

## ARTICLE 15

### Rural Electric Cooperatives

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#### **62-15-1. Short title.**

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Chapter 62, Article 15 NMSA 1978 may be cited as the "Rural Electric Cooperative Act".

**History:** Laws 1939, ch. 47, § 1; 1941 Comp., § 48-401; 1953 Comp., § 45-4-1; Laws 1998, ch. 108, § 49.

**Cross references.** — For jurisdiction of public service commission over rural electric cooperatives, see 62-3-2, 62-3-3 and 62-15-32 NMSA 1978 and notes thereto.

**The 1998 amendment,** effective January 1, 1999, substituted "Chapter 62, Article 15 NMSA 1978" for "This Act" near the beginning of the section.

**Cooperatives are subject to highway and street regulations.** — Rural electrification cooperatives are subject to the same regulations by the highway commission and the county or municipality for the use of rights-of-way as any other public utility, and would be subject to the penal features of 67-8-13 and 67-8-14 NMSA 1978. 1951-52 Op. Att'y Gen. No. 5624.

**Public service commission (now public utility commission) was not required to delineate an electric cooperative's service area** where part of its system was in an area previously certificated to another utility. *Lea County Elec. Coop. v. New Mexico Pub. Serv. Comm'n*, 75 N.M. 191, 402 P.2d 377 (1965), cert. denied, 385 U.S. 969, 87 S. Ct. 503, 17 L. Ed. 2d 433 (1966).

**Premature action.** — Action by cooperative seeking to enjoin municipality from acquiring electric distribution and transmission lines outside of corporate limits where the cooperative held a prior franchise was brought prematurely since it did not yet own plant or transmission lines and could not show basis for relief in equity. *Sierra Elec. Coop. v. Town of Hot Springs*, 51 N.M. 150, 180 P.2d 244 (1947).

**Law reviews.** — For note, "Corporate Law - Formulating and Applying a 'Proper Purpose' Analysis to a Books and Records Inspection Request - *Schein v. Northern Rio Arriba Electric Cooperative, Inc.*," see 28 N.M.L. Rev. 133 (1998).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations §§ 1, 4 to 9, 11 to 13, 49.

Duty of mutual association, nonprofit organization or cooperative to furnish utility services, 56 A.L.R.2d 413.

Validity and enforceability of bylaw amendment reducing benefits available to members, 61 A.L.R.3d 976.

Competency of juror as affected by his membership in cooperative association interested in the case, 69 A.L.R.3d 1296.

Liability of electric utility to nonpatron for interruption or failure of power, 54 A.L.R.4th 667.

3 C.J.S. Agriculture §§ 138 to 158; 43 C.J.S. Industrial Cooperative Societies §§ 1, 3.

### **62-15-2. Purpose; definition.**

Cooperative nonprofit membership corporations may be organized under the Rural Electric Cooperative Act [62-15-1 NMSA 1978] for the primary purpose of supplying electric power and energy and promoting and extending the use of electricity in rural areas. Corporations organized under that act and corporations which become subject to that act in the manner provided in that

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act and for the purposes of Sections 62-15-13, 62-15-14, 62-15-15 and 62-15-19 NMSA 1978, corporations organized on a nonprofit or cooperative basis under the laws of another state for the primary purpose of supplying electric power or energy are referred to in the Rural Electric Cooperative Act as "cooperatives".

**History:** Laws 1939, ch. 47, § 2; 1941 Comp., § 48-402; 1953 Comp., § 45-4-2; Laws 1987, ch. 36, § 1; 1998, ch. 46, § 1.

**The 1987 amendment**, effective June 19, 1987, in the first sentence substituted "primary purpose of supplying electric power and energy" for "purpose of supplying electric energy," and made minor changes in language and punctuation throughout the section.

**The 1998 amendment**, effective March 6, 1998, inserted "and for the purposes of Sections 62-15-13, 62-15-14, 62-15-15 and 62-15-19 NMSA 1978, corporations organized on a nonprofit or cooperative basis under the laws of another state for the primary purpose of supplying electric power or energy" in the second sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations § 4.

### **62-15-3. Powers.**

A cooperative shall have power to:

- A. sue and be sued, complain and defend, in its corporate name;
- B. have perpetual existence by its corporate name;
- C. adopt a corporate seal and alter the same at pleasure, and to use the seal by causing it or a facsimile of it to be impressed or affixed or in any other manner reproduced; but failure to have or to affix a corporate seal does not affect the validity of any instrument or any action taken in pursuance of or in reliance on any instrument;
- D. own, operate, lease or control plant, property and facilities for the generation, transmission or distribution, sale or furnishing of electricity for light, heat or power or other uses; and to generate, manufacture, purchase, acquire, accumulate and transmit electric energy; and to distribute, sell, supply and dispose of electric energy in rural areas to or for its members, governmental agencies and political subdivisions and the general public;
- E. make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, wiring their premises and installing electric and plumbing fixtures, appliances, apparatus and equipment of any kind and character; and in connection therewith to purchase, acquire, lease, sell, distribute, install and repair such electric and plumbing fixtures, appliances, apparatus and equipment; and to accept or otherwise acquire and to sell, assign, transfer, endorse, pledge, hypothecate and otherwise dispose of notes, bonds and other evidences of indebtedness and any type of security therefor; and to lend money for its corporate purposes, invest and reinvest its funds; and to take and hold real and personal property as security for the payment of funds so loaned or invested;
- F. make loans to persons to whom electric energy is or will be supplied by the

cooperative for the purpose of, and otherwise to assist such persons in, constructing, maintaining and operating electric refrigeration plants;

G. purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, exercise rights arising out of the ownership or possession thereof, use, employ, sell, assign, transfer, convey, mortgage, lend, pledge, hypothecate or otherwise dispose of and otherwise use and deal in and with shares, rights, memberships or other interests in, or notes, bonds, debentures, mortgages, passbooks, certificates of deposit or other obligations of, other domestic or foreign corporations, associations, partnerships, limited partnerships or individuals, or direct or indirect obligations or securities of individuals, associations, cooperatives, partnerships, corporations or of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof;

H. construct, purchase, take, receive, lease as lessee or otherwise acquire, and to own, hold, improve, use, equip, maintain and operate, and to sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, property, buildings, structures, dams, plants and equipment and any kind and class of real or personal property which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;

I. purchase or otherwise acquire, and to own, hold, use and exercise, and to sell, assign, transfer, convey, mortgage, pledge, hypothecate or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way and easements;

J. make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the board of trustees shall determine and otherwise contract indebtedness, and to issue its notes, bonds and other evidences of indebtedness therefor, and to secure the payment of any thereof by mortgage, pledge, deed of trust, assignment, security agreement or any other hypothecation or encumbrance upon any or all of its then-owned or after-acquired real or personal property, assets, franchises, revenues or income;

K. construct, maintain and operate electric transmission and distribution lines along, upon, under and across all public thoroughfares, including without limitation all roads, highways, streets, alleys and bridges, and upon, under and across all publicly owned property;

L. exercise the power of eminent domain in the manner provided by the Eminent Domain Code [42A-1-1 NMSA 1978] for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems;

M. conduct its business, carry on its operations, have offices and exercise the powers granted by the Rural Electric Cooperative Act [62-15-1 NMSA 1978] in any state, territory, district or possession of the United States or in any foreign country;

N. adopt, amend and repeal bylaws consistent with the Rural Electric Cooperative Act and the Public Utility Act [62-13-1 NMSA 1978];

O. make donations for the public welfare or for charitable, scientific or educational

purposes, and in time of war to make donations in aid of war activities;

P. transact any lawful business in aid of governmental policy;

Q. subject to any limitations set forth in the articles of incorporation or bylaws, do such other and further acts and undertake such other and further activities and transactions for the mutual benefit of its members and patrons as may be done and undertaken by a corporation organized under the Business Corporation Act [53-11-1 NMSA 1978] for the same or any additional lawful purpose, including the indemnification of and the procurement of insurance for present and former trustees, officers, employees and agents of the cooperative as if trustees and members were directors and shareholders respectively;

R. pay pensions and establish pension plans, pension trusts, bonus plans, health insurance plans, savings plans and any other incentive plans or employee relation plans customarily used by broadly held corporations for its trustees, officers and employees, or for its employees alone;

S. cease its corporate activities and surrender its corporate franchise; and

T. do and perform all other acts and things and have and exercise all other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized, to effectuate the powers set forth in this section and to accept all the burdens and exercise all the benefits which apply to public utilities under the laws of New Mexico.

**History:** Laws 1939, ch. 47, § 3; 1941 Comp., § 48-403; 1953 Comp., § 45-4-3; Laws 1967, ch. 102, § 2; 1971, ch. 8, § 1; 1981, ch. 125, § 51; 1987, ch. 36, § 2.

**Cross references.** — For excavation damage to pipelines and underground utility lines, see 62-14-1 to 62-14-8 NMSA 1978.

**The 1987 amendment,** effective June 19, 1987, in Subsection P, substituted the present provisions for "in time of war transact any lawful business in aid of the United States in the prosecution of the war"; substituted the present provisions of Subsection Q for the provisions set out in the 1984 Replacement Pamphlet; and made minor changes in language and punctuation throughout the section.

**Scope of service.** — Prior to the 1967 amendment to Subsection D, a rural electric cooperative could only supply electric energy to its members, to governmental agencies and political subdivisions and to other persons not in excess of 10% of the number of its members. *Socorro Elec. Coop. v. Public Serv. Co.*, 66 N.M. 343, 348 P.2d 88 (1959).

**Powers of county commissioners over use of roads by utilities.** — See 1973 Op. Att'y Gen. No. 73-26.

**Power of eminent domain.** — A corporation organized for the primary purpose of supplying electric power or energy to rural areas on a cooperative basis, although organized under the laws of another state and resulting from an interstate merger, is a rural electric cooperative under the Rural Electric Cooperative Act, and thus has the power of eminent domain under 62-15-14 NMSA 1978. *Tri-State Generation & Transmission Ass'n. v. King*, 2003-NMSC-029, 134 N.M. 467, 78 P.3d 1226.

**Premature action.** — Action by cooperative seeking to enjoin municipality from acquiring electric

distribution and transmission lines outside of corporate limits where cooperative held prior franchise was brought prematurely since it did not yet own plant or transmission lines and could not show basis for equitable relief. *Sierra Elec. Coop., Inc. v. Town of Hot Springs*, 51 N.M. 150, 180 P.2d 244 (1947).

**Law reviews.** — For article, "Statutory Adoption of Several Liability in New Mexico: A Commentary and Quasi-Legislative History," see 18 N.M.L. Rev. 483 (1988).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations §§ 30 to 32.  
43 C.J.S. Industrial Cooperative Societies §§ 5, 6.

### **62-15-3.1. Subsidiary business activities.**

A. Cooperatives may form, organize, acquire, hold, dispose of and operate any interest up to and including full controlling interest in separate business entities that provide energy services and products and telecommunications and communications services and products, including cable and satellite television and water and wastewater collection and treatment, without prior approval from the public regulation commission so long as those other business entities meet all of the following conditions:

(1) the subsidiary is not financed with loans from the federal rural utilities service of the United States department of agriculture or the United States department of agriculture or with similar financing from any successor agency. This limitation shall not apply to rural utilities service loans or United States department of agriculture loans, or loans from successor agencies, to the extent the loan is to be used for a purpose authorized by the lending agency;

(2) the subsidiary fully compensates the cooperative for the use of personnel, services, equipment, tangible property and the cooperative's fully distributed costs, including all direct and indirect costs and the cost of capital incurred in providing the personnel, services, equipment or tangible property in question;

(3) the total investments, loans, guarantees and pledges of assets of a cooperative in all of its subsidiaries shall not exceed twenty percent of the cooperative's assets; and

(4) the subsidiary agrees to not offer any service or product to the public until it has obtained federal and state regulatory approvals, if any, required to provide the service or product to the public.

B. A director, or spouse of a director, of a cooperative may not be employed or have any financial interest in a separate business entity formed, organized, acquired, held or operated by that cooperative pursuant to the provisions of this section.

C. Should the public regulation commission, upon complaint showing reasonable grounds for investigation, find after investigation and public hearing that the charges for the transactions between the cooperative and other business entity do not conform with the provisions of this section, the public regulation commission is authorized to direct the cooperative to adjust those charges to comply with the provisions of this section. If the cooperative does not comply with the public regulation commission's directive, the public regulation commission is authorized to

direct the cooperative to divest its interest in the other business entity. For purposes of enforcing this section, members of the public regulation commission, and the public regulation commission staff, are authorized to inspect the books and records of such other business entities and the cooperatives, provided that proprietary or confidential data or information of the separate business entities shall not be disclosed to a third party. The public regulation commission shall adopt rules and reporting requirements to enforce the provisions of this section.

D. Nothing in this section grants the public regulation commission the power to regulate a generation and transmission cooperative referred to in Section 62-6-4 NMSA 1978.

**History:** Laws 2003, ch. 416, § 1.

**Effective dates.** — Laws 2003, ch. 416, § 6 makes the act effective on July 1, 2003.

#### **62-15-4. Name.**

The name of each cooperative shall include the words "electric" and "cooperative," and the abbreviation "Inc.," provided, however, such limitation shall not apply if, in an affidavit made by the president or vice president of a cooperative and filed with the state corporation commission [public regulation commission], it shall appear that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name. The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of, or authorized to transact business in, this state. The words "electric" and "cooperative" shall not both be used in the name of any corporation organized under the laws of, or authorized to transact business in, this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of this act [62-15-1 to 62-15-32 NMSA 1978].

**History:** Laws 1939, ch. 47, § 4; 1941 Comp., § 48-404; 1953 Comp., § 45-4-4.

**Cross references.** — For references to state corporation commission now being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations §§ 5 to 9.  
43 C.J.S. Industrial Cooperative Societies § 4.

#### **62-15-5. Incorporators.**

Five or more natural persons, or two or more cooperatives, may organize a cooperative in the manner hereinafter provided.

**History:** Laws 1939, ch. 47, § 5; 1941 Comp., § 48-405; 1953 Comp., § 45-4-5.

#### **62-15-6. Articles of incorporation.**

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A. The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this act [62-15-1 to 62-15-32 NMSA 1978], shall be signed and acknowledged by each of the incorporators and shall state:

- (1) the name of the cooperative;
- (2) the address of its principal office;
- (3) the names and addresses of the incorporators;
- (4) the names and addresses of the persons who shall constitute its first board of trustees; and
- (5) any provisions not inconsistent with this act deemed necessary or advisable for the conduct of its business and affairs.

B. Such articles of incorporation shall be submitted to the state corporation commission [public regulation commission] for filing as provided in this act.

C. It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this act.

**History:** Laws 1939, ch. 47, § 6; 1941 Comp., § 48-406; 1953 Comp., § 45-4-6.

**Cross references.** — For references to state corporation commission now being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations § 1.

43 C.J.S. Industrial Cooperative Societies § 3.

### **62-15-7. Bylaws.**

The original bylaws of a cooperative shall be adopted by its board of trustees. Thereafter bylaws shall be adopted, amended or repealed by the majority of the members present at any regular annual meeting or special meeting called for that purpose, a quorum being present. The bylaws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this act [62-15-1 to 62-15-32 NMSA 1978] or with its articles of incorporation.

**History:** Laws 1939, ch. 47, § 7; 1941 Comp., § 48-407; 1953 Comp., § 45-4-7; Laws 1957, ch. 97, § 1.

**Bylaws may be amended by vote at district meetings.** — A rural electric cooperative may provide for the amendment of its bylaws by a vote taken at a series of meetings of voting districts rather than at a general meeting of all the members, but, in so doing, it cannot take away the power of the majority of members to adopt, amend or repeal the bylaws. 1961-62 Op. Att'y Gen. No. 61-62.

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It is legal to provide for the amendment of bylaws by a majority vote of the members voting by districts, rather than at a general meeting of all the members. This interpretation does no violence to this section, since it mentions "regular annual meeting," and does not exclude a regular annual meeting or special meeting of a voting district. The interpretation is supported by the liberal construction required to be given these statutes under 62-15-32 NMSA 1978. 1961-62 Op. Att'y Gen. No. 61-62.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations §§ 13 to 15, 21.

43 C.J.S. Industrial Cooperative Societies §§ 3 to 5, 7 to 11.

### **62-15-8. Members.**

A. No person who is not an incorporator shall become a member of a cooperative unless he agrees to use electric energy furnished by the cooperative when electric energy is available through its facilities. The bylaws of a cooperative may provide that any person, including an incorporator, shall cease to be a member of a cooperative if he fails or refuses to use electric energy made available by the cooperative or if the electric energy is not made available to that person by the cooperative within a specified time after he becomes a member of the cooperative. Membership in the cooperative shall not be transferable except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect of membership.

B. An annual meeting of the members shall be held at such time as shall be provided in the bylaws or, if not contrary to the bylaws, by the board of trustees.

C. Special meetings of the members may be called by the board of trustees, by any three trustees, by petition signed by not less than ten percent of the members or by the president.

D. Annual and special meetings of members whether general or by voting districts established pursuant to the Rural Electric Cooperative Act [62-15-1 NMSA 1978], shall be held at such place as may be provided in the bylaws. In the absence of any such provision, all general meetings shall be held in the city or town in which the principal office of the cooperative is located and all meetings by voting districts shall be held at a location set by the board of trustees within the boundaries of each district.

E. Except as otherwise provided in the Rural Electric Cooperative Act, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose for which the meeting is called shall be given to each member by the board of trustees or the secretary, or their legal representatives, either personally or by mail not less than ten or more than twenty-five days before the date of the meeting. Failure to receive notice deposited in the mail addressed to a member at the member's address shown on the cooperative's books and records shall not affect the validity of any business conducted at a meeting.

F. Five percent of all members present in person constitutes a quorum for the transaction of business at all meetings of the members, unless the bylaws prescribe the presence of a greater or lesser number of members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further

notice. The failure to hold a meeting of members due to the absence of a quorum shall not affect the validity of any business conducted by the board of trustees.

G. Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person; provided that if the bylaws provide for voting by proxy or by mail, the bylaws shall prescribe the conditions under which proxy or mail voting shall be exercised. No person shall vote as proxy for more than three members at any meeting of the members.

H. All actions required by the Rural Electric Cooperative Act to be adopted or approved by a simple majority or greater number of members voting on the action at an annual or special meeting may be acted upon by voting at a general meeting or, to the extent and in the manner that the board of trustees may authorize, by voting by the voting districts established pursuant to that act, so long as the requisite majority of members voting on the action is obtained regardless of whether such a majority is obtained in any particular voting district. Action by voting by the voting districts shall be valid if a quorum exists as a result of a series of voting district meetings regardless of whether a quorum is present in any particular voting district.

**History:** Laws 1939, ch. 47, § 8; 1941 Comp., § 48-408; 1953 Comp., § 45-4-8; Laws 1961, ch. 210, § 1; 1983, ch. 273, § 1.

**The 1983 amendment** rewrote Subsection A, substituted "bylaws or, if not contrary to the bylaws, by the board of trustees" for "bylaw" in Subsection B, inserted "by petition signed" and substituted "percent" for "per centum (10%)" in Subsection C, deleted "and the meeting shall be held at the place as may be designated in the petition" at the end of Subsection C and, in Subsection D, inserted "and special" and the language beginning with "whether general" and ending with "Cooperative Act" in the first sentence, and "general" in the second sentence and added the language beginning with "and all meetings" at the end of the second sentence. The 1983 amendment also, in Subsection E, added the second sentence and rewrote the first sentence; in Subsection F, substituted "constitutes" for "shall constitute" and "or lesser number of" for "of the" in the first sentence, inserted "in person" in the second sentence and added the last sentence; in Subsection G, substituted "provided that" for "but" and "provide for voting by proxy or by mail, the bylaws shall prescribe" for "so provide, may also be by proxy or by mail; they shall also prescribe" in the second sentence, deleted "In any event" at the beginning of the third sentence; and added Subsection H.

**Statutes, articles of incorporation, bylaws, application and certificate are contract.** — Sections 62-15-1 to 62-15-32 NMSA 1978, together with the articles of incorporation and the bylaws of the cooperative, the application made by the plaintiff and the certificate of membership issued to him, constituted the contract between him and the cooperative. *King v. Farmers' Elec. Coop.*, 56 N.M. 552, 246 P.2d 1041 (1952).

**Member is bound by bylaws.** — A member, in view of provision in his application agreeing to comply with and to be bound by provisions of the charter and bylaws of the cooperative, will, when such bylaws are reasonable, and enacted under properly delegated authority, be bound thereby. *King v. Farmers' Elec. Coop.*, 56 N.M. 552, 246 P.2d 1041 (1952).

A member of the cooperative is not in position to challenge the validity of its bylaws, is presumed to know contents of its charter and bylaws and, having agreed, if accepted as a member, to abide by all its rules, regulations and bylaws, cannot be permitted to repudiate the same. *King v. Farmers' Elec. Coop.*, 56 N.M. 552, 246 P.2d 1041 (1952).

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**Refusal of easement for line forfeits membership.** — Member's refusal to grant needed right-of-way easement for transmission line, ipso facto, worked a forfeiture of his membership and abrogation of the contract for supplying member with electric service. *King v. Farmers' Elec. Coop.*, 56 N.M. 552, 246 P.2d 1041 (1952).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations §§ 13 to 15, 21 to 23, 25, 26.

43 C.J.S. Industrial Cooperative Societies §§ 7, 11.

### **62-15-9. Board of trustees; suits.**

A. The business and affairs of a cooperative shall be managed by a board of not less than five trustees, each of whom shall be a member of the cooperative or of another cooperative which shall be a member thereof. The bylaws shall prescribe the number of trustees, the terms of the trustees and the manner of their election by the members, their qualifications, other than those provided for in the Rural Electric Cooperative Act [62-15-1 NMSA 1978], the manner of holding meetings of the board of trustees and of the election of successors to trustees who resign, die or otherwise are incapable of acting. The bylaws may provide for the removal of trustees from office and for the election of their successors and for the classification of trustees by terms of office. Without approval of the members, trustees shall not receive any salaries for their services as trustees and, except in emergencies, shall not be employed by the cooperative in any capacity involving compensation. The bylaws may, however, provide that a fixed per diem fee and advancement, reimbursement or a per diem amount in lieu of reasonably incurred expenses may be allowed to each trustee for attendance at each meeting of the board of trustees and of a committee thereof and for the performance of other cooperative business when such has had prior approval of the board of trustees.

B. The trustees of a cooperative named in any articles of incorporation, consolidation, merger or conversion shall hold office until the next following annual meeting of the members or until their successors have been elected and qualified.

C. A majority of the board of trustees constitutes a quorum.

D. If a husband and wife hold joint membership in a cooperative, either one, but not both, may be elected a trustee.

E. If the bylaws so provide, the board of trustees, by resolution adopted by a majority of the full board of trustees, may designate from among its members an executive committee and one or more other committees, except no such committee shall have authority to take any action on behalf of the board of trustees to distribute patronage refunds or in any matter which, under the articles of incorporation, bylaws or the Rural Electric Cooperative Act, requires the approval of the cooperative's members. Neither the designation of any such committee, the delegation thereto of authority nor action by such committee pursuant to such authority shall alone constitute compliance by any trustee not a member of the committee in question with the trustee's responsibility to act in accordance with the standard of conduct prescribed by Subsection E of

this section.

F. Unless otherwise provided in the bylaws, any action required by the Rural Electric Cooperative Act to be taken at a meeting of the board of trustees, or any action which may be taken at a meeting of the board of trustees or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the trustees or all of the committee members, as the case may be. The consent shall have the same effect as a unanimous vote.

G. The board of trustees may exercise all of the powers of a cooperative except such as are conferred upon the members by the Rural Electric Cooperative Act or its articles of incorporation or bylaws.

H. No action shall be brought against a trustee as such or against the cooperative in its right unless the plaintiff was a member of record at the time of the transaction complained of and the complaint is verified and alleges with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the board of trustees and the reasons for the plaintiff's failure to obtain the action or for not making the effort. If the cooperative undertakes an investigation upon receipt of a demand by plaintiff for action, or following commencement of suit, the court may stay an action commenced as the circumstances reasonably require. If the court finds the action was brought without reasonable cause, it may require the plaintiff to pay defendants the reasonable expenses, including counsel fees, incurred by them in the defense of such action or to reimburse the cooperative for any indemnification provided a defendant pursuant to the Rural Electric Cooperative Act or the cooperative's bylaws.

**History:** Laws 1939, ch. 47, § 9; 1941 Comp., § 48-409; 1953 Comp., § 45-4-9; Laws 1957, ch. 200, § 1; 1987, ch. 36, § 3.

**The 1987 amendment**, effective June 19, 1987, in Subsection A, in the third sentence added "and for the classification of trustees by terms of office" at the end and, in the fifth sentence, substituted "a fixed per diem fee and advancement, reimbursement or a per diem of amount in lieu of reasonably incurred expenses" for "a fixed fee and expenses of attendance, if any" and added the material at the end following "board of trustees"; added present Subsections E, F, and H; redesignated former Subsection E as present Subsection G; and made minor changes in language and punctuation throughout the section.

**Trustee may serve as director.** — A member of the board of trustees of a rural electric cooperative incorporated under New Mexico's Rural Electric Cooperative Act (62-15-1 to 62-15-32 NMSA 1978) may serve as the salaried director of the cooperative with approval of the members. 1971 Op. Att'y Gen. No. 71-111.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations §§ 19, 22.

43 C.J.S. Industrial Cooperative Societies §§ 6, 8.

### **62-15-9.1. Duties of trustees.**

A trustee shall perform his duties as a trustee, including his duties as a member of any committee of the board upon which the trustee may serve, in good faith, in a manner the trustee

believes to be in or not opposed to the best interests of the cooperative and with such care as an ordinarily prudent person would use under similar circumstances in a like position. In performing such duties, a trustee shall be entitled to rely on factual information, opinions, reports or statements including financial statements and other financial data in each case prepared or presented by:

A. one or more officers or employees of the cooperative whom the trustee reasonably believes to be reliable and competent in the matters presented;

B. counsel, public accountants or other persons as to matters which the trustee reasonably believes to be within such persons' professional or expert competence;

C. a committee of the board upon which the trustee does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws as to matters within its designated authority, which committee the trustee reasonably believes to merit confidence, but the trustee shall not be considered to be acting in good faith if the trustee has knowledge concerning the matter in question that would cause such reliance to be unwarranted; or

D. any bulletin or other directive of the rural electrification administration, or successor agency, material to the matter in question.

A person who so performs such duties shall have no liability to the cooperative or to its members by reason of being or having been a trustee of the cooperative.

**History:** Laws 1987, ch. 238, § 13.

**Law reviews.** — For article, "Statutory Adoption of Several Liability in New Mexico: A Commentary and Quasi-Legislative History," see 18 N.M.L. Rev. 483 (1988).

### **62-15-9.2. Limitation on liability and indemnification of officers and trustees.**

A. Cumulative to any other provision of the Rural Electric Cooperative Act [62-15-1 NMSA 1978] as now or hereafter enacted, the bylaws of a cooperative may provide that 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:

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

(2) the breach or failure to perform constitutes willful misconduct or recklessness; or in the case of a trustee of a cooperative actively engaged in the generation and transmission of electric power, negligence, willful misconduct or recklessness. Such a provision in the bylaws shall, however, only eliminate the liability of a trustee for action taken as a trustee or any failure to take action as a trustee at meetings of the board of trustees or of a committee of the board of trustees, or by virtue of action of the trustees without a meeting as may be permitted by the Rural Electric Cooperative Act as now or hereafter enacted, on or after the date when such provision in the bylaws becomes effective.

B. Cumulative to any other power granted by the Rural Electric Cooperative Act as now or hereafter enacted, each cooperative shall have the power to indemnify any trustee or officer or former trustee or officer of the cooperative or any person serving or having served at the request of the cooperative as a director, trustee, officer, partner, trustee, employee or agent of any cooperative, corporation, nonprofit corporation, partnership, joint venture, trust, unincorporated association, other incorporated or unincorporated enterprise or employee benefit plan or trust against reasonable expenses, costs and attorneys' fees actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of holding or having held such an office or position. The indemnification may include any amounts paid to satisfy a judgment or to compromise or settle a claim. The trustee, officer or other person shall not be indemnified if he shall be adjudged to be liable on the basis that he breached or failed to perform the duties of his office or position and the breach or failure to perform constitutes willful misconduct or recklessness. Advance indemnification to such persons may be allowed for reasonable expenses to be incurred in connection with the defense of the action, suit or proceeding, provided that the trustee, officer or other person shall reimburse the cooperative if it is subsequently determined that he was not entitled to indemnification. Each cooperative may make any other indemnification as authorized by the articles of incorporation or bylaws or by resolution adopted by the members after notice.

**History:** Laws 1987, ch. 238, § 14.

#### **62-15-10. Voting districts.**

Notwithstanding any other provision of this act [62-15-1 to 62-15-32 NMSA 1978], the bylaws may provide that the territory in which a cooperative supplies electric energy to its members shall be divided into two or more voting districts, and that, in respect of each such voting district:

- A. a designated number of trustees shall be elected by the members residing therein;
- or
- B. a designated number of delegates shall be elected by such members; or
- C. both such trustees and delegates shall be elected by such members.

In any such case the bylaws shall prescribe the manner in which such voting districts and the members thereof, and the delegates and trustees, if any, elected therefrom shall function, and the powers of the delegates, which may include the power to elect trustees. No member at any voting district meeting and no delegate at any meeting shall vote by proxy or by mail.

**History:** Laws 1939, ch. 47, § 10; 1941 Comp., § 48-410; 1953 Comp., § 45-4-10.

**Amendment vote by districts rather than at general meeting deemed legal.** — It is legal to provide for the amendment of bylaws by a majority vote of the members voting by districts, rather than at a general meeting of all the members. This interpretation does no violence to 62-15-7 NMSA 1978, since that section mentions "regular annual meeting" and "special meeting," and does not exclude a regular annual meeting or special meeting of a voting district. The interpretation is supported by the liberal

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construction required to be given these statutes under 62-15-32 NMSA 1978. 1961-62 Op. Att'y Gen. No. 61-62.

**But cannot take away power of majority.** — A rural electric cooperative may provide for the amendment of its bylaws by a vote taken at a series of meetings of voting districts rather than at a general meeting of all the members, but, in so doing, it cannot take away the power of the majority of members to adopt, amend or repeal the bylaws. 1961-62 Op. Att'y Gen. No. 61-62.

### **62-15-11. Officers.**

The officers of a cooperative shall consist of a president, vice president, secretary and treasurer, who shall be elected annually by and from the board of trustees. No person shall continue to hold any of the above offices after he shall have ceased to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint such other officers, agents or employees as it shall deem necessary or advisable and shall prescribe the powers and duties thereof. Any officer may be removed from office and his successor elected in the manner prescribed in the bylaws.

**History:** Laws 1939, ch. 47, § 11; 1941 Comp., § 48-411; 1953 Comp., § 45-4-11.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations §§ 18, 19, 49.

43 C.J.S. Industrial Cooperative Societies §§ 6, 8.

### **62-15-12. Amendment of articles of incorporation.**

A. A cooperative may amend its articles of incorporation by complying with the following requirements:

(1) the proposed amendment shall be first approved by the board of trustees and shall then be submitted to a vote of the members at any annual or special meeting thereof, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the members shall choose to make therein, shall be deemed to be approved on the affirmative vote of not less than two-thirds of those members voting thereon at such meeting; and

(2) upon such approval by the members, articles of amendment shall be executed and acknowledged on behalf of the cooperative by its president or vice president and its corporate seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite in the caption that they are executed pursuant to this act [62-15-1 to 62-15-32 NMSA 1978] and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of the filing of its articles of incorporation in the office of the state corporation commission [public regulation commission]; and

(d) the amendment to its articles of incorporation.

The president or vice president executing such articles of amendment shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with. Such articles of amendment and affidavit shall be submitted to the state corporation commission [public regulation commission] for filing as provided in this act.

B. A cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office by filing a certificate of change of principal office, executed and acknowledged by its president or vice president under its seal attested by its secretary, in the office of the state corporation commission [public regulation commission] and also in the office of the county clerk in each county in this state, in which its articles of incorporation or any prior certificate of change of principal office of such cooperative has been filed. Such cooperative shall also, within thirty (30) days after the filing of such certificate of change of principal office in the office of the county clerk, file therein certified copies of its articles of incorporation and all amendments thereto, if the same are not already on file therein.

**History:** Laws 1939, ch. 47, § 12; 1941 Comp., § 48-412; 1953 Comp., § 45-4-12.

**Cross references.** — For references to state corporation commission now being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

### **62-15-13. Consolidation.**

Any two or more cooperatives, each of which is hereinafter designated a "consolidating cooperative," may consolidate into a new cooperative, hereinafter designated the "new cooperative," by complying with the following requirements:

A. the proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be first approved by the board of trustees of each consolidating cooperative. The proposed articles of consolidation shall recite in the caption that they are executed pursuant to the Rural Electric Cooperative Act [62-15-1 NMSA 1978] and shall state:

(1) the name of each consolidating cooperative, the address of its principal office and the date of the filing of its articles of incorporation in the office of the state corporation commission [public regulation commission];

(2) the name of the new cooperative and the address of its principal office;

(3) the names and addresses of the persons who shall constitute the first board of trustees of the new cooperative;

(4) the terms and conditions of the consolidation and the mode of carrying the same



into effect, including the manner and basis of converting memberships in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of membership in respect of such converted memberships; and

(5) any provisions not inconsistent with the Rural Electric Cooperative Act deemed necessary or advisable for the conduct of the business and affairs of the new cooperative;

B. the proposition for the consolidation of the consolidating cooperatives into the new cooperative and the proposed articles of consolidation approved by the board of trustees of each consolidating cooperative shall then be submitted to a vote of the members thereof at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation shall be deemed to be approved upon the affirmative vote of a simple majority of those members of each consolidating cooperative voting thereon at such meeting; and

C. upon such approval by the members of the respective consolidating cooperatives, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice president and its seal shall be affixed thereto and attested by its secretary. The president or vice president of each consolidating cooperative executing such articles of consolidation shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative. Such articles of consolidation and affidavits shall be submitted to the state corporation commission [public regulation commission] for filing as provided in Section 62-15-19 NMSA 1978.

**History:** Laws 1939, ch. 47, § 13; 1941 Comp., § 48-413; 1953 Comp., § 45-4-13; Laws 1979, ch. 64, § 1.

**Cross references.** — For references to state corporation commission now being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 43 C.J.S. Industrial Cooperative Societies §§ 6, 13.

### **62-15-14. Merger.**

Any one or more cooperatives, each of which is hereinafter designated a "merging cooperative," may merge into another cooperative, hereinafter designated the "surviving cooperative," by complying with the following requirements:

A. the proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be first approved by the board of trustees of each merging cooperative and by the board of trustees of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to the Rural Electric Cooperative Act [62-15-1 NMSA 1978] and shall state:

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(1) the name of each merging cooperative, the address of its principal office and the date of the filing of its articles of incorporation in the office of the state corporation commission [public regulation commission];

(2) the name of the surviving cooperative and the address of its principal office;

(3) a statement that the merging cooperatives elect to be merged into the surviving cooperative;

(4) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner and basis of converting the memberships in the merging cooperative or cooperatives into memberships in the surviving cooperatives and the issuance of certificates of membership in respect of such converted memberships; and

(5) any provisions not inconsistent with the Rural Electric Cooperative Act deemed necessary or advisable for the conduct of the business and affairs of the surviving cooperative;

B. the proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the board of trustees of the respective cooperatives, parties to the proposed merger, shall then be submitted to a vote of the members of each such cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger shall be deemed to be approved upon the affirmative vote of a simple majority of those members of each cooperative voting thereon at such meeting; and

C. upon such approval by the members of the respective cooperatives, parties to the proposed merger, articles of merger in the form approved shall be executed and acknowledged on behalf of each such cooperative by its president or vice president and its seal shall be affixed thereto and attested by its secretary. The president or vice president of each cooperative executing such articles of merger shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative. Such articles of merger and affidavits shall be submitted to the state corporation commission [public regulation commission] for filing as provided in Section 62-15-19 NMSA 1978.

**History:** Laws 1939, ch. 47, § 14; 1941 Comp., § 48-414; 1953 Comp., § 45-4-14; Laws 1979, ch. 64, § 2.

**Cross references.** — For references to state corporation commission now being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

**Power of eminent domain.** — A corporation organized for the primary purpose of supplying electric power or energy to rural areas on a cooperative basis, although organized under the laws of another state and resulting from an interstate merger, is a rural electric cooperative under the Rural Electric Cooperative Act, and thus has the power of eminent domain under this section. *Tri-State Generation & Transmission Ass'n. v. King*, 2003-NMSC-029, 134 N.M. 467, 78 P.3d 1226.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 43 C.J.S. Industrial Cooperative Societies §§ 3, 6, 13.

### **62-15-15. Effect of consolidation or merger.**

The effect of consolidation or merger shall be as follows:

A. the several cooperatives, parties to the consolidation or merger, shall be a single cooperative, which in the case of a consolidation shall be the new cooperative provided for in the articles of consolidation and in the case of a merger shall be that cooperative designated in the articles of merger as the surviving cooperative, and the separate existence of all cooperatives, parties to the consolidation or merger, except the new or surviving cooperative shall cease;

B. the new or surviving cooperative shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a cooperative organized under the provisions of the Rural Electric Cooperative Act [62-15-1 NMSA 1978]. It shall possess all the rights, privileges, immunities and franchises, of a public as well as of a private nature, and all property, real and personal, applications for membership, all debts due on whatever account and all other choses in action of each of the consolidating or merging cooperatives, and every interest of or belonging or due to each of the cooperatives consolidated or merged shall be deemed to be transferred to and vested in the new or surviving cooperative without further act or deed. The title to any real estate, or any interest therein, under the laws of this state vested in any such cooperatives shall not revert or be in any way impaired by reason of the consolidation or merger;

C. the new or surviving cooperative shall thenceforth be responsible and liable for all of the liabilities and obligations of each of the cooperatives consolidated or merged, and any claim existing, or action or proceeding pending, by or against any of such cooperatives may be prosecuted as if the consolidation or merger had not taken place, but the new or surviving cooperative may be substituted in its place;

D. neither the rights of creditors nor any liens upon the property of any of such cooperatives shall be impaired by the consolidation or merger; and

E. in the case of a consolidation, the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative; and in the case of a merger, the articles of incorporation of the surviving cooperative shall be deemed to be amended to the extent, if any, that changes in the articles of incorporation are provided for in the articles of merger.

**History:** Laws 1939, ch. 47, § 15; 1941 Comp., § 48-415; 1953 Comp., § 45-4-15; 1998, ch. 46, § 2.

**The 1998 amendment,** effective March 6, 1998, in Subsection B, substituted "the Rural Electric Cooperative" for "this", deleted "as well" preceding "of", inserted "well as", deleted "furthermore all and" preceding "every", deleted "so" following "cooperatives", deleted "taken and" following "be", and substituted "or" for "to"; in Subsection E, substituted "in the articles of incorporation" for "therein"; and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 43 C.J.S. Industrial Cooperative Societies § 2.

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**62-15-16. Conversion of existing corporations.**

Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy in rural areas may be converted into a cooperative and become subject to this act [62-15-1 to 62-15-32 NMSA 1978] with the same effect as if originally organized under this act by complying with the following requirements:

A. the proposition for the conversion of such a corporation into a cooperative and proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors, as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this act and shall state:

- (1) the name of the corporation prior to its conversion into a cooperative;
- (2) the address of the principal office of such corporation;
- (3) the date of the filing of articles of incorporation of such corporation in the office of the state corporation commission [public regulation commission];
- (4) the statute or statutes under which such corporation was organized;
- (5) the name assumed by such corporation in compliance with the provisions of this act;
- (6) a statement that such corporation elects to become a cooperative, nonprofit, membership corporation subject to this act;
- (7) the manner and basis of converting either memberships in or shares of stock of such corporation into membership in the converted corporation; and
- (8) any provisions not inconsistent with this act deemed necessary or advisable for the conduct of the business and affairs of such corporation;

B. the proposition for the conversion of such corporation into a cooperative and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a cooperative and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of such corporation voting thereon at such meeting, or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of such corporation represented at such meeting;

C. upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders shall be executed and acknowledged on behalf of such corporation by its president or vice president and its corporate seal shall be affixed thereto and attested by its secretary. The president or vice president

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executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders, of the proposition for the conversion of such corporation into a cooperative and such articles of conversion were duly complied with. Such articles of conversion and affidavit shall be submitted to the state corporation commission [public regulation commission] for filing as provided in this act;

D. the term "articles of incorporation" as used in this act shall be deemed to include the articles of conversion of a converted corporation.

**History:** Laws 1939, ch. 47, § 16; 1941 Comp., § 48-416; 1953 Comp., § 45-4-16.

**Cross references.** — For references to state corporation commission now being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations §§ 5 to 9.  
43 C.J.S. Industrial Cooperative Societies § 6.

### **62-15-17. Initiative by members.**

Notwithstanding any other provision of this act [62-15-1 to 62-15-32 NMSA 1978], any proposition embodied in a petition signed by not less than 10 per centum (10%) of all members of the cooperative, together with any document submitted with such petition to give effect to the proposition, shall be submitted to the members of a cooperative either at a special meeting of the members held within forty-five (45) days after the presentation of such petition or, if the date of the next annual meeting of members falls within ninety (90) days after such presentation or if the petition so requests, at such annual meeting. The approval of the board of trustees shall not be required in respect of any proposition or document submitted to the members pursuant to this section and approved by them, but such proposition or document shall be subject to all other applicable provisions of this act. Any affidavit or affidavits required to be filed with any such document pursuant to applicable provisions of this act shall, in such case, be modified to show compliance with the provisions of this section.

**History:** Laws 1939, ch. 47, § 17; 1941 Comp., § 48-417; 1953 Comp., § 45-4-17.

### **62-15-18. Dissolution.**

A. A cooperative which has not commenced business may dissolve voluntarily by delivering to the state corporation commission [public regulation commission] articles of dissolution, executed and acknowledged on behalf of the cooperative by a majority of the incorporators, which state:

- (1) the name of the cooperative;

- (2) the address of its principal office;
- (3) the date of its incorporation;
- (4) that the cooperative has not commenced business;
- (5) that the amount, if any, actually paid in on account of membership fees, less any part of that money disbursed for necessary expenses, has been returned to those entitled to it and that all easements have been released to the grantors;
- (6) that no debt of the cooperative remains unpaid; and
- (7) that a majority of the incorporators elect that the cooperative be dissolved.

The articles of dissolution shall be submitted to the state corporation commission [public regulation commission] for filing as provided in the Rural Electric Cooperative Act [62-15-1 NMSA 1978].

B. A cooperative which has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) the board of trustees shall first recommend that the cooperative be dissolved voluntarily, and the proposition that the cooperative be dissolved shall be submitted to the members of the cooperative at any annual or special meeting, the notice of which shall set forth that proposition. The proposed voluntary dissolution shall be deemed to be approved upon the affirmative vote of not less than two-thirds of all of the members of the cooperative;

(2) upon such approval, a certificate of election to dissolve, designated the "certificate" in this section, shall be executed and acknowledged on behalf of the cooperative by its president or vice president, and its corporate seal shall be affixed thereto and attested by its secretary. The certificate shall state:

- (a) the name of the cooperative;
- (b) the address of its principal office;
- (c) the names and addresses of its trustees; and
- (d) the total number of members of the cooperative and the number of members who voted for and against the voluntary dissolution of the cooperative.

The president or vice president executing the certificate shall make and annex to it an affidavit stating that the provisions of this subsection were duly complied with. The certificate and affidavit shall be submitted to the state corporation commission [public regulation commission] for filing as provided in the Rural Electric Cooperative Act;

(3) upon the filing of the certificate and affidavit with the state corporation commission [public regulation commission], the cooperative shall cease to carry on its business except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the state corporation commission [public regulation commission];

- (4) after the filing of the certificate and affidavit with the state corporation

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commission [public regulation commission], the board of trustees shall immediately cause notice of the winding up of proceedings to be mailed to each known creditor and claimant and to be published once a week for two successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located;

(5) the board of trustees shall have full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy and discharge its debts, obligations and liabilities and do all other things required to liquidate its business and affairs. After paying or adequately providing for the payment of all its debts, obligations and liabilities, the board of trustees shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each member during the seven years next preceding the date of filing of the certificate or, if the cooperative was not in existence for that period, during the period of its existence; and

(6) when all debts, liabilities and obligations of the cooperative have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the cooperative have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution which shall thereupon be executed and acknowledged on behalf of the cooperative by its president or vice president, and its corporate seal shall be affixed thereto and attested by its secretary. The articles of dissolution shall recite in the caption that they are executed pursuant to the Rural Electric Cooperative Act and shall state:

- (a) the name of the cooperative;
- (b) the address of the principal office of the cooperative;
- (c) that the cooperative has delivered to the state corporation commission [public regulation commission] a certificate of election to dissolve and the date on which the certificate was filed by the state corporation commission [public regulation commission] in the records of its office;
- (d) that all debts, obligations and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefor;
- (e) that all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and
- (f) that there are no actions or suits pending against the cooperative.

The president or vice president executing the articles of dissolution shall make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. The articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection, shall be submitted to the state corporation commission [public regulation commission] for filing as provided in the Rural Electric Cooperative Act.

**History:** Laws 1939, ch. 47, § 18; 1941 Comp., § 48-418; 1953 Comp., § 45-4-18; 1987, ch. 36, § 4.

**Cross references.** — For legal newspapers, see 14-11-2 NMSA 1978.

For references to state corporation commission now being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

**The 1987 amendment,** effective June 19, 1987, in Subsection B, in the last sentence of Paragraph (1) substituted "all of the members of the cooperative" for "those voting thereon at such meeting," in Paragraph (3) substituted "state corporation commission" for "secretary of state," in Paragraph (5) inserted "the board of trustees" in the second sentence preceding "shall distribute the remainder of its property," and made minor changes in language and punctuation throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations § 22.

Distribution of funds by nonprofit corporation absent dissolution, 51 A.L.R.3d 1318.

43 C.J.S. Industrial Cooperative Societies §§ 2, 3.

### **62-15-19. Filing of articles.**

Articles of incorporation, amendment, consolidation, merger, conversion or dissolution, as the case may be, when executed and acknowledged and accompanied by such affidavits as may be required by applicable provisions of this act [62-15-1 to 62-15-32 NMSA 1978], shall be presented to the state corporation commission [public regulation commission] for filing in the records of that office. If the state corporation commission [public regulation commission] shall find that the articles presented conform to the requirements of this act, he [it] shall, upon the payment of the fees as in this act provided, file the articles so presented in the records of his [its] office and upon such filing the incorporation, amendment, consolidation, merger, conversion or dissolution provided for therein shall be in effect. The state corporation commission [public regulation commission] immediately upon the filing in his [its] office of any articles pursuant to this act shall transmit a certified copy thereof to the county clerk of the county in which the principal office of each cooperative or corporation affected by such incorporation, amendment, consolidation, merger, conversion or dissolution shall be located. The clerk of any county, upon receipt of any such certified copy, shall file and index the same in the records of his office, but the failure of the state corporation commission [public regulation commission] or of a clerk of a county to comply with the provisions of this section shall not invalidate such articles. The provisions of this section shall also apply to certificates of election to dissolve and affidavits of compliance executed pursuant to Subsection B(2) of Section 18 [62-15-18 NMSA 1978] of this act.

**History:** Laws 1939, ch. 47, § 19; 1941 Comp., § 48-419; 1953 Comp., § 45-4-19.

**Cross references.** — For references to state corporation commission now being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.



**Bracketed material.** — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

### **62-15-20. Refunds to members.**

Revenues of a cooperative for any fiscal year in excess of the amount thereof necessary:

A. to defray expenses of the cooperative and of the operation and maintenance of its facilities during such fiscal year;

B. to pay interest and principal obligation of the cooperative coming due in such fiscal year;

C. to finance, or to provide a reserve for the financing of, the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;

D. to provide a reasonable reserve for working capital;

E. to provide a reserve for the payment of indebtedness of the cooperative maturing more than one (1) year after the date of the incurrence of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year; and

F. to provide a fund for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative, shall, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members paid for during such fiscal year. Nothing herein contained shall be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the same shall become due.

**History:** Laws 1939, ch. 47, § 20; 1941 Comp., § 48-420; 1953 Comp., § 45-4-20.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations §§ 19, 22, 23.

### **62-15-21. Disposition of property.**

A cooperative may not sell, convey, lease, exchange, transfer or otherwise dispose of all or any substantial portion of its property unless such sale, conveyance, lease, exchange, transfer or other disposition is authorized at a duly held meeting of the members thereof by the affirmative vote of not less than two-thirds of all of the members of the cooperative, and unless the notice of such proposed sale, lease or other disposition shall have been contained in the notice of the meeting; provided, however, that notwithstanding anything herein contained, or any other provisions of law, the board of trustees of a 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, assignment for security purposes or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the cooperative.

**History:** Laws 1939, ch. 47, § 21; 1941 Comp., § 48-421; 1953 Comp., § 45-4-21; Laws 1971, ch. 8, § 2.

**Severability clauses.** — Laws 1971, ch. 8, § 3, provides for the severability of the act if any part or application thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 43 C.J.S. Industrial Cooperative Societies § 8.

### **62-15-22. Nonliability of members for debts of cooperative.**

The private property of the members of a cooperative shall be exempt from execution for the debts of the cooperative and no member shall be liable or responsible for any debts of the cooperative.

**History:** Laws 1939, ch. 47, § 22; 1941 Comp., § 48-422; 1953 Comp., § 45-4-22.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations § 32.

### **62-15-23. Recordation of mortgages.**

Any mortgage, deed of trust or other instrument executed by a cooperative or foreign corporation transacting business in this state, pursuant to this act [62-15-1 to 62-15-32 NMSA 1978], which, by its terms, creates a lien upon real and personal property then owned or after-acquired, and which is recorded as a mortgage of real property in any county in which such property is located or is to be located, shall have the same force and effect as if the mortgage, deed of trust or other instrument were also recorded or filed in the proper office in such county as a mortgage of personal property. Recordation of any such mortgage, deed of trust or other instrument shall cause the lien thereof to attach to all after-acquired property of the mortgagor of the nature herein described as being mortgaged or pledged thereby immediately upon the acquisition thereof by the mortgagor, and such lien shall be superior to all claims of creditors of the mortgagor and purchasers of such property and to all other liens, except liens of prior record, affecting such property.

**History:** Laws 1939, ch. 47, § 23; 1941 Comp., § 48-423; 1953 Comp., § 45-4-23.

### **62-15-24. Waiver of notice.**

Whenever any notice is required to be given under the provisions of this act [62-15-1 to 62-15-32 NMSA 1978] or under the provisions of the articles of incorporation or bylaws of a

cooperative, waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time fixed for the giving of such notice, shall be deemed equivalent to such notice. If a person or persons entitled to notice of a meeting shall attend such meeting, such attendance shall constitute a waiver of notice of the meeting, except in case the attendance is for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

**History:** Laws 1939, ch. 47, § 24; 1941 Comp., § 48-424; 1953 Comp., § 45-4-24.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations §§ 33, 34.

### **62-15-25. Trustees, officers or members; notaries.**

No person who is authorized to take acknowledgments under the laws of this state shall be disqualified from taking acknowledgments of instruments executed in favor of a cooperative or to which it is a party, by reason of being an officer, director or member of such cooperative.

**History:** Laws 1939, ch. 47, § 25; 1941 Comp., § 48-425; 1953 Comp., § 45-4-25.

### **62-15-26. Foreign corporations.**

Any corporation organized on a nonprofit or a cooperative basis for the purpose of supplying electric energy in rural areas and owning and operating electric transmission or distribution lines in a state adjacent to this state shall be permitted to extend its lines into and to transact business in this state without complying with any statute of this state pertaining to the qualification of foreign corporations for the transaction of business in this state. Any such foreign corporation, as a prerequisite to the extension of its lines into and the transaction of business in this state, shall, by an instrument executed and acknowledged in its behalf by its president or vice president under its corporate seal attested by its secretary, designate the state corporation commission [public regulation commission] its agent to accept service of process in its behalf. In the event any process shall be served upon the state corporation commission [public regulation commission], he [it] shall forthwith forward the same by registered mail to such corporation at the address thereof specified in such instrument. Any such corporation may sue and be sued in the courts of this state to the same extent that a cooperative may sue or be sued in such courts. Any such foreign corporation may secure its notes, bonds or other evidences of indebtedness by mortgage, pledge, deed of trust or other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets or franchises, located or to be located in this state, and also upon the revenues and income.

**History:** Laws 1939, ch. 47, § 26; 1941 Comp., § 48-426; 1953 Comp., § 45-4-26.

**Cross references.** — For references to state corporation commission now being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler. It was not enacted by

the legislature and is not part of the law.

### **62-15-26.1. Distribution cooperative utilities organized in other states; application.**

A distribution cooperative utility organized pursuant to the laws of another state and providing bundled services in this state on April 1, 1999 to not more than twenty percent of its total customers may file an application with the commission seeking approval of its election to be governed by the laws related to electric restructuring of the state where the utility was organized. The commission shall approve the application if the distribution cooperative utility:

A. does not provide supply service to other than its service customers in this state; and

B. remains subject to the jurisdiction and authority of the commission for bundled service provided in this state.

**History:** Laws 2003, ch. 336, § 5.

**Effective dates.** — Laws 2003, ch. 60 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

### **62-15-27. Fees.**

The state corporation commission [public regulation commission] shall charge and collect for:

- A. filing articles of incorporation, five dollars [(\$5.00)];
- B. filing articles of amendment, three dollars [(\$3.00)];
- C. filing articles of consolidation or merger, five dollars [(\$5.00)];
- D. filing articles of conversion, five dollars [(\$5.00)];
- E. filing certificate of election to dissolve, two dollars [(\$2.00)];
- F. filing articles of dissolution, three dollars [(\$3.00)]; and
- G. filing certificate of change of principal office, one dollar [(\$1.00)].

**History:** Laws 1939, ch. 47, § 27; 1941 Comp., § 48-427; 1953 Comp., § 45-4-27.

**Cross references.** — For references to state corporation commission now being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations §§ 34, 40, 44, 46.

### **62-15-28. Taxation.**

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Cooperative and foreign corporations transacting business in this state pursuant to the provisions of the Rural Electric Cooperative Act [62-15-1 NMSA 1978] shall pay annually, on or before July 1, to the state corporation commission [public regulation commission] a tax of ten dollars (\$10.00) for each one hundred persons or fraction thereof to whom electricity is supplied within this state, which tax shall be in lieu of all other taxes except those provided in the Gross Receipts and Compensating Tax Act [7-9-1 NMSA 1978]; provided, however, that in the event a contract has been entered into by a rural electric cooperative and a power consumer prior to February 1, 1961 and such contract does not contain an escalator clause providing for an increase for added tax liability on the cooperative, then the sale to such power consumer shall be exempt until the expiration, extension or renewal of the contract.

**History:** Laws 1939, ch. 47, § 28; 1941, ch. 195, § 1; 1941 Comp., § 48-428; 1953 Comp., § 45-4-28; Laws 1961, ch. 236, § 1; 1966, ch. 58, § 1; 1975, ch. 263, § 7; 1982, ch. 18, § 24.

**Cross references.** — For references to state corporation commission now being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

**Nonseverability clauses.** — Laws 1975, ch. 263, § 10, provides that the act is not intended to be severable, and that if any part thereof should be declared unconstitutional, the entire act should be declared void.

Laws 1975, ch. 263, § 9, was declared invalid under the supremacy clause of the United States constitution in *Arizona Pub. Serv. Co. v. Snead*, 441 U.S. 141, 99 S. Ct. 1629, 60 L. Ed. 2d 106 (1979).

**Sales by rural electric cooperative exempt from school tax.** — This statutory provision must be considered to exempt from the school tax the sale of electricity by a rural electric cooperative to its customers. Since the legal incidence of the emergency school tax is upon the vendor of the goods or services as a tax with respect to his privilege of doing business, it is clearly immaterial to the consideration of the first inquiry that the cooperative, the purchaser of the goods or services, may not itself be subject directly to the tax because of this statute. 1957-58 Op. Att'y Gen. No. 57-302.

**And from compensating tax for out-of-state purchases.** — Rural electric administration cooperatives are not liable for the payment of compensating tax on their out-of-state purchases of materials for use or consumption within the state. 1961-62 Op. Att'y Gen. No. 62-131.

**Law reviews.** — For article, "Taxation of Electricity Generation: The Economic Efficiency and Equity Bases for Regionalism Within the Federal System," see 20 *Nat. Resources J.* 877 (1980).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 *Am. Jur. 2d State and Local Taxation* § 514.

16C *C.J.S. Constitutional Law* § 881; 43 *C.J.S. Industrial Cooperative Societies* § 5; 84 *C.J.S. Taxation* § 251.

## **62-15-29. Repealed.**

**Repeals.** — Laws 1998, ch. 108, § 81 repeals 62-15-29 NMSA 1978, as enacted by Laws 1939, ch.

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47, § 29, relating to exemption from jurisdiction of the state corporation commission, effective January 1, 1999. For former section, see 1993 Replacement Pamphlet.

### **62-15-30. Securities Act exemption.**

The provisions of the Securities Act, Chapter 44, Session Laws of New Mexico, 1921, shall not apply to the issuance of any note, bond or other evidence of indebtedness issued, executed and delivered by any cooperative to the United States of America or any agency or instrumentality thereof. The provisions of said Securities Act shall not apply to the issuance of membership certificates by any cooperative.

**History:** Laws 1939, ch. 47, § 30; 1941 Comp., § 48-430; 1953 Comp., § 45-4-30.

**Securities Act.** — Laws 1955, ch. 131, § 20, repeals the Securities Act, Laws 1921, ch. 44, referred to in this section. For present Securities Act of New Mexico, see 58-13B-1 to 58-13B-57 NMSA 1978.

### **62-15-31. "Rural area," "person" and "member" defined.**

A. "Rural area" means any area not included within the boundaries of any municipality having a population in excess of five thousand persons; provided that a municipality having a population of more than five thousand persons shall not cease to be included within the term "rural area" if at the time of the commencement of the cooperative's or its predecessor's operation therein the population of the municipality was less than five thousand persons and the municipality has been and continues to be served by a cooperative; provided, however, that the population of any municipality shall not be included in any rural area if said municipality has a municipally owned plant or other operating noncooperative utility; and, provided further, that any cooperative shall not be permitted to operate in any municipality without first having obtained a franchise from the governing authorities.

B. "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof or any body politic.

C. "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein, and shall include a husband and wife admitted to a joint membership.

**History:** Laws 1939, ch. 47, § 31; 1941 Comp., § 48-431; Laws 1945, ch. 9, § 1; 1947, ch. 182, § 1; 1953 Comp., § 45-4-31; Laws 1967, ch. 102, § 3.

### **62-15-32. Construction of act; inconsistency.**

The Rural Electric Cooperative Act [62-15-1 NMSA 1978] shall be construed liberally. The enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things. Nothing contained in the Rural Electric Cooperative Act shall be construed, however, to conflict with any duty to which a cooperative is subject or with any benefit to which a cooperative is entitled

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under the Public Utility Act. In the event any provision of the Rural Electric Cooperative Act is held to be repugnant to any provision of the Public Utility Act [62-13-1 NMSA 1978] or to a cooperative's inclusion as a public utility thereunder, the latter shall be controlling and the former shall be held repealed to the extent of the repugnancy. Nothing in the Public Utility Act shall be deemed to authorize interference with, abrogation or change of the rights or obligations of a party under a wholesale power supply agreement, mortgage or financing agreement to which a distribution cooperative utility is a party.

**History:** Laws 1939, ch. 47, § 32; 1941 Comp., § 48-432; 1953 Comp., § 45-4-32; Laws 1967, ch. 102, § 4; 2003, ch. 336, § 7.

**Cross references.** — As to Public Utility Act repealing repugnant provisions of Rural Electric Cooperative Act, see 62-3-2C NMSA 1978.

**The 2003 amendment,** effective June 20, 2003, deleted "as amended" or "as now or hereafter amended" following "the Rural Electric Cooperative Act" and "Public Utility Act" throughout the section and added the last sentence.

**Severability clauses.** — Laws 1967, ch. 102, § 6, provides for the severability of the act if any part or application thereof is held invalid.

**Repealing and saving clauses.** — Laws 1939, ch. 47, § 34 repeals Laws 1937, ch. 100, and provides that the former act, relating to electric membership corporations, shall continue in effect and be applicable to corporations formed under its provisions. For provisions applicable to electric membership corporations, see Laws 1937, ch. 100. As to Public Utility Act repealing repugnant provisions of Laws 1937, ch. 100, see 62-3-2C NMSA 1978 and this section.

**Junior licensee not to interfere with existing system.** — Laws 1937, ch. 100, § 10 means that any system of the junior licensee shall be constructed in such manner as not to materially or unreasonably interfere with any existing system. *Hale v. Farmers Elec. Membership Corp.*, 44 N.M. 131, 99 P.2d 454 (1940) (decided under former law).

**But no liability if operating in skillful manner.** — Where it was not apparent that electric membership corporation had constructed and operated its power line in other than a skillful manner in accordance with the best and most modern methods, it was not liable for inductive interference with use of telephone lines erected and in use many years prior to installation of rural electric power system. *Hale v. Farmers Elec. Membership Corp.*, 44 N.M. 131, 99 P.2d 454 (1940) (decided under former law).

### **62-15-33. Conversion of corporations organized under Laws 1937, Chapter 100, into cooperatives under the Rural Electric Cooperative Act, as amended.**

A corporation created under Laws 1937, Chapter 100 shall be converted into a cooperative authorized to do business and entitled to all privileges and immunities of a cooperative under the Rural Electric Cooperative Act [this article], as amended, being Laws 1939, Chapter 47, as amended, upon the adoption of a resolution to such effect by its board of directors.

**History:** 1953 Comp., § 45-4-33, enacted by Laws 1967, ch. 102, § 1.

**Compiler's notes.** — Laws 1939, ch. 47, § 34, repeals Laws 1937, ch. 100.

### **62-15-34. Renewable portfolio standard.**

A. Each distribution cooperative organized under the Rural Electric Cooperative Act [62-15-1 NMSA 1978] shall meet the renewable portfolio standard requirements, as provided in this section, to include renewable energy in its electric energy supply portfolio. Requirements of the renewable portfolio standard are:

(1) no later than January 1, 2015, renewable energy shall comprise no less than five percent of each distribution cooperative's total retail sales to New Mexico customers;

(2) the renewable portfolio standard shall increase by one percent per year thereafter until January 1, 2020, at which time the renewable portfolio standard shall be ten percent of the distribution cooperative's total retail sales to New Mexico customers;

(3) the renewable portfolio standard of each distribution cooperative shall be diversified as to the type of renewable energy resource, taking into consideration the overall reliability, availability, dispatch flexibility and the cost of the various renewable energy resources made available to the distribution cooperative by its suppliers of electric power; and

(4) renewable energy resources that are in a distribution cooperative's energy supply portfolio on January 1, 2008 shall be counted in determining compliance with this section.

B. If a distribution cooperative determines that, in any given year, the cost of renewable energy that would need to be procured or generated for purposes of compliance with the renewable portfolio standard would be greater than the reasonable cost threshold, the distribution cooperative shall not be required to incur that cost; provided that the existence of this condition excusing performance in any given year shall not operate to delay any renewable portfolio standard in subsequent years. For purposes of the Rural Electric Cooperative Act, "reasonable cost threshold" means an amount that shall be no greater than one percent of the distribution cooperative's gross receipts from business transacted in New Mexico for the preceding calendar year.

C. By March 1 of each year, a distribution cooperative shall file with the public regulation commission a report on its purchases and generation of renewable energy during the preceding calendar year. The report shall include the cost of the renewable energy resources purchased and generated by the distribution cooperative to meet the renewable portfolio standard.

D. A distribution cooperative shall report to its membership a summary of its purchases and generation of renewable energy during the preceding calendar year.

History: Laws 2007, ch. 4, § 1.

**Effective date.** — Laws 2007, ch. 4, § 15 makes the section effective July 1, 2007.

**Cross references.** — For the public regulation commission, see 8-8-3 NMSA 1978.

### **62-15-35. Renewable energy certificates; commission duties.**

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The public regulation commission shall establish:

A. a system of renewable energy certificates that can be used by a distribution cooperative to establish compliance with the renewable portfolio standard and that may include certificates that are monitored, accounted for or transferred by or through a regional system or trading program for any region in which a rural electric cooperative is located. The kilowatt-hour value of renewable energy certificates may be varied by renewable energy resource or technology; provided that each renewable energy certificate shall have a minimum value of one kilowatt-hour for purposes of compliance with the renewable portfolio standard; and

B. requirements and procedures concerning renewable energy certificates that include the provisions that:

(1) renewable energy certificates:

(a) are owned by the generator of the renewable energy unless: 1) the renewable energy certificates are transferred to the purchaser of the energy through specific agreement with the generator; 2) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certificates are owned by the distribution cooperative purchaser of the renewable energy unless retained by the generator through specific agreement with the distribution cooperative purchaser of the energy; or 3) a contract for the purchase of renewable energy is in effect prior to January 1, 2004, in which case the renewable energy certificates are owned by the purchaser of the energy for the term of such contract;

(b) may be traded, sold or otherwise transferred by their owner to any other party; provided that the transfers and use of the certificate by a distribution cooperative for compliance with the renewable energy portfolio standard shall require the electric energy represented by the certificate to be contracted for delivery or consumed, or generated by an end-use customer of the distribution cooperative in New Mexico unless the commission determines that the distribution cooperative is participating in a national or regional market for exchanging renewable energy certificates;

(c) that are used for the purpose of meeting the renewable portfolio standard shall be registered, beginning January 1, 2008, with a renewable energy generation information system that is designed to create and track ownership of renewable energy certificates and that, through the use of independently audited generation data, verifies the generation and delivery of electricity associated with each renewable energy certificate and protects against multiple counting of the same renewable energy certificate;

(d) that are used once by a distribution cooperative to satisfy the renewable portfolio standard and are retired or that are traded, sold or otherwise transferred by the distribution cooperative shall not be further used by the distribution cooperative; and

(e) that are not used by a distribution cooperative to satisfy the renewable portfolio standard or that are not traded, sold or otherwise transferred by the distribution

cooperative may be carried forward for up to four years from the date of issuance and, if not used by that time, shall be retired by the distribution cooperative; and

(2) a distribution cooperative shall be responsible for demonstrating that a renewable energy certificate used for compliance with the renewable portfolio standard is derived from eligible renewable energy resources and has not been retired, traded, sold or otherwise transferred to another party.

History: Laws 2007, ch. 4, § 2.

**Effective date.** — Laws 2007, ch. 4, § 15 makes the sections effective July 1, 2007.

**Cross references.** — For the public regulation commission, see 8-8-3 NMSA 1978.

For the Federal Public Utility Regulatory Policies Act of 1978, see 16 U.S.C. §§ 2601 to 2645.

### **62-15-36. Renewable energy and conservation fee.**

A. A distribution cooperative may collect from its customers a renewable energy and conservation fee of no more than one percent of the customer's bill. In no event shall a distribution cooperative collect more than seventy-five thousand dollars (\$75,000) annually through the renewable energy and conservation fee from any single customer. Money collected through the renewable energy and conservation fee shall be segregated in a separate renewable energy and conservation account from other distribution cooperative funds and shall be expended only on programs or projects to promote the use of renewable energy, load management or energy efficiency. A distribution cooperative that collects a renewable energy and conservation fee from its customers shall report to the public regulation commission by March 1 of the following year the following information:

- (1) the amount of money collected through the renewable energy and conservation fee in the previous calendar year;
- (2) the programs or projects on which the funds collected were expended; and
- (3) the determination of the distribution cooperative as to whether and in what amount to assess a renewable energy and conservation fee in the next calendar year.

B. Each distribution cooperative that collects a renewable energy and conservation fee from its customers shall deduct from the fees paid to the state pursuant to Section 62-8-8 NMSA 1978 an amount equal to fifty percent of the amount of money collected through the renewable energy and conservation fee during the preceding calendar year. The money shall be included in the account with other money from the renewable energy and conservation fee and expended only on programs or projects to promote the use of renewable energy, load management or energy efficiency.

History: Laws 2007, ch. 4, § 3.

**Effective date.** — Laws 2007, ch. 4, § 15 makes the sections effective July 1, 2007.

**62-15-37. Definitions; energy efficiency; renewable energy.**

As used in the Rural Electric Cooperative Act [62-15-1 NMSA 1978]:

A. "energy efficiency" means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices to result in a decrease in consumption of electricity without reducing the amount or quality of energy services; and

B. "renewable energy" means electric energy:

(1) generated by use of low- or zero-emissions generation technology with substantial long-term production potential; and

(2) generated by use of renewable energy resources that may include:

(a) solar, wind and geothermal resources;

(b) hydropower facilities brought in service after July 1, 2007;

(c) fuel cells that are not fossil fueled; and

(d) biomass resources, such as agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas and anaerobically digested waste biomass; but

(3) does not include electric energy generated by use of fossil fuel or nuclear energy.

History: Laws 2007, ch. 4, § 4.

**Effective date.** — Laws 2007, ch. 4, § 15 makes the sections effective July 1, 2007.

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