

**IT SHALL BE THE AIM OF**  
**UPSHUR RURAL ELECTRIC**  
**COOPERATIVE CORPORATION**

**to make reliable electric energy available to its**  
**Members at the lowest cost consistent with**  
**sound economy and good management**

**BYLAWS**

of

**UPSHUR RURAL ELECTRIC**  
**COOPERATIVE CORPORATION**

As Last Amended December 19, 2023  
(Per Board Resolution December 19, 2023)

**ARTICLE I.**

**MEMBERSHIP**

**Section 1.01 Requirement for Membership**

Any person, firm, association, corporation, business trust, partnership, Federal Agency, State or political subdivision thereof, or any body politic having any dwelling, structure, apparatus, or point of delivery in Upshur Rural Electric Cooperative Corporation's (hereinafter called the "Cooperative") service territory may become a Member (as defined below) of the Cooperative by:

- (a) making a written application for Cooperative Services;
- (b) agreeing to purchase Cooperative Services (as hereinafter specified) from the Cooperative; and
- (c) agreeing to comply with and be bound by the Cooperative's Articles of Incorporation ("Articles") and these Bylaws and any amendments thereto and such rate schedules, policies, and rules as may from time to time be adopted or amended by the Board (collectively, the "Governing Documents").

No Member may hold more than one membership in the Cooperative.

**Section 1.02 Membership**

Membership in the Cooperative shall be evidenced by signature and acceptance of the "Application for Electric Service and Membership Agreement", which shall be in such form and contain such provisions as determined by the Cooperative. The term "Member" as used in these Bylaws means an individual eighteen years and older, or two or more individuals eighteen years and older, residing in a single household holding jointly a membership (a "Joint Membership").

### **Section 1.03 Joint Membership**

Individuals eighteen years and older who reside in a single household may apply for a Joint Membership by each signing and accepting such application set forth in Section 1.02, and subject to their compliance with the requirements set forth in Section 1.01. 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 of 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 shall constitute a joint waiver of notice of the meeting;
- (b) The vote of either separately or both jointly shall constitute one joint vote;
- (c) A waiver of notice signed by either or both shall constitute a joint waiver;
- (d) Notice to either shall constitute notice to both;
- (e) Expulsion of either shall terminate the Joint Membership;
- (f) Withdrawal of either shall terminate the Joint Membership; and
- (g) Either but not both may be elected or appointed as an Officer (as defined below) or Director, provided that both meet the qualifications for such office.

For the avoidance of doubt, individuals holding a Joint Membership shall be considered one "Member." In the event multiple individuals holding a Joint Membership exercise a Member right with regard to a specified action, the Cooperative shall rely on the first Member action received by the Cooperative.

### **Section 1.04 Conversion of Membership**

- (a) A membership may be converted to a Joint Membership upon the written request of the holder thereof and the agreement by such holder and the other participating individual(s) to comply with the Articles of Incorporation, Bylaws and rules and regulations adopted by the Board of Directors. The outstanding application for membership shall be changed by the Cooperative in such manner as shall indicate the changed membership status.
- (b) Upon the death of an individual who is a party to the Joint Membership, such membership shall be held solely by the survivor(s) with the same effect as though such membership had been originally issued solely to him or her, as the case may be; provided, however, that the estate of the deceased shall not be released from any debts or liabilities to the Cooperative. The outstanding application for membership shall be changed 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 1.05 Membership Agreement**

The Articles and these Bylaws are contracts between the Cooperative and a Member. By becoming a Member, the Member acknowledges that: (1) every Member is a vital and integral part of the Cooperative; (2) the Cooperative's successful operation depends upon each Member complying with the Governing Documents; and (3) Members are united in an interdependent relationship.

A Member shall: (1) comply with the Governing Documents; and (2) pay the Cooperative for the Cooperative's damages, costs, or expenses, including attorney fees and legal expenses, caused by or associated with the Member's failure to comply with the Governing Documents. If a Member fails to comply with the Governing Documents the Cooperative may cease providing Electric Service to the Member or terminate the Membership. Regardless of whether money damages are available or adequate, the Cooperative may: (1) bring and maintain a legal action to enjoin the Member from violating the Governing Documents; and (2) bring and maintain a legal action to order the Member to comply with the Governing Documents.

#### **Section 1.06 Purchase of Cooperative Services**

"Cooperative Service(s)" shall include providing electric energy and related services or products. Each individual, entity or Member who has submitted an application for a Cooperative Service shall, as soon as the Cooperative Service is available, be liable to the Cooperative for any minimum amounts required by the Cooperative per month regardless of the amount of electric energy consumed or regardless of whether the individual, entity, or Member is ready to receive a Cooperative Service. Each Member shall pay all amounts owed to the Cooperative as and when the same shall become due and payable. A Member shall purchase Cooperative Services provided by the Cooperative and used on the premises specified in the individual's, entities, or Member's application for membership and shall, except as otherwise provided by contract, pay therefore monthly at 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 Cooperative Services in excess of cost of service, are furnished by Members as capital and each Member shall be credited for the capital so furnished as provided in these Bylaws. Except as otherwise provided by the Board of Directors, a Member may not sell, lease, or otherwise transfer a Cooperative Service provided by the Cooperative or a right to a Cooperative Service provided by the Cooperative.

#### **Section 1.07 Provision of Electric Service**

A Member shall comply with reasonable procedures required by the Cooperative regarding the provision of Cooperative Service and take or cease any act required by the Cooperative to safely, reliably, and efficiently operate the Cooperative and to deliver electric energy to Cooperative Members. A Member shall operate their equipment and maintain their facilities in a manner that does not interfere with the operation of the Cooperative system or with the Cooperative providing Cooperative Services to other Members.

The Cooperative shall deliver Cooperative Services to Members in a reasonable manner. The Cooperative, however, does not insure, guarantee, or warrant that it will provide adequate, continuous, or non-fluctuating electric energy to its Members. The Cooperative is not liable for damages, costs, or expenses, including attorney fees or legal expenses, caused by the Cooperative providing inadequate, non-continuous, or fluctuating electric energy or other Cooperative Services, unless the damages, costs, or expenses are caused by the Cooperative's gross negligence or willful misconduct.

#### **Section 1.08 Right of Entry and Grant of Property Rights**

As required by the Cooperative and in partial consideration for providing Cooperative Services a Member shall: provide the Cooperative access to or use of real property in which the Member holds an interest sufficient to grant such use ("Member Property") for the purpose of: (1) restoration efforts; (2) addressing an emergency situation; or (3) for any other reasonable purposes required to provide Electric Service.

In partial consideration for providing Cooperative Services, pursuant to Law and any terms and conditions specified by the Cooperative a Member shall grant or convey to the Cooperative a written easement, right-of-way, or license for use of Member Property as necessary and as reasonably agreed upon between the Cooperative and the Member for the purpose of providing Cooperative Services to the Member or one or more other Members. A Member requesting Cooperative Services shall work with the Cooperative to obtain the necessary easements, rights-of-way, or licenses for use of property necessary to deliver Cooperative Services.

#### **Section 1.09 Member Termination / Cessation of Electric Service**

A Membership is terminated upon the Cooperative learning of the Member's death, legal dissolution, or legal cessation of existence. The Cooperative may terminate a Membership if the Member ceases to use Electric Service for any reason, never begins to use Cooperative Services at location within sixty (60) days of the Cooperative Service being available to the Member, or if the Member fails to comply with the Governing Documents.

When a Membership is a Joint Membership, upon the death of either joint Member, such Membership shall be deemed to be held solely by the survivor with the same effect as though such Membership was originally in his or her name, as the case may be. Cooperative Records shall be updated to reflect that the Membership shall be held in the name of the survivor, provided, however, that the estate of the deceased shall not be released from any Membership debts or liabilities to the Cooperative until the satisfaction of such debts or liabilities.

Except as otherwise provided by the Board, a partnership Member continuing to use Cooperative Services is not suspended or terminated upon the death of a partner or following any other alteration in the partnership. A partner departing a partnership Member remains liable to the Cooperative for Cooperative Services provided to or for the Member before, and amounts owed to the Cooperative by the Member at the time of, the partner's departure.

Termination of Membership in any manner shall not release the Member from debts or liabilities of such Member to the Cooperative. The Cooperative may recover its costs for Cooperative facilities or equipment that have not been recovered and for removing Cooperative facilities or equipment when a Member ceases to use Cooperative Services at a particular location.

### **ARTICLE II.**

#### **RIGHTS AND LIABILITIES OF MEMBERS**

##### **Section 2.01 Property Interest of Members**

Upon dissolution, after (a) all debts and liabilities of the Cooperative shall have been paid, and (b) all capital credit furnished through patronage shall have been retired as provided in these Bylaws, the remaining property and assets of the Cooperative shall be distributed among the Members and former Members in the proportion which the aggregate patronage of each bears to the total patronage of all Members.

##### **Section 2.02 Non-liability for Debts of the Cooperative**

The private property of the Members shall be exempt from execution or liability for the debts of the Cooperative and no Member shall be liable or responsible for any debts or other liabilities of the Cooperative.

## ARTICLE III.

### MEETINGS OF MEMBERS

#### Section 3.01 Member Meetings

The Cooperative shall hold an annual meeting of the Members and may hold special or district meetings of the Members (collectively or individually, "Members' Meeting")

(a) Annual Meeting

The annual meeting of the Members ("Annual Meeting"), beginning with the year 1952, shall be held each year at such time and place as shall be fixed by the Board of Directors, and designated in the notice of the Annual Meeting. The Annual Meeting will be held at such location(s) as determined by the Board of Directors, provided, however, such location must be in a county in which the Cooperative provides Cooperative Services. It shall be the responsibility of the Board of Directors to make adequate plans and preparations for the Annual Meeting. Failure to hold the Annual Meeting at the designated time shall not work as a forfeiture or dissolution of the Cooperative.

At the Annual Meeting: (1) the results of any Member votes and/or Director elections shall be provided; (2) a written or oral report regarding the activities of the Cooperative shall be provided; (3) a written or oral report regarding the financial condition of the Cooperative shall be provided; and (4) Members shall be allowed an opportunity to voice concerns or raise questions about the Cooperative's operations.

(b) Special Meetings

The Cooperative shall hold a special meeting of the Members ("Special Meeting") upon receiving: (1) a written or oral request from the President; (2) a written or oral request from a majority of the members of the Board of Directors; or (3) one or more written demands signed and dated within ten (10) days after the first signature by at least ten percent (10%) of the Members authorized, with each page of each written demand requesting and describing the purpose of the meeting ("Member Demand"). To be valid, a Member Demand shall also contain information as may be required by the Cooperative in order to verify membership of the requesting Members.

The Board shall determine the location, date, and time of a Special Meeting. A Special Meeting may be held within any county in which the Cooperative provides Cooperative Services.

#### Section 3.02 Notice of Members' Meetings

Written or printed notice stating the location(s), date(s), and time(s) of a Members' Meeting and, in the case of a Special Meeting each purpose for which the meeting is called ("Member Notice") shall be delivered to each Member not less than ten (10) days and not more than thirty (30) days before the meeting date(s). If mailed, the Member Notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at the Member's address as it appears in Cooperative Records. As may be allowed by Law, a Member Notice may be delivered electronically or by other means and shall be deemed to be delivered when submitted for delivery. The failure of any Member to receive a Member Notice shall not invalidate any action which may be taken by the Members at a Members' Meeting.

**Section 3.03 Quorum**

The Articles shall set forth the requirements for establishing 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. The minutes of each meeting shall contain a list of the Members present in person.

**Section 3.04 Voting**

(a) Member Votes

Each Member shall be entitled to only one vote upon each matter submitted to a vote of the Members. A Member may be required to provide evidence of Membership in order to vote and to vote as an entity Member, an individual may be required to provide evidence requested by, and satisfactory to, the Cooperative that the individual is authorized to vote on behalf of the entity Member.

(b) Matters Requiring a Vote

Matters requiring a vote of the Members shall be: (1) those required by Law; (2) those required by the Articles; (3) those required by these Bylaws; (4) the election of Directors; (5) those determined by Board resolution; or (6) those determined by a properly adopted resolution of the Members ("Members' Resolution").

(c) The "Record Date" shall be the date for determining Members entitled to: (1) receive an appointment or designation; (2) sign a Director Nominating Petition, Director Removal Petition, request, Member Demand, or other similar document; (3) be mailed an Official Ballot, Member Notice, or other similar document; or (4) cast an Official Ballot or vote o

The Board of Directors may fix the Record Date, but the Record Date shall comply with any applicable Law and shall not be more than twenty (20) days before the date a document is due or the date the action is taken. Unless otherwise established by the Board, the Record Date shall be the date preceding the date a document is due or date the action is taken. Unless otherwise established by the Board, the Record Date for voting at a Members' Meeting shall be the date of the meeting.

(d) Ballot Voting

Except as otherwise provided by these Bylaws a Member shall vote on matters or to elect Directors by casting a ballot authorized by the Cooperative ("Official Ballot"). An Official Ballot may be printed or made available in electronic form. An Official Ballot shall:

- (i) have reasonable security feature(s) to protect against fraud;
- (ii) set forth and describe the matters upon which the Member is being asked to vote;
- (iii) instruct the Member on how an Official Ballot may be cast;
- (iv) state the time and date by which the Cooperative or a third party designated by the Cooperative must receive the Official Ballot;
- (v) if applicable, provide an opportunity to vote for or against, or to abstain from voting on a matter;

- (vi) if applicable, clearly explain how a Member may vote in a director election and provide biographical information for each candidate; and
- (vii) state when and how the results of a Member vote or a director election will be made available to the Members or the date and time of the Members' Meeting at which the results will be announced.

(e) Casting Ballot

Except as otherwise provided in these Bylaws, a Member shall vote on matters by casting an Official Ballot in any manner determined by the Board of Directors. The Board of Directors, an independent organization, or a committee authorized by the Board of Directors shall verify that a ballot is an Official Ballot that it was properly cast by a Member in compliance with these Bylaws ("Cast Ballot"). In the event a Member submits multiple votes, the Cooperative shall rely on the last valid vote to be received.

(f) Members' Meeting Voting

At a Members' Meeting at which a Quorum has been established, the individual presiding over a vote may require the Members to vote by voice. If the individual presiding over the Member vote determines in good faith, that a voice vote is not sufficient to accurately determine the vote results, then the Members shall vote by written ballot, or by any other reasonable manner determined by the Board of Directors.

(g) Voting Results

Except as otherwise provided by Law, the Articles, or these Bylaws a vote of the Members, other than a Members' Meeting vote is decided: (1) if a Quorum is represented by the number of Cast Ballots; and (2) by a majority of Cast Ballots with the same vote. The results of a Member vote or a Director election shall be made available to the Members or shall be announced at a Members' Meeting within five (5) days of the final tabulation of the votes.

### **Section 3.05 Proxies**

Except as otherwise provided in these Bylaws, a Member may grant a proxy only to the Board of Directors for the purpose of establishing a quorum at a Members' Meeting, authorizing the transaction of business at a Members' Meeting and authorizing the Board of Directors to vote on the Member's behalf on matters submitted to a vote of the Members, other than the election of Directors. Except in instances specifically mandated by law or the Articles of Incorporation, a Member may not appoint another person to vote on any matter for the Member.

### **Section 3.06 Districts**

The territory served or to be served by the Cooperative shall be divided into nine (9) enumerated districts (each a "District"). Each District shall be represented by one (1) Director. The Districts will be displayed on a map at the Cooperative's headquarters building in Gilmer, Texas. As necessary, the Board of Directors may revise the Districts based upon geographic, membership, economic development, permanent or full residency, seasonal or partial residency or other equitable considerations determined by the Board of Directors to ensure that the Districts provide equitable Director representation on the Board of Directors throughout the area in which the Cooperative provides Cooperative Services.

**Section 3.07    Agenda, Attendance, and Business at Members’ Meetings**

Except as otherwise provided in these Bylaws, before or at a Members’ Meeting the Board of Directors: (1) shall determine the agenda, program, or order of business for the meeting of the Members; and (2) may limit the attendance of non-Members at the meeting of the Members.

Except, as otherwise provided by the Board of Directors or the President before, or at, a Members’ Meeting, the President: (1) shall preside at the meeting of the Members; (2) may remove a person from the meeting of the Members for unruly, disruptive, or similar behavior; and (3) may exercise power reasonably necessary for efficiently and effectively conducting the meeting of the Members.

Except as otherwise provided by these Bylaws, Members attending a Members’ Meeting at which a Quorum has been established may only consider, vote or act upon the following: (1) procedural matters; and (2) a Members’ Resolution calling for a vote of all Members on matters described in the Member Notice. However, Members attending a Members’ Meeting at which a Quorum has been established may raise or discuss and vote on a Members’ Resolution calling for a vote of the Members on any matters if: (1) at least ten percent (10%) of the Members entitled to participate in the Members’ Meeting sign one or more written requests to raise or discuss the Members’ Resolution at a Members’ Meeting; (2) contains such additional information required by the Cooperative in order to determine Membership of the requesting Members; (3) each page of the written request signed by the Members describes the purpose of Members’ Resolution’s call for a vote of the Members; and (4) the Cooperative receives all written requests at least ninety (90) days before the Members’ Meeting. The Cooperative shall, not more than ninety (90) days after the adoption of a Members’ Resolution calling for a vote of all Members, submit the matter to a vote of the membership.

**Section 3.08    Tied Election**

In the case of a tie vote between candidates or in the event the Board of Directors, an independent organization, or a committee authorized by the Board of Directors are unable to certify the results of the election, the Board of Directors shall call for a new election.

**ARTICLE IV.**

**DIRECTORS**

**Section 4.01    General Powers**

The business and affairs of the Cooperative shall be managed by a board of nine (9) Directors 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 4.02    Election and Tenure of Office**

Beginning with the year 1950, the Directors of the Cooperative shall be divided into three (3) classes, each class to consist of three (3) Members. At the annual meeting of the Cooperative held in 1950, one director from each of the Districts numbered (1), (2), (3), shall be elected by secret ballot by and from the Members, as Directors of the first class, to serve until the next annual meeting or until their successors have been elected and shall have qualified. One director from each of the Districts number (4), (5), (6), shall be elected by secret ballot by and from the Members, as Directors of the second class, to serve until the second succeeding annual meeting or until their successors have been elected and shall have qualified. One director from each of the Districts numbered (7), (8), (9), shall be elected by secret ballot by and from the Members, as Directors of the



third class, to serve until the third succeeding annual meeting or until their successors have been elected and shall have qualified. At each annual meeting thereafter, Directors shall be elected by secret ballot by and from the Members, to succeed those Directors whose terms of office shall have expired, to serve for a period of three years or until their successors have been elected and shall have qualified. The ballots shall be official ballots printed by the Cooperative and shall list the names of the candidates nominated by the Nomination Committee and by petition; such names shall be arranged by Districts. Each Member of the Cooperative, voting by mail or electronic voting, shall be entitled to vote for one candidate from each District from which a Director is to be elected. The candidate from each District from which a Director is to be elected receiving the highest number of votes at such meeting shall be declared elected as a Director.

If an election of Directors shall not be held on the day designated herein for the annual meeting or at any adjournment thereof, the Board of Directors shall cause an election to be held at a special meeting of the Members within a reasonable time thereafter, and the currently serving Directors shall continue to serve until such elections have been held. Directors may be elected by a plurality vote of the Members.

### **Section 4.03**

#### **(a) Qualifications**

To become or remain a Director, an individual must comply with the qualifications outlined below ("Director Qualifications"). No person shall be eligible to become or remain a director of the Cooperative who:

- a) is not a Member in good standing in the area served or to be served by the Cooperative and of the District they are to represent;
- b) is in any way employed by or has significant financial interest in a competing enterprise or a business selling electric energy, or supplies to the Cooperative, or a business primarily engaged in selling electric or plumbing appliances, fixtures or supplies, to the Members of the Cooperative;
- c) has been elected to or holding public office in connection for which a salary is paid or any public benefit is received, including, but no limited to, retirement assistance, insurance benefits, or transportation costs;
- d) is not a resident of the District they represent. A resident of a District is an individual (i) whose primary residence is located in the District they represent, and (ii) who is registered to vote with an address located in the District;
- e) is an employee or former employee of the Cooperative within the seven (7) years prior to the election at which such Member is to be placed on the ballot;
- f) is an employee or a former employee, of a generation and transmission cooperative (G&T Cooperative) of which Cooperative is a member, or has been a member, and the former employee was employed by the G&T Cooperative within the seven (7) years prior to the election at which such Member is to be placed on the ballot;
- g) was an employee of the Cooperative who was terminated for cause;
- h) is receiving compensation for serving the Cooperative in any capacity (except as may be provided in Section 4.07);

- i) who is a Close Relative of an employee of the Cooperative or former employee, who was terminated for cause;
- j) is a Close Relative of an existing Director;
- k) has not been a Member of the Cooperative for a period of twenty-four (24) consecutive months preceding the election;
- l) has been convicted of a felony or a crime of moral turpitude in this state or any other state;
- m) is an existing Director and has failed to attend a minimum of nine (9) meeting during a (12) month period commencing with each annual meeting; provided, however, in the event an existing Director fails to satisfy this minimum attendance requirement in a given year, the Board of Directors may vote to waive the attendance requirement for that year at it pertains to such Director.
- n) does not have the capacity to enter legally binding contracts.

For the purposes of these Bylaws "Close Relative" means an individual who:

- a) through blood, law or marriage, is a spouse, child, stepchild, father, stepfather, mother, stepmother, brother, stepbrother, half-brother, sister, stepsister, half-sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law; or
- b) resides in the same residence.

For the avoidance of doubt, an individual qualified and elected, designated, or appointed as a Director, who becomes a Close Relative while serving in the position because of a marriage or legal action to which the individual was not a party, may continue to serve for the remainder of such Director's term; provided, however, that such Director's status as a Close Relative disqualifies him or her from being re-elected after the expiration of the term.

Any director, after being given notice in writing at least ten (10) days prior to the meeting of the Board of Directors at which a vote is to be taken and having been given an opportunity to respond at that meeting, may be removed by the affirmative vote of the majority of the remaining directors if he fails to meet the qualifications set forth in this Section and the vacancy created thereby shall be filled according to Section 4.06.

Prior to being elected, designated, or appointed to the Board of Directors, a qualified individual shall, upon request of the Board of Directors, submit to the Cooperative a signed certification that he or she satisfies, without exception, the qualifications set forth in this Section 4.03.

Nothing contained in this Section, however, shall affect in any manner whatsoever the validity of any action taken at any meeting of the Board of Directors.

(b) Nomination of Directors

It shall be the duty of the Board of Directors to appoint, not less than forty (40) days nor more than seventy (70) days before the date of a meeting of the Members at which Directors are to be elected, a nomination committee consisting of not less than three (3) Members (the "Nomination Committee"). At least one (1) Member of the Nomination Committee shall be elected from each District from which a Director is to be

elected. Nomination Committee Members may not be an existing or Close Relative of an existing Director; known Director candidate; or Cooperative employee.

The Nomination Committee shall prepare and post at the principal office of the Cooperative at least thirty-five (35) days before the meeting, a list of nominations for Directors. At least one (1) candidate shall be nominated by the Nomination Committee from each District from which a Director is to be elected. Any fifty (50) or more Members acting together may make other nominations by petition not less than sixty (60) days prior to the meeting and the Secretary shall post such nominations at the place where the list of nominations made by the Nomination Committee are posted.

The Secretary shall mail with the notice of the meeting or separately but at least ten (10) days nor more than thirty-five (35) 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. The names of the candidates shall be arranged by Districts, from which a Director is to be elected. Such statement shall also designate the candidate nominated by the Nomination Committee and those nominated by petition.

Notwithstanding anything herein contained, failure to comply with any of the provisions of this subsection shall not affect in any manner whatsoever the validity of any election of Directors.

#### **Section 4.04     Removal of Directors by Members**

A Director may only be removed by the Members for Cause. The term “Cause” as used in this section is defined as Malfeasance, Misfeasance, or Nonfeasance adversely affecting the Cooperative’s interest. “Malfeasance” is the doing of an act which is wholly wrongful and/or unlawful. “Misfeasance” is the improper doing of an act which is wholly wrongful and/or unlawful. “Nonfeasance” means the omission of an act which a person ought to do which would have avoided an act which is wholly wrongful and/or unlawful. “Cause” does not mean conduct or decisions made in good faith with a reasonable basis for believing that the action authorized was in the lawful and legitimate furtherance of the Cooperative’s business.

A Member may bring charges to remove a Director by delivering to the President, Secretary, or any Director such charges in the form of a dated written petition (“Director Removal Petition”):

- (a) identifying the Director on each page;
- (b) explaining, on each page, the Cause(s) for the Director’s removal; and
- (c) containing the printed names, printed services addresses, contact number and original and dated signatures obtained within sixty (60) days following the Director Removal Petition date, of at least twenty-five percent (25%) of the Cooperative’s Members who reside in the District the accused Director represents.

No Director Removal Petition shall specify charges against more than one Director. If the removal of more than one Director is requested, a separate Director Removal Petition for each Director sought to be removed must be submitted.

Upon receipt of a Director Removal Petition, it shall be promptly transmitted to the entire Board of Directors for consideration at the Board of Directors’ next regular meeting. The Directors present against whom no charges have been brought, if such shall constitute a quorum of all Directors, shall determine by majority vote if Cause for removal exists. If the Directors present shall be less than a quorum of all Directors, a determination as to Cause shall be dispensed with and a vote on Member Resolution calling for the vote of the Member on

the removal of the Director shall be considered at a Member's Meeting within ninety (90) after the first regular Board of Director's meeting following the receipt of a Director Removal petition.

In the event both the President and Vice President have had charges brought against them, then at any Members' Meeting at which such charges are to be presented, the majority of remaining Directors shall designate a parliamentarian to conduct that portion of the Members' Meeting at which charges are to be heard.

The Director against whom such charges have been brought shall have an opportunity at the Members' Meeting to be heard in person, and/or by counsel, as to the charges against them. The Member(s) bringing the charges against such Director shall have the same opportunity. After both parties have been heard the Members present at the Member's Meeting may consider and vote on a Members' Resolution calling for a vote of the Members to remove the Director. A Members' Resolution calling for a vote of the Members to remove a Director shall require the affirmative vote of two-thirds (2/3) of the Members present at the Members' Meeting for adoption.

Upon the adoption of a Member Resolution calling for the vote on the removal of a Director a Member vote on the removal of the Director against whom such charges have been brought and heard shall occur within [90] days following the adoption of the Member Resolution at the Member's Meeting.

#### **Section 4.05 Director Disqualification**

After being elected, designated, or appointed, if a Director does not comply with all of the Director Qualifications then, except as otherwise provided by the Board of Directors for good cause, the Board may disqualify the Director from serving as a Director and his or her position shall be declared vacant if:

- (a) the Board of Directors notifies the Director in writing of the basis for, and provides the Director an opportunity to comment regarding, the Board of Directors' proposed disqualification; and
- (b) Within thirty (30) days after the Board of Directors notifies the Director of the proposed disqualification, the Director fails to provide proof of compliance with the Director Qualifications.

Any disqualification under this Section must be unanimously approved by the remainder of Directors.

#### **Section 4.06 Vacancies**

A vacancy occurring in the Board of Directors, including a vacancy resulting from the removal of a Director pursuant to Section 4.04, shall be filled by the affirmative vote of a majority of the remaining Directors for the unexpired portion of the term. The Member elected to fill the vacancy must reside in the same District as the replaced Director and be qualified pursuant to Section 4.03 above.

#### **Section 4.07 Compensation**

Directors shall not receive any salary for their services as Directors, except that, by resolution of the Board of Directors, a fixed sum and actual expense of attendance, if any, may be allowed for attendance at each meeting of the Board of Directors. In addition, a Director may be compensated for serving as an appointed representative of the Cooperative on the board of directors of the Cooperative's generation and transmission cooperative(s). No Director shall receive compensation for serving the Cooperative in any other capacity, nor shall any person who is a Close Relative of a Director receive compensation for serving the Cooperative, unless the payment and amount of compensation shall be specifically authorized by a vote of the Board of Directors.

## **ARTICLE V.**

### **MEETING OF DIRECTORS**

#### **Section 5.01 Regular Meetings**

A regular meeting of the Board of Directors shall be held without notice, immediately after the annual meeting of the Members. A regular meeting of the Board of Directors shall also be held monthly at such time and by such method as the Board of Directors may provide by resolution, including in person, electronically, telephonically, via video conferencing, or by such other method as the board may in its sole discretion approve; provided, however, that in-person meetings shall be held within the county of Upshur County, Texas. Such regular monthly meeting may be held without notice other than such resolution fixing the time and place thereof. Directors not physically present at a regular meeting may participate in the meeting by means of remote communication and may be considered present in-person and may vote at the meeting, whether held at a designated place or solely by means of remote communication.

#### **Section 5.02 Special Meetings**

Special meetings of the Board of Directors may be called by the President or by any three (3) 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 (which shall be in Upshur County, Gilmer, Texas), for the holding of the meeting. A special meeting may be held by other methods and a director may be deemed present at a special meeting by appearing in person, electronically, telephonically, via video conferencing, or by such other method as the board may in its sole discretion approve.

#### **Section 5.03 Notice of Special Meetings**

Written notice of the time, place, and purpose of any special meeting of the Board of Directors shall be delivered to each Director not less than (5) five days previous thereto either personally, by mail, or by electronic transmission (if consented to by a Director), by or at the direction of the Secretary, or upon a default in duty by the Secretary, by the President or the Director calling the meeting. A Director may specify the form of electronic transmission to be used to communicate notice. The Director may revoke this consent by written notice to the Cooperative. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Director at the address as it appears on the records of the Cooperative, with postage thereon prepaid. If sent via electronic transmission, such notice shall be deemed to be delivered on the date sent to the intended recipient's last known electronic address.

#### **Section 5.04 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 Director of the time and place of such adjourned meeting. The act of a 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 6.01 Number

The officers of the Cooperative shall be a President, a Vice President, a Secretary, an Assistant Secretary, a Treasurer, and an Assistant Treasurer (collectively, the "Officers" and each an "Officer"). The same person may be elected to the office of Secretary and Treasurer, and the same person may be elected to the office of Assistant Secretary and Assistant Treasurer as well as such other Officers and committees as may be determined by the Board of Directors from time to time.

#### Section 6.02 Election and Term of Office

The Officers shall be elected annually by and from the Board of Directors at the meeting of the Board of Directors held immediately 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 such Officer's 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 6.03 Removal of Officers and Agents by Directors

Any Officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Cooperative will be served thereby.

#### Section 6.04 President

The President shall:

- (a) be the principal executive officer of the Cooperative and, unless otherwise determined by the Members or the Board of Directors, shall preside at all meetings of the Members and the Board of Directors;
- (b) sign, with the Secretary, or any other proper Officer of the Cooperative authorized by the Board of Directors, 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 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 6.05 Vice President

In the absence of the President, or in the event of the President's 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 be assigned to him by the Board of Directors.

#### **Section 6.06 Secretary**

The Secretary shall be responsible for or make arrangements for the following:

- (a) the minutes of the meetings of the Members and of the Board of Directors in one or more books provided for that purpose;
- (b) 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 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 names and addresses of all Members;
- (e) have general charge of the books in which a record of the Members is kept;
- (f) keep on file at all times a complete copy of the Articles of Incorporation and Bylaws of the Cooperative containing all amendments thereto. Which copy shall always be open to the inspection of any Member; and
- (g) 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 by the Board of Directors.

#### **Section 6.07 Assistant Secretary**

In the absence of the Secretary, the Assistant Secretary shall perform all the duties of the Secretary as described above.

#### **Section 6.08 Treasurer**

- (a) Unless otherwise determined by the Board of Directors, and unless otherwise required by law, the Articles of Incorporation of the Cooperative, or these Bylaws, the Treasurer shall perform all duties, shall have all responsibility, and may exercise all authority, prescribed by the Board of Directors.

#### **Section 6.09 Assistant Treasurer**

In the absence of the Treasurer, the Assistant Treasurer shall perform all the duties of the Treasurer.

#### **Section 6.10 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 be an Officer of the Cooperative, managing the day-to-day operations of the Cooperative, but shall not be a member of the Board of Directors. 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/her and otherwise shall use any powers necessary to operate the Cooperative as a fiduciary, on a day-to-day basis unless otherwise specified by the Board of Directors. The Board of Directors may confer on said Chief Executive Officer any title it deems appropriate.

### **Section 6.11 Officer Compensation**

The powers, duties, and compensation of Officers and the Chief Executive Officer, 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 6.12 Reports**

The Officers of the Cooperative shall submit at each annual meeting of the Members, reports covering the business of the Cooperative for the previous fiscal year. Such reports shall set forth the condition of the Cooperative at the close of such fiscal year.

### **Section 6.13 Indemnification**

The Board of Directors may authorize the Cooperative to indemnify any present or former Director or Officer of the Cooperative against all expenses or costs actually and necessarily incurred by the Director or Officer in connection with the defense of any action, suit or proceeding to which he or she is made a party by reason of being or having been a Director or Officer. The indemnification herein provided shall also cover expenditures incurred in good faith in anticipation of, or in preparation for, threatened or proposed litigation. It shall also cover the good-faith settlement of any action, suit, or proceeding, whether formally instituted or not. No indemnification may be authorized for any Officer or Director adjudicated to be liable for negligence or misconduct in the performance of such person's corporate duties. The indemnification herein provided shall not be deemed exclusive of any other rights to which a Director or Officer may be entitled under the Bylaws, agreement, vote of Members, or otherwise.

The Board of Directors further may authorize liability insurance to be purchased by the Cooperative for the purpose of indemnifying any present or former Director or Officer of the Cooperative of and from expenses or costs actually and necessarily incurred by any such Director or Officer in connection with the defense of any action, suit, or proceeding to which he or she is made a party by reason of being or having been a Director or Officer, further providing for the payment of a judgment to the extent of the policy limits provided which might be rendered in connection with such litigation.

## **ARTICLE VII.**

### **NON-PROFIT OPERATION**

#### **Section 7.01 Interest or Dividends on Capital Prohibited**

The Cooperative shall at all times be operated on a Cooperative non-profit basis for the mutual benefit of its Members. No interest or dividends shall be paid or payable by the Cooperative on any capital furnished by its Members. Although the Cooperative shall at all times be operated without profit to its Members, the rates, fees, rents, or other charges for Cooperative Services and any other facilities, supplies, equipment, or services furnished by the Cooperative shall be sufficient at all times:

- (a) To pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its business and the principal of and interest on the obligations issued or assumed by the corporation in the performance of the purpose for which it was organized, and
- (b) For the creation of reserves.



## **Section 7.02 Patronage Capital in Connection with Furnished Cooperative Services**

In the furnishing of Cooperative Services the Cooperative's operations shall be so conducted that all Members 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 Members for all amounts received and receivable from the furnishing of Cooperative Services in excess of operating costs and expenses properly chargeable against the furnishing of Cooperative Services. All such amounts in excess of operating costs and expenses at the moment of receipt by the Cooperative are received with the understanding that they are furnished by the Members as capital. The Cooperative is obligated to pay by credits to a capital account for each Member all such amounts in excess of operating costs and expenses. The books and records of the Cooperative shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each Member is clearly reflected and credited to the last-known capital account of each Member. The Cooperative shall notify the Members by publication, either by a posting on the Cooperative's publicly maintained website or in a monthly newsletter the percent of their Member billing so credited to their account. All such amounts credited to the capital account of any Member shall have the same status as though they had been paid to the Member in cash in pursuance of a legal obligation to do so and the Member had then furnished the Cooperative corresponding amounts for capital.

All other amounts received by the Cooperative from the operations in excess of costs and expenses shall, insofar as permitted by law, be (a) used to offset any losses incurred during the current or any prior fiscal year, (b) a reserve fund in the amount of \$400,000 shall be accumulated from these revenues and funded each fiscal year if necessary to maintain the \$400,000 balance, and (c) to the extent not needed for that purpose allocated to its Members on a patronage basis and any amount so allocated shall be included as a part of the capital credited to the accounts of Members, as herein provided.

In the event of dissolution or liquidation of the Cooperative, after all outstanding indebtedness of the Cooperative shall have been paid, outstanding capital credits shall be retired without priority on a pro rata basis before any payments are made on account of property rights of Members. If at any time prior to dissolution or liquidation, the Board of Directors shall determine that the financial condition of the Cooperative will not be impaired thereby, the capital then credited to Members' accounts may be retired in full or in part.

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

When any capital credits are ordered to be retired by the Board of Directors and cash payment is made to a Member or former Member, regardless of a statute of limitation or other time limitation, the Cooperative may recoup, offset, or set-off any debt owed to the Cooperative by the Member or former Member, regardless of the purpose for which the debt was incurred, including, but not limited to, debts concerning write-offs and collection fees incurred by the Cooperative to satisfy the indebtedness, by reducing the amount of retired Capital Credits paid to the Member or former Member by the debt owed to the Cooperative.

The Members of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the Articles of Incorporation and these Bylaws shall constitute and be 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 Cooperative may retire and pay capital credits to Members and former Members as provided in these Bylaws. If the Cooperative retires and pays capital credits, then the Cooperative must retire and pay capital

credits in a Member's or former Member's name as shown in Cooperative's records, regardless of the Member's or former Member's marital status. If the Cooperative mails a retired capital credit payment, then the Cooperative shall mail the payment to the Member's or former Member's address as shown in Cooperative's records. It shall be the responsibility of the Member or the former Member to provide the Cooperative with any address change. Any money that the Cooperative attempts to deliver to a Member or former Member, but unclaimed by the Member or former Member within the time prescribed by law, may be used as allowed by law. The Cooperative shall maintain books and records reflecting the retired and paid capital credits to Members and former Members.

## **ARTICLE VIII.**

### **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 (Texas)".

## **ARTICLE IX.**

### **FINANCIAL TRANSACTIONS**

#### **Section 9.01 Contracts**

Except as otherwise provided in these Bylaws, the Board of Directors may authorize any office or Officers, agent or agents, to enter into any contract or execute and deliver any instruments in the name and on behalf of the Cooperative, and such authority may be general or confined to specific instances.

#### **Section 9.02 Checks, Drafts, etc.**

All checks, drafts, or other orders for the payment of money, and all notes, bonds or other evidences of indebtedness issued in the name of the Cooperative shall be signed by such Officer or 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 9.03 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 9.04 Fiscal Year and Business Days**

The fiscal year of the Cooperative shall begin on the first day of January of each year and shall end on the thirty-first day of December of the same year.

For purposes of these Bylaws, the term "Business Day" means any day that is not a federal holiday, for which the Cooperative's main office is open for business.

### **Section 9.05 Real Property**

Unless authorized to do so by the affirmative vote of at least two-thirds (2/3) of the Board of Directors, the Cooperative shall not sell, mortgage, lease or otherwise dispose or encumber any of its property, other than:

- (a) Property which, in the judgment of the Board of Directors, is neither necessary nor useful in the operating and maintaining the Cooperative's system and which in any one (1) year shall not exceed ten percent (10%) of the value of all of the property of the Cooperative; or
- (b) merchandise, including, power, energy and related services;
- (c) personal property acquired for resale.

## **ARTICLE X.**

### **MISCELLANEOUS**

#### **Section 10.01 Membership in Other Organizations.**

The Cooperative shall not become a member of any other organization without an affirmative vote of two-thirds (2/3) of all of the Board of Directors at any regular or special meeting. Provided, however, that the Directors shall have full power and authority on behalf of the Cooperative to purchase stock in or to become a member of any corporation or cooperative organized on a non-profit basis for the purpose of engaging rural electrification.

#### **Section 10.02 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 on the ground that the meeting has not been lawfully called or convened.

#### **Section 10.03 Rules and Regulations**

The Board of Directors shall have power to make and adopt such rules and regulations not inconsistent with law, the Articles of Incorporation or these Bylaws, as it may deem advisable for the management of the business and affairs of the Cooperative.

#### **Section 10.04 Accounting System and Reports**

The Board of Directors shall establish and maintain a complete accounting system which is subject to applicable laws and rules and regulations of any regulatory body. The Board of Directors shall 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.

#### **Section 10.05 Conflict with State Law**

These Bylaws are adopted subject to any applicable law and the Cooperative's formation documents. Whenever these Bylaws may conflict with any applicable law or the formation documents, such conflict shall be resolved in favor of such law or the formation documents.

## **Section 10.06 Dispute Resolution**

Unless otherwise prohibited by law, if a controversy or claim arises out of, or relates to, the Cooperative's Governing Documents, these Bylaws or the terms of membership, the Cooperative's provision of a Cooperative Service, or a Member's use of a Cooperative Service, the parties shall first follow the process established by the Cooperative to submit the claim or dispute to the Board for resolution and shall work to settle the claim or dispute through negotiation. If the dispute is not settled by negotiation, then the Cooperative and the Member shall cooperate to select one or more mediators to help resolve the dispute. If the dispute is not settled by mediation, and if requested by the Cooperative or the Member, the controversy or claim shall be resolved by binding arbitration administered by the American Arbitration Association in accordance with its arbitration rules after all conditions precedent have been met. The arbitration is hereby made subject to and shall be governed by the provisions of the Federal Arbitration Act ("FAA") and the decisions of the federal courts interpreting the FAA. The arbitration shall be held in the State of Texas at a location to be designated by the party not making the initial demand for arbitration. A judgment on the award rendered by the arbitrator shall be entered in any court having jurisdiction thereof. Each party agrees to pay their own attorneys' fees and costs and each party agrees to share equally in the cost of the arbitrator.

The Members also agree to waive any right (i) to pursue a class action arbitration, or (ii) to have an arbitration under this provision consolidated or determined as part of any other arbitration or proceeding. The Members agree that any dispute to arbitrate must be brought in an individual capacity and not as a plaintiff or class member in any purported class or representative capacity. If any part of this arbitration clause, other than waivers of class action rights, is found to be unenforceable for any reason, the remaining provisions shall remain enforceable. If a waiver of class action and consolidation rights is found unenforceable in any action in which class action remedies have been sought, this entire arbitration clause shall be deemed unenforceable with the exception of the Members' and the Cooperative's waiver of a right to a trial by jury set forth below. It is the intention of the parties not to arbitrate class actions or to have consolidated arbitration proceedings. Should a Member have a dispute that is within the jurisdiction of the small claims courts of the State of Texas, such dispute may be resolved at the election of either party in small claims court rather than through arbitration.

IF THE ARBITRATION CLAUSE IS DEEMED UNENFORCEABLE OR THE MEMBERS OTHERWISE LITIGATE A DISPUTE IN COURT, THE MEMBERS AND THE COOPERATIVE AGREE TO WAIVE ANY RIGHT TO A TRIAL BY JURY IN A PROCEEDING BROUGHT IN COURT.

## **ARTICLE XI.**

Regardless of any provision of these Bylaws to the contrary, any document, including contracts, records, notices, communications, and other documents sent electronically to a Director, Member, or former Member at such person's last known electronic address ("Electronic Documents") is considered sent and received on the date sent to the intended recipient. Any Electronic Document sent electronically to the Cooperative from a Member is considered sent and received on the date received by the Cooperative.

## **ARTICLE XII.**

These Bylaws may be altered, amended, or repealed by not less than the affirmative vote of two-thirds (2/3) of the entire Board of Directors at any regular or special meeting, provided the notice of such meeting shall have contained a copy of the proposed alteration, amendment, or repeal.