

BYLAWS AND ARTICLES OF INCORPORATION
OF THE
OTERO COUNTY ELECTRIC COOPERATIVE, INC.

AMENDED AUGUST 1, 2009

Article I-Membership

SECTION 1. Membership. Any natural person, firm, association, corporation, business, trust, partnership, federal agency, state or political subdivision or agency thereof or any body politic (hereinafter called 'person') located in the area served by Otero County Electric Cooperative, Inc. (hereinafter called the 'Cooperative') may receive electric service as a member of the Cooperative or as a member of the general public, upon request and upon meeting such rules, regulations, practices, acts or requirements from time to time established by the Cooperative relating to the availability and terms of electric service. Unless otherwise specified in the application for electric service, each person shall be deemed to be also an applicant for membership in the Cooperative, agreeing to purchase from the Cooperative electric energy according to the terms of any service agreement by and between such person and the Cooperative and according to rates and service regulations established by the Cooperative in accordance with the Public Utility Act as amended and the Rural Electric Cooperative Act as amended and agreeing to comply with and be bound by the Articles of Incorporation and Bylaws of the Cooperative consistent with said Acts. No person shall become or remain a member of the Cooperative unless such person shall agree to use electric energy furnished by the Cooperative when such electric energy shall be available through its facilities. Membership in the Cooperative shall not be transferable and no person may hold more than one membership in the Cooperative. Upon compliance with the above terms, a person becomes a member of the Cooperative upon receipt of electric service.

SECTION 2. Termination of Membership. Upon the withdrawal, death, cessation of existence or expulsion of a member or if a member shall fail or refuse to use electric energy made available by the Cooperative or if electric energy shall not be made available to such person by the Cooperative within any period after such person shall have become a member as may be specified in the service agreement, the membership of such person shall thereupon terminate. The Board of Trustees of the Cooperative may, by the affirmative vote of not less than two-thirds of all the Trustees, expel any

member who shall have refused or failed to comply with any of the provisions of the Articles of Incorporation, Bylaws, or rules or regulations adopted by the Board of Trustees, but only if such member shall have been given written notice by the Secretary of the Cooperative that such refusal or failure makes him liable to expulsion and such refusal or failure shall have continued for at least ten days after such notice was given. Any expelled member may be reinstated by a majority vote of the Board of Trustees or by a majority vote, after hearing, of the members at any annual or special meeting. Termination of membership in any manner shall not release a member or his estate from any debts due the Cooperative.

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 such members, unless otherwise provided by law.

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

ARTICLE III- Meetings of Members

SECTION 1. Annual Meeting. The Annual meeting of the members shall be held during the month of August of each year, on such date and at such place within the service area of the Cooperative, which the Board of Trustees may select and designate, and shall be designated in the notice of 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 the Board of Trustees, by any three Trustees, by not less than ten per centum of the members, or by the President, and the meeting shall be held at the place as may be designated in the

petition.

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 other than that listed in SECTION 6 of this article 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 the duty by the Secretary, by the persons calling the meeting, to each member. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the Cooperative, with postage thereon prepaid. The failure of any member to receive notice of an annual or special meeting of the members shall not invalidate any action which may be taken by the members at any such meeting.

SECTION 4. Quorum. Three percent of all members present in person shall constitute a quorum for the transaction of business at all meetings of the members. If less than a quorum is present at any meeting, a majority of those present may adjourn the meeting from time to time without further notice.

SECTION 5. Voting. Each member shall be entitled to only one vote. Voting by proxy shall not be allowed. Except for voting on the election of Trustees, all questions shall be decided by a vote of the majority of the members voting thereon in person, except as otherwise provided by law, the Articles of Incorporation, or these Bylaws.

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

ARTICLE IV- Board of Trustees

SECTION 1. Number. The Board of Trustees shall be composed of ten members.

SECTION 2. Qualifications and Tenure of Trustees. The area served by the Cooperative is

hereby divided into five Trustee districts as follows:

Northwest District (NW) encompasses all the area served by the Cooperative North and West of the boundary described hereinafter: Beginning with the 2nd Standard Parallel South, which is the Southern boundary of Township 10 South, and coincides with the Lincoln-Otero County Line, as a Southern limit on the Western side. Follow this line to a point which is the Southeastern Corner of T10S, R12E. From this point go North along the East boundary of R12E to a point that is the Southwest corner of Section 19, T10S, R13E, thence East along the Southern boundaries of Sections 19, 20, 21, 22, 23 and 24, all in T10S, R13E, thence continuing East along the Southern boundaries of Sections 19, 20, 21, 22, 23 and 24, all in T10S, R14E, to a point on the Eastern boundary of Range 14 East which is the Southeast corner of Section 24, T10S, R14E. Thence North along the Eastern boundary of Range 14 East to a point that is the Southeastern corner of T8S, R14E. Thence East along the South boundary of Township 8 South to a point that is the Southeastern corner of T8S, R17E. Thence North along the East boundary of Range 17 East to the Northeastern corner of T6S, R17E where upon the boundary offsets West to the Southeastern corner of T5S, R16E, and continues North along the Eastern boundary of Range 16 East.

Northeast (NE) District encompasses all of the area served by the Cooperative North and East of the boundary described hereinafter: Beginning with the Southern boundary of Township 13 South as a Southern limit on the East side and continue West along this boundary to a point on the Eastern boundary of the Mescalero Apache Indian Reservation that is a common point on the Otero, Chaves, and Lincoln County lines and is also the Southwestern corner of T13S, R17E. Then North along the Western boundary of Range 17 East, which is also the Eastern boundary of the Mescalero Reservation, to a point that is the Southwestern corner of T11S, R17E, and a Northeastern corner of the Mescalero Reservation. Thence West along the Southern boundary of Township 11 South which is also a Northern boundary of the Mescalero Reservation to a point that is the Southwestern corner of T11S, R13E. This is also a point at which the Mescalero Reservation boundary turns North. From this point the district boundary goes North along the Western boundary of Range 13 East to a point that is the Southwest corner of Section 19, T10S, R13E, thence East along the Southern boundaries of Sections 19, 20, 21, 22, 23 and 24, all in T10S, R13E, thence continuing East along the Southern boundaries of Sections 19, 20, 21, 22, 23 and 24, all in T10S, R14E, to a point on the Western boundary of Range 15 East which is the Southeast corner of Section 24, T10S, R14E. Thence North along the Western boundary of Range 15 East to a point that is the Northwestern corner of T9S, R15E. Thence East along the Northern boundary of Township 9 South to

a point that is the Southeast corner of T8S, R17E. Thence North along the Western boundary of Range 18 East to a point that is the Northwestern corner of T6S, R18E, whereupon the boundary offsets West to the Southwestern corner of T5S, R17E and continues North along the Western boundary of Range 17 East.

Central District (CN) encompasses all the area served by the Cooperative within the boundaries described hereinafter: Beginning at a point on the Western boundary of Range 11 East and at the Northwest corner of Section 19, T14S, R11E. Thence South along the Western boundary of Range 11 East to a point that is the Southwest corner of Section 31, T15S, R11E. Thence East along the Third Standard Parallel South that is also the Southern boundary of Township 15 South to a point that is the Northwestern corner of Section 6, T16S, R11E. Thence South along the Western boundary of Range 11 East to a point that is the Southwestern corner of Section 31, T16S, R11E, and is also the Southwestern corner of Township 16 South, Range 11 East. Thence East along the Southern boundary of Township 16 South to a point that is the Southeastern corner of Section 36, T16S, R11E, and is also the Southeastern corner of Township 16 South, Range 11 East. Thence North along the Eastern boundary of Range 11 East to a point that is the Northeastern corner of Section 13, T16S, R11E. Thence East along the Southern boundaries of Sections 7, 8, 9, 10, 11 & 12 all in the T16S, R12E, to a point that is the Southeastern corner of Section 12, T16S, R12E. Thence North along the Eastern boundary of Range 12 East to a point that is the Northeastern corner of T16S, R12E. Thence East along the Third Standard Parallel South that is also the Southern boundary to Township 15 South to a point that is the Southeastern corner of T15S, R13E. Thence North along the Eastern boundary of Range 13 East to a point on the Southern boundary of the Mescalero Apache Indian Reservation that is also the Northeastern corner of Section 24, T15S, R13E. Thence West along the Southern boundary of the Mescalero Reservation to a Southwestern corner of the Mescalero Reservation that is also the Southeastern corner of Section 13, T15S, R11E. Thence North along a Western boundary of the Mescalero Reservation that is also the Eastern boundary of Range 11 East to a point that is the Northeastern corner of Section 24, T14S, R11E. Thence West along the Northern boundaries of Section 24, 23, 22, 21, 20 & 19, all in T14S, R11E, to a point that is the Northwestern Corner of Section 19, T14S, R11E, and is the point of beginning.

Southwest District (SW) encompasses all the area served by the Cooperative South and West of the boundary hereinafter described:

Beginning with the Second Standard Parallel South which is the Northern boundary of Township 11 South and coincides with the Lincoln-Otero County Line, as a Northern limit on the Western side. Follow this line to a point which is the Northeastern corner of T11S, R12E. Thence South along the Eastern boundary of Range 12 East which is also an Eastern boundary of the Mescalero Apache Indian Reservation to a point that is the Northeastern corner of T12S, R12E. Thence East along the Northern boundary of Township 12 South, which is also a Northern boundary of the Mescalero Reservation, to a point which is the Northeastern corner of T12S, R16E and is also a Northeastern corner of the Mescalero Reservation. Thence South along the Eastern boundary of Range 16 East, which is also the Eastern boundary of the Mescalero Reservation, to a point which is the Southeastern corner of Section 13, T15S, R16E, and is also the Southeastern corner of the Mescalero Reservation. Thence West along the Southern boundary of the Mescalero Reservation to a Southwestern corner of the Mescalero Reservation that is also the Southeastern corner of Section 13, T15S, R11E. Thence North along a Western boundary of the Mescalero Reservation that is also the Eastern boundary of Range 11 East to a point that is the Northeastern corner of Section 24, T14S, R11E. Thence West along the Southern boundaries of Sections 13, 14, 15, 16, 17 & 18, all in T14S, R11E, to a point on the Eastern boundary of Range 10 East, which is the Southwestern corner of Section 18, T14S, R11E. Thence South along the Eastern boundary of Range 10 East which is the Southwestern corner of Section 18, T14S, R11E. Thence South along the Eastern boundary of Range 10 East to a point on the Third Standard Parallel South, which is the Southeastern corner of T15S, R10E. Thence East along the Third Standard Parallel South, which is the Northern boundary of Township 16 South, to a point which is the Northeastern corner of Township 16 South, Range 10 East. Thence South along the Eastern boundary of Range 10 East to a point that is the Southwestern corner of Township 16 South, Range 11 East. Thence East along the Northern boundary of Township 17 South to a point that is the Northeastern corner of Section 4, T17S, R11 E. Thence South along the Eastern boundaries of Sections 4, 9, 16, 21, 28, & 33, all in T17S, R11 E, and along the Eastern boundaries of the same sections in all Townships South of this point in Range 11 East.

Southeast District (SE) encompasses all of the area served by the Cooperative South and East of the boundary described hereinafter. Beginning with the northern boundary of Township 14 South as a Northern limit on the East side and continue West along this boundary to a point on the Eastern boundary of the Mescalero Apache Indian Reservation. This is a common point on the Otero, Chaves, and Lincoln County Line and is also the

Northwestern corner of T14S, R17E. Thence South along the Western boundary of Range 17 East, which is also the Eastern boundary of the Mescalero Reservation, to a point that is the Southeastern corner of the Mescalero Reservation and is also the Southeastern corner of Section 13, T15S, R16E. Thence West along the Southern boundary of the Mescalero Reservation to a point on the Western boundary of Range 14 East in Township 15 South that is the Northwest corner of Section 19, T15S, R14E. Thence South along the Western boundary of Range 14 East to a point on the Third Standard Parallel South that is the Southwestern corner of Section 31, T15S, R14E. Thence West along the Third Standard Parallel South that is also the Northern boundary of Township 16 South to a point that is the Northwestern corner of Section 6, T16S, R13E. Thence South along the Western boundary of Range 13 East to a point that is the Northwest corner of Section 18, T16S, R13E. Thence West along the Northern boundaries of Sections 13, 14, 15, 16, 17, & 18 all in T16S, R12E to a point that is the Northeastern corner of Section 13, T16S, R11E. Thence South along the Eastern boundary of Range 11 East to a point that is the Southeastern corner of Section 36, T16S, R11E, and is also the Southeastern corner of Township 16 South, Range 11 East. Thence West along the Southern boundary of Township 16 South to a point that is the Northeastern corner of Section 4, T17S, R11E. Thence South along the Eastern boundaries of Sections 4, 9, 16, 21, 28, & 33 all in T17S, R11E, and along the Eastern boundaries of the same Section in all townships south of this point in Range 11 East.

The Board of Trustees will review the boundaries of the districts prior to the annual meeting in 1994 and will propose at the 1994 annual meeting amendments to the Bylaws to adjust the boundaries of the districts if the Board deems such adjustments necessary. Thereafter, the Board shall consider the boundaries and, if necessary, propose adjustments to the Bylaws at every fifth annual meeting. Two Trustees shall be elected for each district by vote of the members present at the meeting and residing in such district. Trustees shall be elected by a plurality of the votes cast for each Trustee position. In the event of a tie vote, the tie will be broken by the toss of a coin. The ground rules of such a coin toss will be determined by the Chairman of the meeting, who may not be one of the candidates involved in the tie vote. The persons qualified and elected as Trustees shall compose the Board of Trustees until the successors shall have been elected and shall have qualified. If the election of Trustees shall not be held on the day designated herein for the annual meeting or at any adjournment thereof, the incumbent

Trustees shall hold office until the next following annual meeting of the members or until a special meeting of the members shall be held for the purpose of electing the Trustees if such special meeting is called. Trustees shall be elected by districts at each annual meeting of the members beginning with the year of 1981, by and from the members, who serve for three years or until their successors have been elected and shall have qualified with the following exceptions: Trustees at the 1981 annual meeting shall be elected only for the districts of Trustees whose terms will expire in 1981. Trustees whose terms do not expire in 1981 shall continue to serve until their term does expire at which time Trustees shall be elected for those districts. No person shall be eligible to become or remain a Trustee or to hold any position of trust in the Cooperative who:

- (a) is not a member of the Cooperative; or
- (b) is not a bona fide resident of the district for which he is elected; or
- (c) is anyway 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 otherwise have any financial interest in the Cooperative other than as consumer of electric services or one entitled to capital credits or receiving Trustee benefits; or
- (d) is absent from three (3) or more consecutive meetings of the Board of Trustees without having a bona fide reason, said reason to be determined by the remaining Trustees, and any Trustee so removed by and under this SECTION shall be notified by the Board of Trustees; or
- (e) shall refuse or fail to fulfill his or her fiduciary duty to the Cooperative.

Upon establishment of the fact that a Trustee is holding office in violation of any of the foregoing provisions it shall immediately become incumbent upon the Board of Trustees to remove such Trustee from office. Nothing contained in this SECTION shall affect in any manner whatsoever the validity of any action taken at any meeting of the Board of Trustees.

SECTION 3. Nominations. It shall be the duty of the Board of Trustees to appoint not less than thirty days nor more than sixty days before the date of a meeting of the members at which Trustees are to be elected, a committee on nominations consisting of not less than five nor more than eleven members who shall be selected from different sections of the project area so as to insure equitable representation. No member of the Board of Trustees may serve on such committee. The committee shall prepare and post at the principal office of the Cooperative, at least twenty days before the meeting, a list of nominations for Trustees, but any fifteen or more members acting together and

who are bona fide residents of the district for which the nomination is made may make another nomination by petition no less than fifteen days prior to the meeting. The Secretary shall post such nominations at the same place where the list of nominations made by the committee is posted. The Secretary shall mail with the notice of the meeting or separately, but at least seven days before the date of the meeting, a statement of the number of Trustees to be elected and the names and addresses of the candidates, specifying separately the nominations made by the committee on nomination and also the nominations made by petition, if any. Nothing contained herein shall, however, prevent additional nominations from the floor at the Annual Meeting of the Members. Notwithstanding anything contained in this SECTION, failure to comply with any of the provisions of this SECTION shall not affect in any manner whatsoever the validity of any election of Trustee.

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

SECTION 5. Vacancies. Subject to the provisions of these Bylaws with respect to the filling of vacancies caused by the removal of Trustees by the members, a vacancy occurring on the Board of Trustees shall be filled by the affirmative vote of a majority of the remaining Trustees for the unexpired portion of the term of the Trustee in respect of whom the vacancy occurs.

SECTION 6. Compensation. Trustees as such shall not receive any salary for their services, but by resolution of the Board of Trustees a fixed sum and expenses of attendance, if any, may be allowed for attendance at each meeting of the Board of Trustees. No Trustee shall receive compensation for serving the Cooperative in any other capacity, nor shall any close relative of a

Trustee receive compensation for serving the Cooperative, unless specifically authorized by a vote of the members or by two-thirds vote of the Board of Trustees voting and participating other than the Trustee affected. However, the Cooperative shall provide Trustees and their dependents the same medical, health and hospitalization insurance benefits furnished to other Cooperative employees, provided that the Cooperative may only furnish such benefits to the Trustees during the terms in office.

ARTICLE V- Meetings of Trustees

SECTION 1. Regular Meetings. A regular meeting of the Board of Trustees shall be held without notice other than this Bylaw requirement, immediately after and at the same place as, the Annual meeting of the members. A regular meeting of the Board of Trustees shall also be held at such time and place in the State of New Mexico as the Board of Trustees may provide by resolution. Such regular 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 Trustees may be called by the President or by any three Trustees, 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 Trustees calling the meeting shall fix the time and place (which shall be in the State of New Mexico), for the holding of the meeting.

SECTION 3. Notice of Trustees Meetings. Written notice of the time, place and purpose of any special meeting of the Board of Trustees shall be delivered not less than five days previous thereto, either personally or by mail, by or at the direction of the Secretary, or upon a default in duty by the Secretary, by the President of the Trustees calling the meeting, to each Trustee. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Trustee at his address as it appears on the records of the Cooperative, with postage thereon prepaid.

SECTION 4. Quorum. A majority of the Board of Trustees shall constitute a quorum, provided, that if less than such majority of the Trustees is present at said meeting, a majority of the Trustees present may adjourn the meeting from time to time; and provided further, that the Secretary shall notify any absent Trustee of the time and place of such adjourned meeting. The act of the majority of the Trustees present at a meeting at which a quorum is present shall be the act of the Board of Trustees.

ARTICLE VI- Officers

SECTION 1. Number. The officers of the Cooperative shall be a President, Vice President, Secretary and Treasurer. The offices of Secretary and

Treasurer may be held by the same person.

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

SECTION 3. Removal of Officers and Agents. Any officer or agent elected or appointed by the Board of Trustees may be removed by the Board of Trustees 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 by filing such charges in writing with the Secretary, together with a petition signed by ten percent of the members, and request removal of the particular officer by reason thereof. The officer against whom such charges have been brought shall be informed in writing of the charges at least five days prior to the meeting at which the charges are to be considered and shall have an opportunity, at the meeting, to be heard in person or by counsel and to present evidence in respect of the charges; and the person or persons bringing the charges against the Officer shall have the same opportunity. The question of the removal of such officer shall be considered and voted upon at the next regular or special meeting of the members.

SECTION 4. President. The President shall:

(a) be the principal executive officer of the Cooperative and, unless otherwise determined by the members or the Board of Trustees, shall preside at all meetings of the members and the Board of Trustees.

(b) sign, with the Secretary, any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board of Trustees to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board of Trustees 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 Trustees from time to time.

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

SECTION 6. Secretary. The Secretary shall be

responsible for:

(a) keeping the minutes of the meetings of the members and of the Board of Trustees in books provided for that purpose;

(b) seeing that all notices are duly given in accordance with these Bylaws or as required by law;

(c) 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) keeping a register of the names and post office addresses of all members;

(e) keeping on file at all times a complete copy of the Articles of Incorporation and Bylaws of the Cooperative containing all amendments thereto (which copy shall always be open to the inspection of any member) and, at the expense of the Cooperative, furnishing a copy of the Bylaws and of all amendments thereto to any member upon request; and

(f) in general performing all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board of Trustees.

SECTION 7. Treasurer. The Treasurer shall be responsible for:

(a) custody of all funds and securities of the Cooperative;

(b) the receipt 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; and

(c) the general performance of all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board of Trustees.

SECTION 8. Manager. The Board of Trustees may appoint a Manager to perform such duties and exercise such authority as the Board of Trustees may from time to time vest in him.

SECTION 9. 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 be bonded in such sum and with such surety as the Board of Trustees shall determine. The

Board of Trustees in its discretion may also require any other officer, agent or employee of the Cooperative to be bonded in such amount and with surety as it shall determine.

SECTION 10. Compensation. The powers, duties, and compensation of any officers, agents and employees shall be fixed by the Board of Trustees.

SECTION 11. Reports. The officers of the Cooperative shall submit at each annual meeting of the members reports covering the business of the Cooperative for the previous fiscal year. Such reports shall set forth the condition of the Cooperative at the close of such fiscal year.

ARTICLE VII-LIABILITY AND INDEMNIFICATION

SECTION 1. Trustees' Limited Liability. A Trustee shall not be personally liable to the Cooperative or to its members for monetary damages for breach of fiduciary duty as a Trustee unless:

(a) the Trustee has breached or failed to perform the duties of his office in compliance with Section 62-15-9.1, NMSA 1978; and

(b) the breach or failure to perform constitutes willful misconduct or recklessness.

SECTION 2. Officers' and Trustees' Indemnification Subject to SECTIONS 4, 5, and 6 of this Article VII, the Cooperative shall indemnify any person who is or was a Trustee or an elected or appointed Officer of the Cooperative and any person, who, while a Trustee or officer of the Cooperative, is or was serving at the request of the Cooperative as a director, officer, partner, Trustee, employee or agent of another cooperative or of a foreign or domestic corporation or nonprofit corporation, partnership, joint venture, trust, unincorporated association, other incorporated or unincorporated enterprise or employee benefit plan or trust, and who is made a party to any action, suit or proceeding, civil or criminal, by reason of holding or having held such an office or position.

SECTION 3. Employees' and Agents' Indemnification. Subject to SECTIONS 4, 5, and 6 of this Article VII, the Cooperative shall indemnify any person other than a Trustee or an Officer acting as such who has or had an employment or agency relationship with the Cooperative and who is made party to any action, suit or proceeding, civil or criminal, by reason of serving during the course of such relationship, including service at the request of the Cooperative as a director, officer, partner, Trustee, employee or agent of another cooperative or of a foreign or domestic corporation or nonprofit corporation, partnership, joint venture, trust, unincorporated association, other incorporated or unincorporated

enterprise or employee benefit plan or trust.

SECTION 4. Indemnification Disqualification. The Trustee, Officer or other person shall not be indemnified if they shall be adjudged to be liable on the basis that they breached or failed to perform the duties of his office or position and the breach or failure to perform constitutes willful misconduct or recklessness. The Trustee, Officer or other person shall, further, not be indemnified in respect to any proceeding charging improper personal benefit to him, whether or not involving action in their official capacity, in which he shall have been adjudged to be liable on the basis that personal benefit was improperly received.

There shall be no indemnification of a person, other than a Trustee, unless the board of Trustees finds that the indemnitee:

(a) acted in good faith;

(b) reasonably believed that he was acting in the course of his office, employment or agency and in a manner to be in or at least not opposed to the best interests of the Cooperative; and

(c) in the case of any criminal proceeding, had no reasonable cause to believe the person's conduct was unlawful. Termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, be determinative that the person is disqualified from receiving indemnification.

SECTION 5. Indemnification Amount. Indemnification shall, pursuant to SECTION 2, and may, pursuant to SECTION 3, be made against judgments, penalties, fines, settlements, and compromises, cost and expenses, including attorney's fees, reasonably incurred by or on behalf of the indemnitee in connection with the defense of such proceeding. Reasonable expenses incurred by a Trustee, officer or other person who is a party to a proceeding may be paid or reimbursed by the Cooperative in advance of the final disposition of such proceeding if:

(a) such person furnished the Cooperative a written affirmation of his good faith belief that he is not disqualified from receiving indemnification under SECTION 4 of this Article VII;

(b) such persons furnished the cooperative a written undertaking by or on behalf of the person to repay such amount if it shall ultimately be determined that he is disqualified or, in the case of a person other than a Trustee or an Officer acting as such, not fully indemnified in the board of Trustee's discretion; and

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

SECTION 6. Indemnification Procedure. No indemnification under SECTIONS 2 and 3 shall be made unless authorized in the specific case after a determination has been made that indemnification is

permissible in accordance with the Rural Electric Cooperative Act and this Article VII. Such determination shall be made:

(a) by the board of Trustees by a majority vote of a quorum of Trustees not at the time parties to the proceeding;

(b) if such a quorum cannot be attained, by a majority vote of a committee of the board of Trustees duly designated to act in the matter by a majority vote of the Board of Trustees, in which designated Trustees who are parties may participate, and consisting solely of two or more Trustees not at the time parties to the proceeding.

(c) by special legal counsel, selected by the board of Trustees or a committee thereof by vote as set forth in paragraph (a) or (b) of this SECTION 6 or, if the requisite quorum of the full board of Trustees cannot be obtained therefore and such committee cannot be established, by a majority vote of the full board of Trustees, in which selection Trustees who are parties may participate; or

(d) pursuant to a resolution of a majority of the members present and voting at any Annual or Special meeting. Authorization of indemnification and determination as to the amount shall be made in the same manner as the permissibility determination, except that if the permissibility determination is made by a special legal counsel, authorization and amount determination shall be made in a manner specified in sub-section (c) of this SECTION 6 for the selection of such counsel.

SECTION 7. Employee Benefit Plans. For the purpose of this Article VII, the Cooperative shall be deemed to have requested a person to serve as a director, Trustee, employee or agent of an employee benefit plan or trust whenever the performance of his duties to the Cooperative also imposes duties of him or otherwise involves his services to the plan or trust or the participants or beneficiaries of the plan or trust; excise taxes assessed on him with respect to an employee benefit plan or trust pursuant to applicable law shall be deemed "fines"; and action taken or omitted with respect to an employee benefit plan or trust in the performance of duties for a purpose reasonably believed to be in the interest of the participants and beneficiaries of the plan or trust shall be deemed to be for a purpose which is not opposed to the best interests of the Cooperative and to be neither willful misconduct or reckless.

SECTION 8. Insurance and Similar Protection. The board of Trustees may purchase and maintain insurance or furnish similar protection, including but not limited to providing a trust fund, a letter of credit or self-insurance, on behalf of any person who is or was a Trustee, officer, employee or agent of the Cooperative or who, while a Trustee,

Officer, employee or agent of the Cooperative, is or was serving at the request of the Cooperative as a director, Officer, partner, Trustee, employee or agent of another cooperative or a foreign or domestic corporation, partnership, joint venture, trust, unincorporated association, other incorporated or unincorporated enterprise or employee benefit plan or trust, against any liability asserted against and incurred by the person in such capacity or arising out of that person's status as such, whether or not the Cooperative could indemnify the person against such liability under the provisions of this Article VII.

SECTION 9. Non-Exclusive. The indemnification authorized by this Article VII shall not be deemed exclusive of any other rights to which these seeking indemnification may be entitled under an agreement approved by the board of Trustees, a resolution of the members or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office or position, and shall continue as to a person who has ceased to be a Trustee, officer, employee or agent and inure to the benefit of his personal representatives and heirs.

ARTICLE VIII: Non Profit Operations

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 allocated in connection with the furnishing of electric energy. In the furnishing of electric energy, the Cooperative's operations shall be so conducted that all patrons, members and non-members alike, will, through their patronage, furnish capital for the Cooperative. In order to induce patronage and to assure that the Cooperative will operate on a non-profit basis, the Cooperative is obligated to account on a patronage basis to all its patrons for all amounts received and receivable from the furnishings of electric energy in excess of operating costs and expenses properly chargeable against the furnishing of electric energy. All such amounts in excess of operating costs and expenses at the moment of receipt by the Cooperative are received with the understanding that they are furnished by the patrons as capital. The Cooperative is obligated to pay by credits to a capital account for each patron all such amounts in excess of operating costs and expenses. The books and records of the Cooperative shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each 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 his 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. All other amounts received by the Cooperative from its operation in excess of costs and expenses shall, insofar as permitted by law, be (a) used to offset any losses incurred during the current or any prior fiscal year and (b) to the extent not needed for that purpose, allocated to its patrons on an electric energy patronage basis and any amount so allocated shall be included as a 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 with priority on a pro rata basis before any payments are made on account of property rights of members. If, at any time prior to dissolution or liquidation, the Board of Trustees shall determine that the financial condition of the Cooperative will not be impaired thereby, the capital then credited to patrons' accounts may be retired in full or in part. Any such retirements of capital shall be made at such times in such amounts, and in such manner as the Board of Trustees may, from time to time, determine and prescribe, subject, however, to the security provisions of outstanding loan documents of the corporation and to the rules, regulations and restrictions promulgated by the Rural Utility Services. Capital credited to the account of each patron shall be assignable only on the books of the Cooperative pursuant to written instructions from the assignor and only to successors in interest or successors in occupancy in all or a part of such patrons' premises served by the Cooperative unless the Board of Trustees, acting under policies of general application, shall determine otherwise. 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 posting in a conspicuous place in the Cooperative's office.

SECTION 3. Pursuant to 7-8-6, N.M.S.A. 1978 Comp., any unclaimed capital credit payments to patrons shall be used for educational scholarships of members or their immediate families or for such other charitable uses as determined by the Board of Trustees. The Board of Trustees shall provide for the management and distribution of the unclaimed capital credit payments which shall include the authority to set up educational and charitable trusts as the Board of Trustees may deem appropriate.

A patron shall be deemed to have made an irrevocable gift to the Cooperative of the patron's capital credit payment if the patron fails to claim the capital credit payment within two years after the Cooperative has mailed, postage pre-paid, to the last known address of the patron as furnished to the Cooperative. Any gifts of capital credit of this provision shall be used for educational and charitable purposes as set forth in this SECTION.

ARTICLE IX- Disposition or Encumbrance of Property.

SECTION 1. The Cooperative may not sell or otherwise dispose of all, or any substantial portion of its property, unless such sale is authorized at a meeting of the members thereof by the affirmative vote of not less than two-thirds of all the members of the Cooperative and unless the notice of such sale shall have been contained in the notice of the meeting.

SECTION 2. The Board of Trustees of the Cooperative, without authorization by the members thereof, shall have full power and authority to 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, as well as the revenues and income there from, or upon such terms and conditions as the Board of Trustees determine, to secure any indebtedness of the Cooperative.

ARTICLE X- Financial Transactions

SECTION 1. Contracts. Except as otherwise provided in these Bylaws, the Board of Trustees 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. Except as otherwise provided by law or in these Bylaws, all checks, drafts or other orders for the payment of money, and all notes, bonds or other evidences of indebtedness issued in the name of the Cooperative shall be signed by such officer, officers, agent or

agents of the Cooperative and in such manner as shall from time to time be determined by resolution of the Board of Trustees.

SECTION 3. Deposits. All funds of the Cooperative shall be deposited from time to time to the credit of the Cooperative in such bank or banks as the Board of Trustees may select.

SECTION 4. Fiscal Year. The fiscal year of the Cooperative shall begin on the first day of January of each year and end on the thirty-first day of December of the same year.

ARTICLE XI- Miscellaneous

SECTION 1. Waiver of Notice. Any member or Trustee may waive in writing, any notice of a meeting required to be given by these Bylaws. The attendance of a member or Trustee at any such meeting shall constitute a waiver of notice of such meeting by such member or Trustee, except in case a member or Trustee shall attend a meeting for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

SECTION 2. Rules and Regulations. The Board of Trustees shall have power to make and adopt such rules and regulations, not inconsistent with law, the Articles of Incorporation or these Bylaws, as it may deem advisable for the management, administration and regulation of the business and affairs of the Cooperative.

SECTION 3. Accounting System and Reports. The Board of Trustees 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 Electrification Administration of the United States of America. The Board of Trustees shall also, after the close of each fiscal year, cause to be made by a Certified Public Accountant a full and complete audit of the accounts, books and financial condition of the Cooperative as of the end of such fiscal year. A report of such audit shall be submitted to the members at the next following annual meeting.

SECTION 4. Seal. The corporate seal of the Cooperative shall be in the form of a circle and shall have inscribed thereon the name of the Cooperative and the words 'Corporate Seal, New Mexico'.

SECTION 5. Board Committees. The board of Trustees may create committees consisting partially or wholly of others than Trustees and, by resolution adopted by a majority of its full

membership, designated from among its members one or more board committees, including an executive committee. The Board of Trustees shall, from time to time, designate the authority of any such committee except that no such committee shall have authority to take any action on behalf of the board of Trustees to retire the capital credited to members' accounts or in any matter which, under the Articles of Incorporation, these Bylaws or the Rural Electric Cooperative Act, requires the members' approval, such as merger, consolidation, dissolution or the disposition of all or any substantial portion of the Cooperative's property (other than encumbrances to secure the Cooperatives indebtedness).

SECTION 6. enchantment. The Board of Trustees is authorized to subscribe to enchantment magazine for the individual consumers of the Cooperative at an annual subscription rate of between \$4.00 to \$8.00, and such subscription shall be paid by the Cooperative's members through the electric rates as would any other expense of the Cooperative.

ARTICLE XII- Amendments

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

NOTE: The original Bylaws were adopted at the first meeting of the Board of Trustees held on the 18th day of October, 1939, and portions of the Bylaws have been amended at the Annual meetings of the membership from time to time through the years since 1939.

ARTICLES OF INCORPORATION

OTERO COUNTY ELECTRIC COOPERATIVE, INC

State of New Mexico Certificate of Filing

United States of America)
)ss.
STATE OF NEW MEXICO)

ARTICLES OF INCORPORATION

OF

Otero County Electric Cooperative, Inc., executed pursuant to Rural Electric Cooperative Act, Senate Bill No.26 of the 1939 Laws of New Mexico.

It is hereby certified, that there was filed for record in the office of the State Corporation Commission of the State of New Mexico on the Sixteenth day of October, A.D. 1939, at 9:00 A.M.

We, the undersigned, do hereby execute the within articles for the purpose of organizing a cooperative, non-profit, membership corporation (herein designated as the 'Cooperative') under the laws of the State of New Mexico pursuant to An Act authorizing the creation and incorporation of electric cooperative, non-profit, membership corporation to engage in rural electrification, etc., approved March 3, 1939, and known as the Rural Electric Cooperative Act.

**Articles of Incorporation
of
Otero County Electric Cooperative, Inc.**

FIRST, the name of the Cooperative is Otero County Electric Cooperative, Inc.
SECOND, the address of the principal office of the Cooperative is Cloudcroft, New Mexico.
THIRD, the names and addresses of the incorporators of the Cooperative are (Names and addresses omitted.)
FOURTH, the names and addresses of the persons who shall constitute the first Board of Trustees of the Cooperative are: (Names and addresses omitted).

WHEREFORE: The incorporators named in said Articles of Incorporation and who have signed the same, and their successors and assigns are hereby declared to be from this date until perpetuity, a corporation by the name and for the purpose set forth in said Article.

IN WITNESS WHEREOF, we have set our hands this 9th day of October, 1939.

(21763)

IN TESTIMONY WHEREOF, the State Corporation Commission of the State of New Mexico has caused this certificate to be signed by its Chairman and the seal of said Commission to be affixed at the City of Santa Fe on this Sixteenth day of October, A.D. 1939.

- (s) Ray Daniels
- (s) L. A. Hendriz
- (s) John J. Mershon
- (s) Charles Bell
- (s) Mrs. Ora Swope
- (s) J. M. Walker
- (s) Bryan Runyan
- (s) M. D. Brantley
- (s) Mrs. A. L. Cleve

(s) Robert Valdez Chairman

(SEAL OF STATE CORPORATION COMMISSION

OF NEW MEXICO)

Attest:

(s) Cosme R. Garcia, Clerk