



# **AMENDED BYLAWS**

# **BEARTOOTH ELECTRIC COOPERATIVE, INC.**

**September 28, 2013**



## TABLE OF CONTENTS

	PAGE
ARTICLE I—MEMBERSHIP .....	1
ARTICLE II—RIGHTS AND LIABILITIES OF MEMBERS .....	3
ARTICLE III—MEETINGS OF MEMBERS .....	5
ARTICLE IV—BOARD TRUSTEES .....	8
ARTICLE V—MEETING OF BOARD.....	11
ARTICLE VI—OFFICERS .....	12
ARTICLE VII—NON-PROFIT OPERATION.....	14
ARTICLE VIII—DISPOSITION OF PROPERTY.....	15
ARTICLE IX—SEAL.....	16
ARTICLE X—FINANCIAL TRANSACTIONS.....	16
ARTICLE XI—AMENDMENTS.....	17
STATEMENT OF NONDISCRIMINATION.....	18



## **ARTICLE I MEMBERSHIP**

### **SECTION 1. Requirements for Membership**

- A. Any person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency of a state or political subdivision or other legal entity (hereinafter Person/Entity), shall become a Member (hereinafter Member or Members) of Beartooth Electric Cooperative, Inc., (hereinafter Cooperative), provided that:
  - 1. The Person/Entity has completed, signed, and provided all information required by the Cooperative's Application for Electric Energy Service;
  - 2. The Person/Entity has delivered such application to the Cooperative; and
  - 3. The Person/Entity has received electric energy service or access to service from the Cooperative.
- B. No Member may hold more than one membership in the Cooperative, and no membership in the Cooperative shall be transferable, except as provided in these Bylaws.
- C. An Application for Electric Energy Service may be rejected if it is determined that the Person/Entity is unwilling or unable to meet the terms and conditions for service contained in the Application for Electric Energy Service. Any Person/Entity whose application is rejected shall be notified of the rejection and the reasons for rejection within thirty (30) days after the determination is made to reject the application. If the notice of rejection is not mailed within thirty (30) days, the applicant shall be accepted for service and membership.
- D. Membership shall be recorded in the records of the Cooperative, and the current recorded membership list shall be present at all membership meetings.
- E. Notwithstanding the provisions of Article I, Section 1, Part A, any Person/Entity who is paying for and receiving electric energy service from the Cooperative as of September 23, 2012, shall be deemed a Member, and, if such Person/Entity has not been recognized as a Member in the records of the Cooperative, such Person/Entity shall be added as a Member in the records of the Cooperative.

### **SECTION 2. Joint Membership**

Any two persons of those receiving electric energy service from the Cooperative at the same location 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 two persons 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 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 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.
- G. Either but not both may be elected or appointed as an officer or Board Trustee, provided that both meet the qualifications for such office.

### **SECTION 3. 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 another party receiving electric energy services from the Cooperative at the same location to comply with the Articles of Incorporation and Bylaws of the Cooperative; with such rules, regulations, policies, procedures, and tariffs as are adopted by the Board of Trustees and provided to Members; and with the terms stated in the Application for Electric Energy Service.
- B. Upon the death of either person who is a party to the joint membership, or action taken in accordance with Article I, Section 2, Parts E or F, such membership shall be converted to an individual membership for the remaining named Member. However, the estate of the deceased shall not be released from any debts due the Cooperative.

### **SECTION 4. Purchase of Electric Energy**

- A. Each Member shall, as soon as electric energy service shall be available, purchase from the Cooperative all electric energy used on the premises specified in the Application for Electric Energy Service, except in such cases as a Member may have interconnected his/her own generation resource with the Cooperative, and shall pay therefore at rates which shall be fixed by the Board. Amounts paid for electric energy in excess of the cost of service are furnished by Members who shall be credited with the capital so furnished as provided in these Bylaws. Each Member shall pay to the Cooperative such minimum amount regardless of the amount of electric energy consumed, as shall be fixed by the Board. Each Member shall also pay all amounts owed to the Cooperative as and when the same shall become due and payable.
- B. The Cooperative shall use its best efforts to furnish adequate and dependable electric energy service, although it cannot, and therefore does not, guarantee a continuous and uninterrupted supply of electricity.

### **SECTION 5. Termination of Membership**

- A. Any Person/Entity may decline to become a Member by filing a written declaration of membership.
- B. The Board may, by resolution and affirmative vote of not fewer than two-thirds (2/3) of all the Members of the Board, expel any Member who refuses or fails to comply with any of the provisions of the Articles of Incorporation, Bylaws, rules, regulations, or policies adopted by the Board, but only if such Member shall have been given written notice by the Cooperative that such refusal or failure makes him/her liable to termination of electric energy service and such refusal or failure shall have continued for at least ten (10) days after such notice was given. Any expelled Member may be reinstated by vote of the Board or by vote of the Members at any Annual or Special Meeting. The membership of a Member who, for a period of six (6) months after service is available to him/her, has not made payment of amount due and payable to the Cooperative, or of a Member who has either terminated electric energy service or has had his/her electric energy service terminated from the Cooperative, may be cancelled by resolution of the Board.
- C. The membership shall cease when the Member no longer receives access to or electric energy service from the Cooperative.

## **ARTICLE II RIGHTS AND LIABILITIES OF MEMBERS**

### **SECTION 1. Property Interest of Members**

Members and former Members holding patronage capital shall have no individual or separate interest in the property or assets of the Cooperative except upon dissolution. Upon dissolution, the property and assets of the Cooperative remaining after all debts and liabilities of the Cooperative are paid 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 and former Members. These distributions shall be made to those for whom the Cooperative has a valid mailing address, during the seven years immediately preceding the date of filing of the Certificate of Dissolution for the Cooperative, or as then otherwise required by applicable law.

### **SECTION 2. Non-liability for Debts of the Cooperative**

No Member shall be individually liable or responsible for any debts or liabilities of the Cooperative.

### **SECTION 3. Access to Property**

- A. As determined or required by the Cooperative, each Member or patron shall provide the Cooperative safe and reliable access reasonably necessary to operate the Cooperative safely, reliably, and efficiently or to provide Cooperative services to any real or personal property in which the Member possesses a legal right.
- B. Members or patrons shall grant the Cooperative the right to inspect, monitor, operate, repair, maintain, or remove any Cooperative facilities or equipment. Members agree to work with and provide easement to Cooperative for extending new facilities or relocating existing facilities. Members or patrons shall also give the Cooperative access to provide, monitor, measure, or maintain any Cooperative service or to satisfy or facilitate any obligation incurred or right granted by the Cooperative regarding the use of Cooperative equipment.
- C. Unless otherwise determined by the Board, the Cooperative owns all Cooperative facilities and equipment. Each Member and patron shall protect all Cooperative equipment and shall install, implement and maintain any protective device or procedure required by the Cooperative.

### **SECTION 4. Membership List**

- A. The Cooperative shall maintain a record of current Members in a form permitting the Cooperative to alphabetically list the names and addresses of all Members. Upon thirty-five (35) days prior written notice or request to the Cooperative, a Member who has been an active Member during the immediately preceding twelve (12) months may do the following:
  - 1. An active Member may inspect and copy the Membership List at a reasonable time and location determined by the Cooperative.
  - 2. An active Member may pay the Cooperative a reasonable charge determined by the Cooperative covering the labor and material cost of preparing and copying the Membership List, and the Cooperative must provide the Member a copy of the Membership List.
- B. A Member may inspect, copy, or receive a copy of the Membership List only if, as determined by the Board of Trustees, the Member complies with all of the following:
  - 1. The Member's notice or request is made in good faith and for a proper purpose.
  - 2. The Member describes with reasonable particularity the purpose for which the Member will use the Membership List.
  - 3. The Membership List is directly connected with the Member's purpose.
  - 4. The Member completes the Cooperative Request for Information form, acknowledging violation of the terms and conditions within will subject the Member to suspension and/or termination of the Member's membership in the Cooperative.

- C. Except as otherwise provided by the Board of Trustees, a Member may not do the following:
1. A Member may not use the Membership List for a purpose unrelated to the Member's interest as a Member.
  2. A Member may not use the Membership List to solicit money or property unless the money or property is used solely to solicit Member votes.
  3. A Member may not use the Membership List for a commercial purpose.
  4. A Member may not sell the Membership List.

#### **SECTION 5. Access to Information**

Members shall have access to information relevant to the business of the Cooperative with the exception of information that is deemed proprietary or confidential by law, contract, policy, or these Bylaws. Information shall be supplied to Members through methods including website postings, mailings, special informational meetings, news releases distributed to industry publications, and news media. Information provided to Members shall include the following:

- A. Board Meeting schedule;
- B. Agenda of any official meeting within five (5) business days prior to the meeting;
- C. Approved Minutes of any official meeting within fifteen (15) business days following approval;
- D. Bylaws and policies;
- E. Financial reports and audits;
- F. Strategic plans;
- G. Load forecasts; and
- H. Business agreements and contracts not deemed confidential.

#### **SECTION 6. Initiative Process**

The Cooperative recognizes applicable state statute as the guideline for Member proposed initiatives. In addition, Members shall abide by all of the following provisions:

- A. Initiatives to be submitted to the Cooperative Members shall be embodied in a petition.
- B. The petition form to be used is provided by the Cooperative.
- C. The petition form issued will be signed and dated by a Cooperative representative, acknowledging the issue date.
- D. Member signatures on the petition are valid only during the current Annual Meeting cycle.
- E. Members may request that their names be removed from a petition at any time prior to petition submittal.



## **ARTICLE III MEETINGS OF MEMBERS**

### **SECTION 1. Annual Meeting**

The Annual Meeting of the Members shall be held during the month of September each year at such place within a county, in the State of Montana, served by the Cooperative, as selected by the Board, and which place shall be designated in the notice of the meeting for the purpose of electing Board Trustees, passing upon reports for the previous fiscal year, and transacting such other business as may come before the meeting. It shall be the responsibility of the Board to make adequate plans and preparations for the Annual Meeting. Failure to hold the Annual Meeting at the designated time shall not cause a forfeiture or dissolution of the Cooperative.

### **SECTION 2. Special Meeting**

- A. The Cooperative shall hold a Special Meeting of the Members at a date, time, and location determined by the Board upon the Cooperative's receiving:
  - 1. A resolution of the Board; or
  - 2. A written request prepared by the President; or
  - 3. A written request signed by at least three (3) Trustees; or
  - 4. One or more written petitions signed and dated, within the current annual meeting cycle, by at least ten percent (10%) of Members; and
  - 5. Each page of the petition shall include the purpose for which the meeting is being called, the printed name and address of the signer and his or her telephone number, and the original dated signature.
- B. If the Cooperative fails to properly notify the Members of a Special Meeting within forty-five (45) days of receiving any Member petition, then any Member signing the petition may do the following:
  - 1. A Member may set a reasonable time, place and location for the Special Meeting.
  - 2. A Member may properly notify the Members of the Special Meeting.
- C. The agenda for a Special Meeting shall be limited to the purpose for which the meeting is called.

### **SECTION 3. Notice of Members' Meetings**

Written or printed notice stating the place, day and hour of the meeting and, in case of a Special Meeting or an Annual Meeting at which business requiring special notice is to be transacted, shall state the purpose or purposes for which the meeting is called and the matter or matters to be acted upon. Notice shall be delivered not less than ten (10) days nor more than twenty-five (25) days before the date of the meeting, either personally by postal or electronic mail, by or at the direction of the Secretary, or upon a default in duty by the Secretary, by the persons calling the meeting. Notice of a Members' Meeting is deemed delivered when either deposited in the United States mail with prepaid postage affixed, and addressed to each Member at the mailing address as it appears on the records of the Cooperative, or when sent electronically to the e-mail address as it appears on the records of the Cooperative. The inadvertent or unintended 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. Conduct and Attendance at Members' Meetings**

At any meeting of Members, unless otherwise determined by the Board, the President will do the following:

- A. The President shall preside at all Members' Meetings.
- B. The President may exercise any power reasonably necessary for conducting any Members' Meeting efficiently and effectively.

## **SECTION 5. Quorum**

Five percent (5%) of all Members present in person, or fifty (50) Members present in person, whichever is fewer, shall constitute a quorum for transaction of business at all meetings of the Members. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting without further notice. The minutes of each meeting shall contain a list of the Members present in person.

## **SECTION 6. Voting**

Each membership shall be entitled to only one (1) vote. Voting by mail shall be permitted, as set forth in Section 7, below, so long as the quorum requirements of Members, present in person, are satisfied, at any meeting of the Members. The vote-by-mail ballots shall be added to the ballots cast by Members who are present, in person. All questions shall be decided by a majority of the Members voting thereon, except as otherwise provided by law or by the Cooperative's Articles of Incorporation or these Bylaws. Two or more persons holding a joint membership shall jointly be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the Members.

## **SECTION 7. Mail Ballot**

On all Bylaw amendments, Trustee elections in conjunction with the Annual Members' Meeting, and with respect to other motions or resolutions which these Bylaws or Montana law requires membership approval, Members may either: 1) vote by mailing in their mail ballot; or 2) vote by casting their mail ballot in person at the meeting in which such matters are subject to vote. All other voting arising from the agenda items, other than those items for which mail ballots are permitted, shall take place at the meeting in which such agenda items are subject to vote.

Ballots shall be mailed to all Members.

- A. All properly completed ballots received on or before the time and date specified shall constitute a vote. If duplicate ballots are received from a Member, all of that Member's ballots will be disqualified.
- B. A Member's failure to receive a ballot by mail does not affect any action taken by mail ballot.
- C. Mail ballots shall be returned to a secure offsite location and held until the day of the meeting at which the mail ballots will be counted.
- D. The ballot shall do the following:
  1. It shall describe each proposed motion and resolution, and with respect to Trustee election identify all candidates for a Trustee position upon which the Members are asked to vote;
  2. It shall provide a written candidate profile prepared by the candidate(s), if provided;
  3. It shall provide a reason for the proposed motions and resolutions as required by Montana law, these Bylaws, or to provide information to the Members if any;
  4. It shall instruct Members how to complete and when and where to return the ballot.

## **SECTION 8. Credentials and Election Committee**

- A. The Board of Trustees shall, at least ten (10) days before any meeting of the Members, appoint a Credentials and Election Committee consisting of an uneven number of Members, not less than five (5) nor more than fifteen (15), who are not existing Trustees or candidates for Trustees, and who are not close relatives or Members of the same household of existing Trustees or known candidates for Trustees to be elected at such meeting. As used in the Bylaws, "close relative" means: son, daughter, mother, father, sister, brother, spouse, stepfather, stepmother, half-sister and half-brother, by blood, by marriage or by adoption, and the spouses of any of the foregoing.
- B. In appointing the Committee, the Board shall have regard for equitable representation of the districts served by the Cooperative. It shall be the responsibility of the Committee to pass upon all questions that may arise with

respect to the registration of Members, to supervise counting all ballots cast in any election or in any other ballot vote taken, to rule upon the effect of any ballots irregularly marked, and to decide any other questions concerning balloting or elections. The Committee's decisions on all such matters shall be final.

#### **SECTION 9. Announcement of Voting Results**

The results of all voting shall be announced after certification by the Credentials and Election Committee and will become effective at that time.

#### **SECTION 10. 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, except as otherwise established at one of the Board of Trustees's regular monthly meetings in advance of the deadline for publishing the Notice of Annual Meeting:

- A. Report on the number of Members present in person in order to determine the existence of a quorum;
- B. 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;
- C. Reading of unapproved minutes of previous meetings of the Members and the taking of necessary action thereon;
- D. Election of Board Trustees;
- E. Presentation and consideration of reports of officers, Trustees and Committees;
- F. Unfinished business;
- G. New business;
- H. Adjournment.

#### **SECTION 11. Districts**

The territory served or to be served by the Cooperative shall be divided into seven (7) districts, each of which shall contain as nearly as practical the same number of Members. Each district shall be represented by one (1) Trustee. The boundaries of the seven (7) districts shall be determined by the Board of Trustees and a description of same shall be kept on file in the principal office of the Cooperative as a part of the official records of the Cooperative.

Not more than ninety (90) days after the Annual Meeting of the Members at which Trustees were elected, the Board shall review the composition of the seven districts and, if it should be found that inequalities in representation have developed which can be corrected by a re-delineation of districts, the Board shall reconstitute the districts so that each shall contain as nearly as practical the same number of Members.

## ARTICLE IV BOARD TRUSTEES

### SECTION 1. General Powers

- A. The business and affairs of the Cooperative shall be managed by a Board of seven (7) Trustees, which shall exercise all of the powers of the Cooperative required by law, by the Articles of Incorporation, by these Bylaws, or conferred upon the Board by the Cooperative Members.
- B. The Board shall have 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 of the business and affairs of the Cooperative.
- C. The Board shall ensure that Cooperative Members have access to information relevant to the business of the Cooperative with the exception of information that is deemed proprietary or confidential by law, contract, policy, and these Bylaws. Information available to Members shall include but not be limited to Bylaws, policies, financial reports and audits, minutes of Board Meetings, strategic plans, load forecasts, business plans, agreements with business partners, power supply contracts, and news relating to the Cooperative and the electric energy industry. Information shall be supplied to Members on request and made available through methods including website postings, mailings, special informational meetings, and news releases distributed to industry publications and news media.
- D. Before creating or entering into an agreement that results in any direct or indirect obligation for the repayment of long-term indebtedness for financing, directly or indirectly, the construction, maintenance, or operation of power generation facilities exceeding five (5) megawatts capacity, the Board of Trustees must receive a vote of approval from at least 51% of the Members of the Cooperative. The Board shall establish and publish a process for mail-in voting that complies with the principles of Article III, Section 7; conduct a Special Meeting in compliance with Article III, Sections 2, 3 and 4; and employ an independent third party to receive and tabulate the ballots cast. The Cooperative shall not circumvent this restriction by dividing a project or work to be performed subject to this restriction into several contracts, projects or components or by any similar device.
- E. Prior to such a vote, the Board shall secure and share with Members an independent analysis of the proposed facility and its potential financial impact on Members. No project may be presented to the Members for consideration without comparative analysis of similar projects; assessment of the financial, engineering, and operations aspects of the project; and examination of its position in an integrated resource plan. The Board shall conduct an informational meeting in each Cooperative district and supply information relevant to the proposed project through methods that include website postings, mailings, special informational meetings, and news releases.
- F. The Board shall ensure that the Members are notified of the timeframe for review and approval of the annual budget. In addition the Board will provide Members access to budget information through methods including, but not limited to, website postings, mailings, and news releases.
- G. The Board shall provide at least 60-day notice to Members of proposals before the Board approves long-term debt exceeding two (2) years, or enters or amends power contracts exceeding two (2) years. During the notification period, Members shall be allowed to comment on such proposals, including, at the monthly Board Meeting immediately prior to the Board Meeting at which a vote on the proposal is scheduled, or at specially scheduled Board Meeting for Member comments and discussion.

### SECTION 2. Tenure of Office

- A. Each Board Trustee shall represent one of the seven (7) districts and shall be elected in conformance with procedures described as follows:
  - 1. At the Annual Meeting for the year 1972 the Board Trustees representing Districts 1, 3 and 7 shall each be elected to serve three (3) year terms, or until their successors shall have been elected and shall have qualified.

2. At the Annual Meeting for the year 1973 the Board Trustees representing Districts 4 and 6 shall each be elected to serve three (3) year terms, or until their successor shall have been elected and shall have qualified.
  3. At the Annual Meeting for the year 1974 the Board Trustees representing Districts 2 and 5 shall each be elected to serve three (3) year terms, or until their successor shall have been elected and shall have qualified.
- B. Trustees whose terms expire shall be elected by ballot at each Annual Meeting of the Members by and from the Members to serve three (3) year terms or until their successors are elected and qualified.
- C. If the election of Trustees has not been held on the day designated herein for the Annual Meeting, the Board shall cause the election to be held at a Special Meeting of the Members as soon thereafter as reasonable and convenient.
- D. No Trustee who has served five (5) consecutive terms of office as an elected Trustee may be reelected to the Board until a successor has completed at least one (1) full term of office.

### **SECTION 3. Qualifications**

- A. No person shall be eligible to become or remain a Board Trustee of the Cooperative under the following circumstances:
1. A person shall not be eligible if he/she is not a consuming Member and bona fide resident of the district served or to be served by the Cooperative.
  2. A person shall not be eligible if he/she is any way employed by or financially interested in a competing enterprise or a business selling electric energy (excluding net metered customers) or supplies to the Cooperative, or a business primarily engaged in selling electrical appliances, fixtures, or supplies to the Members of the Cooperative.
  3. A person shall not be eligible if he/she has been an employee of the Cooperative for any length of time within the immediately preceding five (5) years.
  4. A person shall not be eligible if he/she is employed by, is an agent of, or is a close relative of an employee or agent of the Cooperative.
  5. A person shall not be eligible if he/she is employed by or materially affiliated with any other Trustee.
  6. A person shall not be eligible if he/she owns an interest greater than ten percent (10%) or holds a management position in a business wherein more than ten percent (10%) of the goods sold are sold to the Cooperative or one of its subsidiaries, or a combination thereof.
- B. Upon establishment of the fact that a Board Trustee is holding the office in violation of any of the foregoing provisions, the Board shall remove such Board Trustee from office.
- C. Nothing contained in this section shall affect in any manner the validity of any action taken at any meeting of the Board.

### **SECTION 4. Nominations**

- A. It is the responsibility of the Members to solicit candidates for the election of Trustees. The Trustees shall ensure there are qualified nominees.
- B. Any fifteen (15) or more Members acting together may make nominations by petition and the Secretary shall publicize such nominations. Nominations made by petition received at least fifty (50) days before the meeting shall be included on the official ballot.

### **SECTION 5. Election of Trustees**

Elections of Trustees shall be by a form of printed ballot. Each membership of the Cooperative shall be entitled to vote for one (1) candidate from each district for which a Trustee is to be elected. The candidate from each district for which a Trustee is to be elected receiving the plurality of votes cast for that office at such meeting shall be declared elected as Trustee. If, after a recount, there is a tie for a Trustee position, the winner shall be determined by a coin toss.

## **SECTION 6. Trustee Seating**

At the Board Reorganization Meeting immediately following the Annual Membership Meeting, all newly elected Trustees shall sign a statement verifying they are qualified and have no conflict of interest that violates these Bylaws. The newly elected Trustees shall then be seated.

## **SECTION 7. Removal of Board Trustee**

- A. Any Member may bring charges against a Board Trustee, and by filing with the Secretary such charges in writing together with a petition signed by at least ten percent (10%) of the Members or three hundred seventy-five (375), whichever is the lesser, may request the removal of such Board Trustee by reason thereof. Such Board Trustee shall be informed in writing of the charges at least ten (10) days prior to the meeting of the Members 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 of the charges; and the person or persons bringing the charges against him/her shall have the same opportunity. The question of the removal of such Board Trustee shall be considered and voted upon at the meeting of the Members.
- B. Any Board Trustee who fails to attend three (3) monthly meetings in a calendar year without approval from the Board is subject to removal from the Board by majority vote of the other Board Trustees.

## **SECTION 8. Vacancies**

Subject to the provisions of these Bylaws with respect to the filling of vacancies caused by resignation, failure to attend meetings, or removal of Board Trustees by the Members, a vacancy occurring in the Board shall be filled by the affirmative vote of a majority of the remaining Board Trustees. The appointed Trustee will fill the vacancy until the next Annual Meeting when a Trustee will be elected for the remaining unexpired portion of said term. The Board must give public notice of such vacancy and shall fill such vacancy within one hundred twenty (120) days of its occurrence.

## **SECTION 9. Trustee Compensation**

- A. Without approval of the Membership, Board Trustees may not receive any salaries for their services as Trustees, except Board Trustees shall be covered by liability insurance provided by the Cooperative. Except in emergencies, Board Trustees may not be employed by the Cooperative in any capacity involving compensation.
- B. The Board of Trustees may establish a fixed sum, including expenses of attendance, if any, to be allowed for attendance at each meeting of the Board of Trustees or any Committee of the Board of Trustees; or representing the Cooperative at any meeting or on any business whenever representation has been approved by the Board. Board Trustees 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. Payments to a Board Trustee will be made on submission of an expense report and report of related activities which shall be noted and included in Board meeting minutes.

## **ARTICLE V MEETING OF BOARD**

### **SECTION 1. Regular Meetings**

- A. All regular meetings of the Board shall be open to Members and the public and conducted in the spirit of Robert's Rules of Order. A regular meeting of the Board shall be held monthly at such time and place within one (1) of the counties served by the Cooperative as designated by the Board. The Board will attempt to schedule regular meetings well in advance and publish notification. Such regular monthly meeting may be held without notice other than such resolution fixing the time and place thereof. Regular Board meetings may be held by conference using electronic communications media, including telephone, if convened in accordance with Section 3 below.
- B. A regular meeting of the Board shall be held without notice, immediately after, and at the same place as the Annual Meeting of the Members.

### **SECTION 2. Special Meetings**

The President, designee, or three (3) Board Trustees may call a Special Meeting of the Board. The Secretary shall provide notice of such meeting as hereinafter provided. The President, designee, or Board Trustees calling the meeting shall fix the time and place for the meeting. Special Board Meetings may be held by conference using electronic communications media, including telephone, if convened in accordance with Section 3 below.

### **SECTION 3. Conference Meetings Using Electronic Communications Media**

The Board or any designated Committee of the Cooperative may participate in a Board or Committee meeting by means of conference using electronic media, including telephone, provided all persons entitled to participate in the meeting receive a proper notice of the meeting (See Section 4), and provided that all persons participating in the conference meeting can hear each other simultaneously. A Board Trustee participating in a conference meeting is deemed present in person at the meeting. The Chairperson of the meeting may establish reasonable rules for conducting the meeting by conference using electronic communications media, including telephone.

### **SECTION 4. Notice of Board Meeting**

- A. Oral or written notice of the date, time, and place of any Special Meeting of the Board shall be delivered to each Board Trustee either personally, by mail, or by electronic communications media including telephone. The President, designee, or the Board Trustees calling the meeting shall give Trustees at least three (3) working days of notice before the meeting unless Trustees attending the meeting unanimously agree to a shorter period. If the meeting is to be held by electronic media, including telephone, the person calling the meeting shall provide instructions for participating in the meeting. The person calling the meeting shall maintain a record verifying that participants were notified about the meeting in a timely fashion.
- B. Any Member or Board Member may waive in writing any notice of a meeting required to be given by these Bylaws. The attendance of a Member or Board Member at any meeting shall constitute a waiver of notice of such meeting by such Member or Board Member, except in case a Member or Board Member 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 5. Quorum**

A majority of the Board shall constitute a quorum, provided, that if less than such majority of the Board is present at said meeting, a majority of the Board present may adjourn the meeting; and provided further that the Secretary shall notify any absent Board Members of the time and place of such adjourned meeting. The act of a majority of the Board Members present at a meeting at which a quorum is present shall be the act of the Board, except as otherwise provided in these Bylaws.

## **ARTICLE VI OFFICERS**

### **SECTION 1. Number**

The officers of the Cooperative shall be a President, Vice President, Secretary, Treasurer, and such other officers as may be determined by the Board. The offices of the Secretary and Treasurer may be held by the same person.

### **SECTION 2. Elections and Term of Office**

The officers shall be elected by ballot, annually by and from the Board at the meeting of the Board 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 reasonable. Each officer shall hold office until the first meeting of the Board following the next succeeding Annual Meeting of the Members or until his/her successor shall have been elected and shall have qualified. A vacancy in any office shall be filled by the Board for the unexpired portion of the term.

### **SECTION 3. Removal of Officers and Agents by the Board**

Any officer or agent elected or appointed by the Board may be removed by the Board whenever in its judgment the best interest of the Cooperative will be served thereby. In addition, any Member of the Cooperative may bring charges against an officer, and by filing with the Secretary such charges in writing together with a petition signed by ten percent (10%) of the Members or three hundred seventy-five (375), whichever is the lesser, may request the removal of such officer. The officer against whom such charges have been brought shall be informed in writing of the charges at least ten (10) days prior to the Board 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 of the charges; and the Member or Members bringing the charges against him shall have the same opportunity. In the event the Board does not remove such officer, the question of his or her removal shall be considered and voted upon at the next meeting of the Members.

### **SECTION 4. President**

- A. The President shall be the principal executive officer of the Cooperative and, unless otherwise determined by the Members or the Board, shall preside at all meeting of the Members and the Board;
- B. The President shall sign deeds, mortgages, deeds of trust, notes, bonds, contracts, or other instruments authorized by the Board to be executed, except in cases in which signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Cooperative, or shall be required by law to be otherwise signed or executed.
- C. The President shall perform all duties incident to the office of President, and such other duties as may be prescribed by the Board.

### **SECTION 5. Vice President**

- A. In the absence of the President, or in the event of his or her 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.
- B. The Vice President shall also perform such other duties as may be assigned to him or her by the Board.

### **SECTION 6. Secretary**

- A. The Secretary shall keep the minutes of the meetings of the Members and of the Board in electronic format and in books provided for that purpose.
- B. The Secretary shall see that all notices are duly given in accordance with these Bylaws or as required by law.



- C. The Secretary shall ensure the safekeeping of the corporate books and records and the seal of the Cooperative and affixing 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. The Secretary shall keep a register of the names and post office addresses of all Members.
- E. The Secretary shall keep on file at all times a complete copy of the Articles of Incorporation and Bylaws of the Cooperative containing all of its amendments (which copy shall always be open to the inspection of any Member) and at the expense of the Cooperative, furnish a copy of the Bylaws and all of its amendments thereto to any Member upon request.
- F. The Secretary shall, in general, perform all duties incident to the office of Secretary and such other duties as may be assigned by the Board.

#### **SECTION 7. Treasurer**

- A. The Treasurer shall be responsible for custody of all funds and securities of the Cooperative.
- B. The Treasurer shall be responsible for the receipts of and the issuance of receipts for all monies due and payable to the Cooperative and for the deposit of all such monies in the name of the Cooperative in such bank or banks as shall be selected in accordance with the provisions of these Bylaws.
- C. The Treasurer shall be responsible for the performance of all duties incident to the office of Treasurer and such other duties as may be assigned by the Board.

#### **SECTION 8. Manager**

The Board may appoint a Manager who shall perform such duties and shall exercise such authority as the Board may assign.

#### **SECTION 9. Bonds of Officers**

The Treasurer and any other officer or agent of the Cooperative charged with the responsibility for the custody of any of its funds or property shall be bonded in such sum and with such surety as the Board shall determine. The Board in its discretion may also require any other officer, agent or employee of the Cooperative to be bonded in such amount and with such surety as it shall determine.

#### **SECTION 10. Compensation**

The powers, duties, and compensation of officers, agents, and employees shall be fixed by the Board subject to the provision of these Bylaws.

#### **SECTION 11. Reports**

At each Annual Meeting of the Members, the officers of the Cooperative shall submit reports covering the business of the Cooperative for the previous fiscal year. The reports shall describe the condition of the Cooperative at the close of such fiscal year.

## **ARTICLE VII NON-PROFIT OPERATION**

### **SECTION 1. Patronage Capital in Connection with Furnishing Electric Energy**

The Cooperative shall at all times be operated on a cooperative non-profit basis for the mutual benefit of its patrons. In the furnishing of electric energy service, the Cooperative's operations shall be so conducted that all patrons will, through their patronage, furnish capital for the Cooperative. The Cooperative shall not pay interest or dividends on any capital furnished by its patrons.

### **SECTION 2. Providing For and Accounting For Patronage Capital Credits**

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 the furnishing of electric energy service in excess of operating costs and expenses. All amounts paid to the Cooperative in excess of operating costs and expenses are received with the understanding that they are furnished by the patrons' capital. The Cooperative is obligated to pay all such amounts in excess of operating costs and expenses to a capital account for each patron as capital credits. The books and records of the Cooperative shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each patron is clearly reflected and credited in an appropriate record to the capital account of each patron. The Cooperative shall, within eight and one-half (8½) months after the close of the fiscal year, notify each patron in writing of the amount of capital so credited to the patron's account. All such amounts credited to the capital account of any patron shall have the same status as though they had been paid to the patron in cash in pursuance of a legal obligation to do so and the patron had then furnished the Cooperative corresponding amounts for capital.

### **SECTION 3. Non-operating Revenue**

Non-operating revenue received by the Cooperative, insofar as permitted by law, may be used in the following manner:

- A. Excess funds may be used to pay or offset any losses incurred during the current or any prior fiscal year.
- B. Excess funds may be retained or used as permanent, non-allocated capital.
- C. At the discretion of the Board, excess funds may be allocated to its patrons on a patronage basis, and any amount so allocated shall be included as part of the capital credited to the accounts of patrons, as herein provided.

### **SECTION 4. Assignment of Capital Credits**

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

The Board shall have the power at any time upon the death of any patron, who was a natural person, to retire the patron's capital credits immediately under the following conditions. If the legal representatives of the patron's estate shall request in writing that the capital credited to any such patron be retired prior to the time such capital would otherwise be retired under the provisions of these Bylaws, the Board may reach agreement with the legal representatives of such patron's estate to retire capital credited to any such patron immediately upon such terms and conditions, including capital credit discounting, as the Board permitted under approved cooperative policies provided that the financial condition of the Cooperative will not be impaired thereby. The Board shall establish policies and procedures for implementing and conducting any capital credit discounting.

## **SECTION 5. Retirement Capital Credits**

If the Board determines that the financial condition of the Cooperative will not be impaired thereby, the capital credited to patrons' accounts may be retired in full or in part. The Board of Trustees shall determine the method, basis, priority, and order of retirement, if any, for all amounts furnished as capital. In the event of dissolution or liquidation of the Cooperative, after all outstanding indebtedness of the Cooperative has 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.

## **SECTION 6. Contract between Patron and Cooperative**

The patrons of the Cooperative, by receiving energy service from the Cooperative, acknowledge that the terms and provisions of the Articles of Incorporation and Bylaws shall constitute and be a contract between the Cooperative and each patron, and both the Cooperative and the patrons are bound by such contract as fully as though each patron had individually signed a separate instrument containing such terms and provision. The provisions of this Article of the Bylaws shall be called to the attention of each patron of the Cooperative and made readily available and conspicuously evident using all standard means of notification.

## **SECTION 7. Memberships in Other Organizations**

The Cooperative shall not become a Member or purchase stock in any other organization without an affirmative vote of the Members at a duly held meeting, the notice of which shall specify that action is to be taken upon such proposed Membership or stock purchase, provided, however, that the Cooperative may upon the authorization of the Board, purchase stock in or become a Member of any corporation or organization organized on a non-profit basis for the purpose of engaging in furthering the cause of rural electrification, or with the approval of the Administrator of RUS, of any other corporation for the purpose of acquiring electric facilities.

# **ARTICLE VIII DISPOSITION OF PROPERTY**

## **SECTION 1. Membership-Approved Dispositions**

In accordance with Montana law (MCA 35-18-317), the Cooperative may not sell, lease, exchange, or otherwise dispose of all or any substantial portion of its property or assets unless the following occurs:

- A. The Board appoints three (3) independent appraisers. Each appraiser evaluates the Cooperative's assets and renders an appraisal valuing the cooperative's specified assets.
- B. The Board approves the transaction.
- C. Members are notified at least ninety (90) days in advance of a meeting to vote on disposition of assets or property and the terms of the proposed transaction.
- D. At least thirty (30) days before the Member Meeting, the Cooperative shall invite all the other electric cooperatives in the State of Montana to submit proposals to acquire the Cooperative's specified assets.
- E. Members are mailed, at least thirty (30) days before the Member Meeting, any alternative proposal made by Cooperative Members, if it has been submitted to the Board with dated signatures, printed names, addresses and phone numbers of fifty (50) or more Members.
- F. At least two-thirds (2/3) of the total membership approves the transaction in person at the Meeting and by mail ballot.

## **SECTION 2. Mortgage or Encumbrance**

In accordance with these Bylaws and applicable law, the Board of the Cooperative, without authorization by the Members may authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, 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. This action applies as well to the revenues and income therefrom, all upon such terms and conditions as the Board shall determine, to secure any indebtedness of the Cooperative to the United States of America or any instrumentality or agency thereof or to any other financing sources within the United States.

## **SECTION 3. Merger or Consolidation with a Cooperative**

The Cooperative may merge or consolidate with any one or more cooperatives by complying with the provisions of Montana law (MCA 35-18-401 or 35-18-402) which includes the following:

- A. The proposal for merger or consolidation and the proposed articles of merger or articles of consolidation shall be approved by the Board of Trustees of the Cooperative.
- B. The proposal for merger or consolidation and the proposed articles of merger or articles of consolidation shall be submitted to a vote of the Members of the Cooperative at an Annual or Special Meeting of the Members. The notice for such meeting shall set forth the full particulars of the proposed merger or consolidation including proposed articles of merger or articles of consolidation.
- C. The proposal for merger or consolidation and the proposed articles of merger or articles of consolidation shall be approved by two-thirds (2/3) of the Members voting at such meeting or by mail.

## **ARTICLE IX SEAL**

The corporate seal of the Cooperative shall have inscribed thereon the name of the Cooperative and the words “Corporate Seal of The State of Montana.”

## **ARTICLE X FINANCIAL TRANSACTIONS**

### **SECTION 1. Fiduciary Responsibility**

The following persons are Fiduciaries of Beartooth Electric Cooperative: 1) Board Trustees, 2) committee members, and 3) employees who, in addition to fiduciary responsibility defined in these Bylaws, have responsibilities under Montana laws, Cooperative policies, job descriptions, and/or employment contracts.

Every Fiduciary is subject to the provisions of these Bylaws and shall discharge his/her duties solely in good faith and solely in the best interests of the Cooperative and its Members for the exclusive purpose of providing electric energy service. Fiduciaries may not profit from their position with the Cooperative, excluding wages, benefits, and remunerations paid by the Cooperative pursuant to Board approval.

In addition to complying with applicable Board policies, Montana law, and employment contracts, every Fiduciary shall exercise all skill, care, prudence, and due diligence at his/her disposal when acting on behalf of the Cooperative. All actions of a Fiduciary shall be that of a prudent person, familiar with such matters and acting in a similar capacity under the circumstances then prevailing under these Bylaws.

Failure to comply with the duties and responsibilities of a Fiduciary shall be grounds for removal from his/her position.

## **SECTION 2. Contracts and Obligations**

In accordance with Board policies and these Bylaws, the Board may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Cooperative.

## **SECTION 3. Checks, Drafts, and Financial Documents**

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 and countersigned by such officer or officers, agent or agents, employee or employees of the Cooperative as established by policy which shall be adopted by the Board.

## **SECTION 4. Deposits**

All funds except petty cash of the Cooperative shall be deposited to the credit of the Cooperative in such financial institutions as the Board selects.

## **SECTION 5. Change in Rates**

- A. Notice shall be given to Members at least thirty (30) days prior to a vote by the Board to approve any change in Beartooth Electric Cooperative's energy rates.
- B. Notice shall be given to the Wyoming Public Service Commission at least thirty (30) days prior to a vote by the Board to approve any change in Beartooth Electric Cooperative's energy rates.
- C. Notice shall be given to the United States Department of Agriculture, Rural Utilities Service (RUS) thirty (30) days prior to any proposed change in Beartooth Electric Cooperative's general rate structure as required by the agency.

## **SECTION 6. Fiscal Year**

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

## **SECTION 7. Accounting System, Audit and Reports**

The Board shall be responsible to establish and maintain a complete accounting system subject to applicable laws and rules and regulations of any regulatory body and consistent with RUS requirements. An audit of the books and records and other relevant business documents of the Cooperative shall be conducted each year by an independent public accounting firm hired by the Board. A report of such audit shall be submitted to the Members at the following Annual Meeting.

## **ARTICLE XI AMENDMENTS**

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

The above and foregoing Bylaws were duly and regularly adopted at a regular Meeting of the Membership of BEARTOOTH ELECTRIC COOPERATIVE, INC., upon due notice being given to the Members and these Bylaws supersede all and any prior adopted Bylaws which are hereby and hereof duly amended through September 28, 2013.

## **STATEMENT OF NONDISCRIMINATION**

“Beartooth Electric Cooperative, Inc.” is the recipient of Federal financial assistance from the U.S. Department of Agriculture (USDA). The USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual’s income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA’s TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call toll free (866) 632-9992 (voice) or (800) 877-8339 (TDD) or (866) 377-8642 (relay voice users). USDA is an equal opportunity provider and employer.