

**BYLAWS**  
**OF THE**  
**BON HOMME YANKTON**  
**ELECTRIC**  
**ASSOCIATION,**  
**INCORPORATED**

**TABOR, SOUTH DAKOTA**

**AS AMENDED & APPROVED**  
**August 21, 2012**

A Touchstone Energy® Cooperative   
*The power of human connections*



It shall be the goal of  
**Bon Homme Yankton Electric Association, Inc.**

to make electric energy available to its members at the lowest cost consistent with sound economy and good management.

**BYLAWS  
OF  
Bon Homme Yankton Electric Association, Inc.**

**ARTICLE I**

**MEMBERSHIP**

**SECTION 1. Requirements for Membership.** Any natural person, firm, partnership, corporation, trust, Federal agency, State or political subdivision thereof, or any body political or subdivision thereof may become a member of BON HOMME YANKTON ELECTRIC ASSOCIATION INCORPORATED (hereinafter called the "Cooperative") upon receipt of electric service from the Cooperative and by:

- (a) Making a written application for electric service;
- (b) Agreeing to purchase from the Cooperative electric power and energy on terms and conditions for electric service as adopted by the Board of Directors, and
- (c) Agreeing to comply with and be bound by the articles of incorporation, bylaws of the Cooperative, any policies, rules, regulations, and rate schedules established pursuant thereto, as all the same then exist or may thereafter be duly adopted or amended by the Board of Directors. With respect to any particular classification of service for which the Board of Directors shall require it, such application shall be accompanied by a supplemental contract, executed by the applicant on such form as provided therefore by the Cooperative. 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.

**SECTION 2. Joint Membership.** Two natural persons, including but not limited to a husband and wife, cohabitants and/or tenants in common, 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, but not limited to, a husband and wife, tenants in common or any two natural 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, except that the refund of capital credits upon the death of one member of a joint membership is available to spousal joint members, but not to non-spousal joint members. (See Article VII, Section 2) 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 have the affect of revoking a proxy executed by either or both and of constituting a joint waiver of notice of the meeting:

- (b) The vote of either separately or both jointly shall constitute one joint vote;
- (c) A proxy executed by either or both shall constitute one joint proxy;
- (d) A waiver of notice signed by either or both shall constitute a joint waiver;
- (e) Notice to either shall constitute notice to both;
- (f) Expulsion of either shall terminate the joint membership;
- (g) Withdrawal of either shall terminate the joint membership;
- (h) Either, but not both, may be elected or appointed as an officer or director provided that all other qualifications for such office are met.

**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 the prospective joint member to comply with the articles of incorporation, bylaws, and rules and regulations adopted by the Board of Directors. The outstanding membership shall be cancelled and a new application for electric service executed.
- (b) Upon the death of either person who is a party to a joint membership such membership may be terminated and new membership issued. The estate of the deceased and/or the withdrawing joint member shall not be released from any debts due this cooperative. Upon the legal separation or divorce of the holders of a joint membership, such membership shall continue to be held solely by the one who continues directly to occupy or use the premises covered by such membership in the same manner and to the same effect as though such membership had never been joint: PROVIDED, that the withdrawing joint member shall not be released from any debts due the Cooperative at the date of withdrawal from the joint membership.

**SECTION 4. Membership fees.** No membership fee is necessary to become a member. Any membership fee collected prior to the enactment of this section shall be considered a connection fee.

**SECTION 5. Purchase of Electric Energy.** Each member shall, as soon as electric energy shall be available, purchase from the Cooperative all electric energy purchased for use on the premises specified in the application for service and shall pay thereafter monthly rates which shall from time to time be fixed by the Board of Directors; provided, however, that the Board of Directors may limit the amount of electric energy which the Cooperative shall be required to furnish to any one member. It is expressly understood that amounts paid for electric energy in excess of the cost of service are furnished by members as capital and each member shall be credited with the capital so furnished as provided in these bylaws. Each member shall pay the Cooperative such minimum amount per month regardless of the amount of energy consumed as shall be fixed by the Board of Directors from time to time. Each member shall also pay all amounts owed to the Cooperative as and when the same shall become due and payable.

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

**SECTION 6. Termination of Membership.**

- (a) Any member may withdraw from membership upon compliance with such uniform terms and conditions as the Board of Directors of the Cooperative may prescribe. The Board of Directors may, by the affirmative vote of not less than two-thirds of all the Directors expel any member who fails to comply with any of the provisions of the articles of incorporation, bylaws, policies, or rules and regulations adopted by the Board of Directors, but only if such member shall have been given written notice by the Secretary of the Cooperative that such failure makes the member liable to expulsion and such failure shall have continued for at least ten days after such a notice was given. Any expelled member may be reinstated by vote of the Board of Directors or by vote of the members at any annual or special meeting. The membership of a member who, after service is available, ceases to regularly purchase energy from the Cooperative, or intermittently as in the case of seasonal users, shall terminate and be cancelled.
- (b) Upon the withdrawal, death, cessation of existence or expulsion of a member, the membership of such member shall thereupon terminate. Termination of membership in any manner shall not release a member or a deceased member's estate from any debts due the Cooperative.
- (c) Upon termination, conversion or alteration of a joint membership, and upon the Cooperative receiving written and adequate proof of such termination, conversion or alteration:

For any joint membership constituting a spousal joint membership that is:

- 1. Terminated or converted through the death on one (1) spousal joint member, the Cooperative may, at the discretion of the Board of Directors, refund allocated capital credits to the deceased spouse's estate in accordance with the provisions of Article VII, Section 2.
- 2. Otherwise terminated converted or altered, and unless otherwise instructed by a court or administrative body of competent jurisdiction, the Cooperative shall re-allocate and re-credit to each joint member one-half (1/2) of the capital credits previously allocated and credited to the spousal joint membership.

For any joint membership comprised of two (2) or more joint members not married to each other, that is terminated, converted or altered through the death of one of the joint members or through the failure of one of the joint members to reside in the same location, the Cooperative shall re-allocate the re-credit to the deceased or departing non-spousal joint member a pro rata portion of all capital credits allocated and credited to the joint membership during the time the deceased or departing joint member was a joint member.

- (d) Upon termination, conversion, alteration or cessation of existence of an entity membership, and upon the Cooperative receiving written notice and adequate proof of assignment and identification of the business entity's assignee, the Cooperative shall re-allocate and re-credit to the entity's assignee all capital credits allocated and credited to the business entity membership during the time the business entity was a member. Retirement of the re-allocated capital credits to a business entity's assignee shall be made, in whole or in part, in accordance with the provisions of these bylaws and pursuant to the periodic retirement of capital credits as approved by the Board of Directors.

**SECTION 7. Member to Grant Easements to Cooperative and to Participate in Required Cooperative Load Management Programs.** Each member shall, upon being requested to do so by the Cooperative, execute and deliver to the Cooperative grants of easement or right-of-way over, on and under such lands owned or leased by or mortgaged to the member, and in accordance with such reasonable terms and conditions as the

Cooperative shall require for the furnishing of electric service to the member or other members or for the construction, operation, maintenance or relocation of the Cooperative's electric facilities. Each member shall participate in any required program and comply with related rates, policies, service rules and regulations that may be established by the Cooperative to enhance load management, to more efficiently utilize or conserve energy or to conduct load research.

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

**SECTION 1. Property Interest of Members.** Upon dissolution, after (a) all debts and liabilities of the Cooperative shall have been paid, and (b) all capital furnished through patronage shall have been retired as provided in these bylaws, the remaining property and assets of the Cooperative shall be distributed among the members and former members in the proportion which the aggregate patronage of each bears to the total patronage of all members during the seven years next preceding the date of the filing of the certificate of dissolution.

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

## **ARTICLE III MEETING OF THE MEMBERS**

**SECTION 1. Annual Meeting.** The annual meeting of the members shall be held annually at such time and place, in the County of Bon Homme or Yankton, State of South Dakota as set by the Board of Directors for the purpose of electing directors, passing upon reports for the previous fiscal year and transacting such other business as may come before the meeting. 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 a forfeiture or dissolution of the Cooperative.

**SECTION 2. Special Meetings.** Special meetings of the members may be called by resolution of the Board of Directors, or upon a written request signed by any three directors, by the President, or by ten percent or more of all the members, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. Special meetings of the members may be held at any place within the County of Bon Homme or Yankton, State of South Dakota, and shall be specified in the notice of the special meeting.

**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, the purpose or purposes for which the meeting is called, shall be delivered not less than ten days nor more than twenty-five days before the date of the meeting, either personally or by mail, by or at the direction of the Secretary, or upon a default in duty by the Secretary, by the persons calling the meeting, to each member. Any such notice delivered by mail may be included with member's service billing or as an integral part of or with the Cooperative's monthly newsletter or other publication. If mailed, such notice shall be deemed to be given when deposited in the United States mail, addressed to the member at the member's address as it appears on the records of the Cooperative, with postage thereon prepaid. The failure of any member to receive notice of an annual or special meeting of the members shall not invalidate any action which may be taken by the members at any such meeting.

**SECTION 4. Quorum.** Business may not be transacted at any meeting of the members unless there are present in person a quorum. As long as the total number of members does not exceed one thousand, five percent of the total number of members, present in person, shall constitute a quorum. In case the total number of members exceeds one thousand, fifty members present in person, shall constitute a Quorum. If less than a

quorum is present at any meeting, a majority of those present in person shall adjourn the meeting without further notice. The minutes of each meeting shall contain a list of the members present in person.

**SECTION 5. Voting.** Each member shall be entitled to only one (1) vote. All questions shall be decided by a vote of a majority of the members voting thereon in person, except as otherwise provided by statute, the articles of conversion or these bylaws. Voting by proxy shall not be permitted. Any member who is absent from an annual or special meeting of the members may vote by mail at such meeting upon any motion or resolution, pertaining to the borrowing of funds or the mortgage, lease or other encumbrance of property, including debt limit which has been authorized either by a majority of the directors or by petition of not less than twenty-five (25) members requesting such vote, and any merger or consolidation of the Cooperative. Voting by mail is specifically prohibited on matters concerning the election of directors and the selling, leasing and disposing of Cooperative property to others as provided in Article VIII Section 2, of these bylaws. The Secretary shall enclose with the notice of such meeting an exact copy of such motion or resolution to be acted upon and such absent member shall expressly vote thereon by placing a mark in the space provided therefore opposite each such motion or resolution. Such absent member shall enclose each such copy so marked in a sealed envelope bearing the member's name and addressed to the Secretary of the Cooperative, P. O. Box 158, Tabor, South Dakota. When such written vote so enclosed is received by mail from any absent member, it shall be counted as a vote of such member at such meeting. If joint members are absent from any annual or special meeting of the members, they shall jointly be entitled to one vote by mail as provided in this section. The failure of any member to receive a copy of such motion or resolution shall not invalidate any action which may be taken by the members at any such meeting. No cooperative member may vote by proxy on any issue.

**SECTION 6. Order of Business.** The order of business at the annual meeting of the members and, so far as possible, at all other meetings of the members shall be essentially as follows:

1. Report on the number of members present in person in order to determine the existence of a quorum.
2. Reading of the notice of the meeting and proof of the due publication or mailing thereof, or the waiver or waivers of notice of the meeting, as the case may be.
3. Presentation of unapproved minutes of previous meeting of members and taking of necessary action thereon.
4. Election of Directors.
5. Presentation and consideration of reports of officers, directors and committees.
6. Unfinished business.
7. New Business.
8. Adjournment.

#### **ARTICLE IV DIRECTORS**

**SECTION 1. General Powers.** The business and affairs of the Cooperative shall be managed by a board of not less than five and not more than nine directors which shall exercise all of the powers of the Cooperative except as are set by statute, the articles of conversion or these bylaws conferred upon or reserved to the members.

**SECTION 2. Director Districts.** Based upon geographic, population, and any other equitable consideration determined by the Board, the Board may divide the general area in which members occupy a location at or for which members use a cooperative service ("Cooperative Service Area") into not less than five (5) and not more than nine (9) districts that equitably represent the members ("Director Districts"). As necessary and at least every five (5) years, based upon geographic, population, and any other equitable consideration determined by the Board, the Board shall review and may re-divide the Director Districts to ensure that the Director Districts equitably

represent the members. A detailed description of Director Districts shall be maintained by the Cooperative. Each District shall be represented by at least one Director.

In compliance with the notice requirements set forth in the bylaws of the Cooperative, and not less than 120 days prior to the next member meeting, the Cooperative shall notify all members, in writing, of any Director District revision. No Director District revision may:

1. Increase any existing Director's term; or
2. Shorten any existing Director's term, unless the affected Director consents in writing.

### **SECTION 3. Nomination and Election of Directors.**

(a) Nomination.

Any 15 or more members, within a district, by petition may nominate any qualified member for the position of director for their district. Such nominated member must reside within the district wherein the term of the present director is expiring. Upon receipt of such petition and having found the same to be in order the secretary shall post such nomination in the principal office of the Cooperative. Said petitions for nomination shall be filed with the Cooperative not less than 60 days prior to the meeting.

The secretary shall mail with the notice of the meeting, or separately but at least 10 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.

The members may at any meeting at which a director shall be replaced as provided in these bylaws, elect a successor thereto without compliance with the foregoing requirements with respect to nominations, provided, however, that any such successor must reside in the same district as the director being replaced. Notwithstanding anything herein contained, failure to comply with any of the provisions of this subsection other than the residency requirement shall not affect, after the fact, in any manner whatsoever the validity of any election of directors.

- (b) Election of directors shall be by secret ballot. The original ballot shall list the names of the candidates nominated by petition. Such names shall be arranged by districts. If no more than one candidate runs for the director position in the district, the members at the annual meeting may approve the director by voice vote upon a motion to accept such director for the position being sought.
- (c) Each member of the Cooperative present at the meeting shall be entitled to one vote for one candidate from each district. The candidate from each district receiving the highest number of votes at this meeting shall be declared elected as director. In the event of a tie, the candidates shall draw lots and the winner shall be declared elected.

Directors are elected for a term of three years. At each annual meeting of the members there will be elected one director from each district where the Directors term has expired.

**SECTION 4. Qualifications.** No person shall be eligible to become or remain a director or to hold any position of trust in the Cooperative who:

- (a) Is not a member or does not receive service from the Cooperative at their primary residence within the district which they are to represent; or

(b) Is in any way employed by or financially interested in a competing enterprise or a business selling electric energy or supplies to the Cooperative, or a business primarily engaged in selling electrical or plumbing appliances, fixtures or supplies to the members of the Cooperative; or

(c) Has a substantial conflict of interest with the Cooperative; or

(d) Is employed by the Cooperative or has a close relative (i.e., parent, spouse, child, grandparent or grandchild) employed by the Cooperative;

(e) Does not have the capacity to enter into legally binding contracts; or

(f) Is convicted of or pleads guilty or nolo contendere to a felony or to a misdemeanor involving fraud or dishonesty while serving as a director or within five years prior to standing for election as a director; or

(g) Attends less than two-thirds of regular monthly Board Meetings during the prior twelve month period unless excused for good cause by majority vote of the Board excluding the vote of the absent director; or

(h) Is or becomes physically or mentally unable with or without reasonable accommodations to perform the essential duties of a director, including attendance at regional and national meetings, and the condition that creates such inability is reasonably expected to last six (6) months or more.

(i) Any director (or the members, pursuant to the procedures outlined in Section 5 below) may by written and signed instrument (the "charges") delivered to the President or Secretary of the Board of Directors question the qualifications of any person to serve or to continue to serve as a director. The writing shall state with particularity the factual basis for the charges.

Upon receipt of the charges, the President (or Vice-President if the President is unable to act or is the subject of the charges), shall forward a copy of the charges to the person whose qualifications have been questioned for a response. The person whose qualifications have been challenged shall have 10 business days after receipt of the charges to provide a written response to the President or the President's designated agent. Upon receipt of the response to the charges, the President shall deliver a copy of the charges and the response to all board members.

The charges shall be addressed by the Board at its next regularly scheduled monthly board meeting or at a special meeting if so requested by a majority of the directors. At the meeting, the Board shall consider the written charges, the response, and, if the Board so chooses, oral evidence from any witnesses, including the individual charged. The decision to accept or reject the charges must have the vote of at least 2/3 of the directors, excluding the vote any director charged with violating these provisions.

If a director is removed from office, the director's replacement shall be appointed by the Board in accordance with Article IV, Section 6 of these By-laws. If the person charged has only been nominated as a director, if the Board determines that the candidate is not qualified to stand for election, the individual's name shall be removed from the ballot.

Upon establishment of the fact that a director is holding office in violation of any of the foregoing provisions, the Board of Directors shall remove such director from office.

Nothing contained in this section will affect in any manner whatsoever the

validity of any action taken at any meeting of the Board of Directors.

**SECTION 5. Removal of Directors by Members.**— Regarding the removal of directors by members:

A. Director Removal Petition. Any member may request the removal of one or more Directors for committing any grossly negligent, fraudulent or criminal act or omissions significantly and adversely affecting the Cooperative. For each Director for whom removal is requested, the Member(s) shall deliver to the President or Secretary a dated written petition (“Director Removal Petition”). The petition must provide specific information:

1. Identifying the Director;
2. Explaining the basis for requesting the Director’s removal and specifically setting forth the grossly negligent, fraudulent or criminal act or omission underlying the removal request;
3. Containing the printed names, printed addresses and original and dated signatures of at least ten percent (10%) of the total membership of the Cooperative;
4. Requesting a special member meeting including a statement that the purpose of which is to hear and act upon the charges against the director(s) and if removal of one or more directors results, to elect the successor(s); or
5. Requesting that the matter be acted upon at the next annual meeting if such meeting will be held no sooner than sixty (60) days after the filing of the petition.

The Petition shall be signed by each member in the same name as the member is billed by the Cooperative and shall state the signors address as the same as appears on Cooperative billings to the member.

Each page of the petition, in the upper left corner, shall set forth the document subject, name(s) of the director(s) targeted for removal and the page number: E.g. “Director Removal Petition, Directors John Doe and Jane Doe, page 2”.

Within twenty (20) days following receipt of the petition, the President or the Secretary shall:

1. Forward a copy of the Director Removal Petition to the implicated director(s);
  2. Shall meet with the Board of Directors to review the Director Removal Petition; and
  3. Establish a Member Meeting date not less than thirty (30) and not greater than forty (40) days following a determination that the petition complies with this Bylaw.
- B. Member Meeting: If the Board determines that the Director Removal Petition complies with this Bylaw, then the Cooperative shall send Notice and hold a Member Meeting within sixty (60) days following the filing of the Petition. Notice of the Member Meeting must be given not less than ten (10) days prior to the Meeting and the Notice must state:
1. The date, time and place of the meeting and that a quorum of members must be present in order to carry out the purpose of the meeting;
  2. That the purpose of the special Member Meeting is to consider removing a director or directors;
  3. Evidence shall be presented by the petitioners and by the director(s);
  4. The director(s) shall have an opportunity to be heard in person, by witnesses, by counsel or any combination thereof;

5. The persons bringing the charges shall have the same opportunity and shall be heard first;
  6. The question of removal of a director shall not be voted upon at all unless some evidence in support of the charges is presented during the meeting through oral statements, documents or otherwise by the petitioners;
  7. If more than one director is targeted for removal, the question of removal will be heard separately for each director and shall be considered and voted upon;
  8. Any vacancy created by a removal shall be filled by vote of the members at the Meeting with nominations from the floor allowed;
- C. **Member Quorum:** A member quorum must be present or no action may be taken regarding removal and/or replacement of a director. If a member quorum is present at the Member Meeting, then for each Director named in the Director Removal Petition:
1. If a majority of members present and entitled to vote do so vote to remove a director, then the director is removed effective at the time and date of the member vote;
  2. The members present and entitled to vote may nominate and elect a successor director without complying with the nomination and notice provisions set forth in Section 3 of these Bylaws.
  3. Any successor director nominated and elected must meet the qualifications of a director as set forth in Section 4 of these Bylaws;
  4. The successor director must reside in the same district as the removed director and shall serve the unexpired portion of the removed director's term.

Neither receipt of Director Removal Petition nor the removal of a director affects any action by the Board of Directors. Members may not vote to remove a director by mail ballot. No director may be removed for lawfully opposing or resisting any transfer of Cooperative assets or any dissolution of the Cooperative.

**SECTION 6. Vacancies.** With respect to the filling of vacancies other than by the removal of directors by the members, other than electing directors by regular elections or other than by the creation of a new district, any other vacancy occurring in the Board of Directors shall be filled by the affirmative vote of a majority of the remaining directors for the unexpired portion of the term. A member elected as director to fill a vacancy must reside in the same district as the director whose office was vacated.

**SECTION 7. Compensation.** Directors shall not serve this Association in any other manner or capacity than as a director or officer of the Board of Directors. For such services a director shall be compensated and shall receive reimbursement of any actual travel and out-of-pocket expenses incurred according to the policy established by and upon approval of the Board of Directors.

Except in extreme emergencies no immediate member of a director's family may receive compensation or serve this Association in any capacity without being specifically authorized by a vote of the members.

**SECTION 8. Immediate Member of a Director's Family Defined.** As used in these bylaws, immediate member of a director's family shall mean a person who is related to the principal person, by consanguinity or affinity, to the third degree or less, i. e., that is, a person who is either a spouse, child, grandchild, great grandchild, parent, grandparent, great grandparent, brother, sister, uncle, aunt, nephew or niece, either by blood or in law of the principal.

**ARTICLE V  
MEETINGS OF DIRECTORS**

**SECTION 1. Regular Meetings.** A regular meeting of the Board of Directors shall be held without notice, immediately after, and at the same place as the annual meeting of the members. A regular meeting of the Board of Directors shall also be held monthly at such time and place in Tabor, County of Bon Homme, as the Board of Directors may provide by resolution. Such regular monthly meeting may be held without notice other than such resolution fixing the time and place thereof.

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

**SECTION 3. Notice of Directors' Meetings.** Notice of the date, time, place (or telephone conference call) and purpose or purposes of any special meeting of the Board of Directors shall be delivered to each director not less than seven days previous thereto either personally, by electronic notice or by mail, by or at the direction of the Secretary, or upon a default in duty by the Secretary, by the President or the directors calling the meeting. If mailed, such notice shall be deemed to be given when deposited with the United States Postal Service addressed to the director's address as it appears on the records of the Cooperative, with postage thereon prepaid. The attendance of a director at any meeting of the Board shall constitute a waiver of notice of such meeting unless such attendance shall be for the express purpose of objecting to the transaction of any business, or of one or more items of business, on the ground that the meeting shall not have been lawfully called or convened.

**SECTION 4. Quorum.** A majority of the Board of Directors shall constitute a quorum, provided that if less than such majority of the directors are present at said meeting, a majority of the directors present shall adjourn the meeting. Before adjournment and as the only business to be conducted, those directors present shall set a new meeting time, date and place; further, the Secretary shall notify any absent directors of the date, time and place of the ~~such~~ adjourned meeting, the reason for adjournment and the date, time and place of the new 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 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 of Directors from time to time. The offices of Secretary and Treasurer may be held by the same person.

**SECTION 2. Election and Term of Office.** The officers shall be elected annually by and from the Board of Directors immediately after the annual meeting of the members or as soon thereafter as conveniently may be. If more than one candidate is nominated for an office, such election shall be by ballot.

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 their successor shall have been elected and shall have qualified. A vacancy in any office shall be filled by the Board of Directors for the unexpired portion of the term.

**SECTION 3. Removal of Officers and Agents by the 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 4. 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 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 5. 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 may be assigned by the Board of Directors.

**SECTION 6. Secretary.** The Secretary shall:

- (a) keep or cause to be kept 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 as required by law;
- (c) keep or cause to be kept the corporate records and the seal of this Association and affixing the seal of this Association to all documents, the execution of which on behalf of this Association under its seal, is duly authorized in accordance with the provision of these bylaws;
- (d) keep or cause to be kept a register of the names and post office addresses of all members;
- (e) have general charge of the books of this Association;
- (f) keep or cause to be kept on file at all times a complete copy of the articles of incorporation and bylaws of this Association containing all amendments thereto (which copy shall always be open to the inspection of any members) and at the expense of this Association, forward a copy of the bylaws and all amendments thereto to each 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 by the Board of Directors.

**SECTION 7. Treasurer.** The Treasurer shall:

- (a) have charge and custody of and be responsible for all funds and securities of the Cooperative;
- (b) be responsible for the receipt of and the issuance of receipts for all money due and payable to the Cooperative and for the deposit of all such money in the name of the Cooperative in such bank or banks as shall be selected in accordance with the provisions of these bylaws; and

- (c) in general perform all the duties incident to the office of the Treasurer and such other duties as from time to time may be assigned by the Board of Directors.

**SECTION 8. Delegation of Secretary's and Treasurer's Responsibilities.**

Notwithstanding the duties, responsibilities, and authorities of the Secretary and of the Treasurer hereinbefore provided in Article VI, Section 6 and 7, the Board of Directors by resolution may, except as otherwise limited by statute, delegate, wholly or in part, the responsibility and authority for, and the regular or routine administration of, one or more of each such officer's such duties to one or more agents, other officers or employees of the Cooperative who are not directors. To the extent that the Board does so delegate with respect to any such officer, that officer as such shall be relieved from such duties, responsibilities and authorities.

**SECTION 9. Manager.** The Board of Directors may appoint a manager who may be, but who shall not be required to be a member of the Cooperative. The manager shall perform such duties and shall exercise such authority as the Board of Directors may from time to time vest in the position of manager.

**SECTION 10. Bonds of Officers.** The Treasurer and any other officer or agent of the Cooperative charged with responsibility for the custody of any of its funds or property shall give bond in such sum and with such surety as the Board of Directors shall determine. The Board of Directors in its discretion may also require any other officer, agent or employee of the cooperative to give bond in such amount and with such surety as it shall determine.

**SECTION 11. Compensation.** The powers, duties and compensation of officers, agents and employees shall be fixed by the Board of Directors subject to the provisions of these bylaws with respect to compensation for directors and close relatives of directors. The Cooperative shall indemnify present and former directors, officers, including the General Manager, agents and employees in accordance with and to the fullest extent allowable under S.D. Codified Laws Ann. Section 47-21-21.1. The Cooperative may purchase insurance to cover such indemnification. (See Article IV, Section 8 for definition of "close relative.")

**SECTION 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 the fiscal year.

**ARTICLE VII  
NON-PROFIT OPERATION**

**SECTION 1. Interest or Dividends on Capital Prohibited.** The Cooperative shall at all times be operated on a cooperative non-profit basis for the mutual benefit of its patrons. No interest or dividends shall be paid or payable by the Cooperative on any capital furnished by its patrons.

**SECTION 2. Patronage Capital in Connection with Furnishing Electric Energy.** In the furnishing of electric energy the Cooperative's operations shall be so conducted that all patrons will through their patronage, furnish capital for the Cooperative. The Board of Directors of the Cooperative before allocating and crediting margins to its patrons may, by resolution, provide for the adoption of Margin Stabilization Plans, revenue or expense deferral plans or other plans that provide for the retention of revenues and receipts in excess of those needed to meet current losses and expenses. Reasonable reserves may be created by the Cooperative for the payment of the incremental cost of electric power and energy purchased by the Cooperative for resale to its patrons. Any amounts received by the Cooperative in excess of the funds necessary to provide for the reserves and plans as herein provided and in excess of operating costs and expenses shall be accounted for by the Cooperative on a patronage basis to all its patrons. All such amounts are received with the understanding that they are furnished by the patrons as capital. In order to induce patronage and to assure that the Cooperative will operate on a nonprofit basis, the Cooperative is

obligated to account on a patronage basis to all its members for all the amounts received and receivable from the furnishing of electric energy in excess of operating costs and expenses properly chargeable against the furnishing of electric energy.

The Cooperative is obligated to pay by credits to a capital account for each such patron all such amounts in excess of those funds needed by the Cooperative for the purposes stated herein. The books and records of the Cooperative shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each patron is clearly reflected and credited in an appropriate record to the capital account of each patron, and the Cooperative shall within a reasonable time after the close of the fiscal year notify each patron 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 pursuant of legal obligation to do so and the patron had then furnished the Cooperative corresponding amounts of capital.

All other amounts received by the Cooperative from its operations in excess of costs and expenses shall, insofar as permitted by statute, be (a) used to offset any losses incurred during the current or any prior fiscal year and (b) to the extent not needed for that purpose, 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.

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; PROVIDED, that insofar as gains may at that time be realized from the sale of any appreciated asset, such gains shall be distributed to all persons who were patrons during the period the asset was owned by the Cooperative in proportion to the amount of business done by such patrons during that period, insofar as is practicable, as determined by the Board of Directors 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 patron's accounts may be retired in full or in part. The Board of Directors shall determine the method, basis, priority and order of retirement, if any, for all amounts heretofore and hereafter furnished as capital. Provided further that the Board of Directors shall have the power to adopt rules providing for the separate retirement of that portion of capital credited to the account of the Cooperative by organizations in which the Cooperative is a member.

The Cooperative, before retiring any past, present or future capital credited to any patron's account, shall deduct therefrom, any amount owing by such patron to the Cooperative, not discharged in bankruptcy together with interest thereon at the South Dakota legal rate on judgments in effect when such amount became overdue compounded annually.

Upon the death of any individual Patron or individual former Patron who is a natural person ("Deceased Patron"), but not upon the cessation of existence of any Entity Patron or former Entity Patron, and pursuant to a written request from the Deceased Patron's legal representative, the Board may retire the Deceased Patron's capital credits under terms and conditions agreed upon by the Deceased Patron's legal representative and the Cooperative; provided, however, that the financial condition of the Cooperative will not be impaired thereby. Notwithstanding this provision, in the event of the death of an assignee of an Entity Patron's capital credits, retirement of such re-allocated entity capital credits shall be in accordance with Article 1, Section 6 (d).

The patrons of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the articles of incorporation and bylaws shall constitute and be a contract between the Cooperative and each patron, and both the Cooperative and the patrons are bound by such contract, as fully as though each patron had individually signed a separate instrument containing such terms and provisions. The provisions of this article of the bylaws

shall be called to the attention of each patron of the Cooperative by providing each patron with a copy of the bylaws at the time of application.

**SECTION 3. Assignment and Notification.** Unless otherwise determined by the Board of Directors or provided in the Bylaws, capital credits may be assigned or transferred only upon:

1. A Patron delivering a written assignment or transfer to the Cooperative;
2. The Patron complying with any other reasonable requirement determined by the Board; and
3. The Board approving the assignment or transfer.

All the duties, obligations, liabilities and responsibilities imposed upon the member assigning or transferring his or her capital credits shall be binding upon the assignee or transferee. Assignees and transferees, unless a member in their own right, shall have none of the rights granted by the governing documents to members other than the right to receive retired and refunded capital credits as approved by the Board of Directors.

## **ARTICLE VIII ENCUMBERING OR DISPOSING OF PROPERTY**

**SECTION 1. Encumbering Cooperative Property.** The Board of Directors shall have full power to authorize the execution and delivery of a mortgage or mortgages, or a deed or deeds of trust of, or the pledging or encumbering of any or all of the property, assets, rights, privileges, licenses, franchises and permits of the Cooperative, whether acquired, or to be acquired, and wherever situated, as well as the revenues there-from, all upon such terms and conditions as the Board of Directors shall determine to secure any indebtedness of the Cooperative to the United States of America or any agency or instrumentalities thereof, or any other lender.

The Board of Directors shall also be permitted to enter into agreements, when it deems it advisable, agreeing that should the members vote to sell the Cooperative in accordance with the requirements of Section 2 hereinafter set forth, that said sale be offered at the highest price available first to other East River members, then to East River or Basin Electric through a subsidiary.

**SECTION 2. Other Disposition.** Except as provided in Section 1 of this article, the Cooperative may not sell, lease, or otherwise dispose of all or any substantial portion of its property, unless such sale, lease or other disposition is authorized by affirmative vote of not less than a majority of all members of the Cooperative: members voting thereon must be present and vote in person; provided, however, that notwithstanding any other provisions of this article, or any other provisions of law, the Board of Directors may, upon the authorization of a majority of all members of the Cooperative at a meeting of the members thereof, called for that purpose, sell, lease or otherwise dispose of all or a substantial portion of its property to another cooperative or to the holder or holders of any notes, bonds or other evidences of indebtedness issued to the United States of America or any agency or instrumentality thereof or any other lender.

## **ARTICLE IX SEAL**

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

## **ARTICLE X FINANCIAL TRANSACTIONS**

**SECTION 1. Contracts.** Except as otherwise provided in these bylaws, the Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or

execute and deliver any instrument in the name and on behalf of the Cooperative, and such authority may be general or confined to specific instances.

**SECTION 2. Checks, Drafts, Etc.** All checks, drafts and 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 3. Deposits.** All funds except petty cash of the Cooperative shall be deposited from time to time to the credit of the Cooperative in such bank or banks as the Board of Directors may select.

**SECTION 4. Change in Rates.** Written notices shall be given to the Administrator of the Rural Utilities Service of the United States of America not less than ninety days prior to the date upon which any proposed change in the rates charged by the Cooperative for electric energy becomes effective.

**SECTION 5. Fiscal Year.** 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.

## **ARTICLE XI MISCELLANEOUS**

**SECTION 1. Membership in Other Organizations.** The Cooperative shall not become a member of 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 of Directors, purchase stock in or become a member of any corporation or organization organized on a non-profit basis for the purpose of engaging in or furthering the cause of rural electrification, or of any other organization when in the opinion of the Board of Directors such membership will promote the interest of the Cooperative.

**SECTION 2. Waiver of Notice.** Any member or director may waive in writing any notice of a meeting required to be given by these bylaws, either before or after such meeting. The attendance of a member or director at any meeting shall constitute a waiver of notice of such meeting of such member, or director, except in the event a member or director does attend the meeting for the express purpose of objecting to the transaction of business on the ground that the meeting has not been lawfully called or convened.

**SECTION 3. Rules, Regulations, Rate Schedules and Contracts.** The Board of Directors shall have power to make, adopt, amend, abolish and promulgate such rules, regulations, rate schedules, contracts, security deposits and any other types of deposits, payments or charges, including contributions in aid of construction, not inconsistent with law or the Cooperative's articles of incorporation, the articles of conversion, or bylaws, as it may deem advisable for the management, administration and regulation of the business and affairs of the Cooperative.

**SECTION 4. Accounting System and Reports.** The Board of Directors shall cause to be established and maintained a complete accounting system which, among other things, and subject to applicable laws and rules and regulations of any regulatory body, shall conform to such accounting system as may from time to time be designated by the Administrator of the Rural Utilities Service of the United States of America. The Board of Directors shall also after the close of each fiscal year, cause to be made a full and complete audit of the accounts, books and financial conditions of the Cooperative as of the end of such fiscal year. Such audit reports shall be submitted to the members at the next following annual meeting.

**SECTION 5. Rules of Procedure.** Unless otherwise provided in these bylaws, the rules of parliamentary procedure as provided in Roberts Rules of Order shall govern the conduct of all meetings of the Board of Directors and meeting of members of the Cooperative.

**SECTION 6. Assignment and Gift by Failure to Claim.**

- (a) Notwithstanding any other provisions of the bylaws, if any patron or former patron fails to claim any cash retirement of capital credits or other payment from the Cooperative within six (6) years after payment of the same has been made available by check mailed to the patron or former patron at the last address furnished to the Cooperative, such failure shall constitute an irrevocable assignment and gift to the Cooperative by such member of such capital credit or other payment.
- (b) Failure to claim any such payment within the meaning of this section shall include the failure of such patron or former patron to cash any check mailed by the Cooperative to the last address furnished by the patron or former patron to the Cooperative.
- (c) The assignment and gift provided for under this section shall become effective only upon expiration of six (6) years from the date when such payment was made available to such patron or former patron without claim thereof and only after the further expiration of sixty (60) days following the giving of a Notice by mail or publication that unless such payment is claimed within sixty (60) days, such gift to the Cooperative shall become effective.
- (d) The Notice by mail herein provided shall be one mailed by the Cooperative to such patron or former patron at the last known address. If Notice by publication is given, such publication shall be one insertion in a newspaper circulated in the service area of the Cooperative.
- (e) The sixty (60) day period following the giving of such Notice, either by mail or publication, shall be deemed to terminate sixty (60) days after the mailing or publication of such Notice.

**SECTION 7. Limiting Director Liability.** To the fullest extent permitted by South Dakota Law governing this Cooperative as the same exists or may hereinafter be amended, a director or officer of this Cooperative shall not be personally liable to the Cooperative or its members for monetary damages for breach of fiduciary duty as a director or officer, except for liability:

- (a) for any breach of the director's or officer's duty of loyalty to the cooperative or its members;
- (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- (c) for any violation of Section 47-17-7 of the South Dakota Codified Laws; or
- (d) for any transaction from which the director or officer derived an improper personal benefit.

**ARTICLE XII  
AMENDMENTS**

These bylaws may be altered, amended or repealed by the affirmative vote of not less than a majority of the members present and voting at any regular or special member meeting, except Article VIII Section 2 shall not be altered, amended or repealed unless a majority of all members of the Cooperative are present and vote in favor thereof, and only if the Notice of

such meeting shall have contained a copy of the proposed alteration, amendment or repeal or an accurate summary explanation thereof.

**STATEMENT OF NONDISCRIMINATION**

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

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