

## ARTICLE VIII

### Non-Profit Operation

#### **Section 1. ~~Section 1.~~ Interest or Dividends on Capital Prohibited.**

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

#### **Section 2. ~~Section 2.~~ Patronage Obligation for Electric and Other Patronage Services**

The patrons of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of these Bylaws related to the rights and obligations of patrons 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 0 shall be called to the attention of each patron of the Cooperative by posting in a conspicuous place in the Cooperative's principal office.

As used herein, the term "patron" means a member or any other person or entity receiving services or goods from the Cooperative and to whom the Cooperative is obligated to allocate Capital Credits, as set forth herein, which obligation existed before the Cooperative received payment for such services. As used in Section 5, Section 6, Section 7, and Section 8 of this 0, the term "patron" includes former and current patrons. Notwithstanding anything to the contrary herein, no person or entity who is not a member of the Cooperative is a patron unless and until the Board of Directors passes a written resolution or policy authorizing the Cooperative to treat such person or entity as a patron, which may be accomplished, for example, by designating customers of certain categories of service or goods to specific service areas as patrons. Except with respect to the patronage rights of patrons expressly provided in this 0, patrons who are not members are entitled to no rights granted to members under these Bylaws.

#### **Section 2, Section 3. Capital Credits in Connection with Furnishing Electric ~~Energy and~~ Other Patronage Services.**

(a) —In the furnishing of electric energy, the ~~Cooperative's~~Cooperative's operations shall be so conducted that all patrons will, through their patronage, furnish capital for the Cooperative. ~~In order to~~To induce patronage and to assure that the Cooperative will operate on a non-profit basis, the Cooperative is obligated to account on a patronage basis to all its patrons for amounts received and receivable as operating revenue from the furnishing of electric energy—~~("Patronage Operating Revenue")~~. All such amounts in excess of operating costs and expenses at the moment of receipt by the ~~cooperative~~Cooperative ("Patronage Net Operating Margins") are received with

the understanding that they are furnished by the patrons as capital. -The Cooperative is obligated to equitably allocate and pay by credits to a capital account for each patron ~~all~~ (“Capital Credits”) all Patronage Net Operating Margins.

(b) If, however, such ~~amounts in excess of operating~~ costs and expenses— ~~exceed Patronage Operating Revenue creating an operating loss (“Patronage Net Operating Loss”), the Cooperative may, so far as permitted by law, including federal cooperative tax law, contractual agreements, and loan covenants, and in the Board’s discretion: (i) offset the loss against existing Capital Credits based on patronage during the loss year; (ii) offset the loss against net margins from non-patronage business as provided in Section 4 of this 0; (iii) carry the loss forward to offset future allocations of Capital Credits; (iii) offset the loss against a reserve or similar amount or account; (iv) assess the loss in accordance with contractual provisions between a patron and the Cooperative; or (v) account for the loss in some combination of one or more methods described in this Subsection (b).~~

~~(b)(c)~~ (c) The books and records of the Cooperative shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each patron is clearly reflected and credited in an appropriate record to the capital account of each patron, and the Cooperative may (but shall not be required to) notify each patron after the end of such fiscal year of the amount of capital so credited to this 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 of capital. Accounts reflecting Capital Credits may also be adjusted to account for any losses as set forth in 0 Section 3(b).

(d) — ~~Except as provided in Section 3 hereof, all other amounts received by the Cooperative from its operations in excess of costs and expenses~~Consistent with these Bylaws and without diminishing the Cooperative’s patronage obligation set forth in Article I, Section 2, the Board of Directors will determine the manner and method of allocating Capital Credits and may create allocation classes of similarly situated patrons or based on rate classes for such purpose. Additionally, to allocate Patronage Net Operating Margins and Losses among patrons, the Board of Directors may create classes of patrons or divisions of its operations or goods and services, and may apportion revenues and expenses among them as it deems appropriate. As determined by the Board, Capital Credits may be allocated on the basis of accounting used for financial reporting or tax purposes, or a combination thereof.

(e) The Board of Directors may, by resolution, designate the operating revenue and associated operating costs and expenses, as Patronage Operating Revenue and Patronage Net Operating Margins, respectively, of other services provided by the Cooperative to be treated the same as such items are treated for electric energy services under this 0 (“Other Patronage Services”). In such case, the provisions of this 0 will apply to such other services, and patrons thereof, the same as they are applied to electric energy services and patrons thereof, including but not limited to the Cooperative’s patronage obligation under Section 2 and Section 3(a) of this 0.

(f) If the Cooperative is a member, patron, or owner of an entity from which the Cooperative purchases a good or service and from which the Cooperative is allocated patronage capital or similar credits, then as determined by the Board of Directors and consistent with the Bylaws, the Cooperative may separately identify and allocate to the Cooperative’s patrons any patronage

capital allocated to the Cooperative by such entity. Such allocations shall be allocated to the patrons of the Cooperative only as and to the extent cash or property is received by the Cooperative for such patronage allocations.

(g) Until the Board of Directors declares the retirement of Capital Credits as set forth in Article I, Section 5, the Cooperative may use or invest such capital in any manner determined by the Board of Directors in its sole discretion.

#### **Section 4. Net Margins from Non-Patronage Business.**

Revenue, income, and gains in excess of operating costs, expenses and losses, other than from the furnishing of electric service and Other Patronage Services, 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, available to create unallocated reserves and retained capital not currently allocable to the patrons, or (c) to the extent not needed for the foregoing purposes, allocated to its patrons on a patronage basis and any amount so allocated shall be included as part of the capital credited to the accounts of patrons, as herein provided. Such allocation from operations other than the furnishing of electric energy shall not be made on an accrual basis but shall only be made with respect to amounts actually received by the Cooperative. Capital credit allocations from other cooperatives of which the Association is a member shall be allocated to the patrons of the Cooperative only as and to the extent cash or property is actually received by the Association for such capital credit allocations. Such allocation and allocation base shall be determined and made under the same requirements set forth in Article I, Section 3.

#### **Section 5. Retirement of Capital Credits.**

(a) In the event of dissolution or liquidation of the Cooperative, after all outstanding indebtedness of the Cooperative shall have been paid, outstanding ~~capital credits~~ Capital Credits shall be retired without priority on a pro rata basis before any payments are made on account of property rights of members.

(b) If, at any time prior to dissolution or liquidation, the Board of Directors shall determine that the financial condition of the Cooperative will not be impaired thereby, the capital then credited to ~~patrons'~~ patrons' accounts may be retired in full or in part. The Cooperative shall deduct and retain from payment ~~to a patron~~ of retired ~~capital credits~~ Capital Credits all monies owed by such patron to the Cooperative at that time, together with accrued interest on such owed amount. The Board of Directors shall determine the method, basis, priority, and order of making such retirements, ~~and shall have the authority to retire Capital Credits of classes of similarly situated patrons in a different manner, method, and timing than other classes.~~ The Board shall have the power to adopt rules providing for the separate retirement of ~~capital credits~~ Capital Credits from affiliated organizations, ~~including Capital Credits identified in 0 of this 0.~~

(c) The Board of Directors shall also have the power, exercisable in its sole discretion, to retire all or a portion of the ~~capital credit~~ Capital Credit of patrons prior to the time such capital would otherwise be retired under the ~~provision~~ provisions of these ~~bylaws~~ Bylaws or the policies of the Board of Directors, ~~The payment portion of such early retirement shall be on a discounted and fair value~~ basis, upon such terms and conditions as the Board of Directors shall adopt, ~~provided~~

~~that but only if~~ the financial condition of the Cooperative will not be impaired. ~~The discounted portion of~~ The Cooperative shall also deduct and retain from the ~~capital credit of a payment~~ portion all monies owed by the patron ~~which is not paid to the Cooperative, together with accrued interest on such owed amount. The difference between the total amount of Capital Credits retired and the payment portion of such retirement (“the Discount”) remains unpaid~~ to such patron, ~~after debiting any monies then owed by such patron to the Cooperative, and~~ shall conclusively be deemed donated to, and retained by, the Cooperative and shall not thereafter be reassigned to any member, patron ~~or~~, person ~~or~~, or entity. Any policy of the Board to retire the ~~capital credit~~ Capital Credits of patrons and implement the foregoing provisions of these bylaws shall be applied in a non-discriminatory fashion within each separate class of ~~members~~ patrons, but may be different for different classes of ~~members~~ patrons.

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

(d) ~~Notwithstanding any other provision of these Bylaws, the Board of Directors, in its sole discretion, shall have the power to retire the capital credit~~ Capital Credit of a deceased patron who was a natural person at any time after the death of such patron and prior to the time such capital would otherwise be retired under the provision of these bylaws or the policies of the Board of Directors, upon such terms and conditions as the Board of Directors shall adopt, ~~provided that but only if~~ the financial condition of the Cooperative will not be impaired thereby. No ~~capital credit~~ Capital Credit of a deceased patron shall be retired early unless an heir or legal representative of the deceased patron has requested such retirement in writing to the Cooperative. -If such written request is made to the Cooperative, the Cooperative shall retire the ~~capital credit~~ Capital Credit of a deceased patron to the estate or heirs of the deceased patron on a discounted ~~and fair value~~ basis. The Cooperative shall deduct and retain from ~~such~~ the payment ~~portion of such discounted retirement~~ all monies owed by the deceased patron to the Cooperative ~~at that time~~, together with accrued interest on such owed amount. The ~~discounted portion of the capital credit of such deceased patron which is not paid by the Cooperative, after the retirement of a portion thereof on a discounted and fair value basis, Discount remains unpaid and~~ shall be deemed donated to, and retained by, the Cooperative and shall not thereafter be reassigned to any patron ~~or~~, member ~~or~~, person ~~or~~, or entity. Any policy of the Board to retire the ~~capital credit~~ Capital Credits of deceased patrons and implement the foregoing provisions of these ~~bylaws~~ Bylaws shall be uniform and applied in a non-discriminatory fashion to the capital accounts of deceased patrons.

~~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.~~

~~(e) In all instances of retiring Capital Credits, the Cooperative may offset or recoup against the payment portion of such retired Capital Credits any amount owed to the Cooperative by a patron, including any interest and late-payment fee. The Board of Directors is further authorized, but not required, to discount any Capital Credits, in the manner provided in Section 5(c) of this 0, before applying such offset or recoupment.~~

#### **Section 6. Assignment of Capital Credits.**

~~Capital Credited to the account of each patron shall be assignable only on the books of the Cooperative pursuant to written instruction from the assignor and only to successors in interest or successors in occupancy in all or part of premises served by the Cooperative under such patron's account unless the Board of Directors, acting under policies of general application, determines otherwise. Any assignment of Capital Credits is subject to setoff of amounts owed to the Cooperative as provided in (e) of this 0.~~

#### **Section 7. Unclaimed Capital Credits.**

~~Certain retired patronage capital creditsCapital Credits may go unclaimed by members- ("Unclaimed Capital Credits"). Bookkeeping and accounting maintenance of unclaimed refunds of patronage capital credits for such patrons or past patronsUnclaimed Capital Credits is burdensome and costly to the Cooperative. The~~

~~Therefore, the Cooperative hereby imposes an annual administration fee on the Unclaimed Capital Credits of patrons who fail to claim or negotiate payment of retired Capital Credits for more than one year after the refund was mailed, in the amount of five and no/100 dollars (\$5.00) per year. Said annual administration fee shall be a setoff against the Unclaimed Capital Credits and shall be credited annually to the Cooperative in reduction of the Unclaimed Capital Credits.~~

~~Additionally, as provided herein, the failure by a patron or past patron to assert a claim for such creditsUnclaimed Capital Credits constitutes evidence of intent to abandon such credits.~~

~~Any retired patronage capital credit which remainsUnclaimed Capital Credits that remain unclaimed by a patron or past patron for three years after being published in a newspaper of general circulation within the service area of the Cooperative or tendered in the form of a negotiable instrument, sent by first class mail addressed to such patron or past patron at his/her/its last known address shall be conclusively deemed abandoned and forfeitedassigned to the Cooperative and belongs to. In such event, the Cooperative. The Board of Directors may direct, use such Unclaimed Capital Credits in its discretion, the use of such funds.~~

#### **Section 3. Patronage Refunds in Connection with Furnishing Other Services.**

~~In the event that the Cooperative should engage in any business activity other than the furnishing of electric energy, all amounts actually received from such activity which are in excess of costs and expenses and appropriate reserves properly chargeable against the activity shall, insofar as permitted by law, be (a) used to offset any losses incurred in such activity during the current or any prior fiscal year, and (b) to the extent not needed for that purpose, allocated to its patrons on a patronage basis, and any amount so allocated shall be included as part of the capital credited to the accounts of patrons, as herein provided. Such allocation from such business activity other than the furnishing of electric energy shall not be made on an accrual basis but shall only be made with respect to amounts actually received by the Cooperative. Capital credit allocations from other cooperatives of which the Association is a member shall be allocated to the patrons of the Cooperative only as and to the extent cash or property is actually received by the Association for such capital credit allocation.~~

#### ~~Section 4. Property Interest of Members.~~

~~Upon dissolution, after~~

~~(a) all debts and liabilities of the Cooperative are paid, and,~~

~~(b) all capital furnished through patronage shall have been retired as provided in these Bylaws.~~

~~the remaining property and assets of the Cooperative shall be distributed among the members and former members in the proportion which the aggregate patronage of each bears to the total patronage of all members during the ten years next preceding the date of filing of the Certificate of Dissolution.~~

**Commented [BF1]:** To be relocated to a different Article.

#### ~~Section 5. Administrative Service Charges.~~

~~The Cooperative retires and has previously retired from time to time certain patronage capital credits of its patrons. Some checks tendered in payment of retired patronage capital credits to certain patrons and past patrons have been and are expected in the future to be returned or otherwise to remain unclaimed. Such unclaimed refunds of patronage capital credits are held by the Cooperative for a period of time in accordance with these bylaws for claim by such patrons or past patrons to whom such credits have been allocated, until otherwise abandoned or forfeited as may elsewhere be provided in these bylaws. Bookkeeping and accounting maintenance of~~

~~unclaimed refunds of patronage capital credits for patrons or past patrons is burdensome and costly to the Cooperative. Therefore, the Cooperative hereby imposes an annual administration fee on the unclaimed patronage capital credits of all patrons or past patrons who have failed to claim or negotiate payment of retired patronage capital credits for more than one (1) year after the refund was mailed, in the amount of five and no/100 dollars (\$5.00) per year. Said annual administration fee shall be a set off against the unclaimed patronage capital credits and shall be credited annually to the Cooperative in reduction of the unclaimed patronage capital credits.~~

**Section 8. Security Interests and Credit Support.**

~~If the Board of Directors determines that the cost of initiating or continuing service for a patron justifies additional security to protect the financial interests of the Cooperative, then as a condition to initiate or continue service, the Cooperative may require such patron to execute a security agreement that grants the Cooperative a security interest in such patron's Capital Credits. The rights granted the Cooperative in this Section are in addition to any rights granted under **Error! Reference source not found.** In such event, such patron agrees that the Cooperative may file a financing statement under applicable law.~~

~~In addition, the Board of Directors may declare retirement of a patron's Capital Credits, in whole or in part, but defer payment thereof until a later time determined by the Board. In such case, until payment thereof, the Cooperative will be indebted to such patron therefor, which indebtedness may be set off against such patron's debt to the Cooperative. No interest will accrue on such indebtedness to such patron unless expressly declared by the Board.~~