

**TOMBIGBEE ELECTRIC  
COOPERATIVE, INC.**

**BYLAWS**



**Revised April, 2012**

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# TOMBIGBEE ELECTRIC COOPERATIVE, INC.

## BYLAWS

### ARTICLE I – MEMBERSHIP

**SECTION 1.01 Eligibility; Transfer.** Any natural person, firm, association, corporation, business trust, partnership, Federal agency, state or political subdivision thereof, or body politic (each hereinafter referred to as “person,” “applicant,” “member,” “him” or “his”) shall be eligible to become a member of, and, at one or more premises owned or directly occupied or used by him, to receive electric service from Tombigbee Electric Cooperative, Inc. (hereinafter called the “Cooperative”). No membership shall be transferable except as may be permitted in these Bylaws. Membership may be denied to a person, or a member of such person’s household, who is indebted to the Cooperative for electric services previously provided at the location for which service is now being requested or a former location at which such person was furnished electric service. No member may hold more than one membership in the Cooperative.

**SECTION 1.02 Application for Membership; Renewal of Prior Application.** Application for membership - whereby the applicant agrees 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’s Articles of Conversion and Bylaws, and all rules, regulations, rate classifications and rate schedules established pursuant thereto, as all the same then exist or may thereafter be adopted, repealed or amended (the obligations embraced by such agreement being hereinafter called “Membership Obligations”) - shall be made in writing on such form as is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 the membership fee provided for in Section 1.03 (together with any service security deposit, service connection deposit 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 by Board resolution denied. Any former member of the Cooperative may, by the sole act of paying a new membership fee, renew and reactivate any prior application for membership to the same effect as though the application has 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, a facilities extension deposit or a contribution in aid of construction or any combination thereof, if required by the Cooperative), shall be paid by the member for each additional service connection requested by him.

**SECTION 1.04 Joint Membership.** A husband and wife, by specifically so requesting in writing, may be accepted into joint membership or, if one of them is already a member, may automatically convert such membership into a joint membership by jointly executing another membership application. The terms “member,” “applicant,” “person,” “his” and “him,” as used in these Bylaws, shall include a husband and wife applying for or 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 respectively, one joint vote;
- (c) notice to, or waiver of notice signed by either or both shall constitute, respectively, a joint notice or waiver of notice;
- (d) suspension or termination in any manner of either shall constitute suspension or termination of the joint membership; and
- (e) either, but not both concurrently, shall be eligible to serve as a trustee of the Cooperative but only if both meet the qualifications for such office.

A membership may be converted to a joint membership upon the written request of the holder thereof and the agreement by such holder and his or her spouse to comply with all provisions of these Bylaws.

**SECTION 1.05 Acceptance into Membership.** Upon complying with the requirements set forth in section 1.02, any applicant shall automatically become a member on the date of his connection for electric service; provided, the Board of Trustees may by resolution deny an application and refuse to extend service upon its determination that the applicant is not willing or is not able to satisfy and abide by the Cooperative's terms and conditions of membership or that such application should be denied for other good cause.

**SECTION 1.06 Purchase of Electric Power and Energy; Power Production by Member; Application of Payments to All Accounts.** The Cooperative shall use reasonable diligence to furnish its members with adequate and dependable electric service. The Cooperative shall not be liable to the member for any outage of service or voltage fluctuation or other service difficulty resulting from acts of God, such as lightning or wind storm, or from an occurrence that may reasonably be expected to happen in the normal course of utility business, such as equipment failures and the Cooperative's liability to the members shall be strictly limited as provided in the Act under which the Cooperative is organized.

Each member, for so long as such premises are owned or directly occupied or used by him, shall purchase from the Cooperative all central station electric power and energy purchased for use on all premises to which electric service has been furnished by the Cooperative pursuant to his membership, unless and except to the extent that the Board of Trustees may in writing waive such requirement; and shall pay, therefor, at the times, and in accordance with the rules, regulations, rate classifications and rate schedules (including any monthly minimum amount that may be charged without regard to the amount of electric power and energy actually used) established by the Board of Trustees and, if in effect, in accordance with the provisions of any supplemental contract that may have been entered into as provided for in Section 1.02. Production or use of electric energy on such premises, regardless of the source thereof, by means of facilities which shall be interconnected with Cooperative facilities, shall be subject to appropriate regulations as shall be fixed from time to time by the Cooperative. Each member shall also pay all other amounts owed by him to the Cooperative as and when they become due and payable. When the member has more than one service connection from the

Cooperative, any payment for service to him by the Cooperative shall be deemed to be allocated and recorded on a pro rata basis to his outstanding accounts for all such service connections, notwithstanding that the Cooperative's actual accounting procedures do not reflect such allocation and proration.

**SECTION 1.07 Excess Payments to be Credited as Member-Furnished Capital.** All amounts paid for electric service in excess of the cost thereof shall be furnished by members as capital, and each member shall be credited with the capital so furnished as provided in Article XIII of these Bylaws.

**SECTION 1.08 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, of any applicable state code or local government ordinance, and of the Cooperative. If the foregoing specifications are variant, the more exacting standards shall prevail. The Cooperative shall have the right to inspect any installation before electricity is supplied or any date thereafter to determine compliance with this requirement, but such inspection, or the failure to so inspect shall not render the Cooperative liable or responsible for any loss or damage resulting from defects in such wiring.

Each member shall be responsible for - and shall indemnify and hold harmless the Cooperative and its employees, agents and independent contractors against death, injury, loss or damage and costs, including reasonable attorney's fees, resulting from any defect in or improper use or maintenance of - such premises and all wiring and apparatus 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 of and metering of electric service and shall permit the Cooperative's authorized employees, agents and independent contractors to have safe access thereto for meter reading and bill collecting and for inspection, maintenance, replacement, relocation, repair or disconnection 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 desist 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 when the member's reasonable care and surveillance should have prevented such, the member shall indemnify and hold harmless the Cooperative and its employees, agents and independent contractors against death, injury, loss or damage and costs, including reasonable attorney's fees, 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.

**SECTION 1.09 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, for itself, its successors and assigns, grants of easement or right-of-way over, on or under such lands (or in, under or upon all streets, roads or highways abutting such lands) owned or leased by or mortgaged to the member, such easement or right-of-way to be utilized for the construction, operation, repair and maintenance of electric distribution and service lines and appurtenances for service to the member or others, whether owned by the Cooperative or otherwise, and for any other purposes, such as for communications, whether such facilities are used to serve the member or others. Such easement or right-of-way shall include the right to cut or trim trees on the right-of-way or that threaten facilities located on the easement or right-of-way. The Cooperative shall take into consideration any suggestions of the landowner to minimize any inconveniences to the landowner in the construction, operations, maintenance or relocation of Cooperative electric facilities but the Cooperative may locate said facilities on said premises where it deems them necessary and under the terms and conditions as the Cooperative shall require.

**SECTION 1.10 No Liability for Debts of the Cooperative.** All property of the members shall be exempt from execution or other liability for the debts of the Cooperative and no member shall be liable or responsible for any debts or liabilities of the Cooperative.

## **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 Obligations, a person's membership shall automatically be suspended; and he shall not during such suspension be entitled to receive electric service from the Cooperative or 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 the event the member shall thereafter be entitled to receive electric service from the Cooperative and 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 vote of the Board of Trustees at any subsequently held regular or special meeting of the Board of Trustees. After expulsion of a member, he may not again become a member except upon new application therefor as provided in Sections 1.02 and 1.05; but 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 the 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 this membership, or (b) except when the Board of Trustees specifically waives such condition, 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.** The death of a natural person member shall automatically terminate his membership provided that the death of either spouse holding a joint membership shall not terminate the membership and the surviving spouse shall continue to be a member, but the estate of the deceased spouse shall not be released from any debts due the Cooperative. The cessation of the legal existence of any other type of member shall automatically terminate such membership; provided, 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 to 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, neither a withdrawing partner nor his estate shall be released from any debts then due the Cooperative by the partnership.

**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 a refund of his membership fee (and his service security deposit, if any, theretofore paid to 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 Sections 2.01 and 2.02, such suspension or expulsion shall not, unless the Board of Trustees shall expressly so elect, constitute 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 Effect of Death, Legal Separation or Divorce upon a Joint Membership.** Upon the death of either of the spouses of a joint membership or their legal separation or divorce, such membership shall continue to be held solely by the survivor or by the one who continues directly to occupy or use the premises covered by such membership, whichever is the case, in the same manner and to the same effect as though such membership had never been joint; PROVIDED, the estate of the deceased spouse or of the other separated or divorced spouse shall not be released from any debts due the Cooperative.

**SECTION 2.07 Board Acknowledgment of Membership Termination: Acceptance of Members Retroactively.** Upon the termination of a membership for any reason, the Board, so soon as practicable after such termination if made known to it, shall by appropriate resolution formally acknowledge such termination, effective as of the date on which the Cooperative ceased furnishing electric service to such entity. Upon discovery that the Cooperative has been furnishing electric service to any entity other than a member, it shall cease furnishing such service unless such entity applies to and does become a member retroactively to the date on which such entity first began receiving such service, in which event the Cooperative, to the extent practicable, shall correct its membership and all related records accordingly.

### **ARTICLE III - MEETINGS OF MEMBERS**

**SECTION 3.01 Annual Meetings.** For the purposes 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 shall be held on any day within the first two weeks of August as determined by the Board of Trustees of each year within a county served by the Cooperative in the State of Alabama, (such location to be selected by the Board of Trustees) and beginning at such hour as the Board of Trustees shall from year to year fix. 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 and any special meeting. Failure to hold the annual meeting at the designated time and place shall not work a forfeiture or dissolution of the Cooperative.

**SECTION 3.02 Special Meetings.** A special meeting of the members may be called by resolution of the Board of Trustees or upon a written request signed by the Chairman, by any three (3) trustees or by petition signed by not less than ten percent (10%) of the then-total members of the Cooperative, 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. Special meetings of the members may be held at such place within a county served by the Cooperative in the State of Alabama, on such date, not sooner than thirty (30) 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 the Board of Trustees.

**SECTION 3.03 Record Date; Notice of Member Meetings.** The Board shall fix a date (“Record Date”) for determining the total membership and the members entitled to receive notice of a member meeting, receive a mail ballot and to vote at a member meeting, provided, however, that the Record Date shall not be more than seventy (70) days prior to the date of the Member Meeting and, if the Board does not establish such a date prior to the meeting, the record date shall be the close of business on the 30<sup>th</sup> day prior to the Member Meeting. 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 not less than five (5) days nor more than forty (40) days before the date of the meeting, either personally, by electronic means or by mail, by or at the direction of the Secretary. Any such notice delivered by mail may be included with member service billings or as an integral part of or with the Cooperative’s monthly or periodic newsletter and/or its monthly or periodic insert, if any, in *Alabama Living Magazine* or any similar magazine then being furnished to the members at the expense of the Cooperative. Due to the use of mail ballots, no matter may be acted upon by the members at a meeting unless notice of such proposed action has been included in the notice of the meeting sent to the members.

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 un-intended failure of any member to receive a notice deposited in the mail or sent by electronic means 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.

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 objecting to the transaction of any business, or one or more items of business, on the ground that the meeting shall not have been lawfully called or convened. Any member attending any meeting for the purpose of making such objection shall so notify the Secretary in writing 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 or represented by mail votes at least three percent (3%) of the members of the Cooperative on the Record Date, 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 no sooner than thirty (30) days later and to any place within a county served by the Cooperative in Alabama. The Secretary shall notify all members of the time, date and place of such adjourned meeting by delivering notice thereof as provided in Section 3.03. Registration of attendance at a meeting of members and mail votes shall be used to determine a quorum.

Notwithstanding the normal quorum requirements stated in the preceding paragraph, the members may not vote to recall a trustee or trustees unless there are present in person at least ten percent (10%) of the persons who are then members of the Cooperative.

**SECTION 3.05 Credentials and Election Committee.** Not less than ten (10) days prior to a Member Meeting, the Board shall appoint a Credentials and Election Committee consisting of an uneven number of members between three and fifteen. The Board of Trustees shall have regard for equitable representation of the several areas served by the Cooperative in appointing the member of the Credentials and Election Committee. Members of the Credentials and Election Committee may not be a member of the Nominating Committee and may not be an existing, or a Close Relative of an existing member of the Board of Trustees, Officer of the Cooperative or a known candidate for the Board of Trustees. Members of this Committee may receive reasonable compensation and reimbursement for expenses incurred as approved by the Board. The Committee need not be appointed if there is not more than one nominee or candidate for any Trustee position and there is no other non-routine item of business on the agenda for the meeting.

The Committee shall establish or approve the manner or method of member registration and voting, oversee member registration and voting and the tabulation of member votes, rule upon the effect of any ballots or other votes irregularly or indecisively marked or cast, consider and decide all questions, issues or disputes arising at the Member Meeting concerning member voting and the election of Trustees. The Committee shall have available to it the advice of counsel provided by the Cooperative. Any Committee decision shall require a vote of a majority of the Committee members present and voting. All Committee decisions shall be final. The committee shall also elect a chairperson and secretary.

If a member has a protest or objection to a vote or election occurring at a member meeting, such member may file the protest or objection in writing at the Cooperative's headquarters within three (3) business days following the member meeting. If a Credentials and Elections Committee has not been previously appointed, the Board of Trustees shall appoint the Committee within ten (10) days after the filing of the objection. The Committee shall convene within fourteen (14) days after its appointment after giving notice to the objecting member and, if the objection relates to an election, to the candidates affected, of the time, date and place of the meeting at least three (3) days before the meeting. At this meeting, the Committee shall hear such evidence as is presented by the protestor or objector who may be heard in person, by counsel, or both and any opposing evidence. 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 meeting, render its decision, the results of which may be to affirm an election or any other vote or action taken or procedure followed, to change the outcome thereof or to set it aside. The Committee may not act on any matter unless a majority of the Committee is present. The Committee's decision on all matters assigned by these Bylaws to the Committee shall be final and binding on all parties.

#### **SECTION 3.06 Voting.**

(a) Each member who is not in a status of suspension, as provided for in Section 2.01, shall be entitled to 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 registering 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 vote of a plurality of the members voting thereon, except as otherwise provided by law or by the Cooperative's Articles of Incorporation or these Bylaws. Members may not cumulate their votes or vote by proxy.

(b) Each member who was a member on the Record Date shall be entitled to only one vote upon each matter submitted to a vote of the members. Any member who was a member on the Record Date may vote in person or by mail on all matters requiring a vote of the membership, except for matters involving the disposition of Cooperative property pursuant to Article X of these existing bylaws, upon which members shall be required to vote in person and except for a proposal to place the Cooperative in bankruptcy or receivership which shall require that members vote in person. The Secretary shall be responsible for the enclosure with the notice of each meeting (1) an

exact copy of any motion or resolution to be acted upon by the members, (2) a ballot with instructions for indicating on the ballot the member's vote on the motion or resolution, and (3) an envelope addressed to the Secretary for returning the ballot. The failure of any member of record to receive a copy of any motion or ballot shall not invalidate any action which may be taken by the members. Any member voting by mail shall express that member's vote on the ballot according to the instruction and mail the ballot in the envelope provided. Each ballot received by mail on or before the date and time set by the board of trustees as the deadline for receiving ballots shall be counted. In case of joint membership, the first ballot received from either of them shall constitute one joint vote. A member of record present at a meeting in person may vote on matters presented to the members for a vote only if that member has not already voted on that matter by mail ballot.

**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:

- (1) Report on the number of members present in person and members who voted by mail ballot in order to determine the existence of a quorum;
- (2) Presentation and consideration of reports of officers, trustees and committees;
- (3) Election of trustees;
- (4) Unfinished business;
- (5) New business; and
- (6) Adjournment.

Notwithstanding the foregoing, the Board of Trustees may from time to time establish a different order of business for the purpose of fixing an earlier or later consideration of and action upon any item of business the transaction of which is necessary or desirable in such changed order; provided, no business other than adjournment of the meeting to another time and place may be transacted until and unless the existence of a quorum is first established.

**SECTION 3.08 Minutes of Member Meeting.** The Secretary shall cause minutes of each member meeting to be written. Minutes of the most recent previous member meeting should be available at the headquarters of the Cooperative not less than ten (10) days prior to the next member meeting. Any member may review and copy these minutes during normal business hours. If any member believes that the minutes are not correct, such member may file written notice of objection to the minutes, as written, at the headquarters of the Cooperative not less



than three (3) days prior to the next member meeting. If such a notice of objection is filed, the minutes shall be presented for approval or correction at the next member meeting immediately after a quorum is determined. Likewise, if any member has any objection to the notice of the meeting, such objection shall be filed in writing at the Cooperative's headquarters not less than three (3) days prior to the member meeting and the objection shall be considered and voted upon by the members at the next member meeting, immediately after the determination of a quorum (or after consideration of approval of minutes if minutes are to be approved at the meeting by the members).

## **ARTICLE IV - BOARD OF TRUSTEES**

**SECTION 4.01 Number and General Powers.** The activities and affairs of the Cooperative shall be governed by a Board of (9) Trustees, which shall set policy, provide for competent management, and exercise all of the powers of the Cooperative except such as are by law or by the Cooperative's Articles of Incorporation or Bylaws conferred upon or reserved to the members.

**SECTION 4.02 Qualifications.** No person shall be eligible to become or remain a trustee of the Cooperative who is an employee, a Close Relative of an incumbent trustee or of an employee of the Cooperative, or is not a member of the Cooperative in good standing and has been such for not less than one (1) year and has been receiving service from the Cooperative at his primary residence continuously for not less than one (1) year. No person shall be eligible to become or remain a trustee of, or to hold any other position of trust in, the Cooperative who:

- (a) is not at least nineteen (19) years of age and has the capacity to enter legally binding contracts;
- (b) is in any way employed by or substantially financially interested in a competing enterprise;
- (c) is employed by or substantially financially interested in an entity supplying or that might attempt to supply wholesale power to the Cooperative, is employed by or substantially financially interested in a business selling electric energy or supplies to the Cooperative, or a business substantially engaged in selling electrical appliances, electrical equipment, electrical fixtures or electrical supplies primarily to members of the Cooperative; or who has within the past eighteen (18) years been employed by the Cooperative,
- (d) has been convicted of a felony or multiple misdemeanors other than traffic violations

- during the five (5) years immediately prior to becoming a Trustee;
- (e) is an employee of, or a member of or otherwise has a material affiliation with a labor union which represents any of the employees of the Cooperative or which might attempt to represent any of the employees of the Cooperative; and
  - (f) is not willing to attend a reasonable number of essential seminars, workshops, state, regional and national meetings in order to become and remain an effective trustee.

Notwithstanding the foregoing provision of this Section treating Close Relative relationships, no incumbent trustee shall lose eligibility to remain a trustee or to be re-elected a trustee if, during his incumbency as a trustee, he becomes a Close Relative of another incumbent trustee or of a Cooperative employee because of a marriage or an adoption to which he was not a party. If it is discovered that a person became a trustee at a time when he had a Close Relative who was an employee or an incumbent trustee at the time of such trustee's election, the trustee shall no longer be eligible to hold office. If it is discovered that the Cooperative has employed a Close Relative of a trustee after the date of the trustee's election, the trustee shall remain in office and the employment of the employee shall be terminated.

Upon establishment of the fact that a nominee for trustee lacks eligibility under this Section or as may be provided elsewhere in these Bylaws, it shall be the duty of the Board of Trustees to disqualify him. Upon the establishment of the fact that any person being considered for, or already holding, a trusteeship 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.

The office of a trustee shall automatically become vacant if he misses as many as three (3) consecutive regular meetings of the Board of Trustees, unless the remaining trustees resolve that (1) there was good cause for such absences and (2) such cause shall not likely result in such absences during the ensuing twelve (12) consecutive regular Board Meetings. With respect to trustees elected after the adoption of these Bylaws, it shall be the duty of the Board of Trustees to remove any trustee and declare his office vacant if he fails to attend essential seminars, workshops, state, regional and national meetings without good cause shown or if the trustee does not demonstrate by his actions an understanding of and belief in cooperative principles and the cooperative way of doing business or if

the trustee does not continue to support the continuity of the Cooperative. Each trustee shall be subject to a credit check with respect to his accounts with the Cooperative as of December 31 of each year. Any trustee found to have an unsatisfactory credit record shall be subject to removal from office by the remaining trustees. No trustee may become an employee of the Cooperative for a minimum of eighteen (18) years after leaving the Board of Trustees. 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.

**SECTION 4.03 Election.** At each annual meeting of the members, trustees shall be elected by ballot by the members. Trustees shall be elected by a plurality of votes cast. Drawing by lot shall resolve, where necessary, any tie votes.

**SECTION 4.04 Tenure.** The term of all trustees elected has and shall continue to be three (3) years. Upon their election, trustees shall, subject to the provisions of these Bylaws 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 called pursuant to these Bylaws, such election may be held at an adjournment of such meeting or at a subsequently held special or 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 Nominations.** It shall be the duty of the Board of Trustees to appoint, not less than Seventy (70) days nor more than One Hundred Twenty-Five (125) days before the date of a meeting of the members at which trustees are to be elected, a Committee on Nominations, consisting of not less than five (5) or more than nine (9) members. The members of the Committee on Nominations shall be selected from different areas of the Service Territory of the Cooperative so as to ensure equitable representation of members. No member of the Board of Trustees, nor employee, agent, officer, of the Cooperative, no known candidate for trustee, and no Close Relative or member of the same household thereof, may serve on such Committee. The Committee shall prepare and post at the principal office of the Cooperative at least Thirty (30) days before the meeting, a list of nominations for trustees. The Committee shall nominate at least one or more candidates for each Place for which the current trustee's

term is expiring or is otherwise vacant. Any Fifty (50) or more members acting together, may make other nominations for trustee by petition by May 15 of each year 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 with the notice of the meeting, or separately, a listing of the trustee positions to be filled and the names and address of the candidates specifying separately the nominations made by the Committee on Nominations and the nominations made by petition, if any. Notwithstanding anything contained in this section, failure to comply with any of the provisions of this section shall not affect in any manner whatsoever the validity of any election of trustees or the validity of any action taken by the Board of Trustees after the election of trustees. Nominations for trustee in any other manner, including nominations from the floor, shall not be allowed. The Credentials Committee shall resolve any question concerning the eligibility of a person to be elected to the Board of Trustees.

**SECTION 4.06 Voting for Trustees.** In the election of trustees, each member shall be entitled to vote in each election of a trustee.

**SECTION 4.07 Removal of Trustees by Members.** Any member may bring one or more charges with cause against any one or more trustees, alleging acts or omissions adversely affecting the business and affairs of the Cooperative that amount to actionable negligence, malfeasance, misfeasance, nonfeasance, fraud or criminal conduct, or failure to meet or maintain the qualifications set forth in Section 4.02 hereof, 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 ten percent (10%) of the total membership of the Cooperative, which calls for a special member meeting thereon and specifies the place, time and date thereof not less than thirty (30) days after the filing of such petition or which requests that the matter be acted upon at the subsequent annual members meeting if such meeting will be held no sooner than thirty (30) days after the filing of such petition.

Each page of the petition shall, in the forepart thereof, state the name(s) and address(es) of the member(s) filing such charge(s), a verbatim statement of such charges and the name(s) of the trustee(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 charges have been made and of

the member(s) filing the charge(s) shall be contained in or accompany the notice of the meeting to the members not less than five (5) nor more than thirty (30) days prior to the member meeting at which the matter will be acted upon; provided, the notice shall set forth (by random selection but otherwise in alphabetical order) only twenty (20) of the names and addresses of the charging members if twenty (20) or more members file the same charge(s) against the same trustee(s).

Such trustee(s) shall be informed in writing of the charges 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, 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 shall be heard last; and the person(s) bringing the charge(s) shall have the same opportunity, but shall be heard first. The question of the 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 such trustee shall be removed upon the vote in favor of removal by not less than two-thirds (2/3) of those members present and voting. Any vacancy created by such removal shall be filled by a person meeting the qualification requirements of Section 4.02 elected by vote of the members at such meeting without compliance with the foregoing provisions with respect to nominations, and nominations shall be made from the floor; provided, the question of the removal of a trustee shall not be voted upon at all unless some evidence in support of the charge(s) against him shall have been presented during the meeting through oral statements, documents, or otherwise; and provided further, no trustee shall be so removable from office for the reason that he, in good faith and believing such to be in the best interest of the Cooperative and of its present and future members, failed or declined to support, or that he opposed, (1) a proposal to sell, lease-sell or otherwise dispose of all or a substantial portion of the Cooperative's assets and properties or to dissolve the Cooperative, or (2) a motion to notify the Cooperative's members of a proposal received by the Cooperative for such a sale, lease-sale, disposition or dissolution, or (3) a motion or any other effort to call a meeting of the Cooperative's members to consider and act upon a proposal for such a sale, lease-sale, disposition or dissolution.

**SECTION 4.08 Vacancies.** Subject to the provisions in these Bylaws 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 elected shall

serve out the unexpired term of the trustee whose office was originally vacated and/or until his successor is elected and qualified.

**SECTION 4.09 Expenses; Compensation.** The Board of Trustees shall be reimbursed for expenses incurred by them in the performance of their duties. Trustees who are serving or have served the Cooperative shall only be compensated for the performance of their duties as is authorized in the statute under which the Cooperative is organized. Except in an emergency, Trustees shall not be employed by the Cooperative in any capacity involving compensation. However, a trustee or a Close Relative of a trustee may receive compensation for serving the Cooperative in an emergency only if the service by the trustee or Close Relative shall have been certified by resolution of the Board as an emergency measure.

**SECTION 4.10 Policies, Rules, Regulations, Rate Schedules and Contracts.** The Board of Trustees shall have power to make, adopt, amend, abolish and promulgate such policies, rules, regulations, rate classifications, rate schedules, contracts, security deposits and any other type of deposits, payments or charges, including contributions in aid of construction, not inconsistent with law or the Articles of Conversion or these Bylaws, as it may deem advisable for the management, administration and regulation of the business and affairs of the Cooperative.

**SECTION 4.11 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, subject to and not inconsistent with applicable laws and rules and regulations of any regulatory body. The Board shall also, after the close of each fiscal year, cause to be made a full, complete and independent audit of the accounts, books and records reflecting the financial operations during, and financial condition of the Cooperative as of the end of, such fiscal year. A summary of such audit reports shall be submitted to the members at the time they are sent ballots in order to vote at the following annual member meeting. The Board of Trustees may authorize special audits, complete or partial, at any time and for any specific period of time.

**SECTION 4.12 "Close Relative" Defined.** As used in these Bylaws, "Close Relative" means a person who, by blood or in law, including step, half, foster and adoptive kin, is either a spouse, child, grandchild, grandchild's spouse, parent, grandparent, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother, sister, aunt, uncle, nephew or niece of the principal.

**SECTION 4.13 Trustee Education.** New trustee must in the first 36 months attend an AREA or NRECA new director orientation course and two (5) NRECA 2600 or NRECA equivalent courses. Then, in the first 68 months of serving as a director, three additional NRECA 2600 or NRECA equivalent courses shall be attended. Thereafter, each new trustee shall be required to attend at least one additional continuing director course per year. Whenever most feasible all such training should be obtained in the state of Alabama.

## **ARTICLE V - MEETINGS OF THE BOARD 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 on such day and at such time and place within any of the counties served by the Cooperative as the Board of Trustees shall provide by resolution. Such regular monthly meeting may be held without notice other than such resolution fixing the day, time and place thereof, except when business to be transacted on said occasion shall require special notice; provided, if a policy therefor is established by the Board, the Chairman may change the day, time or place of a regular monthly meeting for a good cause.

**SECTION 5.02 Special Meetings.** A special meeting of the Board of Trustees may be called by the Board of Trustees, by the Chairman 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 Chairman, or the trustees calling the meeting shall fix the date, time and place for the meeting, which shall be held within any of the counties served by the Cooperative, unless all trustees consent to its being held in some other place. Special meetings, upon proper notice as otherwise provided in Section 5.03, may 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 consent thereto provided, however, that the Secretary shall reduce the actions taken by the trustees at a conference call meeting to writing and mail them to all the trustees present at the conference call meeting and the failure of any trustee to object to the accuracy of such minutes in writing within five (5) days from the date such

minutes are mailed shall confirm the accuracy of such minutes.

**SECTION 5.03 Notice of Trustees Meetings.** Written notice of the date, time, place (or telephone conference call) and of the 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 in writing to the transaction of any business, or of one or more items of business, on the ground that the meeting shall not have been lawfully called or convened.

**SECTION 5.04 Quorum.** The presence in person or by conference call 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 shall be required for any action to be taken; provided, a trustee who by law or these Bylaws is disqualified from voting on a particular matter shall not, with respect to consideration of and action upon the matter, be counted in determining the number of trustees in office or present; and provided further, 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 all trustees to be duly and timely notified of the date, time and place of such adjourned meeting.

## **ARTICLE VI - OFFICERS; MISCELLANEOUS**

**SECTION 6.01 Number and Title.** The officers of the Cooperative shall be a Chairman, Vice Chairman, Secretary, Treasurer and President/CEO, 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 officers named in Section 6.01 other than the President shall be elected annually 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 Bylaws 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 of Trustees whenever in its judgment the best interests of the Cooperative will thereby be served, subject to the provisions of any Employment Contract.

**SECTION 6.04 Chairman.** The Chairman shall:

- (a) be the principal executive officer of the Board of Trustees 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, may sign any deeds, 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 Board of Trustees or by these Bylaws to some other officer or agent of the Cooperative, or shall be required by law to be otherwise signed or executed; and
- (c) in general, perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Trustees from time to time.

**SECTION 6.05 Vice Chairman.** In the absence of the Chairman, or in the event of his inability or refusal to act, the Vice Chairman 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 Chairman; and shall perform such other duties as from time to time may be assigned to him by the Board of Trustees.

**SECTION 6.06 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 Bylaws or as required by law;
  - (c) be custodian, with the assistance of Cooperative employees, of the corporate records and of the seal of the Cooperative and see that the seal of the Cooperative is affixed to all documents the execution of which, on behalf of the Cooperative under its seal, is duly authorized in accordance with the provisions of these Bylaws 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 Chairman, certificates of membership the issue of which shall have been authorized by resolution of the Board of Trustees;
  - (f) have general charge of the books of the Cooperative in which a record of members is kept;
  - (g) keep, or cause to be kept, on file at all times a complete copy of the Cooperative's Articles of Conversion and Bylaws, together with all amendments thereto, which copies shall always be open to the inspection of any members, and, at the expense of the Cooperative, furnish a copy of such documents and of all amendments thereto 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 6.07 Treasurer.** The Treasurer shall:

- (a) have charge and custody, with the assistance of Cooperative employees, of and, when necessary, superintend all funds and securities of the Cooperative;
- (b) when employees of the Cooperative are not available to do so, 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 Bylaws; and
- (c) in general perform all 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 6.08 Delegation of Secretary's and Treasurer's Responsibilities.** Notwithstanding the duties, responsibilities and authorities of the Secretary and of the Treasurer hereinabove provided in Sections 6.07 and 6.08, the Board of Trustees by resolution 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 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 6.09 President/CEO.** The Board of Trustees may appoint a President, who may be, but who shall not be required to be, a member of the Cooperative and who shall also be the Cooperative's Chief Executive Officer (CEO) and President. The President shall have responsibility for day to day management of the affairs of the Cooperative, the appointment and termination of employees and the authorization to expend funds of the Cooperative in accordance with any budget that has been approved by the Board of Trustees. 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.

**SECTION 6.10 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 bond in such amount and with such surety as it shall determine. The costs of all such bonds shall be borne by the Cooperative.

**SECTION 6.11 Compensation; Indemnification.** The powers, duties and compensation of officers, agents and employees shall be fixed or a plan therefor approved by the Board of Trustees; provided the Board may delegate the authority to the President/CEO to fix the powers, duties and compensation of all employees other than the President/CEO. The Cooperative shall fully indemnify - and may purchase insurance to ensure such indemnification of all present and former Cooperative trustees, officers, including the President and employees against liability and costs of defending against liability, including reasonable attorney's fees, to the fullest extent permissible by law,

including, without limitation, Section 37-6-3(16) of the Code of Alabama of 1975, as amended, or any other provision of law similar thereto, as the same may from time to time be amended, repealed or supplemented.

**SECTION 6.12 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 - FINANCIAL TRANSACTIONS**

**SECTION 7.01 Contracts.** Except as otherwise provided by law or these Bylaws, 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 of and on behalf of the Cooperative, and such authority may be general or confined to specific instances.

**SECTION 7.02 Checks, Drafts, etc.** All checks, drafts or other orders for the payment of money, and all notes, bonds or other evidences of indebtedness, issued in the name of the Cooperative, shall be signed or countersigned by such officer, agent or employee of the Cooperative and in such manner as shall from time to time be determined by resolution of the Board of Trustees.

**SECTION 7.03 Deposits; Investments.** All funds except petty cash of the Cooperative shall be deposited or invested from time to time to the credit of the Cooperative in such bank or banks or in such financial securities or institutions as the Board of Trustees may select.

**SECTION 7.04 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 VIII - NON-PROFIT OPERATION**

**SECTION 8.01 Interest or Dividends on Capital Prohibited.** The Cooperative shall at all times be operated on a cooperative non-profit basis for the mutual benefit of its patrons. No interest on dividends shall be paid or payable by the Cooperative on any capital furnished by its patrons. Members shall have no individual or separate interest in the property or assets of the Cooperative except as provided herein.

**SECTION 8.02 Patronage Capital in Connection with Furnishing Electric Energy.** In the furnishing of electric energy, the Cooperative's operations shall be so conducted that all patrons, members and non-members alike, 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, members and non-members alike, 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, members and non-members alike, 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 his capital account, and the Cooperative shall within a reasonable time after the close of the fiscal year notify each patron of the amount of capital so credited to his account provided, that individual notices of 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 such patron may compute and determine for himself the specific amount of capital so credited to him and upon the request of a patron, the Cooperative shall notify the patron of the amount of capital so credited to his account. 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 for 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. Any amount so allocated shall be included as a part of the capital credited to the accounts of patrons, as herein provided.

When the Board of Trustees shall determine that the financial condition of the Cooperative will not be impaired thereby, the patron's capital then credited to the patron's accounts may be retired in full or in part and any such

retirements of capital shall be made in order of priority according to the year in which the capital is furnished and credited, the capital first received by the Cooperative being first retired. However, with respect to Patron's capital allocated members after 2005, the Board of Trustees shall determine the method, basis, priority and order of making retirements through capital credits, from time to time, for all amounts heretofore and hereafter furnished as capital; provided, 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 portion of capital credited to the Cooperative patrons, (c) provide for appropriate notifications to patrons with respect to such portions of capital credit to their accounts, and (d) preclude a general retirement of such portions of capital credited to patrons for any fiscal year prior to the receipt by the Cooperative of funds that retire capital credited to it by a power supplier or other service or supplier that has been credited to member patrons for the same year. 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 members.

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 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 Bylaws, the Board of Trustees, at its discretion, shall have the power at any time upon the death of any patron who was a natural person if the legal representatives of his estate shall request in writing that the capital credited to such patron be retired prior to the time such capital would otherwise be retired under the provisions of the Bylaws, to retire such capital immediately upon such terms and conditions as the Board of Trustees, acting under policies of general application, and the legal representatives of such patron's estate 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 patron to the Cooperative, together with interest thereon at the Alabama legal rate on judgments in effect when such amount became overdue, compounded annually.

The patrons of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the Articles of Incorporation and Bylaws shall constitute and be a contract 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 Bylaws shall be called to the attention of each patron of the Cooperative by posting in a conspicuous place in the Cooperative's office.

**SECTION 8.03 Patronage Refunds in Connection with Furnishing Other Services.** In the event the Cooperative shall engage in the business of furnishing goods and services other than electric energy, all amounts received and receivable therefrom which are in excess of costs and expenses properly chargeable thereto may, in the discretion of the Board, insofar as permitted by law, be prorated annually on a patronage basis 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.

## **ARTICLE IX - WAIVER OF NOTICE**

Any trustee or member may waive, in writing, any notice of meetings required to be given by these Bylaws or otherwise required, either before or after such notice is required. The attendance of a trustee or member at any meeting shall constitute a waiver of notice of such meeting, except in case he shall attend the meeting for the express purpose of objecting to the transaction of any business, or one or more items of business, on the ground that the meeting has not been lawfully called or convened. Any trustee or member attending any meeting for the purpose of making such objection shall in writing notify the Secretary prior to or at the beginning of the meeting of his objection.

**ARTICLE X - DISPOSITION  
AND PLEDGING OF PROPERTY:**

**DISTRIBUTION OF SURPLUS  
ASSETS ON DISSOLUTION**

**SECTION 10.01 Disposition and Pledging of Property.**

(a) Consistently with Ala. Code Section 37-6-21 and subsection (b) hereof, the Cooperative may authorize the sale, lease, lease-sale, exchange, conveyance, transfer or other disposition of all or a substantial portion of its properties and assets; and may mortgage, pledge or otherwise encumber all or any portion of its properties and assets and the revenues therefrom to secure indebtedness; and the Board of Trustees, without further authorization of the Cooperative's members, shall have full power and authority (1) to borrow monies from any source and in such amounts as the Board may from time to time determine or (2) to mortgage or otherwise pledge or encumber any or all of the Cooperative's properties and assets as security therefor. The Board may also, without prior approval of the members, dispose of Cooperative properties and assets that do not constitute a substantial portion of the Cooperative's property and assets, if the proposed sale is in the nature of an involuntary sale, such as condemnation, or a sale required or authorized by or pursuant to electric utility territorial legislation or if the property or assets to be sold are no longer used or useful in conducting the business of the Cooperative. Properties and assets authorized for disposition by voluntary agreement of the Board of Trustees, where such disposition is in the nature of a forced sale for the reason that the purchaser possesses and would otherwise exercise the legal right to acquire, damage, relocate or destroy such property by condemnation or otherwise without the Cooperative's consent, shall constitute property no longer necessary or useful for the operation of the Cooperative. "Substantial portion" means ten percent (10%) or more of the dollar value of the Cooperative's total assets as reflected on its books at the time of the transaction.

(b) Not inconsistently with the foregoing subsection (a) and any other applicable provisions of law or of these Bylaws, no sale, lease, lease-sale, exchange, conveyance, transfer or other disposition of all or a substantial portion of the Cooperative's properties and assets shall be authorized except in conformity with the following:

- (1) If the Board of Trustees looks with favor upon accepting a proposal for such sale, lease, lease-



sale, exchange, conveyance, transfer, or other disposition, or if it looks with favor upon making an offer for such, it shall first appoint three (3) persons each of whom or which is independent of the Cooperative and of the other two (2) and each being expert in electric utility property evaluations, and commission them, separately, to study, appraise and evaluate such assets and properties, including their going concern value and the values associated with the right of the members to participate in the ownership and control of the Cooperative. Such appraisers shall be instructed to and shall take into account any other factors they may deem relevant in determining the present market value of such assets and properties. Within not more than sixty (60) days after their appointment each appraiser shall render his or its determination of such present value. The Board of Trustees shall not recommend and submit for member approval any plan to sell, lease, lease-sell, exchange, convey, transfer or otherwise dispose of such assets and properties for a consideration that is less than the highest such determination rendered by the appraisers; nor shall it, following the expiration of one (1) year after receipt of the appraisers' reports, make such a recommendation and submittal without, again, first complying with the foregoing requirements.

(2) If, after receiving such appraisals, the Board of Trustees resolves to pursue the matter further, it shall, within sixty (60) days after such resolution, transmit the appraisals, together with any underlying data and information that may have accompanied them, to every other electric cooperative corporately sited and operating in Alabama and invite any of them to submit competing or alternative proposals, including proposals to merge or consolidate with the Cooperative. Such appraisals shall also be accompanied by any proposal for such a sale, lease, lease-sale, exchange, conveyance, transfer or other disposition received by the Cooperative within one (1) year prior to the receipt of the last appraisal or received subsequent thereto but prior to the adoption of such resolution; provided, only the most recent proposal from a person that has made two or more proposals need be so transmitted. Such other Cooperatives shall be given at least sixty (60) days within which to submit competing or alternative proposals, and

they shall be notified in such transmittal of the actual final date for such submissions.

- (3) If, after such date, the Board of Trustees determines that favorable consideration should be given to the initial or any subsequent proposal which has been submitted to or developed by it, it shall not less than fifty (50) days before sending notice to the members of a member meeting for action thereon, so notify the members, informing them of the Board's recommended proposal and accompanying the proposal with verbatim copies of all competing or alternative proposals it has received, together with all of the appraisals. The Board of Trustees shall thereafter call and give notice of a special meeting of the members thereon or, if it so determines, notify the members that the matter will be considered and acted upon at the ensuing annual member meeting. The special or annual meeting shall be held not less than forty (40) days after the giving of the notice thereon.
  
- (4) Any two hundred (200) or more members of the Cooperative may, over their respective signatures and within not less than thirty (30) days prior to the date of such member meeting, petition the Cooperative to mail to all of the Cooperative's members any statement of opposition to the Board of Trustees' recommendation and/or of their own recommendation that a competing or alternative proposal, which may be or include a proposition to merge or consolidate the Cooperative with one or more other electric cooperatives, be submitted to and acted upon by the members at such meeting, in which event the Board of Trustees shall cause a printed copy of the petition, including the printing of the names of the member signatures thereof, together with a printed copy of the statement, to be transmitted to all of the Cooperative's members via the United States mail, with first-class postage thereon prepaid, not less than twenty (20) days prior to such member meeting, with the cost of such printing and mailing to be borne by the Cooperative. When so mailed, such petition and statement shall constitute sufficient notice of any such competing or alternative proposal for the same to be considered and acted upon at such meeting.

The provisions of this Section 11.01 shall not apply to a Board-recommended proposal to merge or consolidate the Cooperative with one or more other electric cooperatives.

(c) No offer to purchase or lease-purchase and no offer to sell, lease, lease-sell, exchange, convey, transfer or otherwise dispose of all or a substantial portion of the Cooperative's assets and properties shall be valid or, if made and accepted, enforceable unless the total consideration to be paid or otherwise furnished therefore, to the extent that the same is in excess of the amounts necessary to discharge or to provide for the discharge of the Cooperative's liabilities, shall be distributed to, or, if such be the case, allocated and assigned to, the patrons or former patrons of the Cooperative in the manner provided for in the Articles of Incorporation, Bylaws or applicable law.

If the Cooperative shall receive any offer from any person or entity to acquire or lease all or a substantial portion of the assets or property of the Cooperative, the requirements of the second and subsequent paragraphs of Section 37-6-21 of the Code of Alabama 1975, as amended, as it may read from time to time, shall be followed.

**SECTION 10.02 Distribution of Surplus Assets on Voluntary Dissolution.** Upon the Cooperative's voluntary 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, not inconsistently with the provisions of the third paragraph of Section 9.02 of these Bylaws, be distributed without priority but on a patronage basis among all persons who are or have been members of the Cooperative during the seven (7) years next preceding the date of the filing of the certificate of election to dissolve, or, on such other basis as the Board of Trustees may reasonably determine or as may be required by tax law applicable to the Cooperative; provided, 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 XI - RULES OF ORDER**

Parliamentary procedure at all meetings of the members, of the Board of Trustees, of any committee provided for in these Bylaws 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 Bylaws. This Article shall be subordinate to any other provision of these Bylaws

pertaining to the votes required for action by members, trustees or committees.

## **ARTICLE XII - BYLAW AMENDMENTS**

**SECTION 12.01 Power to Amend.** The Cooperative's Bylaws may be changed (adopted, amended or repealed) by the members; provided, both the Board of Trustees and the members may declare the repeal of any bylaw provision if, as established by law, such is illegal or has become a legal nullity.

**SECTION 12.02 Procedure for Amending.** A bylaw may be changed only if (1) a copy or an accurate summary explanation of the proposed change is contained in or with the notice of the member meeting at which it is to be acted upon; and (2) it is sponsored by the Board of Trustees. The Board of Trustees shall not cause any proposed bylaw change to be noticed or acted upon, or permit any amendment to a proposed bylaw change to be acted upon, if it determines that such, if adopted, would be illegal or a legal nullity.

**SECTION 12.03 Effective Date.** The Bylaws of the Cooperative currently in effect as amended, are hereby repealed in their entirety and substituted therefore are the within Bylaws to become effective ten days after the adoption of the within By-Laws.