



For informational purposes only / NOT actual notice;  
actual notice will be mailed to members in September

## NOTICE OF PROPOSAL TO AMEND AND RESTATE DMEA'S ARTICLES OF INCORPORATION

Delta-Montrose Electric Association (DMEA) first filed its Articles of Incorporation in 1938, creating the electric cooperative that has served its members for 80 years. To position DMEA for the future, the DMEA Board of Directors is proposing that the cooperative's members vote to adopt Amended and Restated Articles of Incorporation (the "revised Articles") at a special meeting:

**Date:** October 16, 2018

**When:** Special meeting begins at 10:00 a.m.; results will be announced during the meeting.

**Where:** DMEA headquarters at 11925 6300 Road, Montrose, Colorado.

**What:** The purpose of this special meeting is to vote on the revised Articles; no additional matters will be considered.

**Who:** Members of DMEA as of September 1, 2018 (the record date set by the DMEA Board) may vote.

**How:** After reviewing this material, please record your vote on the accompanying ballot. A YES vote means that you agree that DMEA's Articles of Incorporation should be amended and restated as described in this Notice of Proposal. A NO vote means you want DMEA's Articles of Incorporation to remain as they are today. Ballots may be returned by mail (received no later than October 12), or may be dropped off between 8:00 a.m. and 10:00 a.m. on October 16, 2018 at DMEA headquarters, or may be cast in person at 10:00 a.m. at the October 16, 2018 special meeting.

A member who has voted by mail may NOT vote at the meeting. Ballots may NOT be dropped off at any DMEA location except from 8:00 a.m. – 10:00 a.m. on October 16 at DMEA headquarters.

### MEMBER VOTING MATTERS

#### Vote to Approve and Adopt the Proposed Revised Articles

#### Board's Recommendation

*The DMEA Board believes revising the Articles is in the best long-term interests of DMEA and its members because it gives DMEA the tools it will need to remain competitive, reliable, and cost-effective.*

**YES**

### INFORMATION ABOUT THE REVISED ARTICLES

**Overview.** The revised Articles combine previous amendments into a single document and incorporate new changes proposed by the DMEA Board. The proposed changes, described below, generally (1) let DMEA take advantage of being governed by a newer Colorado cooperative law called the Colorado Cooperative Act, (2) give DMEA more financial flexibility by letting it issue capital stock to non-members, and (3) modernize and streamline language. A complete copy of the proposed revised Articles is attached as [Exhibit A](#). The DMEA Board asks that you please read these materials and give them consideration when deciding your vote.

**Voting Requirements.** Your DMEA Board has approved the revised Articles, but the revised Articles must receive a YES vote from the majority of the members voting in this election to become effective.

**DMEA's Current Structure.** DMEA is organized under and subject to Article 55 of Title 7 of the Colorado Revised Statutes (Article 55). Article 55 defines requirements for cooperative associations. Because it has limited provisions, Article 55 is supplemented by both the Colorado Business Corporation Act and the Colorado Revised Nonprofit Corporation Act. This leads to some uncertainty in the law governing cooperatives, especially for a cooperative like DMEA that is looking for innovative ways to remain competitive, reliable, and cost-effective.

**What is the Colorado Cooperative Act (Article 56)?** The revised Articles would have Article 56 govern DMEA. Article 56 originally covered just agricultural cooperatives. In 1996, Colorado revised the law to give greater direction and flexibility and to let various industries take advantage of its benefits. One benefit is that DMEA can subject itself to Article 56 without having to convert its entire entity structure (a potentially complex and costly process). DMEA need only amend its operating documents to meet the requirements of Article 56 and file a statement with the Secretary of State that it has elected to accept the benefits and be bound by the provisions of Article 56. Under Article 56, a cooperative must have the following characteristics, among others: (1) the business is carried on for the mutual benefit of the members; (2) dividends on stock or interest on equity capital are limited by the cooperative's Articles or Bylaws; (3) only members have voting rights; and (4) members are not liable for any debt, obligation, or liability of the cooperative. Article 56 is a more comprehensive statute that gives specific guidance on fundamental cooperative principles but allows variation in other areas. Article 56 was designed to offer substantial flexibility to meet the opportunities and challenges that cooperatives face.

---

## The Proposed DMEA Amended and Restated Articles of Incorporation

---

Below are the revisions to each section of the current Articles. Proposed additions to the existing Articles, including proposed new sections, are in **bold face underlined type**. Proposed deletions from the existing Articles are in ~~strike through type~~. During the process of revising the Articles, DMEA found that certain pre-1980 amendments to the Articles are not included in the electronic copies of the Articles available on the Colorado Secretary of State website. DMEA believes that these amendments were adopted, and this document reflects those amendments.

---

### PREAMBLE TO THE ARTICLES

---

**Rationale:** *The revised preamble (1) deletes archaic language, (2) clearly states that DMEA is amending and restating its articles in their entirety, and (3) elects to accept the expansive and flexible benefits of Article 56.*

~~KNOW ALL MEN BY THESE ARTICLES OF INCORPORATION, That we, the undersigned, residents of Delta and Montrose Counties, as incorporators, have associated ourselves together for the purpose of incorporation under the laws of the State of Colorado, and particularly Chapter 62 of the Session Laws of Colorado, 1913, as a cooperative Corporation, and do therefore make, sign, and acknowledge these duplicate certificates in writing which when filed shall constitute the Articles of Incorporation of the within named Corporation.~~

**THESE AMENDED AND RESTATED ARTICLES OF INCORPORATION (i) fully set forth the articles of incorporation of Delta-Montrose Electric Association (the "Cooperative") as so amended and restated, (ii) have been duly adopted as required by law, effective as of \_\_\_\_\_, 2018, and (iii) supersede the original articles of incorporation and all amendments thereto. The Cooperative is organized under Title 7, Article 55 of the Colorado Revised Statutes, and has determined to accept the benefits and to be bound by the provisions of Title 7, Article 56 of the Colorado Revised Statutes (the "Colorado Cooperative Act") in accordance with § 7-56-205, C.R.S., and has amended its constituent operating documents as necessary to conform to the Colorado Cooperative Act by amendments adopted in accordance with applicable law and the Cooperative's constituent operating documents.**

---

NAME

---

ARTICLE 1

***Rationale:** Article 1 of the revised Articles makes a technical correction, referring to DMEA as a "Cooperative" instead of a "Corporation." This correction and other technical corrections occur throughout the revised Articles, including deleting references to members as "shareholders," corrections to references and cross-references, and various grammatical edits.*

The name of ~~this Corporation~~ **the Cooperative** shall be Delta-Montrose Electric Association.

---

ORGANIZATIONAL ITEMS & PURPOSES

---

ARTICLE 2

***Rationale:** Article 2 in the current Articles will be deleted because organizational information about the principal office and agent is not necessary for the restatement. The current principal office and registered agent for DMEA is already on file with the Secretary of State and need not be included in these revised Articles. Because of this deletion, the remaining "Articles" are renumbered accordingly.*

~~The office and principal place of transacting business of the Corporation shall be in Delta, County of Delta, State of Colorado, and the principal business of said Corporation shall be carried on in the counties of Delta and Montrose, and in said State of Colorado, and Donald S. Mitchell is hereby designated as the agent in charge of the principal office of said Corporation, the address of said office and agent being Delta, Colorado. The original or duplicate stock ledger and the books required by Sections 31 and 32, Chapter 41, 1935, Colorado Statutes Annotated shall be kept in Colorado at the principal office of said Corporation.~~

~~If the principal office of said Corporation is changed to another address, the said stock ledger and books will be kept by the Secretary of said Corporation at its principal office at the address set forth in the annual report of said Corporation filed with the Secretary of State of Colorado.~~

***Rationale:** Section 2.1 of the revised Articles will be amended to be more concise, make technical corrections, and to incorporate all the powers available to a cooperative under Article 56.*

ARTICLE 3

**2.1** ~~The purposes for which this Corporation~~ **Cooperative** is organized and ~~for~~ the general nature of the business to be transacted are **following purposes**:

~~Section 1. (a)~~ To generate, manufacture, purchase, acquire, **store** and accumulate electric energy for its ~~shareholders~~ **members**, and to transmit, distribute, furnish, sell and dispose of such electric energy to its ~~shareholders~~ **members** and any consumers in the area served by the ~~cooperative~~ **Cooperative** who agree to be governed by the rules and regulations of the Board of Directors, and subject to any ~~state laws that may be applicable,~~ and in order to carry out and accomplish any or all of such purposes the company is authorized: **applicable laws of the State of Colorado;**

***Rationale:** Current subsections (a) – (d) and (f) of Article 3, Section 1 are all powers expressly allowed under Article 56, so it is redundant to list each action individually in DMEA's Articles. The revised Articles will delete such subsections but all of the actions will still be incorporated into the revised Articles (in fewer words) with the revision in 2.1 (d) and the addition of Section 2.2 below.*

~~(a) — To construct, erect, purchase, lease as lessee and in any manner acquire, own, and hold, maintain, operate, sell, dispose of, lease as lessor, exchange and mortgage plants, buildings, works, machinery, equipment, supplies, transmission and distribution lines or systems and any and all other real and personal property;~~

~~(b) To acquire, own, hold, exercise and, to the extent permitted by law, mortgage, pledge, hypothecate and in any manner dispose of, franchises, rights, privileges, license and easements;~~

~~(c) To assist its shareholders to wire their premises and to install therein electrical and plumbing appliances, fixture, machinery, supplies, apparatus and equipment of any and all kinds and character and in connection therewith to purchase, acquire, lease, sell, distribute, install and repair electrical and plumbing appliances, fixtures, machinery, supplies, apparatus and equipment of any and all kinds and character and to receive, acquire, endorse, pledge, guarantee, hypothecate, transfer and otherwise dispose of notes and other evidences of indebtedness and all security therefor;~~

~~(d) To borrow money and to make and issue bonds, notes, bills of exchange, debentures and other evidences of indebtedness secured or unsecured, for moneys borrowed or in payment for property acquired and to secure the payment of any such notes, bonds, bills of exchange, debentures or other evidences of indebtedness by mortgage or mortgages or deed or deeds of trust upon, or by the pledge of or other lien upon any and all of the property of the company;~~

~~(f) To have and exercise all powers expressly delegated to cooperative corporations under the existing and subsequent statutes of the State of Colorado.~~

**Rationale:** *The revised Articles will eliminate the prohibition on issuing capital stock so that DMEA may take advantage of the flexible financing options available under Article 56 (discussed in more detail below in revised Section 3.3).*

~~(g) No capital stock shall be issued.~~

~~(h-b) To form one or more wholly owned profit or non-profit subsidiary business organizations, or to participate with third parties in the ownership of independent profit or non-profit business organizations to provide such other services or products as may be permitted by law;~~

**Rationale:** *Section 2.1(c) of the revised Articles will include a provision that DMEA may (subject to Board approval) enter into any business in which DMEA may legally participate. The DMEA Board believes that this flexibility should be included in the revised Articles so that DMEA can quickly adapt to a rapidly evolving marketplace.*

**(c) To transact all lawful business in which the Cooperative may be involved pursuant to the Colorado Cooperative Act and any other applicable law;**

~~(e-d) To do all such acts and things as may be useful, necessary or convenient for the accomplishment of the purposes in this article expressed or any of them **Article 2**, provided, however, that all of the operations and business of the company **Cooperative** shall be on a cooperative basis, not for profit **and for the mutual benefit of its members.**~~

**2.2 In pursuing its purposes, the Cooperative shall have all of the rights, powers and privileges now or later conferred upon cooperative associations subject to the Colorado Cooperative Act, and as may be stated in the Bylaws of the Cooperative as may be amended from time to time.**

---

**MEMBERSHIP; BYLAWS; CAPITAL STOCK**

---

**ARTICLE 3**

**ARTICLE 4**

**Rationale:** *Sections 3.1 and 3.2 of the revised Articles will be revised to make technical corrections.*

~~Section 3.1-~~ Any person, firm, corporation or body politic may become a member of the ~~Corporation~~ **Cooperative** by:

- (a) making a written application for membership, ~~and,~~
- (b) agreeing to purchase from the ~~Corporation~~ **Cooperative** electric energy as specified herein, and,
- (c) agreeing to comply with and be bound by ~~these~~ Articles of Incorporation and ~~the~~ Bylaws **of the Cooperative** and **any** amendments thereto, and with such rules and regulations as may from time to time be adopted by the Board of Directors **of the Cooperative**, provided, however, that no person, firm, corporation or body politic may hold more than one membership in the ~~Corporation~~ **Cooperative**.

~~Section 3.2-~~ The Bylaws of the Cooperative may define and fix the duties and responsibilities of the ~~shareholders~~ **members** and prescribe such terms and conditions upon which ~~shareholders~~ **members** shall be admitted to and retain membership in the ~~cooperative~~ **Cooperative** not inconsistent with these Articles of Incorporation or **applicable law**.

*Rationale: Section 3.3(a) of the revised Articles outlines the rights and interests of the members in DMEA as required by Article 56. While this language is new in the revised Articles, it is consistent with current DMEA practices relating to the rights and interests of its members.*

### **3.3 Capital Stock.**

**(a) The Cooperative shall be organized without common voting capital stock. The property rights and interests of each voting member shall be different depending on the rate class of the member as determined by the Board of Directors according to the Bylaws of the Cooperative, and shall be subject to restrictions on transfer as set forth in the Bylaws. The property rights and interests of newly admitted members shall be determined in the same manner. Each member shall be entitled to only one vote on any matter presented to the members for a vote. No member of the Cooperative shall have a direct interest in or claim upon the property of the Cooperative. Qualifications for voting membership in the Cooperative shall be established in and administered pursuant to the Bylaws of the Cooperative. Only members whose membership has not been suspended shall be entitled to vote. Members of the Cooperative shall be entitled to share in allocations of net margins and be subject to per unit retains in the manner and to the extent determined by the Board of Directors in accordance with the Bylaws.**

*Rationale: Section 3.3(b) of the revised Articles will allow the DMEA Board to issue up to one million shares of capital stock (referred to as preferred stock) to investors, including non-member investors. Issuing this stock is a way for DMEA to access funding faster than through member-retained earnings, which only accumulate over time. Preferred stock also provides greater flexibility than a traditional loan. To maintain flexibility and avoid having to amend the DMEA Articles each time capital stock is issued, the revised Articles let the DMEA Board determine the terms of the preferred stock prior to its issuance. However, under no circumstances may any non-member investor be granted voting rights.*

**(b) The Cooperative is authorized to issue, on terms and conditions established by the Board of Directors, up to 1,000,000 shares of non-voting preferred stock ("Preferred Stock"), with no par value, in one or more series as may be established by the Board of Directors in the Bylaws or in the resolution authorizing its issuance. Preferred Stock shall be: (i) subject to redemption on such terms and conditions, (ii) entitled to dividends, if any, (iii) entitled to such preferences as to dividends and distributions, and (iv) subject to such restrictions on transfer as established by the Board of Directors in the Bylaws or in the resolution authorizing the issuance of the Preferred Stock. Preferred Stock may be issued and sold by the Cooperative to any person, including persons not otherwise qualified to be members. Under no circumstances shall Preferred Stock, or the holders of such Preferred Stock by virtue of their ownership of Preferred Stock, have any voting rights in the Cooperative.**

---

## PERPETUAL EXISTENCE

---

### ARTICLE 4

### ARTICLE 5

**Rationale:** Article 4 of the revised Articles will be revised to be more concise and make technical corrections.

The said ~~Corporation~~ **Cooperative** shall have perpetual existence ~~from and after the date of the issuance of its Certificate of Authority.~~

---

## BOARD OF DIRECTORS

---

### ARTICLE 5

### ARTICLE 6

**Rationale:** Section 5.1 of the revised Articles will require that all DMEA Board members be members of the Cooperative—preventing any non-member investor or other third party from being elected or appointed to a seat on the Board.

~~Section 5.1-~~ The powers of this ~~corporation~~ **Cooperative** and the management of its affairs shall be vested in the Board of Directors. The number of directors shall be as prescribed by the Bylaws **of the Cooperative**, except that the number of **the** directors shall be no less than nine and no more than twelve. Each term of office for a director shall be three years. **Each director must be a member of the Cooperative.**

**Rationale:** Proxy voting is when a member delegates his, her, or its voting power to someone else. To comply with Article 56, section 5.2 of the revised Articles will prevent proxy voting. However, the revised Articles will clarify that when a member is a legal entity and not an individual, that member's vote may be cast by a representative in the same way that an individual may vote.

~~Section 5.2-~~ Cumulative **or proxy** voting shall not be permitted ~~in the election of directors~~ **except that, where a member is other than an individual, its vote may be cast by a representative authorized pursuant to the Colorado Cooperative Act.**

~~Section 5.3-~~ The Board of Directors shall have **the** power to make such prudential Bylaws as shall be necessary for the government of the ~~Corporation~~ **Cooperative** not inconsistent with these Articles and for the management of ~~its~~ **the Cooperative's** business and the conduct of its affairs, and to add to, repeal, modify and amend the same.

~~Section 5.4-~~ The Board of Directors shall have power to make and adopt such rules and regulations, not inconsistent with ~~this Certificate of Incorporation~~ **these Articles** or the Bylaws of the Cooperative, as it may deem advisable for the management, administration and regulation of the business and affairs of the ~~cooperative~~ **Cooperative.**

**Rationale:** Section 5.5 of the revised Articles is expanded to not only limit the personal liability of directors, but also to permit indemnification for directors, officers, employees and other agents of DMEA. Indemnification refers to a situation in which one party (here, DMEA) is required to pay the costs, losses and expenses, including potential legal fees, experienced by another party (here, the directors, officers and employees of DMEA). Because directors and officers face increased personal exposure in company business disputes, prudent directors and officers will likely demand this type of legal protection. The DMEA Board believes that in order to continue to attract capable directors and officers, DMEA should offer these typical legal protections to its directors, officers, employees and other agents. However, to be eligible for indemnification, a director, officer or employee must, among other things, meet required minimum standards of conduct.

~~Section 5.5:~~ The corporation Cooperative shall eliminate or limit the personal liability of a Director to director of the Association or to its members, Cooperative to the maximum extent permitted by law and indemnify to the fullest extent authorized or permitted by law (as now or hereafter in effect) any director, officer, employee or agent of the Cooperative. No amendment or repeal of this Section 5.5 of Article 5 shall apply to or have any effect on any right to indemnification provided hereunder with respect to any acts or omission occurring prior to such amendment or repeal.

*Rationale: Section 5.6 of the revised Articles maintains the term limitations for all DMEA directors but makes technical corrections and deletes the outdated reference to the start date of the original term limitations.*

~~Section 5 TERM LIMITATIONS. 5.6~~ In order to broaden the opportunities for service to the Association Cooperative and to assure that the Board of Directors is representative of DMEA the Cooperative's members, no Board member director shall serve more than four consecutive three-year terms as a member of the board. ~~This limitation of the number of terms shall apply to terms of office beginning on or after March 27, 1995~~ director on the Board. Any person appointed or elected to fill a vacancy on the Board of Directors and who serves at least one-half of a term of office shall be considered to have served a term in that office for purposes of this ~~section~~ Section 5.6. Terms are considered consecutive unless they are at least two years apart.

---

## LIMITED LIABILITY OF MEMBERS

---

### ARTICLE 6

### ARTICLE 7

*Rationale: The purpose of the revisions to Article 6 of the revised Articles is to ensure that DMEA's operating documents comply with the requirements of Article 56 regarding the limitation of member liability.*

The ~~private property~~ members of the shareholders of the cooperative Cooperative shall not be individually responsible for corporate debts, obligations, or liabilities of the Cooperative to any extent whatever except as required by law.

---

## ***What happens after the vote?***

**Majority Vote YES** - If a majority of the voting members vote YES for the adoption of the revised Articles, then the DMEA Board will revise and approve a new set of Bylaws that correspond with the changes made to the revised Articles and the requirements of Article 56. The Board will then file the revised Articles with the Colorado Secretary of State and post the revised Bylaws on DMEA's webpage. After the revised Articles are filed with the Colorado Secretary of State, DMEA will be governed by Article 56, and be subject to the terms of the revised Articles and Bylaws.

**Majority Vote NO** - If a majority of the members who cast their votes vote NO, DMEA's Articles of Incorporation will remain the same as they are today. DMEA will continue to operate as a cooperative under Article 55 and will have no right to issue capital stock to investors.

## ***Summary of the Rationale for Proposing Revised Articles***

The Board is proposing the revised Articles for a number of reasons. As an initial matter, revising the Articles gives DMEA the chance to modernize and streamline language in DMEA's Articles.

The Board and management team believe that DMEA will generally benefit from taking advantage of governance under Article 56 (as opposed to the current Article 55). Article 55 isn't as comprehensive as Article 56, and so for guidance cooperatives must look to other laws (the Colorado Business Corporation Act and the Colorado Revised Nonprofit

Corporation Act) for direction on various business matters. This can lead to some uncertainty in the law governing cooperatives, especially for a cooperative like DMEA that is looking for innovative ways to remain competitive, reliable, and cost-effective. Article 56, on the other hand, is more comprehensive in its guidance.

At the same time, Article 56 was designed to offer substantial flexibility to meet the opportunities and challenges that cooperatives face.

The flexibility includes things like modernizing DMEA's financing options so that it can consider additional investments, power supply alternatives, and more local generation. The DMEA Board believes the prudent use of this additional financing could open the door to stabilizing or possibly even reducing member electric rates in the long term, but there is no guarantee that lower-cost power alternatives will be available on acceptable terms or that DMEA will be successful at stabilizing or reducing member costs. While options such as exiting DMEA's power supply contract with Tri-State and increased purchases of locally generated power are being evaluated, it may not be possible to implement them under terms that your DMEA Board finds advisable for your cooperative.

Currently, DMEA can raise capital by raising electric rates (member equity) or through cooperative loans (debt). The revised Articles would give DMEA the ability to issue non-member capital stock; this adds another tool to DMEA's financial toolbox. On financial statements, loans are classified as liabilities while stock is classified as equity. This difference matters for DMEA's finances and therefore our member rates. The Board sees the issuance of this capital stock as another method to raise capital for DMEA.

If the revised Articles are approved by the members, the DMEA Board will have the right to issue capital stock to investors when it is in DMEA's interests, without further approval by the members. The board will have the discretion to set the terms of the stock (including, for example, the price and total amount of the stock, the amount of any dividends, any restrictions on the transfer of the stock, and the identity and number of investors) without further member input. However, the revised Articles require that any preferred stock issued be *non-voting* stock. Unlike an Investor-owned utility, DMEA's members will still control the cooperative and keep the voting rights. Of course, the DMEA Board will only approve the issuance of preferred stock if it believes it to be beneficial to DMEA, and it's not certain that DMEA will find investors willing to purchase the stock on acceptable terms.

The DMEA Board acknowledges that in the electric cooperative world, issuing stock to non-members appears to be a relatively new and unique proposition. We are not aware of any electric cooperatives that have issued capital stock to non-members (but there are other types of co-ops that have). The DMEA Board and management have investigated this innovative option and believe that entering this new territory could present DMEA with a better direction for its future but, like any other cutting-edge transaction, issuing capital stock to non-members could pose unknown risks. Because no other electric co-op in Colorado has issued such equity, we cannot be certain how regulatory authorities and other third parties will react to this novel approach to an electric cooperative's capital structure. The proposed changes will also require the consent of certain of DMEA's lenders. DMEA has communicated and will continue to communicate with its lenders about the rationale for revised Articles, but there is no guarantee we will receive the necessary consent.

### ***The Board's statement in favor of amending and restating DMEA's Articles of Incorporation:***

The DMEA Board believes this proposal is in the best interests of DMEA as it positions itself for operation in the next 80 years. Article 56 will provide DMEA with operational advantages and flexibility—giving DMEA the tools it will need to remain competitive, reliable, and cost-effective.



Exhibit A

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
DELTA-MONTROSE ELECTRIC ASSOCIATION**

THESE AMENDED AND RESTATED ARTICLES OF INCORPORATION (i) fully set forth the articles of incorporation of Delta-Montrose Electric Association (the “*Cooperative*”) as so amended and restated, (ii) have been duly adopted as required by law, effective as of \_\_\_\_\_, 2018, and (iii) supersede the original articles of incorporation and all amendments thereto. The Cooperative is organized under Title 7, Article 55 of the Colorado Revised Statutes, and has determined to accept the benefits and to be bound by the provisions of Title 7, Article 56 of the Colorado Revised Statutes (the “*Colorado Cooperative Act*”) in accordance with § 7-56-205, C.R.S., and has amended its constituent operating documents as necessary to conform to the Colorado Cooperative Act by amendments adopted in accordance with applicable law and the Cooperative’s constituent operating documents.

**ARTICLE 1**

The name of the Cooperative shall be Delta-Montrose Electric Association.

**ARTICLE 2**

2.1 The Cooperative is organized for the following purposes:

(a) To generate, manufacture, purchase, acquire, store and accumulate electric energy for its members, and to transmit, distribute, furnish, sell and dispose of such electric energy to its members and any consumers in the area served by the Cooperative who agree to be governed by the rules and regulations of the Board of Directors, and subject to any applicable laws of the State of Colorado;

(b) To form one or more wholly owned profit or non-profit subsidiary business organizations, or to participate with third parties in the ownership of independent profit or non-profit business organizations to provide such other services or products as may be permitted by law;

(c) To transact all lawful business in which the Cooperative may be involved pursuant to the Colorado Cooperative Act and any other applicable law;

(d) To do all such acts and things as may be useful, necessary or convenient for the accomplishment of the purposes in this Article 2, provided, however, that all of the operations and business of the Cooperative shall be on a cooperative basis, not for profit and for the mutual benefit of its members.

2.2 In pursuing its purposes, the Cooperative shall have all of the rights, powers and privileges now or later conferred upon cooperative associations subject to the Colorado Cooperative Act, and as may be stated in the Bylaws of the Cooperative as may be amended from time to time.

## ARTICLE 3

3.1 Any person, firm, corporation or body politic may become a member of the Cooperative by:

- (a) making a written application for membership,
- (b) agreeing to purchase from the Cooperative electric energy as specified herein, and
- (c) agreeing to comply with and be bound by these Articles and the Bylaws of the Cooperative and any amendments thereto, and with such rules and regulations as may from time to time be adopted by the Board of Directors of the Cooperative, provided, however, that no person, firm, corporation or body politic may hold more than one membership in the Cooperative.

3.2 The Bylaws of the Cooperative may define and fix the duties and responsibilities of the members and prescribe such terms and conditions upon which members shall be admitted to and retain membership in the Cooperative not inconsistent with these Articles or applicable law.

3.3 Capital Stock.

(a) The Cooperative shall be organized without common voting capital stock. The property rights and interests of each voting member shall be different depending on the rate class of the member as determined by the Board of Directors according to the Bylaws of the Cooperative, and shall be subject to restrictions on transfer as set forth in the Bylaws. The property rights and interests of newly admitted members shall be determined in the same manner. Each member shall be entitled to only one vote on any matter presented to the members for a vote. No member of the Cooperative shall have a direct interest in or claim upon the property of the Cooperative. Qualifications for voting membership in the Cooperative shall be established in and administered pursuant to the Bylaws of the Cooperative. Only members whose membership has not been suspended shall be entitled to vote. Members of the Cooperative shall be entitled to share in allocations of net margins and be subject to per unit retains in the manner and to the extent determined by the Board of Directors in accordance with the Bylaws.

(b) The Cooperative is authorized to issue, on terms and conditions established by the Board of Directors, up to 1,000,000 shares of non-voting preferred stock (“**Preferred Stock**”), with no par value, in one or more series as may be established by the Board of Directors in the Bylaws or in the resolution authorizing its issuance. Preferred Stock shall be: (i) subject to redemption on such terms and conditions, (ii) entitled to dividends, if any, (iii) entitled to such preferences as to dividends and distributions, and (iv) subject to such restrictions on transfer as established by the Board of Directors in the Bylaws or in the resolution authorizing the issuance of the Preferred Stock. Preferred Stock may be issued and sold by the Cooperative to any person, including persons not otherwise qualified to be members. Under no circumstances shall Preferred Stock, or the holders of such Preferred Stock by virtue of their ownership of Preferred Stock, have any voting rights in the Cooperative.

## **ARTICLE 4**

The Cooperative shall have perpetual existence.

## **ARTICLE 5**

5.1 The powers of this Cooperative and the management of its affairs shall be vested in the Board of Directors. The number of directors shall be as prescribed by the Bylaws of the Cooperative, except that the number of the directors shall be no less than nine and no more than twelve. Each term of office for a director shall be three years. Each director must be a member of the Cooperative.

5.2 Cumulative or proxy voting shall not be permitted except that, where a member is other than an individual, its vote may be cast by a representative authorized pursuant to the Colorado Cooperative Act.

5.3 The Board of Directors shall have the power to make such prudential Bylaws as shall be necessary for the government of the Cooperative not inconsistent with these Articles and for the management of the Cooperative's business and the conduct of its affairs, and to add to, repeal, modify and amend the same.

5.4 The Board of Directors shall have power to make and adopt such rules and regulations, not inconsistent with these Articles or the Bylaws of the Cooperative, as it may deem advisable for the management, administration and regulation of the business and affairs of the Cooperative.

5.5 The Cooperative shall eliminate or limit the personal liability of a director of the Cooperative to the maximum extent permitted by law and indemnify to the fullest extent authorized or permitted by law (as now or hereafter in effect) any director, officer, employee or agent of the Cooperative. No amendment or repeal of this Section 5.5 of Article 5 shall apply to or have any effect on any right to indemnification provided hereunder with respect to any acts or omission occurring prior to such amendment or repeal.

5.6 In order to broaden the opportunities for service to the Cooperative and to assure that the Board of Directors is representative of the Cooperative's members, no director shall serve more than four consecutive three-year terms as a director on the Board. Any person appointed or elected to fill a vacancy on the Board of Directors and who serves at least one-half of a term of office shall be considered to have served a term in that office for purposes of this Section 5.6. Terms are considered consecutive unless they are at least two years apart.

## **ARTICLE 6**

The members of the Cooperative shall not be individually responsible for debts, obligations, or liabilities of the Cooperative to any extent whatever except as required by law.

IN WITNESS WHEREOF, the undersigned have executed these Amended and Restated Articles of Incorporation on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[NAME], President

\_\_\_\_\_  
[NAME], Secretary

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF MONTROSE        )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, and \_\_\_\_\_, as President and Secretary, respectively, of Delta-Montrose Electric Association, a Colorado cooperative association.

\_\_\_\_\_  
Notary Public

[Seal]