agents and employees, as provided for present or former trustees or officers in the N.M. Stat. Ann. Section 62-15-3(Q). The Cooperative may purchase insurance to cover such indemnification.

SECTION 6.13 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 and showing the condition of the Cooperative at the close of such fiscal year.

ARTICLE VII CONTRACTS, CHECKS AND DEPOSITS

SECTION 7.01 CONTRACTS

Except as otherwise provided by law or these By-laws, the Board of Trustees may authorize any Cooperative officer, agent or employee 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. No contract of employment by and between the Cooperative and any employee which in any way alters the at-will employment relationship between the Cooperative and any employee shall be binding on the Cooperative until the same shall have been expressly approved by the Board of Trustees in session.

SECTION 7.02 CHECKS, DRAFTS, ETC.

All checks, drafts and 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 or countersigned by such officer, agent or employee of the Cooperative and in such manner as shall from time to time be determined by action of the Board of Trustees.

SECTION 7.03 DEPOSITS, INVESTMENTS

All funds of the Cooperative shall be deposited or invested from time to time to the credit of the Cooperative in such bank or in such financial securities or institutions as the Board of Trustees may select.

ARTICLE VIII MEMBERSHIP CERTIFICATES

SECTION 8.01 CERTIFICATE OF MEMBERSHIP

Membership in the Cooperative may, if the Board so resolves, be evidenced by a certificate of membership, which shall be in such form and shall contain such provisions as shall be determined by the Board of Trustees not contrary to, or inconsistent with, the Cooperative's Articles of Incorporation or its By-laws. Such certificate, if authorized to be issued by the Board, shall be signed by the President and by the Secretary, and the seal shall be affixed thereto: PROVIDED, that the seal and signatures of the President and the Secretary may be imprinted thereon by facsimile.

SECTION 8.02 ISSUE OF MEMBERSHIP CERTIFICATES

No membership certificate shall be issued for less than the membership fee fixed by the Board of Trustees nor until such membership fee, any required service security deposits, facilities extension deposits, service connection fees, or contributions in aid of construction have been fully paid.

SECTION 8.03 LOST CERTIFICATE

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

ARTICLE IX NON-PROFIT OPERATION

SECTION 9.01 INTEREST OR DIVIDENDS ON CAPITAL PROHIBITED

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

SECTION 9.02 PATRONAGE CAPITAL IN CONNECTION WITH FURNISHING ELECTRIC ENERGY

Not inconsistent with NM Stat. Ann. Section 62-15-20, in the furnishing of electric energy the Cooperative's operations shall be so conducted that all patrons will, through their patronage, furnish capital for the Cooperative. In order to induce patronage and to assure that the Cooperative will operate on a non-profit basis, the Cooperative is obligated to account on a patronage basis to all its patrons for all amounts received and receivable from the furnishing of electric energy in excess of operating costs and expenses properly chargeable against the furnishing of electric energy. All such amounts in excess of operating costs and expenses at the moment of receipt by the Cooperative are received with the understanding that they are furnished by the patrons as capital. The Cooperative is obligated to pay by credits to a capital account for each patron all such amounts in excess of operating costs and expenses. The books and records of the Cooperative shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each patron is clearly reflected and credited in an appropriate record to the capital account of each patron and the Cooperative shall, within a reasonable time after the close of the fiscal year, notify each patron of the amount of capital so such amounts furnished by each patron shall not be required if the Cooperative notifies all patrons of the aggregate amount of such excess and provides a clear explanation of how each patron may compute and determine for himself the specific amount of capital so credited to him. All such amounts credited to the capital account of any patron shall have the same status as though they had been paid to the patron in cash in pursuance of a legal obligation to do so and the patron had then furnished the Cooperative corresponding amounts of capital. All other amounts received by the Cooperative from its operations in excess of costs and expenses shall, insofar as permitted by law, be (a) used to offset any losses incurred during the current or any prior fiscal year and (b) 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 a part of the capital credited to the accounts of patrons, as herein provided.

In the event of dissolution or liquidation of the Cooperative, after all outstanding indebtedness of the Cooperative shall have been paid, outstanding capital credits shall be retired without priority on a pro rata basis before any payments are made on account of property rights of patrons; PROVIDED, that insofar as gains may at that time be realized from the sale of any appreciated asset, such gains shall be distributed to all persons who were patrons during the period the business done by such patrons during that period, insofar as is practicable, as determined by the Board of Trustees and not inconsistently with NM Stat. Ann. Section 62-15-18(B)(5), before any payments are made on account of property rights of patrons. If, at any time prior to dissolution or liquidation, the Board of Trustees shall determine that the financial condition of the

Cooperative will not be impaired thereby, the capital then credited to patrons accounts may be retired in full or in part. Any such retirements of capital shall be made in order of priority according to the year in which the capital was furnished and credited, the capital first received by the Cooperative being first retired. After January 1, 1978, the Board of Trustees shall determine the method, basis, priority and order of retirement, if any, for all amounts heretofore and hereafter furnished as capital: PROVIDED, however, that the Board of Trustees shall have the power to adopt rules providing for the separate retirement of that portion (“power supply or other service or supply portion”) of capital credited to the accounts of patrons which corresponds to capital credited to the account of the Cooperative by an organization furnishing power supply or any other service or supply to the Cooperative. Such rules shall (a) establish a method for determining the portion of such capital credited to each patron for each applicable fiscal year, (b) provide for separate identification on the Cooperative’s books of such portions of capital credited to the Cooperative’s patrons, (c) provide for appropriate notifications to patrons with respect to such portions of capital credited to their accounts and (d) preclude a general retirement of such portions of capital credited to patrons for any fiscal year prior to the general retirement of other capital credited to patrons for the same year of any capital credited to patrons for any prior fiscal year.

Capital credited to the account of each patron shall be assignable only on the books of the Cooperative pursuant to written instructions from the assignor and only to successors in interest or successors in occupancy in all or a part of such patron’s premises served by the Cooperative, unless the Board of Trustees, acting under policies of general application, shall determine otherwise.

Notwithstanding any other provisions of these By-laws, the Board of Trustees shall, at its discretion, have the power at any time upon the death of any patron who was a natural person (or, if as so provided for in the preceding paragraph, upon the death of an assignee of the capital credits of a patron which assignee was a natural person), if the legal representatives of his estate shall request in writing that the capital so credited or assigned, as the case may be, be retired prior to the time such By-laws provide, to retire such capital immediately upon such terms and conditions as the Board of Trustees, acting under policies of general application to situations of like kind, and such legal representatives, shall agree upon: PROVIDED, however, that the financial condition of the Cooperative will not be impaired thereby.

The Cooperative, before retiring any capital credited to any patron’s account, shall deduct therefrom any amount owing by such member to the Cooperative, together with interest thereon at the New Mexico legal rate on judgments in effect when such amount became overdue, compounded annually.

The members of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the Articles of Incorporation and By-laws shall constitute and be a contract between the Cooperative and each patron and both the Cooperative

and the patrons are bound by such contract, as fully as though each patron had individually signed a separate instrument containing such terms and provisions. The Provisions of this Article of the By-laws shall be called to the attention of each patron of the Cooperative by posting in a conspicuous place in the Cooperative's offices.

SECTION 9.03 PATRONAGE REFUNDS IN CONNECTION WITH FURNISHING OTHER SERVICES

In the event that the Cooperative should engage in the business of furnishing goods or services other than electric energy, all amounts received and receivable therefrom which are in excess of costs and expenses properly chargeable against the furnishing of such goods or services shall, insofar as permitted by law, be prorated annually on a patronage bases and returned to those patrons from whom such amounts were obtained at such time and in such order of priority as the Board of Trustees shall determine.

SECTION 9.04 CHARITABLE ASSIGNMENT OF PATRONAGE CAPITAL

The Board of Trustees may cause the establishment of a charitable trust, foundation or not-for-profit corporation ("charity") for the purpose of receiving transfers of patronage capital in accordance with these By-laws and using the same for educational scholarships or other charitable uses. The declaration, charter or other organizational instruments approved by the Board shall set forth specifically the duties and purposes, and trustees, officers and employees of the Cooperative who administer such funds shall be entitled to indemnification from the Cooperative to the same extent as if such service were to the Cooperative itself. If the Board so establishes a charity,

- (a) any patron may assign in writing in a form acceptable to the Cooperative all or any portion of that patron's patronage capital, vested or expected, to such a charity, effective as of the date of assignment;
- (b) any distribution of the retirement of patronage capital which has become vested subsequent to 1985 to a patron or former patron who has not claimed it, or corresponded in writing with the Cooperative concerning it, within two (2) years after the date prescribed for the distribution shall be deemed to have been irrevocably assigned and donated to such charity, provided that the Cooperative shall give such patron or former patron at least sixty (60) day's notice, either by mailing to the last address shown in the Cooperative's records or by publication at least once each week for two (2) successive weeks in a newspaper of general circulation in the county in this state in which is located such last known address, that such assignment and gift shall be effective if that person does not claim the same before the expiration of the two-year period, and provided, further, that this paragraph (b) shall not affect a patron who is not also a member unless that patron has so agreed, whether through specific agreement or by virtue of service under regulations so providing; and

- (c) any assignment or assignment and donation under these By-laws shall be first offset, by way of deduction, for any unpaid amounts owed to the Cooperative.

**ARTICLE X
WAIVER OF NOTICE**

Any member or trustee may waive, in writing, any notice of meetings required to be given by these By-laws or any notice that may otherwise be legally required, either before or after such notice is required to be given.

**ARTICLE XI
DISPOSITION AND PLEDGING OF PROPERTY; DISTRIBUTION OF
SURPLUS ASSETS ON DISSOLUTION**

SECTION 11.01 DISPOSITION AND PLEDGING OF PROPERTY

The Cooperative may not sell, convey, lease, exchange, transfer or otherwise dispose of all or any substantial portion of its property unless such sale, conveyance, lease, exchange, transfer or other disposition is authorized at a duly held meeting of the members thereof 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 meeting: PROVIDED, however, that notwithstanding anything herein contained, the Board, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, or pledging, assignment for security purposes or encumbering of, any or all of 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 11.02 DISTRIBUTION OF SURPLUS ASSETS ON
DISSOLUTION**

Upon the Cooperative's dissolution, any assets remaining after all liabilities or obligations of the Cooperative have been satisfied and discharged shall, to the extent practicable as determined by the Board of Trustees and not inconsistently with the third paragraph of Section 9.02 of these By-laws, be distributed without priority but on a patronage basis among all persons who are or who have been members of the Cooperative for period(s) during the seven years next preceding the date at the filing of

a certificate of election to dissolve: PROVIDED, HOWEVER, that, if in the judgment of the Board the amount of such surplus is too small to justify the expense of making such distribution, the Board may, in lieu thereof, donate, or provide for the donation of, such surplus to one or more nonprofit charitable or educational organizations that are exempt from Federal income taxation.

**ARTICLE XII
FISCAL YEAR**

The Cooperative's fiscal year shall begin on the first day of the month of January of each year and end on the last day of the month of December following.

**ARTICLE XIII
RULES OF ORDER**

Parliamentary procedure at all meetings of the members, of the Board of Trustees, of any committee provided for in these By-laws and of any other committee of the members or Board of Trustees which may from time to time be duly established shall be governed by the most recent edition of Robert's Rules of Order, except to the extent such procedure is otherwise determined by law or by the Cooperative's Articles of Incorporation or By-laws.

**ARTICLE XIV
SEAL**

The Corporate seal of the Cooperative shall be in the form of a circle and shall have inscribed thereon the name of the Cooperative and the words "Corporate Seal, New Mexico.

**ARTICLE XV
AMENDMENTS**

These By-laws may be altered, amended or repealed by the affirmative vote of not less than a majority of the members present at any regular or special member 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.

ADDITIONS TO THE BY-LAWS

ARTICLE XVI LIABILITY AND INDEMNIFICATION

SECTION 16.01 TRUSTEES' LIMITED LIABILITY

A trustee shall not be personally liable to the Cooperative or to its members for monetary damages for breach of fiduciary duty as a trustee unless:

- (a) the trustee has breached or failed to perform the duties of his office in compliance with Section 62-15-.1 NMSA 1978; and
- (b) the breach or failure to perform constitutes willful misconduct or recklessness.

SECTION 16.02 OFFICERS' AND TRUSTEES' INDEMNIFICATION

Subject to Sections 16.04, 16.05 and 16.06 of this Article XVI, the Cooperative shall indemnify any person who is or was a trustee or an elected or appointed officer of the Cooperative and any person who, while a trustee or officer of the Cooperative, is or was serving at the request of the Cooperative as a director, officer, partner, trustee, employee to agent of another cooperative or of a foreign or domestic corporation or non-profit corporation, partnership, joint venture, trust, unincorporated association, other incorporated or unincorporated enterprise or employee benefit plan or trust, and who is made a party to any action, suit or proceeding, civil or criminal, by reason of holding or having held such an office or position.

SECTION 16.03 EMPLOYEES' AND AGENTS' INDEMNIFICATION

Subject to sections 16.04, 16.05 and 16.06 of this Article XVI, the Board of Trustees may indemnify any person other than a trustee or an officer acting as such who has or had an employment or agency relationship with the Cooperative and who is made a party to any action, suit or proceeding, civil or criminal by reason of service during the course of such relationship, including service at the request of the Cooperative as a director, officer, partner, trustee, employee, or agent of another cooperative or of a foreign or domestic corporation or nonprofit corporation, partnership, joint venture, trust, incorporated association, other incorporated or unincorporated enterprise or employee benefit plan or trust.

SECTION 16.04 INDEMNIFICATION DISQUALIFICATIONS

The trustee, officer or other person shall not be indemnified if he shall be judged to be liable on the basis he breached or failed to perform the duties of his office or position and the breach or failure to perform constitutes willful misconduct or recklessness. The trustee, officer or other person shall further not be indemnified in respect to any proceeding charging improper personal benefit to him, whether or not involving action

in his official capacity, in which he shall have been adjudged to be liable on the basis that personal benefit was improperly received. There shall be no indemnification (of a person other than a trustee) unless the Board of Trustees finds that the indemnity:

- (a) acted in good faith;
- (b) reasonably believed he was acting in the course of his office, employment or agency in a manner to be in or at least not opposed to the best interests of the Cooperative; and
- (c) in the case of any criminal proceeding, had no reasonable cause to believe the person's conduct was unlawful. Termination of any proceedings by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, be determinative that the person is disqualified from receiving indemnification.

SECTION 16.05 INDEMNIFICATION AMOUNT

Indemnification shall, pursuant to Section 16.02, and pursuant to Section 16.03, be made against judgments, penalties, fines, settlements and compromises, cost and expenses, including attorney fees, reasonably incurred by or on behalf of the indemnity in connection with the defense of such proceeding. Reasonable expenses incurred by a trustee, officer or other person who is a party to a proceeding may be paid or reimbursed by the Cooperative in advance of the final disposition of such proceeding if:

- (a) such person furnished the Cooperative a written affirmation of his good faith belief he is not disqualified from receiving indemnification under Section 16.04 of the Article XVI;
- (b) such person furnished the Cooperative a written undertaking by or on behalf of the person to repay such amount if it shall ultimately be determined he is disqualified or, in the case of a person other than a trustee or an officer acting as such, not fully indemnified in the Board of Trustee's discretion; and
- (c) a determination is made that the facts then known to those making the determination would not preclude indemnification.

SECTION 16.06 INDEMNIFICATION PROCEDURE

No indemnification under Sections 16.02 and 16.03 shall be made unless authorized in the specific case after a determination has been made indemnification is permissible in accordance with the Rural Electric Cooperative Act and this Article XVI. Such determination shall be made:

- (a) by the Board of Trustees by a majority vote of a quorum of trustees not at the time parties to the proceeding;
- (b) if such a quorum cannot be attained, by a majority vote of a committee of the Board of Trustees duly designated to act in the matter by a majority vote of the Board of Trustees, in which designated trustees who are parties may participate,

and consisting solely of two or more trustees not at the time parties to the proceeding;

- (c) by special legal counsel, selected by the Board of Trustees or a committee thereof by vote as set forth in paragraph (a) or (b) of this Section 16.06 or, if the requisite quorum of the full Board of Trustees cannot be obtained therefor and such committee cannot be established, by a majority vote of the full Board of Trustees, in which selection trustees who are parties may participate; or
- (d) pursuant to a resolution of a majority of the members present and voting at any annual or special meeting. Authorization of indemnification and determination as to the amount shall be made in the same manner as the permissibility determination, except that if the permissibility determination shall be made in a manner specified in subsection (c) of this Section 16.06 for the selection of such counsel.

SECTION 16.07 EMPLOYEE BENEFIT PLAN

For the purpose of this Article XVI, the Cooperative shall be deemed to have requested a person to serve as a director, trustee, employee, or agent of an employee benefit plan or trust whenever the performance of his duties to the Cooperative also imposes duties on him or otherwise involves his service to the plan or trust or the participants of beneficiaries of the plan or trust; excise taxes assessed on him with respect to an employee benefit plan or trust pursuant to applicable law shall be deemed “fines”; and action taken or omitted with respect to an employee benefit plan or trust in the performance or duties for a purpose reasonably believed to be in the interest of the participants and beneficiaries of the plan or trust shall be deemed to be for a purpose which is not opposed to the best interest of the Cooperative and to be neither willful misconduct or reckless.

SECTION 16.08 INSURANCE AND SIMILAR PROTECTION

The Board of Trustees may purchase and maintain insurance or furnish similar protection, including but not limited to providing a trust fund, a letter of credit or self-insurance, on behalf of any person who is or was a trustee, officer, employee or agent of the Cooperative or who, while a trustee, officer, employee, or agent of the Cooperative, is or was serving at the request of the Cooperative as a director, officer, partner, trustee, employee or agent of another cooperative or a foreign or domestic corporation, partnership, joint venture, trust, unincorporated association, other incorporated or unincorporated enterprise or employee benefit plan or trust, against any liability asserted against and incurred by the person in such capacity or arising out of that person’s status as such, whether or not the Cooperative could indemnify the person against such liability under the provision of the Article XVI.

SECTION 16.09 NON-EXCLUSIVE

The indemnification authorized by this Article XVI shall not be deemed exclusive to any other rights to which those seeking indemnification may be entitled under an agreement approved by the Board of Trustees, a resolution of the members or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office or position, and shall continue as to a person who has ceased to be a trustee, officer, employee or agent and insure to the benefit of his personal representative and heirs.