



The Bylaws
Of
CENTRAL NEW MEXICO ELECTRIC
COOPERATIVE INC.

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ARTICLE I MEMBERSHIP

SECTION 1.01 Eligibility, Terms, Requirements

- 1.01.1** Any natural person, association, corporation, federal agency, state or political subdivision thereof, or body politic (each hereinafter referred to as “member”, “person”, “entity”, “applicant”, “him”, “her”, or “his”) owning, occupying or using premises within the Cooperative service area shall be eligible to become a member and to receive electric service from Central N.M. Electric Cooperative, Inc. (hereinafter the “Cooperative”).
- 1.01.2** Any person or entity who or which is furnished electric service by the Cooperative is and at all times such person or entity receives services, shall be a member, and no person or entity is or shall be a member unless said person or entity receives electric service from the Cooperative; provided, when a member only has need for seasonal electric service, the member shall not cease being a member upon seasonally ceasing to receive and use such service unless such cessation is intended thereafter to be permanent. A legal representative of an estate of a deceased natural-person, who was a member, or a corporation in bankruptcy proceedings, shall be eligible for membership during all times that the Cooperative serves the estate or entity. The purpose of this section is to assure that all persons and entities being served by the Cooperative are members with full voting rights and privileges and subject to all duties and membership obligations.
- 1.01.3** No person or entity shall hold more than one membership in the Cooperative.

SECTION 1.02 Applications for Membership, Renewal of Prior Memberships

- 1.02.1** Persons and entities who are required to make application for membership whereby the applicant agrees to purchase electric power and energy from the Cooperative shall be bound by the Cooperative’s Articles of Incorporation, Bylaws, and all rules, regulations, policies, rate classifications and rate schedules established pursuant thereto, as the same then exist or may thereafter be adopted, repealed or amended (the obligations embraced by such agreement being hereinafter called “Membership Obligations”). The application shall be made in writing on such form as is provided by the Cooperative.
- 1.02.2** With respect to any particular classification of service for which the Cooperative’s Board of Trustees (herein the “Board”) shall require it, such application shall be accompanied by a supplemental contract executed by the applicant on such form as is provided by the Cooperative.
- 1.02.3** There shall be no membership fee, but the application shall be accompanied by such service connection fee as is required by the Cooperative’s rules and regulations, together with any security deposit, facilities extension deposit, advance of

engineering and other costs, or contribution in aid of construction, that may be required by the Cooperative (hereinafter the “additional payments”), which fee and such additional payments, if any, shall be refunded if the application is denied.

- 1.02.4** Any former member of the Cooperative, by paying a new connection fee and any outstanding account due the Cooperative plus accrued interest thereon at a rate established by the Board, from time to time, in effect when such account first became overdue, compounded annually, together with such additional payments, if any, may renew and reactivate any prior membership to the same effect as though the application had been newly made on the date of such payment(s). The membership obligations apply fully to such members.

SECTION 1.03 Acceptances into Membership

Any person or entity who, before the adoption of these Bylaws, was a member of the Cooperative because of service there from or from any of the Cooperative’s predecessor power companies shall continue to be a member of the Cooperative while receiving service from it, subject to the other provisions of these Bylaws. The membership obligations apply to such members. Upon complying with the requirements set forth in Section 1.02, or upon receiving service from the Cooperative, any person or entity shall automatically become a member on the date the person or entity begins receiving service from the Cooperative. The Cooperative may reject or deny an application and refuse to furnish service upon its determination that the applicant is not willing or is not able to abide by the membership obligations or such application shall be denied for other good cause.

SECTION 1.04 Recognition of Members

Upon discovery that the Cooperative is furnishing electric service to any person or entity other than the one who has made written application, it shall cease furnishing such service unless such person or entity makes application, in which case the applicant shall be recognized as being a member from the date such person or entity first began receiving such service. The Cooperative, to the extent practicable, and if necessary, shall correct its membership and related records accordingly.

SECTION 1.05 Joint Memberships

- 1.05.1** If service is or shall have been applied for by either spouse of a married couple, or held in the name of either spouse, the two of them shall, together constitute one joint membership, unless both shall sign or shall have signed a written request that only a designated one of them shall be a member. Joint memberships shall be subject to subparagraphs 1.05.1 through 1.05.7 of this section and subparagraphs 1.06.1 and 1.06.2. The terms “member”, “applicant”, “entity”, “person”, “his”, “her”, 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. All provisions relating to the rights, powers, terms, conditions, obligations, responsibilities and liabilities of membership shall apply equally, severally and jointly to them.

- 1.05.2** 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.
- 1.05.3** The vote of either or both shall constitute one joint vote. If the vote is at a meeting or a polling place, the first to vote will be counted, but if there is a dispute as to which may vote, the right to vote will be suspended until the dispute is resolved between the spouses.
- 1.05.4** Notice to, or waiver of notice signed by either or both shall constitute, respectively, a joint notice or waiver of notice.
- 1.05.5** Termination of service shall constitute termination of the membership as a joint membership.
- 1.05.6** Either, but not both concurrently, shall be eligible to serve as a trustee on the Board, but only if the person serving meets the qualifications for such office.
- 1.05.7** The presence at a meeting of either shall constitute the presence of a member for the purposes of establishing the presence of a quorum.

SECTION 1.06 Effects of Death, Legal Separation or Divorce upon a Joint Membership

- 1.06.1** 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 separated or divorced one, whichever be the case, who continues to occupy or use the premises served by the Cooperative, in the same manner and to the same effect as though such membership has never been joint; provided, the estate of the deceased spouse or the other separated or divorced spouse shall not be released from any debts due the Cooperative.
- 1.06.2** Upon the death of either spouse without leaving a surviving spouse, the membership of such joint member shall terminate when the Cooperative is advised in writing of the death of the surviving spouse, and the consumer taking service at the same location or through the same facilities, shall be a member from the date of death of the deceased, and is required to make application for membership and service, or the Cooperative may terminate service pursuant to Section 1.07.

SECTION 1.07 Termination of Membership upon Termination of Service

The membership of a member who has ceased to be served by the Cooperative shall be automatically terminated without further action by the Cooperative unless service to such member is pursuant to a continuing contractual or seasonal service agreement. A member, whose membership has ceased pursuant hereto, shall automatically be reinstated as a member at such time as said person or entity again commences taking service from the Cooperative pursuant to 1.02.

SECTION 1.08 Terminations by Death or Cessation of Existence, Continuation of Membership in Remaining or New Partners

- 1.08.1** The death of a natural-person member shall automatically terminate his or her membership, except as to a joint membership.
- 1.08.2** The cessation of the legal existence of any other type of member shall automatically terminate such membership; provided, upon the dissolution of a partnership, or upon the death, withdrawal or addition of any individual partner, such membership shall continue to be held by such remaining partner and/or new partner or partners and who continue to own, lease as lessor or lessee, 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 has never been held by different partners. Neither a withdrawing partner nor his/her estate shall be released from any debts then due the Cooperative by the partnership.

SECTION 1.09 Effects of Termination

Upon the termination of a person's membership, he, her or their estate, as the case may be, or upon termination of any entity, the entity entitled thereto shall be entitled to a refund of the security deposit, if any, theretofore paid to the Cooperative, less any amounts due the Cooperative. Neither he, her, nor their estate, or the entities, shall be released from any debts or other obligations then due the Cooperative.

SECTION 1.10 Non-terminations

No membership shall be terminated during the time that a member is receiving service from the Cooperative.

**ARTICLE II
MEETINGS OF MEMBERS**

SECTION 2.01 Annual Meetings

The annual meeting of the members shall be held on the third Saturday of April of each year beginning in April 1999, at such place in the Cooperative service area at the hour fixed by the Board. For good cause as determined by it, the Board may fix a different date for such annual meeting not more than thirty (30) days before or after the day otherwise established for such meeting in this section. The Board shall make adequate plans for, and encourage member attendance at the annual meeting. Failure to hold the annual meeting at the designated time and place shall not work a forfeiture or dissolution of the Cooperative.

SECTION 2.02 Special Meetings

A special meeting of the members may be called by resolution of the Board, by any five (5) Trustees or by petition signed by not less than ten percent (10%) of then members of the Cooperative. The secretary shall cause notice of such meeting to be given as provided in Section 2.03. Special meetings of the members may be held in Torrance County, or at such other places as set by the Board of Trustees, on such

date, not sooner than thirty (30) days after the call for such meeting if the call is made by a member petition, and beginning at such hour as shall be designed by those calling the same.

SECTION 2.03 Notices of Member Meetings

- 2.03.1** 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, of the purpose of the meeting shall be delivered to each member not less than fifteen (15) days nor, except as provided in Section 9.01, more than sixty (60) days before the date of the meeting, either personally or by mail.
- 2.03.2** Any such notice delivered by mail may be included with member service billings or in or with a Cooperative newsletter and/or any other publication regularly circulated to all of the members.
- 2.03.3** If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his/her address as it appears on the records of the Cooperative, postmarked at least eighteen (18) calendar days before the meeting date. In making such computation, the date of the meeting shall not be counted.
- 2.03.4** The failure of any member to receive a notice deposited in the mail addressed to the member at his/her address as shown on the Cooperative's books shall not invalidate any action which may be taken by the members at any such meeting.

SECTION 2.04 Quorums

- 2.04.1** Business may not be transacted at any meeting of the members unless there are present in person at least two and one-half percent (2 ½%) of the membership up to five thousand (5,000) members; and, in addition, at least one percent (1%) of the membership that exceeds five thousand (5,000) members.
- 2.04.2** If less than the required quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.
- 2.04.3** At all meetings of the members, whether a quorum be present or not, the secretary shall attach to the meeting minutes, or incorporate therein by reference, a list of those members who were registered as present in person.

SECTION 2.05 Voting By Members

- 2.05.1** Each member shall be entitled to only one vote upon each matter submitted for a vote to the members.
- 2.05.2** A corporation, association, body politic or multiple ownership-type business structure may vote through any officer, director, or manager of its organization or

business enterprise (herein the “authorized representative”). Should a question arise as to what individual may vote for any such entity, the right of said member to vote shall be suspended until such time as the Cooperative shall have received, in writing, a designation of the person entitled to vote by the governing board or proper authority of the member entity.

2.05.3 At all meetings of members, all questions shall be decided by a vote of a majority of the members voting thereon, except as otherwise provided by law or by the Cooperative’s Articles of Incorporation or these Bylaws.

2.05.4 Members may not cumulate their votes.

2.05.5 All questions put to a vote of the members, except upon a question of dissolution, may be held at a time before the commencement of the meeting and on the same day as the meeting.

SECTION 2.06 Voting Lists

The secretary of the Cooperative shall cause to be made, and kept current a complete list of the members entitled to vote at any meeting of members, arranged in alphabetical order, which list shall contain the mailing address of each member to be kept on file at the principal office of the Cooperative which shall be subject to inspection pursuant to policies of the Cooperative. Such lists shall also be produced and kept open at the time and place of any meeting of members and shall be subject to the inspection of any member during the meeting. Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting. The Cooperative may require, before a member is authorized to inspect a list of members’ names and addresses, that the member requesting such inspection furnish an affidavit that such inspection is not desired for a purpose which is in the interest of a business or object other than the business of the Cooperative; and, that the member has not at any time sold or offered for sale any list of members, will not use the list for any purpose contrary to the interests of the Cooperative, or has aided or abetted any person in procuring any such list of members for any such purposes.

SECTION 2.07 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 hereinafter set out:

Registration

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

Reading of the Notice of the Meeting and Proof of the mailing of the Notice, giving thereof, or of the waiver or waivers of notice of the meeting, as the case may be;

Reading of unapproved Minutes of previous meetings of the members or the waiver thereof and the taking of necessary action thereon;

Announcement of the Trustee election results;

Presentation of reports of officers, Trustees and committees;
Unfinished business;
New business; and
Adjournment.

Notwithstanding the foregoing, the Board may from time to time establish a different order of business.

SECTION 2.08 Proxies

Voting shall be in person at all meetings as provided in these Bylaws, and no member shall be entitled to vote by proxy or power of attorney.

**ARTICLE III
BOARD OF TRUSTEES**

SECTION 3.01 Number and General Powers

The business of the Cooperative shall be managed by a Board of eight (8) Trustees, which shall exercise all of the powers of the Cooperative except such as are by law or by the Cooperative's Article of Incorporation or Bylaws conferred upon or reserved to the members.

SECTION 3.02 Policies, Rules, Regulations, Rate Schedules and Contracts

The Board shall have power to adopt, amend and abolish such policies, rules, regulations, rate classifications, rate schedules, contracts, security deposits and any other types of deposits, payments or charges, including contributions in aid of construction, not inconsistent with law or the Articles of Incorporation or these Bylaws, as it may deem advisable for the management of the business and affairs of the Cooperative.

SECTION 3.03 Qualifications of Trustees

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

- (a) While serving on the Board or during the five (5) years preceding his/her election thereto has been adjudged to be guilty of a felony; or
- (b) Is a close relative (as defined in Section 8.06.1) of an incumbent trustee or of an employee of the Cooperative; and
- (c) Has been employed by the Cooperative in the past three (3) years; or
- (d) Has not been, for at least forty-five (45) days before his/her election, or who ceases after his/her election to be, a member in Good Standing of the Cooperative, receiving service there from at his/her primary residential abode in the Trustee District from which he/she is elected.

"Good Standing" means that a person has not consistently been, more than forty five (45) days, delinquent in paying his/her undisputed obligations during the twelve (12) months preceding his/her election, whether at Central New Mexico Electric Cooperative, Inc. or a previous utility company; and,

- does not at that time or during his/her incumbency become so delinquent or refuse or decline to fulfill any of his/her membership obligations; or
- (e) Has been receiving service less than one (1) year.
 - (f) Is not, a natural person, at least twenty-one (21) years of age; or
 - (g) Is not employed by or has a fiduciary relationship in a competing enterprise or a business selling electric energy or merchandise to the Cooperative.

- 303.2** Notwithstanding the provisions of Section 3.03.1(b), no incumbent trustee shall lose eligibility to remain a trustee or to be re-elected a trustee, if during his/her incumbency as a trustee, he/she becomes a Close Relative of an incumbent trustee or of a Cooperative employee because of a marriage or an adoption to which he/she was not a party.
- 303.3** No trustee may, during his/her incumbency or within three (3) years after ceasing to be a trustee, become an employee of the Cooperative.
- 303.4** If a candidate for trustee is ineligible under these Bylaws, the Board shall disqualify him/her. If any person being considered for, or is a trustee, or other position of trust in the Cooperative is ineligible under this Section; the Board shall cause him/her to be removed there from.
- 303.5** Nothing contained in this Section shall affect the validity of any action taken at any meeting of the Board unless such action is taken with respect to a matter which is affected by the provisions of this section and in which one or more of the trustees have a personal interest in conflict with that of the Cooperative.

SECTION 3.04 Candidacies for Trustee

- 3.04.1** Not more than sixty (60) days or less than forty-five (45) days before the date of an annual meeting of the members at which the election of Board of Trustees will be conducted, the Board of Trustees shall give public notice of the election by publishing at least one notice of the election or by mailing a notice to each of the members. The notice shall state the date when the election will be held; the vacancies to be filled; the period during which candidacy must be declared; and where candidacy must be filed.
- 3.04.2** A candidate for the Board of Trustees shall execute a Declaration of Candidacy and file it in the Cooperative's office in Mountainair, New Mexico before 4:00 PM on the last business day, which is thirty (30) days before the annual meeting of the members.
- 3.04.3** To be qualified to be voted upon for election or to be appointed to fill a vacancy on the Board, a person who has not previously served on the Board of Trustees shall be required to attend an informational orientation workshop to be presented by the Cooperative or at such time as the Board may set. Reasonable travel expenses to attend the workshop shall be paid by the Cooperative.

3.04.4 The Board shall cause ballots to be prepared and printed promptly after the holding of the workshop for declared candidates. The ballot shall be divided into sections corresponding to the districts for which the trustee is to be elected. The names of all qualified persons shall appear on such official ballots in alphabetical order for each such district.

3.04.5 If no qualified person declares to represent a particular district, a vacancy shall occur at the end of the regular three (3) year term of the trustee currently serving, and the vacancy shall be filled pursuant to Section 3.10.

SECTION 3.05 Tenures of Trustees

3.05.1 Upon approval of these proposed Bylaws the members will at the August, 1998 meeting of the members, elect a trustee for District 5, District 7, and District 8 whose terms begins in August, 1998 and ends in April, 2001; and a trustee for District 6 whose term begins in August, 1998 and ends in April, 2000. Trustees for Districts 1 and 3 will stand for election in April, 1999; Trustees for Districts 2, 4, and 6 in April, 2000; and Trustees for Districts 5, 7, and 8 in April, 2001.

3.05.2 Upon their election, trustees shall, subject to the provisions of these Bylaws with respect to the removal of trustees, serve until the adjournment of the annual meeting of the members in the year in which their terms expire.

3.05.3 Failure of an election to be held in a given year shall allow the incumbent trustee to continue in office until the adjournment of the third annual meeting thereafter and until his/her successor is elected and has qualified.

3.05.4 Except as set forth in section 3.05.1, the term of office of a trustee shall commence at the adjournment of the annual meeting of the members following the trustee's election; and, shall continue until the adjournment of the third annual meeting thereafter, and, until his/her successor is elected and has qualified.

SECTION 3.06 Trustee Districts

The territory served by the Cooperative shall have eight (8) trustee districts and each shall be represented by one (1) trustee. The trustee districts are numbered and described as follows:

District No. 1:

North Boundary: Old Hwy 66 to Hwy 41 then North along Hwy 41 to Coop boundary

East Boundary: From Coop boundary line on North, South along Hwy 285 to Township line between T7N and T8N

South Boundary: Township line between T7N and T8N

West Boundary: Coop boundary line

District No. 2:

Township line between T7N and T8N
East Boundary: Hwy 285
South Boundary: Township line between T5N and T6N
West Boundary: Coop boundary line

District No. 3:

North Boundary: Coop boundary
East Boundary: Coop boundary
South Boundary: Township line between T3N and T4N
West Boundary: Hwy 3 from Township line T3N and T4N to Encino Hwy 285
North from Encino

District No. 4:

North Boundary: Township line between T5N and T6N
East Boundary: Township line between T5N and T6N along Hwy 285 to Encino;
along Hwy 3 from Encino to Township line between T3N and T4N; East along
Township line between T3N and T4N to Range line between R14E and R15E South
along Range line to Township T1N and T2N;
South Boundary: Township line between T1N and T1S from West Coop boundary
to Range line between R11E and R12E; North along Range line to Township line
between T1N and T2N; East along Township line;
West Boundary: Coop boundary

District No. 5:

At Large comprising the areas of Districts 1 and 8

District No. 6:

At Large comprising Districts 2, 3, 4, and 7

District No. 7:

North Boundary: Township line between T1N and T1S to Range line between
R11E and R12E; North on Range line to Township line between T1N and T2N;
East along Township line to Range line between R14E and R15E; North along
Range line to Township line between T3N and T4N; East along Township line to
Coop boundary;
East Boundary: Coop boundary
South Boundary: Coop boundary
West Boundary: Coop boundary

District No. 8:

North Boundary: Coop boundary
East Boundary: State Hwy 41
South Boundary: Old Hwy 66
West Boundary: Coop boundary

SECTION 3.07 Elections of Trustees

- 3.07.1** Trustees shall be elected by secret ballot to fill the offices of the trustees whose terms of office are expiring. At each annual election the persons entitled to vote are the members of the Cooperative as of 4:00 p.m. on the Wednesday preceding the annual meeting.
- 3.07.2** The results of all the votes cast for the election of trustees shall be announced at the annual meeting, or at any adjournment thereof, or at a special meeting of the members held for the purpose of announcing the results of such election within a reasonable time thereafter.
- 3.07.3** Trustees shall be elected by a plurality vote of the members. In the event of a tie between two or more trustees for one district, the outcome shall be determined by lot.
- 3.07.4** If there is only one (1) qualified candidate for a particular trustee district, such candidate shall automatically be declared elected, and no balloting shall be held with respect to that particular district.
- 3.07.5** Notwithstanding the provisions of Subsection 2.05.1 of these Bylaws, at an election for trustees, every member entitled to vote at such election shall have the right to vote as many votes as there are trustees to be elected and for whose election said member has a right to vote. A member shall not cast more than one (1) vote for a candidate in any district; but, may cast one (1) vote for a candidate in each district of which a trustee is being elected.
- 3.07.6** Polling shall be conducted by such person (s) as the Board may designate. All ballots cast by members for the election of trustees at the Annual Meeting shall be delivered to the person conducting the polling and shall be placed in one (1) of two (2) sealed containers; and shall be opened and counted at the close of elections, unless voting machines are used. The Board of Trustees shall appoint three (3) or more officials before the annual meeting and designate one (1) individual, to serve as chairman of the election officials. Election officials, who must be members of the districts from which the trustees are to be elected, shall supervise the election to include counting of the ballots and safeguarding all voting material. The chairman will certify the election and tally the votes cast.

SECTION 3.08 Trustees Compensation, Expenses 3.08.1

Trustees shall, as determined by resolution of the Board, receive a reasonable fee, which may include insurance benefits, for attending meetings of the Board or for otherwise performing their duties. The fee or fees fixed for otherwise performing their duties need not be the same as the fee fixed for attending meetings of the Board. Trustees shall also receive advancement or reimbursement of any travel and out-of-pocket expenses actually, necessarily and reasonably incurred in performing their duties.

- 3.08.2** No trustee shall receive compensation for serving the Cooperative in any other capacity, except that a trustee who is also an officer of the Board and who as such officer performs duties of a substantial nature for the Cooperative may be additionally compensated in such amount as shall be fixed and authorized in advance of such service by the unanimous vote of the remaining trustees.
- 3.08.3** No close relative of a trustee shall be employed by the Cooperative, unless the employment of such relative or the service of such trustee is temporary and shall be authorized by a vote of the Board upon a determination that such is or was an emergency measure.

SECTION 3.09 Removals of Trustees by Members

- 3.09.1** Any member may bring charges against any trustee, alleging with particularity violations of one (1) or more of the qualification requirements of Section 3.03.1 or alleging with particularity matters which if true could support a determination that: (a) the trustee(s) is guilty of misfeasance, nonfeasance, malfeasance; or (b) guilty of a crime in the conduct of his trusteeship. Such member(s) may request the removal of such trustee(s) by reason thereof by filing with the Cooperative such charge(s) in writing; together with a petition, signed by not less than ten percent (10%) of the members which calls for a special election by the members to remove the trustee(s) not sooner than thirty (30) days after the filing of such petition.
- 3.09.2** Each page of the petition shall, state the name(s) and address(es) of the member(s) filing such charge(s); a verbatim statement of such charge(s), the name(s) of the trustees against whom such charge(s) are being made; and, whether or not a hearing before a meeting of the members is requested. The petition shall be signed by each member by the same name and address as the member is billed by the Cooperative; and, such signatory shall affirm or give oath to the date of his/her signing, which shall be not later than ninety (90) days after the earliest date of any signatory.
- 3.09.3** A copy of the petition(s) shall be immediately delivered to the trustee(s) who have been charged in the petition(s).
- 3.09.4** The charged trustee(s) shall then have ten (10) days from the date of the filing of the petition(s) with the Cooperative to request a hearing before a meeting of the members.
- 3.09.5** If either the members charging the trustee(s) in their petition, or the charged trustee(s) request a hearing; the trustees shall act within thirty (30) days from the date of filing the petition to notice a special meeting of the members for such purpose; and, the meeting shall be held not less than ten (10) days and not more than forty (40) days from the date of the notice.
- 3.09.6** At the meeting, the members bringing the charge(s) and the trustee(s) charged shall have an opportunity to be heard in person, present witnesses and be represented by counsel.

- 3.09.7** Whether or not a hearing has been held, the questions of removal of the charged trustee(s) shall be determined by a written ballot pursuant to Section 8.13; and, the trustee(s) shall arrange for the same to occur within twenty (20) days following the hearing.
- 3.09.8** A vote of a majority of the total membership shall be required to remove a trustee.
- 3.09.9** Any vacancy created by removal of a trustee shall be filled by the Board pursuant to Section 3.10 hereof; the member selected to fill the vacancy shall be qualified to serve as a trustee from the same trustee district; and, shall serve out the unexpired portion of the removed trustee's term.

SECTION 3.10 Vacancies

A vacancy occurring in the Board shall be filled by the Board. A trustee so appointed must be a qualified member of the same trustee district as the replaced trustee, and shall serve out the unexpired term of the trustee whose office was originally vacated, and until his/her successor is elected and has qualified.

**ARTICLE IV
MEETINGS OF TRUSTEES**

SECTION 4.01 Regular Meetings

Before December 31st of each year, the Board shall adopt a resolution, which shall set the date and time of the regular meetings of the Board of Trustees for the ensuing calendar year. A regular meeting of the Board shall be held immediately after and at the same place as the annual meeting of the members.

SECTION 4.02 Special Meetings

A special meeting of the Board may be called by the Board, by the president or by any three (3) trustees. The Board, the president, or the trustees calling the meeting shall fix the date and time of the meeting.

SECTION 4.03 Place of Meetings

Except for the Board meeting held at the place of the annual meeting, regular meetings, special meetings and emergency meetings shall be held at the offices of the Cooperative; unless the Board determined that a meeting is to be held outside of the Cooperative offices.

SECTION 4.04 Notices Of Trustees Meetings

- 4.04.1** Notice of regular and special meetings other than emergency meetings shall be in writing and shall contain the following information:
- (a) The time, place and location of the meeting.

An Agenda consisting of:

- (a) A clear and complete statement of the topics to be considered during the meeting.
- (b) A list and description of the items to be voted on during the meeting, which must be clearly denoted as items on which action will be taken.
- (c) Such additional information as may be required by the Cooperative Bylaws.

4.04.2 As the first order of business after a quorum has been established at each meeting of the Board, the Board will adopt, amend or supplement the agenda, but the same may be further amended, supplemented or foregone at any time during the meeting, if the Board resolves that the best interests of the Cooperative so require. The vote required to amend the agenda shall be a majority vote of the trustees present.

SECTION 4.05 Service, Posting And Publication of Notice of Meetings

Notice of regular and special meetings, other than emergency meetings, including the agendas, shall be given not less than five (5) working days before the meeting, by or at the direction of the secretary, or upon a default to do so by the secretary, by or at the direction of the president or the trustees calling the meeting, as hereinafter set out.

- (a) A copy shall be delivered to each trustee.
- (b) A copy of the notice shall be posted at each principal office of the Cooperative.
- (c) If notice is mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the person to receive the notice at the address as it appears on the records of the Cooperative, with postage thereon prepaid.

SECTION 4.06 Meetings Open To Members

All meetings of the Board of Trustees shall be open and all members must be permitted to attend any meetings of the Board of Trustees unless specifically excepted under Section 4.09. Time shall be made available for any member to address the Board at any of its meetings. The Board may remove, or have removed, any person(s) that willfully disrupts a Board meeting, so that orderly conduct is made impractical.

SECTION 4.07 Telephonic Meetings

Provided there are at least three (3) Board members present at the time and place for which a Board of Trustees meeting is to be held; and, any members present can hear the proceedings, trustees or members of any committee designated by such Board, may participate by means of a conference telephone network or a similar communications method, by which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section constitutes presence in person at such meeting.

SECTION 4.08 Quorums

The presence in person or by telephone conference 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 or by telephone conference call shall be required for any such 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 that matter, be counted in determining the number of trustees present.

SECTION 4.09 Confidential Matters

The Board may consider and act upon matters in a meeting closed to such person(s) as the Board so desires whenever, as resolved by a majority of the trustees present, it determines that such is required in the best interests of the Cooperative and its members. The Board of Trustees may close a meeting upon a motion, which specifies the general nature of the matters to be considered. Such matters shall include, but not be limited to the following:

- (a) To consider an employee's alleged misconduct, professional incompetence or physical or mental health:
- (b) To discuss Cooperative matters with the Cooperative's attorneys, accountants, or other consultants.

ARTICLE V OFFICERS

SECTION 5.01 Number And Title

The officers of the Cooperative shall be a president, or chairman of the board, vice president, or vice chairman, secretary, treasurer, and such other officers as may be determined by the Board of Trustees from time to time. The offices of secretary and treasurer may be held by the same person.

SECTION 5.02 Elections and Term of Office

The officers shall be elected by secret written ballot, annually and without prior nomination, by and from the Board 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/her successor shall have been duly elected and shall have qualified, subject to the provisions of the bylaw with respect to the removal of trustees and to the removal of officers by the Board.

SECTION 5.03 Removals

Any officer, agent, consultant, or employee elected or appointed by the Board may be removed by the Board whenever in its judgment the best interests of the Cooperative will thereby be served, subject to the provisions of any employment contract.

SECTION 5.04 Vacancies

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

SECTION 5.05 President

5.05.1 The president is also the chairman of the board and shall:

- (a) Be the principal executive officer of the Board and shall preside at all meetings of the Board and, unless determined otherwise by the Board, at all meetings of the members;
- (b) Sign, with the secretary, deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board 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 from time to time.

SECTION 5.06 Vice President

If the president is absent, unable to or refuses to act, the vice president shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president; and shall perform such other duties as from time to time may be assigned to him/her by the Board.

SECTION 5.07 Secretary

The secretary shall:

- (a) Keep, or cause to be kept, the minutes of the meetings of the members and of the Board in one (1) 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 of the corporate records and of the seal of the Cooperative and see that the seal of the Cooperative, or a facsimile thereof when so allowed, 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) Have general charge of the books of the Cooperative in which a record of the members is kept;
- (f) Keep on file a complete copy of the Cooperative's Articles of Incorporation and Bylaws, together with all amendments thereto, which copies shall always be open to the inspection of any member; and, at the expense of the Cooperative, furnish a copy of such documents and of all amendments thereto upon request to any member;
- (g) 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/her by the Board.

SECTION 5.08 Treasurer

The treasurer shall:

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

SECTION 5.09 Delegation of Secretary's and Treasurer's Responsibilities

Notwithstanding the duties, responsibilities and authorities of the secretary and of the treasurer hereinbefore provided in Sections 5.07 and 5.08, the Board 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 (1) or more of each such officer's duties to one (1) or more agents, other officers or employees of the Cooperative who are not trustees. To the extent the Board does so delegate with respect to any such officer, that officer shall be released from such duties, responsibilities and authorities.

SECTION 5.10 General Manager, Chief Executive Officer

The Board shall appoint a general manager, who may be but who shall not be required to be a member of the Cooperative, and who shall also be designated chief executive officer. Such officer shall perform such duties as the Board from time to time requires and shall have such authority as the Board may from time to time vest in him/her and his/her duties and authorities shall be fully set forth in a written position description approved by the Board.

SECTION 5.11 Bonds

The Board 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 be bonded in such sum and with such surety as the Board shall determine. The Board may also require any other officer, agent or employee of the

Cooperative to be bonded in such amount and with such surety as it shall determine. The costs of all such bonds shall be borne by the Cooperative.

ARTICLE VI FINANCIAL TRANSACTIONS

SECTION 6.01 Contracts

Except as otherwise provided by law or these Bylaws, the Board may authorize any Cooperative officer, agent or employee to enter into any contract or execute and deliver any instrument in the name and on behalf of the Cooperative and such authority may be general or confined to specific instances.

SECTION 6.02 Checks, Drafts, Etc.

All checks, drafts or other orders for 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.

SECTION 6.03 Deposits, Investments

All funds received by the Cooperative, except petty cash funds, shall be deposited or invested from time to time to the credit of the Cooperative in such bank(s) or in such financial securities or institutions as the Board may select.

ARTICLE VII NON-LIABILITY OF MEMBERS

SECTION 7.01 Non-liabilities for Debts of the Cooperative

The private property of the members of the Cooperative shall be exempt from execution for the debts of the Cooperative and no member shall be individually liable or responsible for any debts or liabilities of the Cooperative.

ARTICLE VIII MISCELLANEOUS

SECTION 8.01 Offices

8.01.1 The principal office of the Cooperative shall be located at Highway 55 – P.O. Box 157, Mountainair, New Mexico 87036. The Cooperative may have such other offices, within the State of New Mexico, as the Board of Trustees may designate, or as the business of the Cooperative may require from time to time.

8.01.2 Any registered office of the Cooperative may be, but need not be; identical with the principal office or offices, and the address of any registered office may be changed from time to time by the Board of Trustees.

SECTION 8.02 Seal

The corporate seal of the Cooperative shall be in the form of a circle and shall have thereon: "Central N.M. Electric Cooperative, Inc. 1945".

SECTION 8.03 Memberships in Other Organizations

The Cooperative may, upon the authorization of the Board of Trustees, purchase stock in or become a member of any corporation or organization when the interests of the Cooperative will be furthered by so joining.

SECTION 8.04 Rules of Order

Parliamentary procedures at all meetings of the members, of the Board, of any committee provided for in these Bylaws, and of any other committee of the members or Board 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. The Articles shall be subordinate to these Bylaws pertaining to the votes required for action by members, trustees or committees.

SECTION 8.05 Fiscal Year

The Cooperative's fiscal year shall begin on the first (1st) day of January of each year and end on the last day of December following.

SECTION 8.06 Definitions of Close Relative and Employees

8.06.1 As used in these Bylaws, "close relative" means a person who, by blood or marriage, including half, foster, step and adoptive kin, is a spouse, child, parent, brother or sister of the trustee or employee. The term "spouse" shall also mean persons who are living together in a conjugal relationship, even though not legally married.

8.06.2 An employee shall not lose eligibility to continue in the employment of the Cooperative if he or she becomes a close relative of a trustee because of a marriage or adoption to which he or she was not a party.

Section 8.07 Accounting System, Audits and Reports

The Board 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 by independent auditors who are certified public accountants, an independent audit of the accounts, books and records reflecting the financial condition of the Cooperative as of the end of such fiscal year. The annual audit report summaries shall be provided and readily available to the members as soon after their completion as practicable, and the annual report summaries shall be provided to members, upon their request for such, without charge. The Board may authorize special audits, complete or partial, at any time and for any specified period of time.

SECTION 8.08 Waivers 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/she shall attend the meeting for the express purpose of objecting to the transaction 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 before or at the beginning of the meeting of his/her objection.

SECTION 8.09 Publication of a Cooperative Newsletter, Subscription to Publications

The Board shall be empowered, on behalf of and for circulation to the members, to publish a Cooperative Newsletter. The Board shall also be empowered, on behalf of and for circulation to the members, to subscribe to publications, which may include a Cooperative insert and other pages for use of the Cooperative.

SECTION 8.10 Addresses of Members

Every member or former member (both herein referred to as “member”) and the heirs, personal representative, administrators, successors and assigns of every member, shall give the Cooperative notice and keep it informed of any change of address while a member, and as long as the member has capital credits that have not been repaid. If the Cooperative, through its Board of Trustees, determines to retire any portion of the members or former member’s capital credits, payment checks shall be mailed, or notice of such determination shall be mailed to those members entitled to receive payment, which notice shall be mailed to the last address given by the member to the Cooperative.

SECTION 8.11 Liabilities and Indemnification

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

- (a) The trustee has breached or failed to perform the duties of his office in compliance with NMSA 1978 Section 62-15-9.1: and
- (b) The breach or failure to perform constitutes willful misconduct or recklessness.

8.11.2 Officers’ and Trustees Indemnification

Subject to Sections 8.11.4, 8.11.5, and 8.11.6, the Cooperative shall indemnify any person who is or was a trustee or an elected or appointed officer of the Cooperative and any person who, while a trustee or officer of the Cooperative, is or was serving at the request of the Cooperative as a director, officer, partner, trustee, employee or agent of another cooperative or of a foreign or domestic corporation or non-profit corporation, partnership, joint venture, trust, unincorporated association, other incorporated or unincorporated enterprise or employee benefit plan or trust, and who is made a party to any action, suit, or proceeding, civil or criminal, by reason of holding or having held such an office or position.

8.11.3 Employees' and Agents' Indemnification

Subject to Sections 8.11.4, 8.11.5, and 8.11.6 the Board of Trustees may indemnify any person other than a trustee or an officer acting as such who has or had an employment or agency relationship with the Cooperative and who is made a party to any action, suit or proceeding, civil or criminal, by reason of service during the course of such relationship, including service at the request of the Cooperative as a director, officer, partner, trustee, employee or agent of another cooperative or of a foreign or domestic corporation or non-profit corporation, partnership, joint venture, trust, unincorporated association, other incorporated or unincorporated enterprise or employee benefit plan or trust.

8.11.4 Indemnification Disqualification

The trustee, officer or other person shall not be indemnified if he shall be adjudged to be liable on the basis that he breached or failed to perform the duties of his office or position and the breach or failure to perform constitutes willful misconduct or recklessness. The trustee, officer or other person shall, further, not be indemnified in respect to any proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he shall have been adjudged to be liable on the basis that personal benefit was improperly received. There shall be no indemnification (of a person other than a trustee) unless the Board of Trustees finds that the indemnities:

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

8.11.5 Indemnification Amount

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

- (a) Such person furnishes the Cooperative a written affirmation of his/her good faith belief that he/she is not disqualified from receiving indemnification under 8.11.4;
- (b) Such person furnished the Cooperative a written undertaking by or on behalf of the person to repay such amount if it shall ultimately be determined that he/she is disqualified or, in the case of a person other than a trustee or an

officer acting as such, not fully indemnified in the Board of Trustee's discretion; and

- (c) A determination is made that the facts then known to those making the determination would not preclude indemnification.

8.11.6 Indemnification Procedure

No indemnification under 8.11.2 and 8.11.3 shall be made unless authorized in the specific case after a determination has been made that indemnification is permissible in accordance with the Rural Electric Cooperative Act and this section. Such determination shall be made:

- (a) By the Board of Trustees by a majority vote of a quorum of trustees not at the time parties to the proceeding;
- (b) If such a quorum cannot be attained, by a majority vote of a committee of the Board of Trustees duly designated to act in the matter by a majority vote of the full Board of Trustees, in which designated trustees who are parties may participate, and consisting solely of two (2) or more trustees not at the time parties to the proceeding;
- (c) By special legal counsel, selected by the Board of Trustees or a committee thereof by vote as set forth in paragraph (a) or (b) of this Section, or if the requisite quorum of the full Board of Trustees cannot be obtained therefore and such committee cannot be established, by a majority vote of the full Board of Trustees, in which selection trustees who are parties may participate; or
- (d) Pursuant to a resolution of a majority of the members present and voting at any annual or special meeting.

Authorization of indemnification and determination as to the amount shall be made in the same manner as the permissibility determination, except that if the permissibility determination is made by special legal counsel, authorization and amount determination shall be made in a manner specified in Subsection c) of this section for the selection of such counsel.

8.11.7 Employee Benefit Plans

For the purpose of this Section, the Cooperative shall be deemed to have requested a person to serve as a director, trustee, employee or agent of an employee benefit plan or trust whenever the performance of his/her duties to the Cooperative also imposes duties on him/her or otherwise involved his/her services to the plan or trust or the participants or beneficiaries of the plan or trust; excise taxes assessed on him/her with respect to an employee benefit plan or trust pursuant to applicable law shall be deemed "fines"; and action taken or omitted with respect to an employee benefit plan or trust in the performance of duties for a purpose reasonably believed to be in the interest of the participants and beneficiaries of the plan or trust shall be deemed to be for a purpose which is not opposed to the best interests of the Cooperative and to be neither willful misconduct nor recklessness.

8.11.8 Insurance and Similar Protection

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

8.11.9 Non-Exclusive

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

ARTICLE IX DISPOSITION AND PLEDGING OF ASSETS

SECTION 9.01 Dispositions and Pledging Of Assets

9.01.1 Consistent with the Rural Electric Cooperative Act of the State of New Mexico, the Cooperative may authorize the sale, lease as lessor, lease-sale, exchange, conveyance, transfer or other disposition of all or a Substantial Portion of its assets upon the affirmative votes of three-fourths ($3/4^{\text{th}}$) of the Trustees, approved by two-thirds ($2/3^{\text{rd}}$) of the Cooperative's members and may, without authorization of its members but upon authorization by its Board give a mortgage, deed of trust or other pledge or encumbrance of its assets to secure any Cooperative indebtedness. The Board may also, without authorization of the members, dispose of merchandise or property no longer necessary or useful for the operation of the Cooperative or of less than a Substantial Portion of such properties. Properties authorized for disposition by the Board, where such disposition is in the nature of a forced sale for the reason that the acquirer possesses and would otherwise exercise the legal power to acquire, damage, relocate or destroy such property by condemnation or otherwise without the Cooperative's consent, shall constitute "merchandise or property no longer necessary or useful for the operation of the Cooperative." "Substantial Portion" means twenty-five percent (25%) or more of the dollar value of the Cooperative's total assets as reflected on its books at the time of the transaction.

- 9.01.2** No sale, lease as lessor, lease-sale, exchange, conveyance, transfer or other disposition of all or a Substantial Portion of the Cooperative's assets ("Transaction") shall be authorized except in conformity with the following:
- (a) Before the Board may submit to the members for their approval any proposal for such transaction, or make an offer for such, it shall first appoint three persons, each of whom is independent of the Cooperative and of the other two and each being expert in electric utility property evaluations, and commission them, separately, to study, appraise and evaluate such assets and properties, including those concerning current value (tangible values) and the values associated with the right of the members to participate in the ownership and control (intangible values) of the Cooperative. Such appraisers shall be instructed to and shall take into account any other factors they may deem relevant in determining the intrinsic value of such assets and properties. Within not more than sixty- (60)-days after their appointment and commission, each appraiser shall render his/her highest determination of such present value. The Board shall not recommend and submit for member approval any plan for such a Transaction for consideration that is less than the highest such appraisal, 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.
 - (b) If, after receiving such appraisals, the Board resolved 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 operating in New Mexico and invite them to submit competing or alternative proposals, including proposals to consolidate with the Cooperative. 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.
 - (c) If, after such date, the Board 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 call and give notice of a special meeting of the members thereon, of, if it so determines, notify the members that the matter will be considered and acted upon at the next Annual Meeting. Such notice shall contain or be accompanied by the Board's recommended proposal and verbatim copies of all competing or alternative proposals the Cooperative has received, together with all of the appraisals.
 - (d) Any two hundred (200) or more members of the Cooperative may, over their respective signatures and within not less than forty-five (45) 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's recommendation and/or of their own recommendation that a competing or alternative proposal, which may be or include a proposition to consolidate the Cooperative with one (1) or more other electric Cooperatives, be submitted to, and acted upon, by the members at such meeting, in which event the Board shall cause a printed copy of the petition, including the printing of the names of the member signatories thereof, together with a printed copy of the

statement of opposition, 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-five (25) 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 9.01.2 shall not apply to a proposed consolidation of the Cooperative with one (1) or more other electric cooperatives or a transaction having essentially the effect of a merger or consolidation.

- 9.01.3** No offer for such a transaction 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 all of the Cooperative's obligations and liabilities, including the payment of capital credits, shall be distributed to, or, if such be the case, allocated and assigned in the manner provided in the Articles of Incorporation and Bylaws.

ARTICLE X NON-PROFIT OPERATION

SECTION 10.01 Definitions

In this Article,

- (a) "Patron" shall mean (1) a member, as defined in Article I of these Bylaws, to whom the Cooperative furnishes electric energy and/or electric distribution services on a cooperative basis in accordance, (2) a member to whom the Cooperative also furnishes other utility type services on a cooperative basis and/or (3) a non-member to whom the Cooperative furnishes electric energy, electric distribution services, and/or other utility type services on a cooperative basis by authorized contractual authority.
- (b) "Patronage capital" shall mean the capital credited to the capital accounts of patrons on the basis of patronage pursuant to the pre-existing obligation to do so in Section 10.02.03 of this Article X.
- (c) "Other utility type services" shall mean goods and services provided by the Cooperative to its patrons, other than the furnishing of electric energy and electric distribution services, which qualify for exemption under Section 501(c)(12) of the Internal Revenue Code
- (d) "Cooperative Services" shall mean electric energy, electric distribution services, and other utility type services purchased by patrons and for which the

Cooperative has a pre-existing obligation to allocate patronage capital to the patrons purchasing such services.

SECTION 10.02.1 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. No interest or dividends shall be paid or payable by the Cooperative on any capital furnished by its patrons.

SECTION 10.02 Patronage Capital In Connection With Furnishing Cooperative Services

10.02.1 In the furnishing of cooperative services the Cooperative's operations shall be so conducted that all persons will, through their patronage, furnish capital for the Cooperative. In order to induce patronage and to assure that the Cooperative will operate on a non-profit basis, the Cooperative is obligated to account on a patronage basis to all its patrons for all amounts received and receivable from and directly related to the furnishing of cooperative services in excess of costs and expenses properly chargeable against the furnishing of cooperative services hereinafter referred to as margins, as determined by a cost of service study or other means by the Board of Trustees. The amounts of contributions to capital may be established in contracts between the member and the Cooperative. All such margins at the moment of receipt by the Cooperative are received with the understanding that they are furnished by the patrons as capital. The Cooperative is obligated to pay by credits to a capital account for each patron all such margins. 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, but no later than eight and one-half months, notify each patron of the amount of capital so credited to his account; provided, 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 each patron may compute and determine for himself/herself the specific amount of capital so credited to him/her. 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.

If the costs and expenses exceed the amounts received and receivable from and directly related to the furnishing of cooperative services, hereinafter referred to as "loss", then the board shall have the authority to prescribe a fair and equitable manner in which such loss shall be handled, including but not limited to, (1) the cancellation of outstanding prior year allocations of patronage capital of the loss year patrons, (2) the carrying forward of the loss to offset future allocations to patrons of the margins from and directly related to the furnishing of cooperative services, (3) the offsetting of the loss against amount received and receivable in excess of costs and expenses other than the margins from and directly related to the

provision of cooperative services, and/or (4) the offsetting of unallocated non-operating reserves, other unallocated reserves and/or other capital not assignable to the patrons prior to the dissolution of the Cooperative. The cancellation of prior year capital credits will be done in the order of priority against capital first received by the Cooperative from those patrons who were active patrons of the Cooperative in the year of the loss. Losses subject to this paragraph will be determined in the same manner and method that patronage capital is calculated and allocated to members as provided above with respect to the pre-existing obligation to allocate patronage capital.

Notwithstanding any provision in Section 10.03, it is understood that the margins and losses noted above are calculated separately for each distinctive cooperative service (the furnishing of electric energy, electric distribution services, and other utility type services). The margins for each respective cooperative service shall be allocated on the basis of patronage solely to the patrons of each cooperative service, and the Board shall choose the method for handling losses for each cooperative service in accordance with the above provisions this Section 10.03.1. For purposes of this provision, the margins and losses from each cooperative service shall not be combined with the margins and losses from other cooperative services unless approved by a simple majority of the Cooperative's patrons for each cooperative service.

10.02.2 All other amounts received by the Cooperative from its operations in excess of costs and expenses other than the margins from and directly related to the furnishing of cooperative services shall, insofar as permitted by law, be:

- (a) Used to offset any losses incurred during the current or any prior fiscal year if not precluded by Board action taken pursuant to the provisions of Section 10.02 of this Article X,
- (b) Used to establish reserves and other capital not assignable to the patrons prior to the dissolution of the Cooperative, and
- (c) To the extent not needed for that purpose, allocated to its patrons on patronage basis, and any amount so allocated shall be included as a part of the capital credited to the amounts of patrons, as herein provided.

10.02.3 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 in distribution of assets. If, at any time prior to dissolution or liquidation, the Board shall determine that the financial condition of the Cooperative will not be impaired thereby, the capital then credited to patrons' accounts may be retired in full or in part. Any such retirement of capital furnished prior to January 1, 1997, shall be made in order of priority according to the year in which the capital was furnished and credited, the capital first received by the Cooperative being first retired. As to capital furnished on or after January 1, 1997, the Board shall determine the method, basis, priority and order of making such retirements, if any, for all amounts heretofore and hereafter furnished as capital; provided, the Board 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 of the Cooperative's books of such portions of capital credited to the Cooperative's patrons, (c) provide for appropriate notifications to patrons with respect to such portions of capital credited to their accounts and (d) preclude a general retirement of such portions of capital credited to patrons for any fiscal year prior to the general retirement of other capital credited to patrons from the same year or of any capital credited to patrons for any prior fiscal year. Notwithstanding any other provision of these Bylaws, the method, basis, priority and order of retirement, if any, considered by the board may, but is not required to, include the retirement of amounts furnished as capital at a discount. Additionally, the method, basis, priority and order of retirement shall be determined separately for each cooperative service based on the operational and contractual needs of each. In no event shall any retirements of capital for any cooperative service be made if such retirements would violate any applicable law or regulation, or if such retirements would breach any provision of any mortgage or loan contract executed by the Cooperative upon the authority of the board pursuant to the provisions of Article IX of these Bylaws.

10.02.4 Capital credited to the account of each patron shall be assignable on the books of the Cooperative only pursuant to written instructions from the assignor, unless the Board, acting under policies of general application, shall determine otherwise; however, members shall be freely permitted to assign their capital credits to the Cooperative as a donation.

10.02.5 Notwithstanding any other provisions of these Bylaws, the Board of Trustees, at its discretion, shall have the power to negotiate patronage capital settlement arrangements with estates of deceased natural persons for the retirement of such capital prior to the time it would otherwise be retired under the provisions of these Bylaws. However, such settlements are solely at the discretion of the board, must be requested in writing by the legal representatives of the inactive patron or of the estate of the deceased natural person, must be in accordance with the terms and conditions that the board and the legal representatives of such patrons shall agree upon, and is prohibited if the financial condition of the Cooperative is impaired thereby; provided further however, that the aggregate amounts so retired in any one (1) year shall not exceed Twenty-Five Thousand and 00/100 Dollars (\$25,000.00); and, provided further however, that if acting under policies of general application, the amount mentioned above is not sufficient to retire the sums to be retired to any such patron(s), such patron(s) shall have said sums retired in the next succeeding year before any other retirements are made in such succeeding year.

10.02.6 The Cooperative, before retiring any capital credited to any patron's account, shall deduct there from any amount owing by such patron to the Cooperative, together with interest thereon at the New Mexico legal rate on judgments in effect when such amount became overdue, compounded annually; and, the Cooperative shall have a lien on such capital.

10.02.7 The members of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the Articles of Incorporation and Bylaws shall constitute a contract between the Cooperative and each member, and both the Cooperative and the members are bound by such contract, as fully as though each member had individually signed a separate instrument containing such terms and provisions. The provisions of this Article shall be posted in a conspicuous place in the Cooperative's office.

10.03 (Amended/Deleted 4-26-05)

SECTION 10.04 Unclaimed Capital Credits, Deposits, or Other Monies

10.04.1 Within a reasonable time after any portion of the capital credits of a member is determined to be retired, the Cooperative shall mail either the check in retirement of said capital credits or a notice of the availability of the capital credit to the last address given by the member to the Cooperative.

10.04.2 Any member may assign all or any portion of his/her patronage capital earned or credited or expected to be earned or credited in the future to the Central N.M. Electric Education Foundation, a charitable tax-exempt trust, effective as of the date of assignment, subject in all cases to the Cooperative's prior lien for unpaid charges.

10.04.3 Notwithstanding any other Bylaw provision, capital credits allocation statements and capital credit payments, deposits or other monies, notice or delivery of which cannot be made for failure of a member or former member to claim the same in person, or to furnish an effective mailing address for a period of two years after the Cooperative has mailed the same with sufficient postage to the last known address provided to the Cooperative, or after the Cooperative has in good faith attempted to deliver such notice or payment, shall be and constitute an irrevocable gift by the member to Central N.M. Electric Education Foundation of such credit or payment remaining after the Cooperative's prior claim for charges due has been satisfied.

10.04.4 The Cooperative shall establish a tax exempt charitable trust for the purpose of making educational grants to the Cooperative's active Members immediate families; obtain approval of the Internal Revenue Service of the United States and the Bureau of Revenue of New Mexico; and to name as trustees, the officers, from time to time of the Cooperative, being the president, vice-president, secretary and treasurer.

10.04.5 Nothing contained in this Article shall deprive the Cooperative of its lien against

any capital credits to satisfy any unpaid electric bill of the member; only that portion of a capital credit or payment which is not needed to satisfy an unpaid balance for electric service may be transferred to the Central N.M. Electric Education Foundation.

10.04.6 If any portion of this Article shall be held invalid or not effective to accomplish its purpose, the remaining portions of the Article shall not be affected thereby and this Article shall not be construed to adversely affect the exemption of the Cooperative from liability for payment of income taxes on its revenues from the distribution of electricity to its members.

10.04.7 The benefits accrued by the members under this Article shall be retroactive and effective as of the first calendar year in which the records of the Cooperative show that its members, for said year, paid for electric service a sum in excess of the operating costs and expenses properly chargeable against the furnishing of such service.

ARTICLE XI ELECTRIC SERVICE

SECTION 11.01 Purchases of Electric Power & Energy, Application of Payment to All Accounts

11.01.1 The Cooperative shall use reasonable diligence to furnish its members with adequate and dependable electric service; although it cannot and does not guarantee a continuous and uninterrupted supply thereof. Each member, for so long as such premises are owned, leased as lessor or lessee, or directly occupied or used by him/her, shall purchase from the Cooperative all electric power and energy for use on all premises to which electric service is furnished by the Cooperative pursuant to his/her membership, unless and except to the extent the Cooperative may in writing waive such requirement; and, shall pay therefore at all times, and in accordance with all membership obligations established by the Board; and, if in effect in accordance with the provisions of any supplemental contract that may have been entered into as provided in Section 1.02.

11.01.2 Each member shall also pay all other amounts owed by him/her to the Cooperative when they become due and payable. Payments made by a member, who has more than one (1) service connection from the Cooperative, shall be deemed to be allocated and credited on a pro rata basis to his/her outstanding accounts for all such service connections, notwithstanding that the Cooperative's actual accounting procedures do not reflect such allocation and pro ration.

11.01.3 The Cooperative shall, however, in accordance with its applicable service rules and regulations, reimburse the member for any overcharges for service that may result from a malfunctioning of its metering equipment or any error occurring in the Cooperative's billing procedures.

SECTION 11.02 Wiring of Premises, Responsibility Therefore, Indemnification

- 11.02.1** Each member shall cause all premises receiving electric service pursuant to his/her membership to become and to remain wired in accordance with the specifications of the latest edition of the National Electric Code, of any applicable state code or local government ordinance and of the Cooperative. If the foregoing specifications vary, the more existing standards shall prevail.
- 11.02.2** Each member shall also provide such protective devices to his/her 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.
- 11.02.3** 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 on or improper use or maintenance of, such premises and all wiring and apparatuses connected thereto or used thereon. In no event shall the responsibility of the Cooperative extend beyond the point of delivery.

SECTION 11.03 Change of Equipment

The materials and equipment installed to provide service at any given location are engineered by the Cooperative and sized to suit the estimated needs of the member. For this reason, it shall be the responsibility of the member to notify the Cooperative, in writing, before any change is made in the load characteristics or change of purpose or of locations of the member's installation.

SECTION 11.04 Locations of Cooperative Facilities, Meter Tampering or Bypassing, Damage to Cooperative Facilities, Indemnification

- 11.04.1** Each member shall make available to the Cooperative a suitable site, as determined by the Cooperative, whereon to place the Cooperative's physical facilities for the furnishing and metering of electric service to such member and shall permit the Cooperative's authorized employees, agents and independent contractors to have free and 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 desist from interfering with, impairing the operation or causing damage to such facilities; and, shall use his/her best efforts to prevent others from doing so.
- 11.04.2** If 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, less or damage and costs, including reasonable attorney's fees, resulting there from, 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 11.05 Members to Grant Easements

Each member shall, upon being so requested by the Cooperative, execute and deliver to the Cooperative, easements of right-of-way over, on or under such lands owned or leased to the member to provide service to such member; and, in accordance with such reasonable terms and conditions as the Cooperative shall require for the furnishing of electric service to him/her for the construction, operation, maintenance or relocation of the Cooperative's electric facilities.

SECTION 11.06 Pole Attachments

A member shall not make any attachments of any type to poles. Since the Cooperative's poles carry high voltage electricity, any material may become energized and a source of injury or death. Such unauthorized attached material is also a hazard for the Cooperative's personnel who climb the poles and maintain the lines. If the member is notified of a violation of this nature; and, the hazard is not removed promptly, the Cooperative may discontinue the member's service without further notice.

SECTION 11.07 Power Productions by Member

Production or use of electric energy by a member, regardless of the source thereof, by means of facilities which shall be interconnected with the Cooperative's facilities, shall be subject to appropriate regulations as shall be fixed from time to time by the Cooperative.

SECTION 11.08 Load Management Programs

Each member shall participate in any required program; and, will comply with related rates and service rules and regulations that may be established by the Cooperative to enhance load management, or more efficiently to utilize or to conserve electric energy, or to conduct load research.

SECTION 11.09 Rate Change

The Board of Trustees may implement a rate change in compliance with applicable governmental regulations.

ARTICLE XII DISTRIBUTION ON DISSOLUTION

SECTION 12.01 Distributions of Assets upon Dissolution of Cooperative

Upon the Cooperative's dissolution, the assets of the Cooperative shall be paid and distributed as follows:

- (a) All debts and liabilities of the Cooperative shall be paid;
- (b) All capital furnished through patronage shall be retired and paid; and
- (c) The remaining property and assets of the Cooperative shall be distributed pursuant to the New Mexico Rural Electric Cooperative Act, NMSA 1978 Sec. 62-15-1, et. seq., as the same may be from time to time amended.

**ARTICLE XIII
BYLAW AMENDMENTS**

SECTION 13.01 Authorities to Amend

These Bylaws may be altered, amended or repealed by the members at any regular or special meeting, provided the notice of such meeting shall have contained a copy of the proposed alteration, amendment or repeal.

STATEMENT OF NONDISCRIMINATION

Central N.M. Electric Cooperative, Inc. is the recipient of Federal financial assistance from the Rural Electrification Administration, an agency of the U.S. Department of Agriculture, and is subject to the provisions of Title VI of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, as amended and the rules and regulations of the U.S. Department of Agriculture which provide that no person in the United States, on the basis of race, color, national origin, age, or handicap shall be excluded from participation in, admission or access to, denied the benefit of, or otherwise be subjected to discrimination under any of this organization's programs or activities.

The person responsible for coordinating this organization's nondiscrimination compliance efforts is the Mountainair District Manager. Any individual or specific class of individuals, who feels that this organization has subjected them to discrimination, may obtain further information about the statutes and regulations listed above from and/or file a written complaint with this organization; or the Secretary; U.S. Department of Agriculture, Washington, D.C. 20250, the Administrator, Rural Utilities Service, Washington, D.C. 20250. Complaints must be filed within 180 days after the alleged discrimination. Confidentiality will be maintained to the extent possible.