

### **ARTICLE III. BOARD OF DIRECTORS**

Section 3.1 Board Authority. The business and affairs of the Cooperative are managed by a Board, who shall number no less than five and no more than 18 and who may exercise all of the powers of the Cooperative except those that by law, the Articles or these Bylaws are conferred upon or reserved to the Members. The Board is composed of Directors elected and qualified in the manner provided in this Article.

Section 3.2 Rules and Regulations. The Board has the power to make and adopt such rules and regulations not inconsistent with law, the Articles of Incorporation of the Cooperative, or these Bylaws as it deems advisable for the management, administration, and regulation of the business and affairs of the Cooperative.

Section 3.3 Director Districts. The Board may provide that all or a portion of the members of the Board be residents of Director Districts, established and revised as set forth in this Article.

- (A) Establishment of Director Districts. Based on geographic location, number of members, or any other equitable consideration determined by the Board, the Board may adopt, modify and adjust policies that: (i) divide the territory served by the Cooperative (“Electric Service Area”) into no less than two districts (“Director Districts”) with boundaries determined by the Board; and (ii) establish the number of Director seats allocated to each Director District; and (iii) provide that one or more directors seats not be associated with any Director District.
- (B) Revision of Director Districts. When the Board revises the boundaries of Director Districts, increases or decreases the number of Directors elected from a Director District or from seats not associated with a Director District, the Board may not:
  - (i) Lengthen an existing Director’s term;
  - (ii) Shorten any existing Director’s term, unless the affected Director consents in writing.

At the time the Board makes any revision authorized by this provision, the Board may adopt transitional provisions necessary to retain existing Directors for the remainder of their current terms. Such transitional provisions may include, without limitation, (a) designating one or more existing Directors to serve a newly created or modified Director District they are otherwise qualified to serve for the remainder of their current term, even though the director was not nominated by members who are residents of the newly modified or created Director seat; (b) delaying the effective date of any newly created seat or modification of district boundaries; or (c) other equitable means consistent with the requirements of subparts (i) and (ii) of this provision.

- (C) Notice and Effective Date of Revision. Within sixty (60) days following any final action by the Board to add, revise or modify any Director District or at large

Director seat, and at least thirty (30) days before the next Annual Member Meeting, the Cooperative must publish or otherwise notify Members affected by the revision of the Director District. Director District revisions are effective on the date the Cooperative issues such notice or such later date as expressly adopted by the Board.

Section 3.4 Terms. Except as otherwise expressly provided in this Article , Directors will be elected for terms of three years. Terms will be staggered so approximately the same number of Directors will be up for election each year. Despite the expiration of a Director's term, a Director will continue to serve until a new Director is elected, or until the number of Directors is decreased.

Section 3.5 Qualifications. Only Persons meeting the following eligibility requirements may be nominated, elected, or serve as a Director.

- (A) *Required criteria*. To be nominated, elected, or serve as a Director of the Cooperative, a Person must:
  - (i) If the seat is associated with a Director District, be: (1) an individual Member of the Cooperative or the spouse of an individual Member; and (2) a bona fide resident of such District.
  - (ii) If the seat is not associated with a Director District, be: (1) an individual Member of the Cooperative or the spouse of an individual Member; and (2) be a bona fide resident of the Electric Service Area of the Cooperative.
- (B) *Disqualifying criteria*. To be nominated, elected, or serve as a Director of the Cooperative, a Person must not:
  - (i) Currently be, or within the immediately previous five-year period have been, a director, officer or employee of any entity, other than another electric cooperative or affiliate of an electric cooperative that engages in either:
    - (a) the electrical distribution, generation or transmission business or a business engaged in the sale or generation of a source of energy that competes with electricity, whether or not done directly or through a parent, subsidiary, or other affiliated organization that is under common ownership or control, from any area within thirty miles from an area served by the Cooperative; or
    - (b) any business not described in subpart (A)(i) above that competes directly or indirectly with any business activity carried on by the Cooperative or by a Related Entity, unless otherwise approved by vote of a majority of all of the disinterested Directors of the Cooperative;
  - (ii) Have a Close Family Member who currently is, or within the previous five years has been, a director or corporate officer of any entity with an entity described in Section 3.5(B)(i) above, unless otherwise approved by vote of a majority of all of the disinterested Directors of the Cooperative;

- (iii) Have any of the following relationships with the Cooperative or a Related Entity:
  - (a) Have, within the past five years, been compensated as an employee of the Cooperative or Related Entity.
  - (b) Have received within any of the past three calendar years, total compensation or other payments exceeding \$10,000 from the Cooperative or a Related Entity, as an independent contractor, exclusive of any expense reimbursement or compensation paid as a consequence of service on the Board of the Cooperative or Related Entity.
  - (c) Have otherwise received directly or indirectly Material Financial Benefits from the Cooperative or Related Entity. Transactions that give rise to reportable “Material Financial Benefits” under this provision are: (i) loans to and from current or former officer, Directors or and any Person who is a managing employee or one of the five highest paid employees of the Cooperative or Related Entity (exclusive of consumer loans generally made available to all qualifying members of the Cooperative); (ii) receipt of scholarships, fellowships, internships, prizes and awards, or other benefits including the provision of goods or services or use of facilities; or (iii) any business transaction in which total payments exceed the greater \$10,000 or 1% of the Cooperative’s revenues, or in which all payments from the Cooperative or Related Entity to the Director or Close Family Member exceed \$100,000 during a calendar year. Financial benefits that result directly from a Member being a Member, such as receipt or payment of capital credits, or that arise out of goods or services or loans generally available to Members of the Cooperative, are not to be considered as Material Financial Benefits under this provision.
  - (d) Have a Close Family Member that engaged in any transaction described in Section 3.5(B)(iii)(a) or (c), except that an individual disqualified solely as a result of the operation of this subpart may be qualified to serve by the vote of a majority of the disinterested Directors.
- (iv) Have ever been convicted of, or pleaded guilty or nolo contendere to, any criminal act constituting a felony under the law of the jurisdiction in which the conviction, guilty plea, or plea of nolo contendere occurred;
- (v) Be employed by the same employer, or by any Related Entity of an employer, that employs any other Directors of the Cooperative, provided that this provision may not be construed to disqualify any Director who is employed by the same or Related Entity of the same employer as another Director, solely as the result of the change of employment of another

director, or sale or acquisition of control of the employer of the other director; or

- (vi) In order for an incumbent Director to be eligible to run for reelection, the Director must have obtained his/her NRECA Credentialed Cooperative Director (CCD) Certificate before the end of the incumbent Director's first full term.

(C) *Definitions.* For the purpose of this Article:

- (i) "Close Family Member" means a Member's spouse, parents, children and grandchildren (including adopted children and grandchildren).
- (ii) "Related Entity" means any entity of which more than 50% of the voting equity interests are held by the Cooperative, or in which the Cooperative, directly or through another entity, has the right to elect or otherwise select or control the selection of at least fifty percent of the voting interest of the governing board of the entity.

(D) *Effect of Noncompliance.* The failure of any Director to be qualified under this Section 3.5 will not affect the validity or enforceability of matter approved by the Board.

Section 3.6 Nominations. Members who are eligible to serve as a Director may be nominated for election to the Board as set forth below.

(A) *Nominating Petition.* Persons who desire to serve as a member of the Board must deliver to the Cooperative office each of the following at least ninety (90) days prior to the date of the Annual Member Meeting at which an election will be held:

- (i) a petition signed by fifteen (15) or more Members or spouses of Members who (a) reside in the Director District for which the nomination is made, placing in nomination the name of a Member who is a bona fide resident of such district; or (b) if the nomination is made for a seat not associated with a Director District, who reside in the Electric Service Area of the Cooperative placing in nomination the name of an individual Member or Spouse of an individual Member who resides in the Electric Service Area of the Cooperative. The Cooperative may, but is not required to, contact a potential candidate to advise of any inadequacies or insufficiencies in their application materials. In the event of Joint Membership, the signature of only one of the Joint Members may be counted toward the fifteen Member requirement; and
- (ii) biographical information and such other information as the Board or Credentialing Committee may require to establish and verify the qualifications of the proposed Director to serve.

(B) *Credentialing Committee.* The names of all candidates who submit the required information in the time and manner specified in this provision will be submitted to a Credentialing Committee consisting of Directors that are not running for election (the "Credentialing Committee").

- (C) *Composition and Selection.* Members of the Credentialing Committee will be selected by the Board following receipt of recommendations of the Chairman. Members of the Credentialing Committee must be Members and may not be either: (i) a current Director up for election; (ii) an employee of the Cooperative or a Related Entity; or (iii) a Close Family Member of any nominee.
- (D) *Duties.* The Credentialing Committee must review the petitions and information provided by candidates, together with such other information it may obtain, to determine whether each candidate is qualified to serve as a Director. The Credentialing Committee may require candidates to provide and verify additional information it deems relevant.
- (E) *Report.* At least 45 days prior to the Annual Member Meeting, the Credentialing Committee must submit a report to the Board containing the following information:
- (i) names of all candidates the Credentialing Committee finds as qualified to serve as Directors;
  - (ii) names of all candidates the Credentialing Committee has determined are not qualified to serve as Directors, along with relevant information relied on by the Credentialing Committee in making that determination and a specification of the reasons the nominee is not qualified;
  - (iii) names of all candidates whose qualifications are referred to the Board for final approval as a result of a finding by the Credentialing Committee that either: (a) the candidate is not qualified to serve solely as the result of the nominee's failure to satisfy a qualification that is waivable by the Board; or (b) the qualifications of the candidate to serve are ambiguous or uncertain under these Bylaws as written, along with all relevant information relied on by the Credentialing Committee in making its determination.
- (F) *Referred Nominations.* At least ~~sixty- forty~~ (60/40) days prior to the Annual Member Meeting, the Board must review and consider whether to allow a candidate to be nominated for election whose nomination has been referred to the Board by the Credentialing Committee under Section 3.6(E)(iii). The Board must advise a candidate at least thirty (30) days prior to the Annual Meeting that their name will appear on the ballot. No Director who has filed petitions for the election may participate in or vote on issues relating to the referred petitions.
- (G) *Lack of Nominations.* If no nominations are received or no candidate is found qualified to serve as a Director for election at the Annual Member Meeting, the Board may publish notice of that fact, and otherwise request additional nominations for any open seat lacking a qualified nominee, and establish new deadlines pertaining to the submission of petitions, credentialing and nomination of persons otherwise qualified to serve. The Credentialing Committee must act as soon as practicable with respect to any additional petitions submitted in the manner proscribed by these Bylaws, as modified by the Board in accordance with this paragraph. Any noted timeframes in the petitioning, credentialing or nomination process are specifically waived with respect to the process to fill a seat that has no qualified candidate under this section.

- (H) *Notice of Approved Nominees.* The Secretary will post at the Principal Office of the Cooperative a list of all nominees approved by the Credentialing Committee or the Board, as applicable, within twenty-five (25) days before the Annual Member Meeting, or promptly following the date a candidate is found qualified to serve, whichever is later. The Secretary must mail the notice of the Annual Member Meeting, a statement of the number of Directors to be elected, and a list of eligible Director candidates .
- (I) *Failure to Comply.* No individual may serve as a Director whose nomination does not comply with the provisions of this section. Any election to the Board of any Person who does not comply with the qualifications specified in this Article is null and void and will create an immediate vacancy on the Board. The decision of a majority of disinterested Directors is final with respect to any ambiguities or uncertainties regarding the qualification of any particular candidate, or whether to waive any waivable qualification to serve. Unless the Board expressly authorizes nominations from the floor to fill any seat for which no nominee has been qualified to fill, nominations from the floor will not be authorized.
- (J) *Removal for Violations.* Any Director who submits materially misleading information to the Board or Membership as part of the election process, or who otherwise engages in fraudulent conduct, or conduct in violation of generally applicable election policies, may be removed by a vote of a majority of all disinterested Directors within 120 days after receipt of allegations of wrongful conduct.

Section 3.7 Director Elections. Directors shall be elected at Annual Member Meetings as provided herein.

- (A) *Ballots.* At the Annual Member Meeting, the Credentialing Committee's report and any action taken thereon by the Board will be communicated to the Members. A ballot will identify all qualified nominees for each open seat. Nominees will be listed alphabetically, with incumbents noted.
- (B) *Voting.* Persons entitled to vote under Section 2.9 are entitled to one ballot, and to cast one vote for each open seat. A Member that is an Entity is entitled to one ballot and may cast one vote for each open seat. The candidate receiving the highest number of votes cast for each open seat is elected.
- (C) *Unopposed Nominees.* Notwithstanding anything in these Bylaws or applicable procedural rules to the contrary, a candidate running unopposed may be elected upon appropriate motion by a voice vote, show of hands or other appropriate means determined by the Chair.

Section 3.8 Removal of Directors. A Director's service on the board may be terminated prior to the expiration of the Director's term as a consequence of any one or more of the following:

- (A) *Resignation.* A Director may resign at any time by delivering written notice to the President/CEO, or the Board Chairman or Secretary. Unless the notice of resignation specifies a later effective date, a Director's resignation is effective upon receipt. 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 Board can initiate Director Vacancy pursuant to Section 3.9 before the effective date of the Director's resignation.
- (B) *Loss of Qualification.* A Director who becomes unqualified to be elected, serve, or remain a Director under Section 3.5 will be removed on the earlier of: (i) the date the Board votes to remove the Director; or (ii) sixty days after the Director becomes unqualified, unless the lack of qualification is subject to waiver by the Board under the express provisions of these Bylaws, and the Board votes to waive the condition giving rise to the lack of qualification.
- (C) *Board Removal.* If a Director materially breaches any policy applicable to the Board, or is guilty of a serious dereliction of duty, becomes physically or mentally impaired in a manner that compromises the ability of the Director to carry out his or her duties and responsibilities as a Director, or is not physically present at the place of the regularly scheduled meeting more than three times during any calendar year, the Director may be removed by the Board, but only after notice and an opportunity to be heard.
- (D) *Member Removal.* A Director may be removed by the Members for any gross or willful negligence or misconduct significantly and adversely affecting the Cooperative according to the following provisions:
  - (i) For each Director for whom removal is requested, one or more Member(s) shall deliver to the Chairman or Secretary a separate written and dated petition ("Director Removal Petition"). A Director Removal Petition must:
    - (a) Identify the Director on each page;
    - (b) Explain on each page the basis for requesting the Director's removal and identifying the gross or willful negligence or misconduct significantly and adversely affecting the Cooperative that is the basis for the Director Removal Petition; and
    - (c) Contain the printed names, printed addresses, and dated original signatures of at least five percent (5%) of all the Members. All signatures must be obtained within sixty (60) days of the Director Removal Petition date.
  - (ii) Within sixty days following receipt of a Director Removal Petition:
    - (a) The Cooperative will forward a copy of the Director Removal Petition to the implicated Director; and
    - (b) The Board will meet to review the Director Removal Petition.

- (iii) If the Board determines that the Director Removal Petition complies with this Bylaw, then the Cooperative shall provide notice and hold a Member Meeting within sixty (60) days following the Board's determination. Notice of the Member Meeting must state that:
  - (a) The purpose of the meeting is to consider removing a Director;
  - (b) Evidence may be presented, and a Member vote taken, regarding removing the Director; and
  - (c) Members may elect a successor Director.
- (iv) If a quorum, as defined in Section 2.8, is present in person at the Member Meeting, then for each implicated Director:
  - (a) Prior to any Member vote, evidence must be presented supporting the basis for removing the Director;
  - (b) The Director may be represented by legal counsel, and must have the opportunity to refute and present evidence opposing the basis for removing the Director;
  - (c) Following open Member discussion, Members must vote whether to remove the Director; and
  - (d) If a majority of the Membership votes to remove the Director, removal is effective at the time and date of the Member vote.
- (v) Neither a Director Removal Petition, nor the removal of a Director affects, any Board action. No Director may be removed solely for advocating for or opposing any lawful Cooperative action or position.

Section 3.9 Director Vacancy. Unless otherwise provided in these Bylaws, vacancies on the Board shall be filled as follows:

- (A) *Director Vote*. The Board must fill any vacant Director position by majority vote of the remaining Board members within 90 days of the date the vacancy occurs unless the Annual Member Meeting is scheduled within 120 days of the vacancy occurring, in which case the standard nominating, credentialing, and Member election process will be used to fill the vacancy. This process may also be used for open seats created by increasing the number of Director positions.
- (B) *Term of Directors Elected to Fill Vacancy*. Any Director elected by the Board to fill any vacant Director position shall serve until the next Annual Member Meeting, at which time the Members must elect a Director to fill the unexpired term. A Director elected by the Members to fill a vacant Director position will serve the remaining unexpired term applicable to the position.
- (C) *Vacancy by Resignation*. If a Director resigns effective on a specified date, the Board may fill the vacancy before the vacancy occurs, and in such case the Director so elected will begin to serve on the date specified in the resignation notice. An individual elected to fill a vacant Director position must comply with

all qualifications for a Director. The procedures applicable to election of Directors at the expiration of a Director term apply to any Member election of Directors to fill an unexpired term.

Section 3.10 Director Compensation. Directors may not receive any salary or other compensation except as set forth herein. The Board shall determine or approve the manner, method, and amount of any Director reimbursement, compensation, or benefits as authorized by this Section.

- (A) *Reimbursement*. Upon approval of the Board, the Cooperative may reasonably reimburse, provide insurance or other benefits to Directors and pay Directors a fixed fee and expenses for attending any:
  - (i) Board meeting;
  - (ii) Function, meeting, or event involving or relating to the Cooperative; or
  - (iii) Function, meeting, or event involving, relating to, or reasonably enhancing the Director's ability to serve in the role of Director.
- (B) *Other Benefits*. The Cooperative recognizes that Directors are expected to devote, extensive amounts of time and energy to the business of the Cooperative, above and beyond the time actually spent at meetings and other functions. In recognition of the time and effort Directors devote to the business of the Cooperative, the Board may elect to provide Directors with additional benefits, including, but not limited to, insurance premiums and monthly stipends at a reasonable rate set by the Board.

Section 3.11 Director Conduct. Unless modified or prohibited by law:

- (A) *Standard of Conduct*. A Director shall discharge the Director's duties, including duties as a member of a Board Committee or as a Cooperative representative on other affiliated boards:
  - (i) In good faith;
  - (ii) Consistent with standards required of a Director under applicable legal requirements; and
  - (iii) In a manner the Director believes to be in the Cooperative's best interests.
- (B) *Reliance on Others*. Unless a Director possesses knowledge concerning a matter making reliance unwarranted, a Director may rely upon information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by:
  - (i) One or more Cooperative Officers or employees whom the Director reasonably believes to be reliable and competent in the matters prepared or presented;
  - (ii) Legal counsel, public accountants, or other individuals regarding matters the Director reasonably believes are within the individual's professional or expert competence; and

- (iii) A Board Committee of which the Director is not a member regarding matters within the Board Committee's jurisdiction, if the Director reasonably believes the Board Committee merits confidence.
- (C) *Liability.* A Director is not liable to the Cooperative, any Member, or any other individual or Entity for action taken, or not taken, as a Director that either:
  - (i) Satisfies the requirements of this Bylaw; or
  - (ii) Satisfies the standard set forth in NDCC Section 10-15-31, or comparable provision of future law.
- (D) *Status.* No Director is deemed a trustee regarding the Cooperative of any property held or administered by the Cooperative, including but not limited to property potentially subject to restrictions imposed by the property's donor or transferor.

Section 3.12 Indemnification of Directors and Officers.

- (A) *Indemnity.* Subject to subsections (B) and (C), the Cooperative will indemnify and defend a current or former Director or Officer of the Cooperative ("Indemnified Party") who is made or is threatened to be made a party to any civil, criminal, administrative, arbitration or investigative proceeding from any judgments, penalties, fines, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the Indemnified Party as a result of the Indemnified Party's service:
  - (i) on the governing Board of the Cooperative or any committee of the Board;
  - (ii) as the President/CEO or as an elected officer of the Cooperative;
  - (iii) as a Director, Officer, manager, partner, trustee of another electric cooperative related organization, retirement plan, or employee benefit plan (a "Related Organization").
- (B) *Conditions:* The Cooperative's obligation to indemnify and defend under this policy will not exist to the extent that, based on the acts or omissions of the Indemnified Party complained of in the proceeding for which indemnity is sought, the Indemnified Party:
  - (i) is entitled to be indemnified by another organization or an employee benefit plan for the same judgment, penalty or fine for which the Indemnified Party seeks indemnity;
  - (ii) is covered by a policy of insurance;
  - (iii) seeks indemnity for a claim arising out of personal injury or property damage arising from a motor vehicle accident involving a vehicle operated by the Indemnified Party;
  - (iv) failed to act in good faith;
  - (v) in the case of a criminal proceeding, had reasonable cause to believe the conduct involved a criminal act or if the criminal act did not arise out of negligent, as opposed to willful or intentional misconduct; or

- (vi) the Indemnified Party did not believe that the conduct was in the best interests of the Cooperative or Related Organization.
- (C) *Additional Exclusions.* Notwithstanding the foregoing, the Cooperative is not required to indemnify or defend an Indemnified Party if the claim for which the Indemnified Party is seeking indemnity arises out of any one or more of the following:
- (i) actual fraud or willful misconduct by the Indemnified Party in connection with the claim for which indemnity is sought;
  - (ii) intentional or willful violation by the Indemnified Party of written policies or directives of the Cooperative or a Related Organization;
  - (iii) gross or willful negligence or gross or willful misconduct by the Indemnified Party; or
  - (iv) the Indemnified Party's attempt to seek or obtain an unauthorized personal profit, gain or advantage to the detriment of the Cooperative or Related Organization.
- (D) *General Provisions.* The Indemnified Party seeking indemnification, payment or reimbursement of expenses pursuant to this section has the burden of proof to establish a claim. Nothing contained in this provision is intended to limit the discretionary authority of the Cooperative to indemnify an Indemnified Party or other individual who is not a Director or Officer by resolution, contract or otherwise. Any indemnification proceeds due under this section will be offset by any amount reimbursed to the Indemnified Party pursuant to any insurance policy proceeds from the Cooperative's, the Indemnified Party's, or other party's insurance.