

# WRIGHT-HENNEPIN COOPERATIVE ELECTRIC ASSOCIATION

## DISTRIBUTED GENERATION

### AS IT RELATES TO COGENERATION AND SMALL POWER PRODUCTION

#### RULES IMPLEMENTING 216B.164

WHEREAS, Wright-Hennepin Cooperative Electric Association (the "**Cooperative**"), by and through its Board of Directors, has elected to adopt a Resolution authorized by the Minnesota Legislature regarding the authority of the Cooperative to assume the authority of the Minnesota Public Utilities Commission ("**PUC**") under Minnesota Statute Section 216B.164 (the "**Cogeneration Section**"), concerning Cogeneration and Small Power Production; and

WHEREAS, under the Resolutions, the Board of Directors of the Cooperative concluded that it is in the best interest of the Cooperative and its membership that the Cooperative elect to assume the authority delegated to the PUC over cooperative electric utilities under Cogeneration Section within the service territory assigned to the Cooperative, and the Cooperative is exempt from regulation by the PUC under the Cogeneration Section.

WHEREAS, under the Resolutions, the Board of Directors of the Cooperative constitutes the "commission" for purposes of the Cogeneration Section.

WHEREAS, the Board of Directors set forth the following rules for purposes of implementing the Cogeneration Section, and have them in effect as of the Effective Date of these rules, namely October 16, 2017.

WHEREAS, under Minnesota Statute 216B.1611 cooperatives shall adopt an interconnection process that addressed the issues addressed in the Commission's order; and

WHEREAS, Wright-Hennepin Cooperative Electric Association has updated the Cogeneration Policy to reflect the adoption of the Cooperative Minnesota Distribution Energy Resources Interconnection Process, (C-MIP); and

WHEREAS, all new distribution energy resources shall follow the C-MIP interconnection process beginning June 1, 2019.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of Wright-Hennepin Cooperative Electric Association, has adopted the Cogeneration Policy ED-55 as well as the Cooperative Minnesota Distribution Energy Resources Interconnection Process, (C-MIP) and the updated Cooperative Cogeneration rules.

FURTHERMORE, the Cooperative has concluded that it is in the best interests of the Cooperative and its membership to more clearly define the rules that will govern all disputes that may arise under Minnesota Statutes § 216B.164; and

WHEREAS, March 9, 2018 the Board of Directors amended and restated its Distributed Generation Rules implementing Minnesota Statutes § 216B.164.

WHEREAS, February 14, 2019 the Board of Directors hereby amends and restates its Distributed Generation Rules implementing Minnesota Statutes § 216B.164, as follows:

## A. DEFINITIONS.

**Subpart 1. Applicability.** For purposes of these rules, the following terms have the meanings given them in this part.

**Subp. 2. Average retail cooperative energy rate.** "Average retail cooperative energy rate" means, for any class of Cooperative member, the quotient of the total annual class revenue from sales of electricity minus the annual revenue resulting from fixed charges, divided by the annual class kilowatt-hour sales. For purposes of determining the "average retail cooperative energy rate" the Cooperative may consider a retail demand rate as a fixed charge and may exclude such annual revenue from the calculation. Data from the most recent 12-month period available must be used in the computation.

**Subp. 3. Backup power.** "Backup power" means electric energy or capacity supplied by the Cooperative to replace energy ordinarily generated by a qualifying facility's own generation equipment during an unscheduled outage of the facility.

**Subp. 4. Capacity.** "Capacity" means the capability to produce, transmit, or deliver electric energy, and is measured by the number of kilowatts alternating current at the point of distributed energy resource connection, (PoC) between a qualifying facility and a Cooperative's electric system during a 15-minute interval period.

**Subp. 5. Capacity costs.** "Capacity costs" means the costs associated with providing the capability to deliver energy. The Cooperative capital costs consist of the costs of facilities from the Cooperative and the Cooperative's wholesale provider used to generate, transmit, and distribute electricity and the fixed operating and maintenance costs of these facilities.

**Subp. 6. Cooperative.** "Cooperative" means the Wright-Hennepin Cooperative Electric Association

**Subp. 6a. Member.** "Member" as defined by the bylaws of the Cooperative.

**Subp. 7. Energy.** "Energy" means electric energy, measured in kilowatt-hours.

**Subp. 8. Energy costs.** "Energy costs" means the variable costs associated with the production of electric energy. They consist of fuel costs and variable operating and maintenance expenses.

**Subp. 9. Firm power.** "Firm power" means energy delivered by the qualifying facility to the Cooperative with at least a 65 percent on-peak capacity factor in the month. The capacity factor is based upon the qualifying facility's maximum metered capacity delivered to the Cooperative during the on-peak hours for the month.

**Subp. 10. Interconnection costs.** "Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, and administrative costs incurred by the Cooperative that are directly related to installing and maintaining the physical facilities necessary to permit interconnected operations with a qualifying facility. Costs are considered interconnection costs only to the extent that they exceed the costs the Cooperative would incur in selling electricity to the qualifying facility as a non-generating Member.

**Subp. 11. Interruptible power.** "Interruptible power" means electric energy or capacity supplied by the Cooperative to a qualifying facility subject to interruption under the provisions of the Cooperative's tariff applicable to the retail class of members to which the qualifying facility would belong irrespective of its ability to generate electricity.

**Subp. 12. Maintenance power.** "Maintenance power" means electric energy or capacity supplied by the Cooperative during scheduled outages of the qualifying facility.

**Subp. 13. On-peak hours.** "On-peak hours" means either those hours formally designated by the Cooperative as on-peak for ratemaking purposes or those hours for which its typical loads are at least 85 percent of its average maximum monthly loads.

**Subp. 14. Point of Distributed Energy Resource Connection.** "Point of DER Connection " means the point where the qualifying facility's generation system, including the point of generator output, is connected to the member's electric system and meets the definition of IEEE-1547-2018.

**Subp. 15. Purchase.** "Purchase" means the purchase of electric energy or capacity or both from a qualifying facility by the Cooperative.

**Subp. 16. Qualifying facility.** "Qualifying facility" means a cogeneration or small power production facility which satisfies the conditions established in Code of Federal Regulations, title 18, part 292. The initial operation date or initial installation date of a cogeneration or small power production facility must not prevent the facility from being considered a qualifying facility for the purposes of this chapter if it otherwise satisfies all stated conditions. The qualifying facilities must be owned by the Member.

**Subp. 17. Sale.** "Sale" means the sale of electric energy or capacity or both by the Cooperative to a qualifying facility.

**Subp. 18a. Standby charge.** "Standby charge" means the charge imposed by the Cooperative upon a qualifying facility for the recovery of costs for the provision of standby services necessary to make electricity service available to the qualifying facility.

**Subp. 18b. Standby service.** "Standby service" means the service to potentially provide electric energy or capacity supplied by the Cooperative to a qualifying facility greater than 40 kW.

**Subp. 19. Supplementary power.** "Supplementary power" means electric energy or capacity supplied by the Cooperative which is regularly used by a qualifying facility in addition to that which the facility generates itself.

**Subp. 20. System emergency.** "System emergency" means a condition on a Cooperative's system which is imminently likely to result in significant disruption of service to customers or to endanger life or property.

## **B. SCOPE AND PURPOSE.**

The purpose of these rules are to implement certain provisions of Minnesota Statutes, section 216B.164; the Public Utility Regulatory Policies Act of 1978, United States Code, title 16, section 824a-3; and the Federal Energy Regulatory Commission regulations, Code of Federal Regulations, title 18, part 292. These rules shall be applied in accordance with its intent to give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public.

## C. FILING REQUIREMENTS

Annually the Cooperative shall file for review and approval, a cogeneration and small power production tariff with its Board of Directors. The tariff must contain schedules 1 – 4.

**Subpart 1. Schedule 1.** Schedule 1 shall contain the calculation of the average retail cooperative energy rates to be updated annually.

**Subp. 2. Schedule 2.** Schedule 2 shall contain all standard contracts to be used with qualifying facilities, containing applicable terms and conditions.

**Subp. 3. Schedule 3.** Schedule 3 shall contain the Cooperative's adopted interconnection process, safety standards and technical requirements for distributed energy resource systems.

**Subp. 4. Schedule 4.** Schedule 4 shall contain the estimated average incremental energy costs by seasonal, peak and off-peak periods for the Cooperative's power supplier from which energy purchases are first avoided. Schedule 4 shall also contain the net annual avoided capacity costs, if any, stated per kilowatt-hour and averaged over the on-peak hours and over all hours for the Cooperative's power supplier from which capacity purchases are first avoided. Both the average incremental energy costs and net annual avoided capacity costs shall be increased by a factor equal to 50 percent of the Cooperative and the Cooperative's power supplier's overall line losses due to distribution, transmission and transformation of electric energy.

## D. AVAILABILITY OF FILINGS.

All filings shall be maintained at the Cooperative's general office and any other office of the Cooperative where rate tariffs are kept. The filings shall be made available for Member inspections during normal business hours. To the extent possible, Cooperative shall supply the current year's distributed generation rates, interconnection procedures and applications on the Cooperative website.

## E. REPORTING REQUIREMENTS

Annually the Cooperative shall report to the Cooperative Board of Directors for their review and approval and an annual report including information in Subp. 1 – 3. The Cooperative shall still comply with other federal and state reporting of distributed generation to federal and state agencies expressly required by statute.

**Subpart. 1. Summary of Average Retail Cooperative Energy Rate.** A summary of the qualifying facilities that are currently served under average retail cooperative energy rate.

**Subp. 2. Other Qualifying Facilities.** A summary of the qualifying facilities that are not currently served under average retail cooperative energy rate.

**Subp. 3. Wheeling.** A summary of the wheeling undertaken with respect to qualifying facilities.

## **F. CONDITIONS OF SERVICE**

**Subpart 1. Requirement to Purchase.** The Cooperative shall purchase energy and capacity from any qualifying facility which offers to sell energy and capacity to the Cooperative and agrees to the conditions in these rules.

**Subp. 2. Written Contract.** A written contract shall be executed between the qualifying facility and the Cooperative.

## **G. ELECTRICAL CODE COMPLIANCE.**

**Subpart 1. Compliance; standards.** The interconnection between the qualifying facility and the Cooperative must comply with the requirements in the most recently published edition of the National Electrical Safety Code issued by the Institute of Electrical and Electronics Engineers. The interconnection is subject to subparts 2 and 3.

**Subp. 2. Interconnection.** The qualifying facility is responsible for complying with all applicable local, state, and federal codes, including building codes, the National Electrical Code (NEC), the National Electrical Safety Code (NESC), and noise and emissions standards. The Cooperative shall require proof that the qualifying facility is in compliance with the NEC before the interconnection is made. The qualifying facility must obtain installation approval from an electrical inspector recognized by the Minnesota State Board of Electricity.

**Subp. 3. Generation system.** The qualifying facility's generation system and installation must comply with the American National Standards Institute/Institute of Electrical and Electronics Engineers (ANSI/IEEE) standards applicable to the installation.

## **H. RESPONSIBILITY FOR APPARATUS.**

**Subpart 1. Member owned facilities.** The qualifying facility, without cost to the Cooperative, must furnish, install, operate, and maintain in good order and repair any apparatus the qualifying facility needs in order to operate in accordance with schedule 3.

**Subp. 2. Cooperative owned facilities.** The Cooperative shall furnish, install, operate, own and maintain in good working order distribution facilities required for the operation of the qualifying facility. The Cooperative retains ownership of any distribution facilities it furnishes including any additions or modifications to the Cooperative's distribution system to accommodate the qualifying facility regardless of any financial contribution to said facilities by member(s).

## **I. TYPES OF POWER TO BE OFFERED; STANDBY SERVICE.**

**Subpart 1. Service to be offered.** The Cooperative shall offer maintenance, interruptible, supplementary, and backup power to the qualifying facility upon request.

**Subp. 2. Standby service.** The Cooperative shall offer a qualifying facility standby service at the Cooperative applicable standby rate schedule.

## **J. DISCONTINUING SALES DURING EMERGENCY.**

The Cooperative may discontinue sales to the qualifying facility during a system emergency, if the discontinuance and recommencement of service is not discriminatory.

## **K. RATES FOR COOPERATIVE SALES TO A QUALIFYING FACILITY**

Rates for sales to a qualifying facility must be governed by the applicable tariff(s) for the class of electric cooperative member to which the qualifying facility belongs or would belong were it not a qualifying facility. Such rates are not guaranteed and may change from time to time at the discretion of the Cooperative.

## **L. STANDARD RATES FOR PURCHASES FROM QUALIFYING FACILITIES.**

**Subpart 1. Qualifying facilities with 100 kilowatt capacity or less.** For qualifying facilities with capacity of 100 kilowatts or less, standard purchase rates apply. The Cooperative shall make available four types of standard rates, described in parts M, N, O, and P. The qualifying facility with a capacity of 100 kilowatts or less must choose interconnection under one of these rates, and must specify its choice in the written contract required in part V. Any net credit to the qualifying facility must, at its option, be credited to its account with the Cooperative or returned by check or comparably electronic payment service within 15 days of the billing date. The option chosen must be specified in the written contract required in part V. Qualifying facilities remain responsible for any monthly service charges and demand charges specified in the tariff under which they consume electricity from the Cooperative.

**Subp. 2. Qualifying facilities over 100 kilowatt capacity.** A qualifying facility with more than 100 kilowatt capacity has the option to negotiate a contract with the Cooperative or any other Minnesota utility or, if it commits to provide firm power, be compensated under standard rates.

**Subp. 3. Grid Access Settlement.** A qualifying facility shall be assessed a monthly Grid Access Settlement to recover the fixed costs not already paid by the member through the member's existing billing arrangement. The additional charge shall be reasonable and appropriate for the class of member based on the most recent cost of service study defining the Grid Access Settlement. The cost of service study for the Grid Access Settlement shall be made available for review by the member of the Cooperative upon request.

**Subp. 4. Renewable energy credits.** The renewable energy credits for the qualifying facility are the property of the qualifying facility owner unless the qualifying facility owner chooses to assign ownership of the renewable energy credit to a different entity.

## **M. AVERAGE RETAIL COOPERATIVE ENERGY RATE.**

**Subpart 1. Applicability.** The average retail cooperative energy rate is available only to Member-owned qualifying facilities with capacity of less than 40 kilowatts which choose not to offer electric power for sale on either a time-of-day basis, a simultaneous purchase and sale basis or roll-over credit basis.

**Subp. 2. Method of billing.** The Cooperative shall bill the qualifying facility for the excess of energy supplied by the Cooperative above energy supplied by the qualifying facility during each billing period according to the Cooperative's applicable retail rate schedule.

**Subp. 3. Additional calculations for billing.** When the energy generated by the qualifying facility exceeds that supplied by the Cooperative to the Member at the same site during the same billing period, the Cooperative shall compensate the qualifying facility for the excess energy at the average retail cooperative energy rate.

## **N. SIMULTANEOUS PURCHASE AND SALE BILLING RATE.**

**Subpart 1. Applicability.** The simultaneous purchase and sale rate is available only to qualifying facilities with capacity of less than 40 kilowatts which choose not to offer electric power for sale on average retail cooperative energy rate basis, time-of-day basis or roll-over credit basis.

**Subp. 2. Method of billing.** The qualifying facility must be billed for all energy and capacity it consumes during a billing period according to the Cooperative's applicable retail rate schedule.

**Subp. 3. Compensation to qualifying facility; energy purchase.** The Cooperative shall purchase all energy which is made available to it by the qualifying facility. At the option of the qualifying facility, its entire generation must be deemed to be made available to the Cooperative. Compensation to the qualifying facility must be the energy rate shown on schedule 4.

**Subp. 4. Compensation to qualifying facility; capacity purchase.** If the qualifying facility provides firm power to the Cooperative, the capacity component must be the Cooperative's net annual avoided capacity cost per kilowatt-hour averaged over all hours shown schedule 4, divided by the number of hours in the billing period. If the qualifying facility does not provide firm power to the Cooperative, no capacity component may be included in the compensation paid to the qualifying facility.

## **O. TIME-OF-DAY PURCHASE RATES.**

**Subpart 1. Applicability.** Time-of-day rates are required for qualifying facilities with capacity of 40 kilowatts or more and less than or equal to 100 kilowatts, and they are optional for qualifying facilities with capacity less than 40 kilowatts. Time-of-day rates are also optional for qualifying facilities with capacity greater than 100 kilowatts if these qualifying facilities provide firm power.

**Subp. 2. Method of billing.** The qualifying facility must be billed for all energy and capacity it consumes during each billing period according to the Cooperative's applicable retail rate schedule.

**Subp. 3. Compensation to qualifying facility; energy purchase.** The Cooperative shall purchase all energy which is made available to it by the qualifying facility. Compensation to the qualifying facility must be the energy rate shown on schedule 5.

**Subp. 4. Compensation to qualifying facility; capacity purchase.** If the qualifying facility provides firm power to the Cooperative, the capacity component must be the capacity cost per kilowatt shown on schedule 5 divided by the number of on-peak hours in the billing period. The capacity component applies only to deliveries during on-peak hours. If the qualifying facility does not provide firm power to the Cooperative, no capacity component may be included in the compensation paid to the qualifying facility.

## **P. ROLL-OVER CREDIT PURCHASE RATES.**

**Subpart 1. Applicability.** The roll-over credit rate is available only to qualifying facilities with capacity of less than 40 kilowatts which choose not to offer electric power for sale on average retail cooperative energy rate basis, time-of-day basis or simultaneous purchase and sale basis.

**Subp. 2. Method of billing.** The Cooperative shall bill the qualifying facility for the excess of energy supplied by the Cooperative above energy supplied by the qualifying facility during each billing period according to the Cooperative's applicable retail rate schedule.

**Subp. 3. Additional calculations for billing.** When the energy generated by the qualifying facility exceeds that supplied by the Cooperative during a billing period, the Cooperative shall apply the excess kilowatt hours as a credit to the next billing period kilowatt hour usage. Excess kilowatt hours that are not offset in the next billing period shall continue to be rolled over to the next consecutive billing period. Any excess kilowatt hours rolled over that are remaining at the end of each calendar year shall cancel with no additional compensation.

#### **Q. CONTRACTS NEGOTIATED BY MEMBER.**

A qualifying facility with capacity greater than 100 kilowatts must negotiate a contract with the Cooperative setting the applicable rates for payments to the Member of avoided capacity and energy costs.

**Subpart 1. Amount of Capacity Payments.** The qualifying facility which negotiates a contract under Part Q must be entitled to the full avoided capacity costs of the Cooperative. The amount of capacity payments will be determined by the Cooperative and the Cooperative's wholesale power provider.

**Subp. 2. Full Avoided Energy Costs.** The qualifying facility which negotiates a contract under Part Q must be entitled to the full avoided energy costs of the Cooperative. The costs must be adjusted as appropriate to reflect line losses.

#### **R. WHEELING.**

Qualifying facilities with capacity of 30 kilowatts or greater, are interconnected to the Cooperative's distribution system and choose to sell the output of the qualifying facility to any other utility, must pay any appropriate wheeling charges to the Cooperative.

#### **S. NOTIFICATION TO MEMBERS**

**Subpart 1. Contents of Written Notice.** Following each annual review and approval by the Cooperative of the cogeneration rate tariffs the Cooperative shall furnish in the monthly newsletter or through similar notice to each of its members that the Cooperative is obligated to interconnect with and purchase electricity from cogenerators and small power producers.

**Subp. 2. Availability of Information.** The Cooperative shall make available to all members on the Cooperative's website the interconnection; process and requirements; adopted by the Cooperative, pertinent rate schedules and sample contractual agreements.

#### **T. DISPUTE RESOLUTION**

**Subpart 1. Dispute Resolution.** The Cooperative has adopted Addendum 1 regarding Dispute Resolution and the procedures outlined may be amended by the Cooperative Board of Directors, from time to time, shall govern the resolution of all disputes between a Member and the Cooperative herein.



## U. INTERCONNECTION CONTRACTS

**Subpart 1. Interconnection Standards.** The Cooperative shall provide the member with a copy of, or electronic link to, the Cooperative's adopted interconnection process and requirements.

**Subp. 2 Existing Contracts.** Any existing interconnection contract executed between the Cooperative and a qualifying facility with capacity of less than 40 kilowatts remains in force until terminated by mutual agreement of the parties or as otherwise specified in the contract. The Cooperative has assumed all dispute responsibilities as listed in existing interconnection contracts. Disputes are resolved through the process in Section T.

**Subp. 3 Renewable Energy Credits; Ownership.** Generators own all renewable energy credits unless other ownership is expressly provided for by a contract between a generator and the Cooperative.

## V. UNIFORM AGREEMENT.

The form for uniform agreement shall be used between the Cooperative and a qualifying facility that meets the requirements of the rules adopted by the Cooperative on Cogeneration and Small Power Production (up to 100 kW),

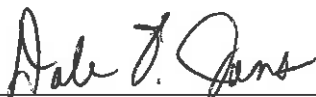
## W. INTERPRETATION

In the event the Rules are in conflict with the requirements of the Cogeneration Section or any other applicable federal or state law or regulation, the applicable law or regulation shall be controlling. In all instances, this policy shall be construed and administered to be in compliance with all applicable federal and state laws and regulations, including without limitation the Cogeneration Section.

ADOPTED EFFECTIVE: October 16, 2017

AMENDED EFFECTIVE: March 9, 2018

RESTATED AND AMENDED EFFECTIVE: February 14, 2019

Attest:   
Dale Jans, Secretary,  
Wright-Hennepin Cooperative Electric Association

# **Addendum: 1**

## **DISPUTE RESOLUTION**

### ***I. Purpose***

These rules are established by the Board of Directors of Wright-Hennepin Cooperative Electric Association pursuant to Minnesota Statute 216B.164, Subd.11(a) for the dispute resolution process concerning Cogeneration and Small Power Production to be followed in all instances where issues arise under Minn. Stat. 216B.164.

### ***II. Definitions***

For purposes of these rules the following words have the following meanings:

- A. **Board of Directors:** A number of duly seated directors of Cooperative constituting a quorum that are assembled for the purpose of addressing the dispute or otherwise implementing these rules.
- B. **Board Hearing:** The opportunity for the member to address the Board of Directors, present written and oral evidence, call witnesses and otherwise communicate its position regarding the dispute to the Board of Directors.
- C. **Cooperative:** Wright-Hennepin Cooperative Electric Association.
- D. **Dispute:** An unresolved disagreement that has been articulated in writing and submitted to the Cooperative.
- E. **Hearing Examiner:** The individual who has been selected under these rules to conduct the Board Hearing.
- F. **Hearing Record:** The tape recording of the proceedings, written submissions, and other documentary evidence offered by either party and received and allowed into the record by the Hearing Examiner.
- G. **Mediator:** An individual listed on the roster of neutrals for civil matters established by the State Court Administrator under Rule 114.12 of Minnesota's General Rules of Practice for District Courts who has been selected pursuant to these rules for the purpose of assisting in resolving the dispute.
- H. **Member:** An individual(s) or entity that is a "member" as defined by the Bylaws of the Cooperative, is in good standing, and is involved in a dispute with this Cooperative.
- I. **Substantial Evidence:** Such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. To be substantial, the evidence should be reasonable in nature, credible, and of solid value. Substantial evidence may consist of inferences, but such inferences must be logical and reasonable and must be based on the evidence. Inferences that are the result of speculation or conjecture cannot support a finding.

### **III. Dispute Procedures**

#### **A. Initial Procedures**

1. A member who has a dispute with the Cooperative which arises from or is related to the member or Cooperative's rights or responsibilities under Minn. Stat. 216B.164 shall first prepare a written description of the dispute and provide as much explanation of the dispute as is reasonably necessary to allow others to understand the nature of the dispute.
2. The member shall furnish the written dispute to the Cooperative. The Cooperative shall acknowledge receipt of the dispute by providing the member with a signed and dated receipt for the same.
3. Within ten (10) business days of receipt of the written dispute, the Cooperative shall contact the member and use its best efforts to schedule a meeting between the member and Cooperative staff, which shall include the Cooperative's President & CEO. The purpose of this meeting shall be to discuss the dispute and try to come to a mutually amicable resolution of the dispute. Any resolution reached at this stage shall be reduced to writing and signed by the Cooperative and member. Regardless of the resolution, written confirmation of the meeting date and attendees present shall be furnished from Cooperative to member.

#### **B. Board Hearing**

1. If no mutual resolution is reached at the meeting described in step #3 above, the member shall then have the right to have the dispute heard in a Hearing before a quorum of the Cooperative's Board of Directors. Any request for this Hearing before the Board of Directors shall be made within ten (10) business days of the date when the meeting described in step #3 above occurred.
2. The Board Hearing shall be scheduled by the Cooperative's President & CEO for a time and date that is within thirty (30) business days after the date when the request for said Board Hearing was received from the member. The Board Hearing shall take place at the Cooperative's principal business address or if that is not available at such other suitable place that the Cooperative's President & CEO may designate.
3. The Board Hearing may be attended by Cooperative directors, Cooperative legal counsel, and staff, the member, the member's legal counsel, if any, and any witnesses the parties may deem necessary for proper presentation of their respective positions on the dispute. With the exception of legal counsels and or witnesses described above, the Board Hearing is only open to members of the cooperative in good standing.
4. The Board Hearing shall be recorded. Either party may retain a court reporter to record the Hearing at their expense. In this event, either party may obtain a transcript of the reported proceedings, at the requesting party's expense.
5. The Hearing shall be conducted by an individual designated by the Board of Directors, who may be the Cooperative's legal counsel or a non-member who is retained specifically for this purpose. The individual selected shall be referred to herein as the Hearing Examiner. The Cooperative will pay the expense for the Hearing Examiner.

6. The Hearing Examiner shall conduct the Hearing; insure that decorum and civility are followed; have the ability to order the removal of individuals from the Hearing room; swear in witnesses; accept testimony and documentary exhibits; record the proceedings and save the record afterwards; rule on any procedural objections; ask questions of any individual present; and generally, be in charge of the Hearing procedure.
7. Minnesota rules of evidence shall not be strictly applied to the Hearing process and any evidence that in the Hearing Examiner's judgment is reasonably trustworthy and probative to the issues involved, may be received into the record.
8. At the Board Hearing, the member shall articulate the nature of the dispute and shall come forward with substantial evidence to support the member's position. A representative designated by the Cooperative shall have an opportunity to examine any witnesses and to ask the member questions regarding any documentary evidence offered as an exhibit into the record or about any document referenced by the member as part of its case-in-chief.
9. After the member has concluded its presentation of evidence, questioning of witnesses, making any desired statements and otherwise presenting its case-in-chief, the Cooperative, by its designated individual, shall come forward with any comments, witness testimony or documentary exhibits that it may wish to present. The member shall have the opportunity to ask the Cooperative witnesses, if any, questions it may have and to comment on any document submitted for the record or referenced by the Cooperative as part of its case-in-chief.
10. At the conclusion of the party's respective cases-in-chief, the Hearing Examiner shall afford each party an opportunity to make any final comment regarding the dispute.
11. Once the parties have concluded their final comments, the Hearing Record will be considered to be closed. At this time, the member and all other individuals shall leave the room where the Hearing was conducted, leaving just the Cooperative's Board of Directors, its legal counsel, if any, and the Hearing Examiner. The Board of Directors shall then deliberate until it is able to make a final decision regarding the dispute. The Board of Directors may rely on its Director's independent recollections of facts, may review documentary exhibits, and may request a Hearing Examiner to produce for review any part of the Hearing Record made.
12. Within twenty-four (24) hours of the conclusion of the Hearing, the Board of Directors shall make a final decision regarding resolution of the dispute. As part of the final decision, the Board of Directors shall prepare written Findings of Fact upon which the decision is based. In rendering its decision, the Board of Directors shall be governed by the following principles. If the Board of Directors finds by a majority vote of those directors in attendance at the Hearing that substantial evidence exists in the record to support the member's position that the cooperative failed to properly follow applicable state statutes, the Cooperative policies, or the Cooperative procedures, the Board of Directors should establish an appropriate remedy that is just, fair, reasonable and final toward the member and which purports to resolve the dispute. If the Board of Directors conclude by a majority vote of those directors in attendance at the Hearing that the member's position on the dispute is not supported by substantial evidence in the record, then the Board of Directors shall issue a ruling denying the member's dispute. The written decision of the Cooperative Board shall be furnished to the member.

13. A complete copy of the Hearing Record shall be maintained at the Cooperative offices and shall be available to members for review upon request. A copy of the Board of Director's final written ruling shall be recorded in the minutes from the Board Hearing. The Board Hearing shall be considered a special meeting of the Board of Directors.
14. Any fees, expenses and other miscellaneous charges incurred as a result of employing a Hearing Examiner for purposes of these rules shall be born exclusively by the Cooperative.

#### ***IV. Mediation***

- A. Following conclusion of the Board Hearing and issuance of the Board of Director's written Findings and decision, if the member is not satisfied with said ruling, it may demand that the parties participate in a non-binding mediation process; said mediation to be conducted within sixty (60) business days of the date of the Board of Director's written ruling. Said mediation demand must be made in writing within ten (10) business days of the date of the Board of Directors written ruling. At any mediation conducted pursuant to this rule, the Cooperative shall be represented, at a minimum, by its Board Chair and President & CEO.
- B. Within ten (10) business days of either party making a demand for mediation, the Cooperative shall furnish the member with a copy of the roster of available neutrals maintained by the State Court Administrator under Rule 114.12 of Minnesota's General Rules of Practice for District Courts. Thereafter, the parties shall attempt to agree upon a mediator who is willing and able to conduct the mediation. In the event the parties are unable to mutually agree upon a mediator, a coin toss will be utilized to determine who the mediator is. A United States quarter will be used for purposes of this coin toss and the member shall be designated "head" on the coin and the Cooperative shall be designated "tail". In the presence of the member, the Cooperative's CEO or his/her designee shall flip the coin and the winner shall select the mediator. The mediation shall take place at the Cooperative's headquarters or such other location that may be mutually agreed upon.
- C. The mediation shall be non-binding and either party may declare an impasse and terminate the mediation at any time.
- D. The Cooperative and the member involved in the dispute shall share the expense of mediation. The Cooperative shall be responsible for 90 percent of the mediator's cost/expenses and the member shall be responsible for 10 percent of the mediator's cost/expense.
- E. If an agreeable resolution is reached in the mediation process, the same shall be committed to a written Mediated Settlement Agreement to be signed by both parties.

*V. Miscellaneous*

These rules are being implemented in conjunction with amendments to Minn. Stat. 216B.164, subd. 11. The Cooperative Board of Director's reserves the right to amend these rules at appropriate future dates.

Effective: 03/09/18

Supersedes: NA

Approved: 03/09/18



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Dale Jans, Secretary