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**Delaware County  
Electric  
Cooperative, Inc.**

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**BYLAWS**

**Delhi, New York**

**Revised September 21, 2018**

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*The aim of Delaware County Electric Cooperative, Inc., is  
to make electric energy and related services available to members  
at the lowest cost consistent with sound economy  
and good management.*

**BYLAWS  
of Delaware County Electric  
Cooperative, Inc.**

**ARTICLE I**

***Membership***

**Section 1. Requirements for Membership.** Any natural person, firm, association, corporation, business trust, estate, partnership, federal agency, state or political subdivision or agency thereof or any body politic (collectively, a “person”) may become a member in Delaware County Electric Cooperative, Inc. (herein called the "Cooperative") by:

- (a) filing a written or electronic application for membership therein;
- (b) agreeing to purchase from the Cooperative electric energy or other electric energy related services furnished by the Cooperative when they are made available through its facilities;
- (c) agreeing to comply with and be bound by the articles of incorporation and bylaws of the Cooperative and any policies, rules and regulations adopted by the board of directors; and
- (d) paying the membership fee hereinafter specified; provided, however, that no person shall become a member unless and until he or she or it has been accepted for membership by the board of directors or the members. No member may hold more than one membership in the Cooperative, and no membership in the Cooperative shall be transferable.

At each meeting of the members held subsequent to the expiration of a period of six months from the date of incorporation of the Cooperative, all applications received more than ninety days prior to such meeting and which have not been accepted or which have been rejected by the board of directors shall be submitted by the Secretary to such meeting and, subject to compliance by the applicant with the requirements hereinabove set forth, such applications or any one or more of them may be accepted by vote of the members. The Secretary shall give each such applicant at

least ten days notice of the date of the members' meeting to which his application will be submitted and such applicant shall be entitled to be present and heard at the meeting.

**Section 2. *Membership Certificates.*** Membership in the Cooperative shall be evidenced by a membership certificate which shall be in such form and shall contain such provisions as shall be determined by the board of directors. Such certificate shall be signed by the President and by the Secretary of the Cooperative and the corporate seal shall be affixed thereto. No membership certificate shall be issued for less than the membership fee fixed in these bylaws, nor until such membership fee has been fully paid. In case of a lost, destroyed or mutilated certificate, a new certificate may be issued therefor upon such uniform terms and indemnity to the Cooperative as the board of directors may prescribe.

**Section 3. *Joint Membership.*** In order to comply with New York State law as articulated in the 2011 Marriage Equality Act, a joint membership is defined as a membership held by a married couple. A married couple may apply for a joint membership and subject to their compliance with the requirements set forth in Section 1 of this Article, may be accepted for such membership. The term "member" as used in these bylaws shall be deemed to include a married couple holding a joint membership and any provisions relating to the rights and liabilities of membership shall apply equally with respect to the holders of a joint membership. Without limiting the generality of the foregoing, the effect of the hereinafter specified actions by or in respect to the holders of a joint membership shall be as follows:

- (a) The presence at a meeting of either or both shall be regarded as the presence of one member, and of constituting a joint waiver of notice of the meeting.
- (b) The vote of either separately or both jointly shall constitute one joint vote;
- (c) An absentee ballot executed by either or both shall constitute one joint absentee ballot;
- (d) A waiver of notice signed by either or both shall constitute a joint waiver;
- (e) Notice to either shall constitute notice to both;
- (f) Expulsion of either shall terminate the joint membership;
- (g) Withdrawal of either shall terminate the joint membership;
- (h) Either but not both may be elected or appointed as an officer or director, provided that both meet the qualifications for such office.

**Section 4. *Conversion of Membership.*** (a) A membership may be converted to a joint membership upon written request of the holder thereof and the agreement by such holder and his or her spouse to comply with the articles of incorporation, bylaws, policies and rules and regulations adopted by the board of directors. The outstanding membership certificate shall be surrendered, and shall be reissued by the Cooperative in such manner as shall indicate the changed membership status.

(b) Upon the death of either spouse who is a party to the joint membership, such membership shall be held solely by the survivor. The outstanding membership certificate shall be surrendered, and shall be reissued in such manner as shall indicate the changed membership status; provided, however, that the estate of the deceased shall not be released from any debts due the Cooperative.

**Section 5. *Membership and Service Connection Fees.*** The membership fee shall be five dollars, upon the payment of which a member shall be eligible for one service connection. An additional fee of five dollars shall be charged for each additional service connection. Membership and service connection fees for inactive members or services shall be transferred to donated capital.

**Section 6. *Purchase of Electric Energy or Other Electric Energy Related Services.*** Each member shall, as soon as electric energy or other electric energy related services shall be available, purchase from the Cooperative such electric energy or other electric energy related services and shall pay therefore monthly rates which shall from time to time be fixed by the board of directors; provided, however that the board of directors may limit the amount of electric energy which the Cooperative shall be required to furnish to any one member. It is expressly understood that amounts paid for electric energy and other electric energy related services in excess of the cost of service are furnished by members as capital and each member shall be credited with the capital so furnished as provided in these bylaws. Each member shall pay to the Cooperative such minimum amount per month regardless of the amount of electric energy used, as shall be fixed by the board of directors from time to time. Each member shall also pay all amounts owed by him or her to the Cooperative as and when the same shall become due and payable.

**Section 7. *Termination of Membership.*** Any member may withdraw from membership upon compliance with such uniform terms and conditions as the board of directors may prescribe. The board of directors of the Cooperative may, by the affirmative vote of not less than two-thirds of all the directors, expel any member who shall have refused or failed to comply with any of the provisions of the articles of incorporation, bylaws, policies or rules or regulations adopted by the board of directors, but only if such members shall have been given written notice by the Secretary of the Cooperative that such refusal or failure makes him or her liable to expulsion and such refusal or failure shall have continued for at least ten days after such notice was given. Any expelled member may be reinstated by vote of the board of directors or by vote of the members at any annual or special meeting. The membership of a member who for a period of six months after service is available to him or her has not purchased electric energy or other related services from the Cooperative or of a member who has ceased to purchase energy or services from the Cooperative, may upon notice be cancelled by an affirmative vote of not less than two-thirds of all of the board of directors.

## ARTICLE II

### ***Rights and Liabilities of Members***

**Section 1. *Property Interest of Members.*** Upon dissolution of the Cooperative, after (a) all debts and liabilities of the Cooperative shall have been 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, to the extent practical, distributed among the members and

former members in the proportion which the aggregate patronage of each bears to the total patronage of all members preceding the date of the filing of the certificate of dissolution.

**Section 2. *Non-Liability for Debts of the Cooperative.*** The private property of the members shall be exempt from execution or other liability for the debts of the Cooperative and no member shall be individually liable or responsible for any debts or liabilities of the Cooperative.

### ARTICLE III

#### *Meetings of Members*

**Section 1. *Annual Meeting.*** The annual meeting of the members shall be held in September of each year at such place in Delhi, in the County of Delaware, New York, or, where desirable, in another township in which the Cooperative conducts business, as shall be designated in the notice of the meeting for the purpose of electing directors, passing upon reports for the previous fiscal year, and transacting such other business as may come before the meeting. The day fixed for the annual meeting shall not be a Sunday or a legal holiday. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Cooperative.

**Section 2. *Special Meetings.*** Special meetings of the members may be called upon by resolution of the board of directors, or upon a written request signed by any three directors, by the President, or by ten per centum or more of all the members, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. Special meetings of the members may be held at any place within the County of Delaware, or where desirable, in another County in which the Cooperative conducts business in the State of New York, as specified in the notice of the special meeting.

**Section 3. *Notice of Members Meetings.*** Written, printed or electronic notice stating the place, day and hour of the meeting and, in case of a special meeting or an annual meeting (“Membership Meetings”) at which business other than that listed in Section 7 of this article is to be transacted, the purpose or purposes for which the meeting is called, shall be given not less than ten days nor more than twenty-five days before the date of the meeting, either personally or by mail, by or at the direction of the Secretary, or upon a default in duty by the Secretary, by the persons calling the meeting, to each member. If mailed, such notice shall be deemed to have been given when deposited in the United States mail, addressed to the member at his address as it appears on the records of the Cooperative, with postage thereon prepaid. The failure of any member to receive notice of an annual or special meeting of the members shall not invalidate any action which may be taken by the members at any such meeting.

**Section 4. *Quorum.*** As long as the total number of members does not exceed five hundred, ten per centum of the total number of members present in person shall constitute a quorum. In case the total number of members shall exceed five hundred, fifty members present in person, shall constitute a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice, provided, that the Secretary shall notify any absent members of the time and place of such adjourned meeting.



**Section 5. Voting.** Each member shall be entitled to only one vote. All questions shall be decided by a vote of a majority of the members voting thereon in person or by absentee ballot, except as otherwise provided by law, the articles of incorporation or these bylaws. Questions resulting in a tie vote shall be decided by a second round of voting in like manner. If a second round of voting results in a tie, the question shall be decided by a flipping of a coin, which shall be administered by a duly elected officer of the Cooperative.

**Section 6. Absentee Balloting.**

- (a) A member may vote by absentee ballot for any question or issue that is properly brought before the membership at Membership Meetings. To be eligible to vote by absentee ballot, a member must follow one of the following absentee balloting procedures:
1. The member may request an absentee ballot by completing an official form available from the Cooperative and submit the completed form to the Cooperative. The Cooperative must receive the completed form at least twenty (20) days prior to the Membership Meeting where, upon receipt, the Cooperative will provide an official absentee ballot to the member. The Cooperative will count a properly completed absentee ballot if it is received within the office of the Cooperative by no later than the close of business on the 4<sup>th</sup> business day preceding the day of the Membership Meeting.

OR

2. The member may appear, in person, at the office of the Cooperative, verify his or her identity by presenting a government issued photo identification, request the absentee ballot, complete the absentee ballot, and return it to the office of the Cooperative by no later than the close of business on the 4th business day preceding the day of the Membership Meeting. Absentee ballots shall be made available to members at the office of the Cooperative starting at least 20 days prior to the Membership Meeting.
- (b) Upon receipt of an absentee ballot by the Cooperative, a member may not revoke an absentee ballot and vote at the meeting regarding the matter described in the ballot. A member's failure to receive an absentee ballot shall not affect a vote or action taken by absentee ballot and in-person vote.
- (c) The absentee ballot must: (1) set forth and describe a proposed action, identify a candidate(s) and include the language of a motion, resolution, Bylaw Amendment, or other written statement, upon which a Member is asked to vote or act; (2) state the date of a Membership Meeting at which the members are scheduled to vote or act on the matter; (3) provide an opportunity to vote for or against, or to abstain from voting on, the matter; (4) instruct the member how to complete and return the absentee ballot; and (5) state the time and date by which the Cooperative must receive the complete absentee ballot.

**Section 7. Order of Business.** The order of business at the annual meeting of the members and, so far as possible, at all other meetings of the members, shall be essentially as follows:

1. Report as to which members are present in person in order to determine the existence of a quorum.

2. Reading of the notice of the meeting and proof of the due publication or mailing thereof, or the waiver or waivers of notice of the meeting, as the case may be.
3. Reading of unapproved minutes of previous meetings of the members, or the waiver or waivers of notice of reading, as the case may be, and the taking of necessary action thereof.
4. Presentation and consideration of reports of officers, directors and committees.
5. Election of directors.
6. Unfinished business.
7. New business.
8. Adjournment.

## **ARTICLE IV**

### ***Directors***

**Section 1. *General Powers.*** The business and affairs of the Cooperative shall be managed by a board of seven directors selected from the Northern, Central and Southern Regions of the Cooperative (as hereinafter described), which shall exercise all of the powers of the Cooperative except such as are by law, the articles of incorporation or these bylaws conferred upon or reserved to the members.

**Section 2. *Qualification, Election and Tenure.*** Two directors represent the Northern Region, three directors represent the Central Region and two directors represent the Southern Region.

At each annual meeting, a number of directors, equal to the number of directors whose terms expire at the time of such meeting, shall be elected to hold office for a 3-year term.

In order to achieve a balanced rotation of Central Region directors with one Central Region director elected each year, a one-time exception to the 3-year director term shall take place for directors elected at the 2019 Annual Meeting of the Members, at which two Central Region directors shall be elected in accordance with this Article. The Central Region director candidate receiving the most votes at the 2019 Annual Meeting of the Members shall serve a term of 3 years. The Central Region director candidate receiving the second most votes at the 2019 Annual Meeting of the Members shall serve a term of 2 years.

Directors shall be elected by a plurality vote of members. No person shall be eligible to become or remain a director, or to hold any position of trust in the Cooperative, who:

- (a) is not a member; or

- (b) is in any way employed by, or was a former employee of within thirty-six (36) months, or materially financially interested in, a competing enterprise of a business primarily engaged in selling electric energy to the members of the Cooperative; or
- (c) is a close relative of another director or active employee of the Cooperative (as defined as being within the third degree of consanguinity or affinity); or
- (d) was a former employee of the Cooperative within thirty-six (36) months prior to the vote; or
- (e) has been convicted of a felony crime; or
- (f) who currently has amounts owed to the Cooperative for more than 90 days in arrears; or
- (g) is not a natural person (excludes entities such as firms, associations, corporations, business trusts, estates, partnerships, federal agencies, state or political subdivisions or agencies thereof or any body politic).

When a membership is held jointly by a married couple, either one, but not both, may be elected a director, provided, however, that neither one shall be eligible to become or remain a director or to hold a position of trust in the Cooperative, unless both shall meet the qualifications hereinabove set forth.

Nothing contained in this section shall, or shall be construed to, affect in any manner whatsoever the validity of any action taken at any meeting of the board of directors.

**Section 3. Nominations.** It shall be the duty of the board of directors to appoint, not less than ninety (90) days nor more than two hundred (200) days before the date of a meeting of the members at which directors are to be elected, a committee on nominations consisting of not less than five nor more than eleven members who shall be selected from different sections of the project area so as to insure equitable representation. No member of the board of directors may serve on such committee.

The committee, keeping in mind the principle of geographical representation, shall prepare and post at the principal office of the Cooperative at least sixty (60) days before the meeting a list of nominations for directors, comprised of at least two nominees per vacancy from each region or area of the Cooperative having one or more vacancies on the board. Any fifteen or more members acting together may make other nominations by petition not less than forty-five (45) days prior to the meeting and the Secretary shall post such nominations at the same place the list of nominations made by the committee is posted. The Secretary shall mail with the notice of the meeting or separately, but at least seven days before the date of the meeting, a statement of the number of directors to be elected and the names and addresses of the candidates, specifying separately the nominations made by the committee on nominations and also the nominations made by petition, if any. Additional nominations made by petition shall be for the respective region having vacancies on the board to be filled at the annual election. At the meeting, members shall each cast one vote for every vacancy in each region. If, for example, there are two vacancies in the Northern Region, each member may cast one vote for each of two nominees on the list, for a total of two votes. The

nominee, or in the case of multiple vacancies, nominees, in each region receiving the most votes cast shall be deemed elected to the board of directors. In the multiple vacancy example, that would mean that the nominee receiving the most, and the nominee receiving the second most votes would become directors. Notwithstanding anything contained in this section, failure to comply with any of the provisions of this section shall not affect in any manner whatsoever the validity of any election of directors.

Such regions and the area of each such region are numbered and defined as follows:

1. Northern Region

Schoharie County – Towns of Gilboa, Jefferson and Summit

Delaware County – Towns of Davenport, Harpersfield and Stamford

Otsego County – Town of Maryland

2. Central Region

Delaware County – Towns of Bovina, Delhi, Franklin, Hamden, Kortright and Meredith

3. Southern Region

Delaware County – Towns of Andes, Colchester, Masonville, Middletown, Sidney, Tompkins and Walton.

Chenango County – Town of Bainbridge

**Section 4. *Removal of Directors by Members.*** Any member may bring charges against a director by filing such charges in writing with the Secretary, together with a petition signed by at least ten per centum of the members and request the removal of such director by reason thereof. The director against whom such charges have been brought shall be informed in writing of the charges at least five days prior to the meeting at which the charges are to be considered and shall have an opportunity at the meeting to be heard in person or by counsel and to present evidence in respect to the charges; and the person or persons bringing the charges against him or her shall have the same opportunity. The question of the removal of such director shall be considered and voted upon at the next regular or special meeting of the members and any vacancy created by such removal may be filled by vote of the members at such meeting without compliance with the foregoing provisions with respect to nominations.

**Section 5. *Removal of Directors by the Board of Directors.*** The majority of the board of directors, acting pursuant to a duly made and seconded motion at a duly noticed regular or special meeting of the board of directors, may remove a director from the board if that director has failed to meet an objective qualification or requirement prescribed by these bylaws. The director against whom such charges have been brought shall be informed in writing of the charges at least five days prior to the meeting at which the charges are to be considered and shall have an opportunity at the meeting to be heard in person or by counsel and to present evidence in respect to the charges.

The question of the removal of such director shall be considered and voted upon at the next regular or special meeting of the board of directors and any vacancy created by such removal may be filled in accordance with Section 6 of these bylaws.

**Section 6. *Vacancies.*** Subject to the provisions of these bylaws with respect to the filling of vacancies caused by the removal of directors by the members, a vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors. The director appointed in accordance with this paragraph must meet the director qualifications as set out in Article IV, Section 2. The appointed director may serve for a term ending no later than the next annual meeting of the members. In cases where the term of the vacated seat would have extended beyond the next annual meeting of the members, a special election shall be held at the next annual meeting of the members to fulfill the unexpired portion of the term of the director in respect of whom the vacancy occurs.

**Section 7. *Compensation.*** Directors as such shall not receive any salary for their services. However, by resolution a fixed sum may be paid for each day or portion thereof spent on Cooperative business such as attendance at meetings, conferences, and training programs or performing committee assignments as authorized by the board. If authorized by the board, directors may also be reimbursed for expenses actually and necessarily incurred in carrying out such Cooperative business or granted a reasonable per diem allowance by the board in lieu of detailed accounting for some of their expense. No director shall receive compensation for serving the Cooperative in any other capacity nor shall any close relative of a director receive compensation for serving the Cooperative unless the payment of compensation shall be specifically authorized by a vote of the members or the service by such directors or close relative have been certified by the board as an emergency measure.

**Section 8. *Employment of Former Directors by the Cooperative.*** Former directors shall not be employed by the Cooperative for at least thirty-six (36) months after completing their service as a director.

## ARTICLE V

### *Meetings of Directors*

**Section 1. *Regular Meetings.*** A regular meeting of the board of directors shall be held without notice other than this bylaw, immediately after, and at the same place as, the annual meeting of the members. A regular meeting of the board of directors shall also be held monthly at such time and place in Delhi, Delaware County, New York State, or where desirable, in another township in which the Cooperative conducts business as the board of directors may provide by resolution. Such regular monthly meetings may be held without notice other than such resolution fixing the time and place thereof.

**Section 2. *Special Meetings.*** Special meetings of the board of directors may be called by the President or by any three directors, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. The President or the directors calling the meeting shall fix the time and place for the holding of the meeting.

**Section 3. *Notice of Directors Meetings.*** Written notice of the time, place and purpose of any special meeting of the board of directors shall be delivered not less than two days previous thereto, either personally or by regular or electronic mail or facsimile, by or at the direction of the Secretary, or upon a default in duty by the Secretary, by the President, or the directors calling the meeting, to each director. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the director at his address as it appears on the records of the Cooperative, with postage thereon prepaid. If given by electronic mail or facsimile, notice shall be deemed to be delivered on the day of transmission to such last known address or number.

**Section 4. *Allowance of and Limitations on Telephonic Participation.*** Any one or more members of the board of directors may participate in a meeting of such board by means of a conference telephone or similar telephonic communication equipment allowing all persons participating in the meeting to hear each other and such participation by telephonic means shall constitute presence at such meeting. Notwithstanding the allowance of telephonic participation of any one or more member of the board of directors at any given meeting, each member of the board of directors shall appear in person for at least 9 regular meetings of the board of directors in each year of his or her term, where a term year starts and ends at an annual meeting of the members.

**Section 5. *Quorum.*** A majority of the board of directors shall constitute a quorum, provided, that if less than such majority of the directors is present at said meeting, a majority of the directors present may adjourn the meeting from time to time; and provided further, that the Secretary shall notify any absent directors of the time and place of such adjourned meeting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors.

## ARTICLE VI

### *Officers*

**Section 1. *Number.*** The officers of the Cooperative shall be a President, Vice-President, Secretary and Treasurer and such other officers as may be determined by the board of directors from time to time. The offices of Secretary and Treasurer may be held by the same person.

**Section 2. *Election and Term of Office.*** The officers shall be elected, by ballot, annually by and from the board of directors at the meeting of the board of directors held directly after the annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until the first meeting of the board of directors following the next succeeding annual meeting of the members or until his successor shall have been elected and shall have qualified. A vacancy in any office shall be filled by the board of directors for the unexpired portion of the term.

**Section 3. *Removal of Officers and Agents by Directors.*** Any officer or agent elected or appointed by directors may be removed by the board of directors whenever in its judgment the best interests of the Cooperative will be served thereby. In addition, any member of the Cooperative may bring charges against an officer by filing such charges in writing with the Secretary, together with a petition signed by ten per centum of the members, and request the removal of the particular officer by reason thereof. The officer against whom such charges have

been brought shall be informed in writing of the charges at least five days prior to the meeting at which the charges are to be considered and shall have an opportunity at the meeting to be heard in person or by counsel and present evidence in respect to the charges; and the person or persons bringing the charges against him or her shall have the same opportunity. The question of the removal of such officer shall be considered and voted upon at the next regular or special meeting of the members.

**Section 4. *President.*** The President shall:

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

**Section 5. *Vice President.*** In the absence of the President, or in the event of his inability or refusal to act, the Vice President shall perform the duties of the President and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice-President shall also perform such other duties as from time to time may be assigned to him or her by the board of directors.

**Section 6. *Secretary.*** The Secretary shall:

- (a) keep the minutes of the meetings of the members and of the board of directors stored or available on the premises in a media 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 affix the seal of the Cooperative to all certificates of membership prior to the issue thereof and to all documents, the execution of which on behalf of the Cooperative under its seal is duly authorized in accordance with the provisions of these bylaws;
- (d) keep a register of the names and post office addresses of all members;
- (e) sign, with the President, certificates of membership, the issue of which shall have been authorized by the board of directors of the members;

- (f) have general charge of the books of the Cooperative in which a record of the members is kept;
- (g) keep on file at all times a complete copy of the Cooperative bylaws containing all amendments thereto, which copy shall always be open to the inspection of any member at the office of the Cooperative and on the Cooperative's website, and at the expense of the Cooperative, forward a copy of the bylaws and of all amendments thereto to each member, upon written request therefore; and
- (h) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the board of directors.

**Section 7. Treasurer.** The treasurer shall:

- (a) have charge and custody of and be responsible for all funds and securities of the Cooperative;
- (b) be responsible for the receipt of and the issuance of receipts for moneys due and payable to the Cooperative from any source whatsoever, and for the deposit of all such moneys in the name of the Cooperative in such bank or banks as shall be selected in accordance with the provisions of these bylaws;
- (c) in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the board of directors.

**Section 8. Chief Executive Officer.** The board of directors may appoint a Chief Executive Officer who may be, but who shall not be required to be, a member of the Cooperative. The Chief Executive Officer shall perform such duties and shall exercise such authority as the board of directors may from time to time vest in him or her.

**Section 9. Compensation.** The powers, duties and compensation of any officers, agents and employees shall be fixed by the board of directors, subject to the provisions of these bylaws with respect to compensation for directors and close relatives of directors.

**Section 10. Reports.** The officers of the Cooperative shall submit at each annual meeting of the members reports covering the business of the Cooperative for the previous fiscal year. Such reports shall set forth the condition of the Cooperative at the close of such fiscal year.

## **ARTICLE VII**

### ***Non-Profit Operation and Capital***

**Section 1. Definitions.** As used in this Article,

- (a) "Authorized Early Retirement" shall mean the Retirement of Patronage Capital Credits prior to the time such capital would otherwise be generally retired to current and former Patrons under provisions of these bylaws.



- (b) "Patron" shall mean (1) a member in accordance with the provisions of these By-laws, (2) a non-member purchasing electric energy and (3) a non-member to whom the Cooperative furnishes goods or services, other than electric energy, on a patronage basis as evidenced by Board policies, Board resolutions or contract.
- (c) "Patronage Capital Credits" shall mean the amounts allocated to and contributed by the Patron to the Cooperative as capital.
- (d) "Patronage" shall mean the quantity or value of the goods or services purchased by the Patrons during the fiscal year and used by the Cooperative for allocating Patronage Capital Credits in a proportionate manner to each Patron. With respect to the furnishing of electric energy, the patronage of each Patron is measured on the basis of the proportionality of the revenue billed by the Cooperative to the individual Patron for electric energy with respect to the total revenue billed by the Cooperative to all Patrons for electric energy. With respect to the furnishing of goods and services on a patronage basis, other than electric energy, the patronage of each Patron is measured separately for each such good or service and on the basis of the proportionality of the revenue billed by the Cooperative for such good or service to the individual Patron with respect to the total revenue billed by the Cooperative to all Patrons for such good or service.
- (e) "Retirement" shall mean the redemption and payment in cash or other property of allocated Patronage Capital Credits to the Patrons and former Patrons to whom such amounts were previously allocated.

**Section 2. *Interest or Dividend on Capital Prohibited.*** The Cooperative shall at all times be operated on a cooperative non-profit basis for the mutual benefits of its Patrons. No interest or dividends shall be paid or payable by the Cooperative on any capital furnished by its Patrons.

**Section 3. *Patronage Capital Contributions, Allocations and Retirements, in Connection with Furnishing Electric Energy.***

- (a) In the furnishing of electric energy the Cooperative's operations shall be so conducted that all Patrons will through their Patronage furnish capital for the Cooperative.
- (b) 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 electric energy in excess of operating costs and expenses properly chargeable against the furnishing of electric energy (hereinafter referred to as "the Electric Margin"). The Cooperative's accounting methods for determining the Electric Margin and the amount of patronage capital to be allocated will substantially comply with accounting principles generally accepted in the United States, federal and New York State tax law as it applies to electric cooperatives, and with the requirements of Article XI of these bylaws.

- (c) All Electric Margins are received with the understanding that they are furnished by the Patrons as capital. The Cooperative is obligated to allocate on the basis of Patronage and contribute as a credit to a capital account for each Patron all such amounts.
- (d) Provided, however, if costs and expenses exceed the amounts received and receivable from and directly related to the furnishing of electric energy, hereinafter referred to as "loss", then the board of directors shall have the authority, under accepted accounting practices, loan covenants, and federal and New York State tax law as it applies to electric cooperatives, to prescribe the accounting procedures under which such loss may be addressed.
- (e) 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 allocated to each Patron is clearly reflected and credited in an appropriate record to the capital account of each Patron, and the Cooperative shall within a reasonable time after the close of the fiscal year notify each Patron of the amount of capital so allocated to his account. All such amounts allocated to the capital account of any Patron shall have the same status as though they had been paid to the Patron in cash and the Patron had then furnished the Cooperative corresponding amounts for capital.
- (f) In the event of dissolution or liquidation of the Cooperative, after all outstanding indebtedness of the Cooperative shall have been paid, outstanding Patronage Capital Credits shall be retired without priority on a pro rata basis before any payments are made on account of property rights of members. 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 allocated and credited to the Patrons' or former Patrons' accounts may be generally retired in full or in part. Subject to sound business and management practices, the timing and amount of such Retirements are at the discretion of the board of directors. Provided, however, any such Retirements of capital shall be made in order of priority according to the year in which the capital was allocated and credited, the capital first received by the Cooperative being first retired. In no event, however, may any such capital be retired unless, after the proposed Retirement, the capital of the Cooperative shall equal at least thirty per centum (30%) of the total assets of the Cooperative EXCEPT that if, after the proposed Retirement, the capital of the Cooperative shall be less than thirty per centum (30%) of the total assets of the Cooperative, a Retirement of Patronage Capital Credits may nonetheless be made up to but not more than 25% of the net margins received in the previous year less the amount of Authorized Early Patronage Capital Credit Retirements as defined herein.
- (g) When the Patronage Capital Credits of any Patron no longer receiving service from the Cooperative comes to a total amount of less than a fixed sum determined by the board of directors, the same shall be retired in full with such retirements made only when and at the same time that general retirement to other Patrons is made.
- (h) When such retirements of capital are made to the patrons, the Cooperative shall be obligated to pay to each Patron or former Patron his share of the capital so retired in

accordance with these By-laws in whatsoever manner (i.e. cash, check or bill credit) that the board of directors determines most efficient and convenient. The board of directors may also establish a nominal fixed amount below which a check shall not be issued and the amount of such retired but unpaid Patronage Capital Credits will be paid in the first following year when the total amount of Patronage Capital Credits qualifying for retirement exceeds that nominal amount set by the board of directors, including the amount carried over. Regardless of the nominal fixed amount set by the board of directors, however, a check shall be issued to a former Patron if all such retirements fully retires the capital credits balance of such former Patron.

- (i) The board of directors, acting under policies of general application or as may be negotiated from time to time, may approve an Authorized Early Retirement. Provided, however, the payment portion of such Authorized Early Retirement shall be on a discounted and net present value basis in order to reflect the time value of money due to the early retirement of said Patronage Capital Credits. For purposes of Authorized Early Retirements, net present value shall consider the following factors:
  - (1) a market based discount interest rate and
  - (2) a discount period of no greater than the time between the Authorized Early Retirement and the normal expected retirement date of those Patronage Capital Credits.

The difference between the total of the amount of Patronage Capital Credits retired and the cash payment of such Authorized Early Retirement shall be considered a contribution of capital to and part of the net savings of the Cooperative.

- (j) Notwithstanding any provision of these bylaws, the board of directors, at its discretion, shall have the power, at any time upon the death of any Patron or former Patron, if the legal representatives of his estate shall request in writing that the capital allocated to any such Patron be retired as an Authorized Early Retirement, to retire capital allocated to any such person immediately upon such terms and conditions as the board of directors, acting under policies of general application, and the legal representatives of such Patron's estate shall agree upon; provided, however, that the financial condition of the Cooperative will not be impaired thereby.
- (k) The Cooperative, before retiring and paying any capital credited to any Patron's or former Patron's account, shall deduct therefrom any amount owing by such Patron or former Patron to the Cooperative; the right of offset applies to the amount retired and approved for payment. As method for implementing the right of offset for amounts owed the Cooperative and notwithstanding any provision of these bylaws, the board of directors, at its discretion, shall also have the power after termination of service to a Patron to recover amounts owed the Cooperative through an Authorized Early Retirement of Patronage Capital Credits of any such Patron immediately upon such terms and conditions as the board of directors, acting under policies of general application shall agree upon. The amount retired for such a Patron shall be no more

than the amount owed the Cooperative and shall be applied to such amount owed. Patronage Capital Credits of such Patron in excess of amounts owed the Cooperative shall remain allocated and credited in the capital account of such Patron.

- (l) Retired Patronage Capital Credits, which have not been claimed by the respective Patron or former Patron shall constitute an irrevocable assignment and contribution to the Cooperative, after reasonable effort to locate said Patron or former Patron. The assignment and contribution shall be added to the Cooperative's net savings. Mailing of a check or notice of the availability of a check to the last known address of a Patron or former Patron by first class mail and publication of the list of Patrons or former Patrons having unclaimed Patronage Capital Credits on the website and/or newsletter of the Cooperative for a period of three years shall be deemed reasonable effort to locate said Patron or former Patron.
- (m) Subject to the right of offset for any amounts owed the Cooperative, however, a Patron or former Patron, may at any time irrevocably assign their Patronage Capital Credits back to the Cooperative. Such irrevocable assignment shall be part of the Cooperative's net savings.
- (n) Subject to the right of offset for any amounts owed the Cooperative, unretired Patronage Capital Credits of a Patron or former Patron shall be assignable on the books of the Cooperative only on such terms and conditions and under such circumstances the board of directors, acting under policies of general application and the laws of the State of New York, shall direct. Nothing contained herein shall also give unto any Patron a vested right to assign any part of such Patronage Capital Credits.

**Section 4. *Patronage Capital Credits from Associated Organizations.*** If the Cooperative is a member, Patron or owner of an entity or organization from which the Cooperative uses or purchases a good or service, which is used in or directly related to the furnishing of electric energy and other goods or services on a patronage basis to its Patrons, and from which the Cooperative is allocated a capital credit or similar amount, then as determined by the board of directors and consistent with this Bylaw, the Cooperative may separately identify and allocate on the basis of Patronage to the Cooperative's Patrons this capital credit or similar amount allocated by the entity or organization. If the Cooperative separately identified and allocated to its Patrons such Patronage Capital Credits received from an entity or organization, the Cooperative may retire and pay such Patronage Capital Credits only after the entity or organization retires and pays the Patronage Capital Credits or similar amounts to the Cooperative. Any such Patronage Capital Credits allocated and retired pursuant to this Section 4 shall be allocated and retired using methods substantially consistent with those methods described in section 3 above.

**Section 5. *Patronage Capital Contributions, Allocations and Retirements, in Connection with Furnishing Other Goods or Services.*** In the event that the Cooperative should engage in the business of furnishing goods or services other than electric energy, all amounts received and receivable therefrom which are in excess of costs and expenses properly chargeable against the furnishing of such goods or services shall, insofar as permitted by law, be prorated annually on a Patronage basis and allocated to each Patron. Patronage capital allocated and retired pursuant to this Section 5 shall be made consistent with the following:

- (a) The board of directors shall determine to whom such other goods or services are provided on a Patronage basis, whether to members only or to both members and non-members alike. All such determinations, required from time to time under this Section 5 and made by the board of directors, shall be through applicable policies, resolutions or other contractual authority.
- (b) The board of directors shall have the authority under accepted accounting practices, loan covenants and tax law to prescribe the manner in which losses derived from such other goods or services may be handled.
- (c) The retirement of Patronage Capital Credits allocated to such Patrons shall be paid to said Patrons using methods substantially consistent with those methods described in section 3 above.
- (d) To the extent other goods or services are provided to non-members on a non-patronage basis, the net earnings of which shall be retained as part of the Cooperative's net savings.

**Section 6. *Net Earnings from Non-patronage Business.*** Revenue, income and gains in excess of expenses and losses from the provision of a good or service not provided to the patrons on a Patronage basis, including earnings or losses from a subsidiary corporation, insofar as permitted by law, may be used by the Cooperative to offset any losses incurred during the current or any prior year, to retain as capital not assignable to the members except in the event of dissolution of the Cooperative and to the extent not needed for these purposes, allocated to the patrons on a Patronage basis at the discretion of the board of directors.

**Section 7. *Net Savings.*** Unallocated reserves and retained capital not currently distributable to the Patrons as Patronage Capital Credits are subject to property rights of members and are subject to use by the Cooperative consistent with its obligations of prudent financial management. Notwithstanding other provisions of these bylaws and insofar as permitted by law, such amounts are available to offset any current or future loss of the Cooperative and may be comprised of, but not limited to:

- (a) Capital arising from the forfeiture of membership fees, assignments of capital made by a Patron or former Patron and from donations authorized under federal lender guidelines,
- (b) The difference between the amounts of Patronage Capital Credits in a Patron's account and the discounted amount paid out for Authorized Early Retirements,
- (c) The net earnings from non-patronage business, and
- (d) Unclaimed retirements of Patronage Capital Credits.

**Section 8. *Patron Agreement.*** The Patrons of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the articles of incorporation, bylaws, policies, rules and regulations 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 providing a copy of these bylaws to each new Patron and by posting a copy of these bylaws to the website of the Cooperative.

## **ARTICLE VIII**

### ***Disposition of Property***

The board of directors of the Cooperative shall have full power and authority, without authorization by the members thereof, to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust of, or the pledging or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the Cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of directors shall determine, to secure any indebtedness of the Cooperative to United States of America or any agency or instrumentally thereof, or to a national financing institution, organized on a cooperative plan for the purpose of financing its members' programs, projects, and undertakings, in which the Cooperative holds membership.

The Cooperative may not otherwise sell, mortgage, lease or otherwise dispose of or encumber all or a substantial portion of its property unless such sale, mortgage, lease or other disposition or encumbrance is authorized by the affirmative vote of TWO THIRDS of those members of the Cooperative.

## **ARTICLE IX**

### ***Seal***

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

## **ARTICLE X**

### ***Financial Transactions***

**Section 1. Contracts.** Except as otherwise provided in these bylaws, the board of directors may authorize any officer or officers, employee, agent or agents 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 2. Checks, Drafts, etc.** Except as otherwise provided by law or in these bylaws, all checks, drafts or other orders for the payment of money and all notes, bonds or other evidences of indebtedness issued in the name of the Cooperative shall be signed by such officer, officers, agent or agents, employee or employees of the Cooperative and in such manner as shall from time to time be determined by resolution of the board of directors.

**Section 3. Deposits.** All funds of the Cooperative shall be deposited from time to time to the credit of the Cooperative in such bank or banks as the board of directors may select.

**Section 4. Change in Rates.** Reserved for future use.

**Section 5. Fiscal Year.** The fiscal year of the Cooperative shall begin on the first day of January each year and end on the thirty-first day of December of that year.

## ARTICLE XI

### *Miscellaneous*

**Section 1. Membership in Other Organizations.** The Cooperative shall not become a member of any other organization without an affirmative vote of the members at a meeting called as provided in these bylaws, and the notice of said meeting shall specify that action is to be taken upon such proposed membership as an item of business provided, however, that the Cooperative shall, upon the authorization of the board of directors alone, have full power and authority to become a member of other cooperatives or corporations or to own stock therein for the purpose of engaging in or supporting rural electrification.

**Section 2. Waiver of Notice.** Any member or director may waive in writing, any notice of a meeting required to be given by these bylaws. The attendance of a member or director at any meeting shall constitute a waiver of notice of such meeting by such member or director, except in case a member or director shall attend a meeting for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

**Section 3. Rules and Regulations.** The board of directors shall have the power to make and adopt such policies, rules and regulations not inconsistent with law, the articles of incorporation or these bylaws, as it may deem advisable for the management, administration and regulation of the business and affairs of the Cooperative.

**Section 4. Accounting System and Reports.** The board of directors shall cause to be established and maintained a complete accounting system which shall conform so long as the Cooperative is indebted to the Government or any agency or instrumentality thereof, to such accounting system as may from time to time be designated by the Administrator of the Rural Utilities Service of the Department of Agriculture of the United States of America. All accounts of the Cooperative shall be examined by a finance committee of the directors appointed by the board of directors which shall meet periodically, but not less than two times per year, and render reports to the board of directors at regular meetings of the board of directors. The board of directors shall also after the close of each fiscal year cause to be made a full and complete audit of the accounts, books and financial condition of the Cooperative as of the end of such fiscal year. Such audit reports shall be submitted to the members at the annual meeting next following the close of such fiscal year.

## ARTICLE XII

### *Amendments*

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.