

## **CHAPTER 10-13 ELECTRIC COOPERATIVE CORPORATIONS**

### **10-13-01. Purposes of electric cooperatives.**

A cooperative may be organized and operated as an electric cooperative under the general law governing cooperatives and this chapter for the purpose of engaging in rural electrification by any one or more of the following methods:

1. The furnishing of electric energy to persons in rural areas who are not receiving central station service.
2. The furnishing of assistance in the wiring of the premises of persons in rural areas or in the acquisition, supply, or installation of electrical or plumbing equipment therein.
3. The furnishing of electrical energy, wiring facilities, electrical or plumbing equipment, or services to any other corporation, limited liability company, or cooperative organized under this chapter or to the members thereof.
4. The operation and maintenance of electrical cold storage and electrical processing plants.
5. The establishment and operation by itself or with any one or more electric cooperatives of an electric generation or transmission cooperative for the purpose of providing electric energy to other cooperatives, public utilities, municipalities, or any department or agency of the state or federal government.

### **10-13-02. Name of electric cooperative.**

The name of an electric cooperative must include the words "electric cooperative". The name must be such as to distinguish it from any other cooperative organized and existing under the laws of this state or authorized to do business in this state. Only a cooperative organized subject to this chapter or authorized to do business under this chapter may use the words "electric cooperative" in its name.

### **10-13-03. Powers of electric cooperatives.**

In addition to the powers granted by the general law governing cooperatives, electric cooperatives have the power:

1. To generate, manufacture, purchase, acquire, and accumulate electrical energy and to transmit, distribute, sell, furnish, and dispose of such electrical energy to its members, and to other persons not in excess of ten percent of the number of its members. However, a cooperative that acquires existing electrical facilities may continue service to persons, not in excess of twenty percent of the number of its members, who are already receiving service from such facilities without requiring such persons to become members but such persons may become members upon such terms as may be prescribed in the bylaws. An electric generation or transmission cooperative providing electric energy to other cooperatives, public utilities, municipalities, or any department or agency of the state or federal government shall not be limited to the ten percent and twenty percent limitation on the transmission, distribution, sale, furnishing, and disposal of electric energy as provided in this subsection.
2. To establish, maintain, and operate electrical cold storage and electrical processing plants.
3. To construct, erect, purchase, lease as lessee, and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange, and mortgage plants, buildings, works, machinery, supplies, equipment, apparatus, and transmission and distribution lines or systems necessary and proper for the operation of its business.
4. To assist only its members to wire their premises and install therein electrical and plumbing fixtures, machinery, supplies, apparatus, and equipment of any and all kinds and character, and in connection therewith and for such purposes, to purchase, acquire, lease, sell, distribute, install, and repair electrical and plumbing fixtures, machinery, supplies, apparatus, and equipment of any and all kinds and character, and

to receive, acquire, endorse, pledge, hypothecate, and dispose of notes, bonds, and other evidences of indebtedness.

5. To furnish to other corporations, limited liability companies, or cooperatives organized under this chapter, or to the members thereof, electrical energy, wiring facilities, electrical and plumbing equipment, and services.
6. To use any highway, right of way, easement, or other similar property right owned or held by the state or any political subdivision thereof in connection with the acquisition, construction, improvement, operation, or maintenance of its lines, with the consent of the local authorities having control of the street or highway proposed to be used for such purpose.
7. Subject to chapter 32-15, to have and exercise the power of eminent domain to acquire private property for its use, such right to be paramount except as to property of the state or any political subdivision thereof.
8. To fix, regulate, and collect rates, fees, rents, or other charges for electrical energy and other facilities, supplies, equipment, or services furnished by it.
9. To make contracts with other cooperatives, with public utilities, with municipalities, or with any department or agency of the state or federal government, for the sale at wholesale to, or interchange of electric energy with, such cooperatives, public utilities, municipalities, or department or agency of the state or federal government, and, notwithstanding any provisions of this chapter, such cooperatives, public utilities, municipalities, or department or agency of the state or federal government shall be eligible to membership in cooperatives organized under this chapter.
10. To establish and operate by itself or with any one or more electric cooperatives an electric generation or transmission cooperative for the purpose of providing electric energy to other cooperatives, public utilities, municipalities, or any department or agency of the state or federal government.

#### **10-13-04. Members of electric cooperatives.**

All persons who are not receiving central station service and who reside in rural areas proposed to be served by a cooperative organized under this chapter shall be eligible to membership in the cooperative. No person other than the incorporators shall be, become, or remain a member of a cooperative unless such person shall use or agree to use electrical energy or the facilities, supplies, equipment, and services furnished by a cooperative.

"Rural area" means any area not included within the boundaries of an incorporated city having a population in excess of two thousand five hundred inhabitants at the time a corporation or cooperative commences to operate electric facilities or to furnish electric energy in such an area, and includes both the farm and nonfarm population thereof. No change thereafter in the population of a rural area, as defined herein, regardless of the reason for such change, shall operate to affect in any way its status as a rural area for the purposes of this chapter.

An electric cooperative organized under this chapter may become a member of another such electric cooperative and may avail itself fully of the facilities and services thereof.

#### **10-13-05. Nonprofit basis - Rates and fees.**

Each electric cooperative shall be operated without profit to its members, but the rates, fees, rents, or other charges for electrical energy and for any other facilities, supplies, equipment, or services furnished by the cooperative shall be sufficient at all times:

1. To pay all the operating and maintenance expenses necessary or desirable for the prudent conduct of its business and the principal and interest on the obligations issued or assumed by the cooperative in the performance of the purpose for which it was organized.
2. For the creation of reserves.

#### **10-13-06. Use of revenue - Dividends.**

The revenues of an electric cooperative shall be devoted first to the payment of operating and maintenance expenses and the principal and interest on outstanding obligations, and

thereafter, to such reserves for improvement, new construction, depreciation, and contingencies as the board of directors from time to time may prescribe. Revenues not required for the purposes set forth in this section shall be returned from time to time to the members of the cooperative in cash, in abatement of current charges for electrical energy, or otherwise as the board of directors may determine on a pro rata basis according to the amount of business done with each during the period. Such return may be made by way of general rate reduction to the members if the board of directors so elects.

**10-13-07. Excise tax exemption - License fee.**

Repealed by S.L. 1965, ch. 97, § 1.

**10-13-08. Exemption from securities law.**

The provisions of chapter 10-04 shall not apply to the issuance of membership certificates in electric cooperatives organized under this chapter nor to obligations issued by any such cooperative to secure the repayment of moneys borrowed by the cooperative from or allotted to it by any federal agency.

**10-13-08.1. Electric cooperatives - Sale of physical plant - Approval.**

No electric cooperative corporation shall sell, transfer, or convey, within the period of any single calendar year, physical plant in excess of five percent in value of such cooperative corporation, based upon the most recent audit of the books of said cooperative corporation, unless consent therefor shall have been obtained by vote of not less than two-thirds of the entire membership of such cooperative corporation cast at any regular or special meeting called for that purpose, after notice in writing to all the membership of such cooperative corporation not less than twenty nor more than thirty days prior to the date of such meeting. Nothing in this section shall prohibit the sale, transfer, conveyance, or exchange of electric cooperative corporation assets to another electric cooperative corporation, an agency of the state of North Dakota or of the government of the United States, nor in exchange for physical plant of equal monetary value to any person or organization, public or private.

**10-13-09. Powers of electric cooperative corporation.**

Repealed by omission from this code.

**10-13-10. Directors, trustees, officers, and managers - Immunity from civil liability.**

The directors, trustees, and officers of an electric cooperative, and the manager of an electric cooperative who is the person most responsible for carrying out the policies and directives of the officers, trustees, or the board of directors, are immune from civil liability for any act or omission relating to their service or function as a director, trustee, officer, or manager, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.

**10-13-11. Right of rural electric cooperative to construct, own, and maintain electric transmission lines.**

1. For purposes of this section, the terms electric transmission provider, electric transmission line, electric public utility, and rural electric cooperative have the same meanings as in section 49-03-01.5.
2. Except as provided in subsection 3, an electric transmission provider or designee may not construct an electric transmission line interconnecting with an existing electric transmission line owned, leased, or operated by a rural electric cooperative, unless the electric transmission provider or designee has provided written notice to the rural electric cooperative of its intention to do so. If the rural electric cooperative provides written notification to the electric transmission provider or designee within one hundred eighty days from receipt of the written notice under this subsection, that the rural electric cooperative is willing and able to construct and operate a similar electric transmission line, the rural electric cooperative shall have the right to construct the line.

3. If an electric transmission line would interconnect facilities owned, leased, or operated by a rural electric cooperative and facilities owned, leased, or operated by a municipal utility, a municipal power agency, or an electric public utility doing business in this state the following conditions apply:
  - a. The rural electric cooperative and municipal utility, municipal power agency, or the electric public utility shall attempt to agree on all terms and conditions, including design, construction, ownership, and operation of the electric transmission line.
  - b. If parties are unable to agree, this subsection does not compel a party to participate in the project or be construed as a waiver by any party of its right to establish and enforce any requirements for interconnection of transmission facilities to its transmission system.
4. For purposes of this section, a "municipal utility" means anything a municipality is allowed to possess under section 40-33-01 and a "municipal power agency" has the meaning provided in section 40-33.2-02.