

AMENDED AND RESTATED BY-LAWS  
OF THE  
MUNICIPAL ENERGY AGENCY OF NEBRASKA  
(Amended and restated effective May 20, 2021)

ARTICLE I. OFFICES

The principal office of the Agency in the State of Nebraska shall be located in the City of Lincoln, County of Lancaster. The Agency may have such other offices, either within or without the State of Nebraska, as the Board of Directors may designate or as the business of the Agency may require from time to time.

ARTICLE II. BOARD OF DIRECTORS

Section 1. The business and affairs of the Agency shall be conducted and managed by its Board of Directors ("Board").

Section 2. Directors and Alternate Directors.

A. Qualifications for Appointment of Directors: Each participating municipality, as that term is defined in the Municipal Cooperative Financing Act Neb. Rev. Stat. §§ 18-2401 et seq. (the "Act"), shall be entitled to appoint one director and one alternate director. The alternate director shall serve and exercise all powers of a director in the absence of the director for whom he or she is the alternate. Each director shall serve until his or her successor is appointed. There shall be no proxies. Any person appointed as a director or alternate director may represent only one participating municipality of MEAN.

B. Suspension or Removal of Directors or Alternate Directors by the MEAN Board: Directors and alternate directors may be suspended or removed for any cause by at least a two-thirds vote of the votes cast in any regular or special meeting of the Board whenever in the Board's judgment the best interest of the Agency will be served thereby. Any suspended director or alternate director may be reinstated by at least a two-thirds vote of the votes cast in any regular or special meeting of the Board or may be terminated as provided above. Notwithstanding any provision of these by-laws to the contrary, a director or alternate director that has been suspended shall not, for the period of the suspension, be eligible to participate as a member of the Board or subcommittees at meetings of the Board or subcommittees of the Board. Accordingly, a suspended director will be recorded as not in attendance at meetings of the Board and applicable subcommittees held during the period of suspension. Removal of a director will result in a vacancy.

Section 3. Classes of membership.

A. The Agency shall have two classes of membership: Active Members and Inactive Members, with allocated voting rights. The initial classifications will be made on the effective date of these Amended and Restated Bylaws and will be based on meeting attendance beginning with the January 23, 2020 meeting of the Board.

B. Each participating municipality shall be classified as an Active Member unless and until it meets the criteria to become an Inactive Member. Each director representing an Active Member shall be entitled to cast one vote.

C. If neither the director nor the alternate director of a participating municipality has attended and participated for quorum purposes at the previous two consecutive meetings of the Board, the participating municipality becomes an Inactive Member. An Inactive Member's director shall not be entitled to vote and shall not be counted in determining the number required for a quorum of the Board for conducting business at any meeting of the Board. An Inactive Member will be immediately restored to Active Member status at the first meeting at which its director or alternate director resumes attendance.

Section 4. The Board shall hold an annual meeting at such time and place as the Board shall designate. The Board shall provide, by resolution, the time and place for the holding of regular meetings. Meetings may be held in person or by means of electronic, telecommunication, or videoconference equipment in accordance with Nebraska state law.

Section 5. Special meetings of the Board may be called by or at the request of the chairperson or vice-chairperson or upon the written request of at least one-third of the directors representing Active Members.

Section 6. Written notice of all public meetings shall be simultaneously transmitted by electronic mail, regular mail, or personal delivery to all members of the Board at their designated addresses, and communicated to the public by publication in a newspaper of general circulation within MEAN's jurisdiction and, if available, on such newspaper's web site, by sending a copy of the notice to such other news media that request notification of meetings and by posting a copy of the notice in the office of the Agency at 8377 Glynoaks Drive, Lincoln, Nebraska 68516. The public notice and agenda so displayed shall be in conformity with Nebraska state law regarding public meetings under Neb. Rev. Stat. § § 84-1408 et seq. or as amended.

Section 7. Notwithstanding the provisions of Section 6 of this Article, when it is necessary to hold an emergency public meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes of the meeting and any formal action taken in such meeting shall pertain only to the emergency as prescribed by Nebraska state law in Neb. Rev. Stat. § 84-1411 or as amended. The procedures for such emergency meetings shall be in conformity with Nebraska state law.

Section 8. An agenda of matters to be acted upon at any regular public meeting of the Board shall be prepared by the Executive Director and (whenever reasonably possible) shall be transmitted by electronic mail, regular mail, or personal delivery to each director at his or her designated address, or shall be posted to an electronic forum accessible by all members of the Board, at least one week preceding the meeting. Any matter shall be put on the agenda at the request of any member of the Board if made at least forty-eight (48) business hours before the scheduled commencement of the meeting. The foregoing shall not foreclose the right of the public to attend and the right to speak at public meetings, except for closed sessions, subject to such reasonable time and relevancy limitations as the Chairperson, with the concurrence of the Board, may set.

Section 9. At all meetings of the Board, a quorum of the Board shall be constituted when directors are present who are entitled to cast a majority of the total votes which may be cast by all of the Board's directors. Unless otherwise so provided, action may be taken upon a vote of a majority of the votes which the directors present are entitled to cast. No vacancy in the membership of the Board shall impair the right of such majority to exercise all the rights and perform all of the duties of the Board. If at any meeting there is less than a quorum present, the majority of those present may adjourn the meeting to a fixed time and place, and notice of such time and place shall be given in accordance with the provisions of Section 6 of this Article; provided, however, that if there cannot be reasonable compliance with the time element of said Section 6 of this Article, such notice, if any, of such adjourned meeting shall be given as is reasonably practical.

Section 10. The members of the Board shall not be entitled to compensation for their services, but may be reimbursed by the Agency for their necessary expenses properly incurred in the performance of their official duties.

### ARTICLE III. COMMITTEES

There shall be an Executive Committee composed of the chairperson of the Board, vice-chairperson of the Board, secretary-treasurer of the Board, and four directors to be elected by the Board

to serve on the Executive Committee, who shall serve for a term of one year or until their successors are elected and qualified, whichever is later. The four at-large members shall be elected by the Board at the annual meeting of the Agency and the term of such at-large members shall begin on the first day of April each year. The method of filling vacancies on the Executive Committee shall be the same as that of the officers of the Agency. The Executive Committee shall have and exercise the power and authority of the Board during intervals between the Board's meetings in accordance with these by-laws, rules, motions, or resolutions. In accordance with Nebraska Rev. Stat. § 18-2438, in no event shall the Executive Committee or any committee of the Board be empowered to authorize the issuance of bonds. At all meetings of the Executive Committee, the presence of the majority of the members of the Executive Committee shall be necessary for the transaction of business and the affirmative vote of a majority of the members of the Executive Committee present shall be necessary for any action.

The Board may create such other subcommittees as may from time to time be necessary and shall at the time of creation establish the subcommittee's powers, duties, membership, and voting requirements. The chairperson of the Board shall serve as an ex officio member of all such subcommittees. Unless expressly approved by the Board, such other subcommittees shall be advisory only and shall have no authority to make policy or take any formal action on behalf of the Board.

#### ARTICLE IV. OFFICERS

Section 1. The officers of the Agency shall be a chairperson, vice-chairperson, secretary-treasurer, and such other officers as the Board may deem appropriate from time to time.

Section 2. At the first meeting of the initial Board, the Board shall elect one of its members as chairperson, and one as vice-chairperson. A secretary-treasurer shall also be elected. The officers shall serve for a term of one year or until their successors are elected and qualified, whichever is later. The officers shall be elected by the Board at the annual meeting of the Agency and the term of the officers shall begin on the first day of April each year.

Section 3. Officers may be removed by at least a two-thirds vote of the votes cast in any regular or special meeting of the Board whenever in the Board's judgment the best interest of the Agency will be served thereby. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board for the unexpired portion of the term.

Section 4. The chairperson of the Board:

A. Shall be the principal executive officer of the Agency and, unless otherwise determined by the Board, shall preside at all meetings of the Board.

B. May sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these by-laws to be otherwise signed and executed; and

C. Shall, in general, perform all duties incident to the office of chairperson and such other duties as may be prescribed by the Board from time to time.

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

Section 6. The secretary-treasurer shall cause to be performed the following:

A. Keep the minutes of the meetings of the Board in one or more books provided for that purpose;

B. See that all notices are duly given in accordance with these by-laws or as required by law;

C. Be custodian and have general charge of the Agency's books and records;

D. Keep a register of the names and post office addresses of all participating municipalities and their duly authorized directors and alternate directors;

E. Have charge and custody of and be responsible for all funds, securities, and properties of the Agency as well as the authority to delegate to the Executive Director charge and custody of such;

F. Be responsible for the receipt of and the issuance of receipts for all monies due and payable to the Agency and for the deposit of all such monies in the name of the Agency in bank(s) or financial institution(s); and,

G. In general perform all the duties incident to the office of secretary-treasurer and such other duties as from time to time may be assigned to him or her by the Board.

Section 7. The Board shall appoint an Executive Director, who shall be an employee of the Agency. The Executive Director shall perform such duties as the Board may require and shall have such authority as the Board may vest in him or her. The Board grants to the Executive Director all of the authority necessary to operate the Agency in accordance with the Board's decisions and the purposes for which the Agency was formed. The Executive Director shall submit periodic reports on the activities of the Agency.

Section 8. MEAN and the other entities operating under the NMPP Energy trade name will procure commercial crime insurance with a limit of not less than \$1,000,000.00 to protect against certain losses due to third party fraud or employee fidelity. The insurance policy shall cover the following, among other losses: actions by the Executive Director, the secretary-treasurer and any other officer or agent of MEAN charged with responsibility for the custody of any MEAN funds or property.

Section 9. The terms of employment, and compensation of all officers, agents, and employees of the Agency shall be fixed by resolution of the Board.

#### ARTICLE V. BOOKS AND RECORDS

The Board shall cause to be established and maintained in accordance with generally accepted principles of accounting, books and records of all the Agency's obligations, contracts, transactions, and undertakings and of all income and receipts of every nature and all expenditures of every kind.

#### ARTICLE VI. CONTRACTS AND FINANCIAL TRANSACTIONS

Section 1. Subject to Nebraska state law and the by-laws of the Agency, the Board may by resolution authorize any one or more of its officers, agents, or employees to enter into any contract or execute and deliver any instrument in the name and on behalf of the Agency.

The Executive Director is authorized to execute any contract or other instrument, on behalf of the Agency, which has been approved by the Board. In addition, the Executive Director is authorized to execute or to delegate the authority to execute any contract or other instrument necessary to effectively operate the Agency where, in the judgment of the Executive Director, it is not in the best interests of the Agency to delay action until the next meeting of the Board.

The Executive Director and such other agents as are set forth in the policies and guidelines of the Agency as approved by, and as may be amended from time to time by, the Board are authorized to execute power and energy contracts or other instruments in accordance with such policies and guidelines.

Section 2. All checks, drafts, or other orders of the payment of money, notes, bonds or other evidence of indebtedness shall be signed by more than one officer, agent, or employee.

Section 3. All funds of the Agency shall be deposited to the credit of the Agency in bank(s) or financial institution(s).

Section 4. The fiscal year of the Agency shall begin on the first day of April each year and shall end on the last day of March of the following year.

## ARTICLE VII. COOPERATION WITH OTHER ENTITIES

The Agency shall, through its Board and officers, coordinate its activities and cooperate with other NMPP Energy organizations, as well as other public energy organizations, for the purpose of promoting the interests of municipal utilities and for the accomplishment of the Agency's purposes and objectives.

## ARTICLE VIII. AMENDMENTS

Section 1. These by-laws may be altered, amended, suspended, or repealed by the affirmative vote of two-thirds of the votes cast in any regular or special meeting of the Board.

Section 2. Any amendment shall be transmitted by electronic means, regular mail or personal delivery to all directors of the Agency, or shall be posted to an electronic forum accessible by all members of the Board, within ten days after its adoption.

## ARTICLE IX. INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS

To the fullest extent permitted by law, MEAN shall defend and indemnify any individual who was or is a party or threatened to be made a party to any proceeding, other than a proceeding by or in the right of MEAN, because he or she was a director, officer or employee of MEAN, or because he or she was an agent of MEAN employed by the Nebraska Municipal Power Pool, against claims, liability and/or expenses incurred in the proceeding, whether the same is settled or proceeds to judgment, if: (i) he or she conducted himself or herself in good faith; (ii) he or she reasonably believed (a) in the case of conduct in his or her official capacity, that his or her conduct was in the best interests of MEAN, and (b) in all other cases, that his or her conduct was at least not opposed to the best interests of MEAN; and (iii) in the case of any criminal proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful.

The indemnity provided for by this Article shall not be deemed to be exclusive of any other rights to which those indemnified may be otherwise entitled, nor shall the provisions of this Article be deemed to prohibit MEAN from extending its indemnification to cover other persons or activities to the extent permitted by law or pursuant to any provision in these by-laws.

## ARTICLE X. MEDIATION

The Board, the Agency's participating municipalities, and Associates, mutually agree that providing the opportunity for communication and review of certain limited grievances, issues or disputes that may arise is in the best interest of the Agency and all of its participating municipalities and Associates. Grievances, disputes or disagreements (other than matters addressed by other provisions of these by-

laws or any contract between MEAN and any participating municipality or any Associate) shall be subject to the Dispute Resolution procedure set forth in this Article; provided, however, that the following matters are excluded and exempt from such Dispute Resolution procedure: (i) breach or failure to comply with any contract between the Agency and any participating municipality or any Associate, (ii) non-payment, (iii) failure to take scheduled power by a participating municipality power purchaser or an Associate, (iv) expulsion or termination of a participating municipality or an Associate, or (v) a continuing failure to meet or perform obligations under these by-laws. The first step to resolve any dispute subject to this procedure shall be initiated by a written statement from the complaining party, with a request for discussion between the representative designated by the chairperson of the Board and the representative of the participating municipality or Associate. Such meeting shall occur within thirty (30) days following the receipt of the written statement setting forth the issue in dispute. In the event such meeting does not produce a resolution of the dispute, then either party may within sixty (60) days following the date of the written statement require non-binding mediation. The parties shall select a mutually acceptable mediator, and two representatives (one representative designated by the chairperson of the Board and one representative designated by the participating municipality or Associate), shall then meet with the mediator to review the issues in dispute. The mediator shall provide a written report to the parties. The parties shall use their best efforts in good faith to provide for such meeting on an expedited basis. The mediator shall provide the mediation report to the parties within ninety (90) days following the date of the written statement setting forth the dispute. In the event the report of the mediator is not accepted by all the parties, then the parties shall report the status of any unresolved issues to the Board.

#### ARTICLE XI. ASSOCIATE CLASS

Section 1. A nonvoting Associate class of participation in MEAN will be available to those entities who are not participating municipalities in MEAN's Charter and who meet the following requirements:

- A. An Associate must be approved by the Board;
- B. An Associate must qualify under one of the following methods:
  - (i) enter into an agreement with MEAN under which the Associate receives power supply, marketing agent, transmission agent or other power-related services from MEAN ("Participation Agreement") and receive approval from the Board to become an Associate; or



- (ii) transition from participating municipality status to Associate status under Section C. below; or
  - (iii) accept an invitation from the Board to become an Associate;
- C. A participating municipality may transition to the status of Associate by completing the following:
  - (i) requesting and receiving approval from the Nebraska Power Review Board to withdraw as a participating municipality in MEAN's Charter, and
  - (ii) requesting and receiving approval of the Board to become an Associate;
- D. Participation as an Associate is valid until terminated. Termination shall be effective upon the earlier of (i) thirty (30) days advance written notice from the Associate or MEAN, or (ii) termination of the initial Participation Agreement and any successor Participation Agreement. Termination shall not relieve the Associate from any contractual obligations it may have with the Agency or from the Associate's liability to pay any dues, assessments, or fees incurred or commitments made prior to such termination;
- E. An Associate will not join MEAN's Charter;
- F. An Associate shall not constitute a participating municipality under these by-laws or the Charter;
- G. An Associate will not have representation on the Board nor have any voting privileges;
- H. An Associate will be eligible to receive agendas and packets for public meetings of the Board and certain subcommittees upon request;
- I. An Associate must join and maintain full membership in the NMPP; and
- J. Associate status is not transferable.

## ARTICLE XII. PROPRIETARY INFORMATION

Section 1. All Associates and all participating municipalities of MEAN, and the representatives of all Associates and all participating municipalities shall maintain the confidentiality of all proprietary information. Proprietary information shall include, but not be limited to, the following:

- A. The content of any closed session;
- B. All trade secrets, pricing processes, or other confidential or intellectual property;
- C. Information or data developed for MEAN by its officers, directors, employees, and agents which may be subject to patent or copyright application; and
- D. Information or data designated as proprietary or confidential by the Board.

### ARTICLE XIII. CONFLICT OF INTEREST

Section 1. A Conflict of Interest is defined as a financial benefit or detriment to a director or alternate director, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of an action on the public generally or a broad segment of the public. A Conflict of Interest shall not arise by reason of the mere fact that a director or alternate director is an employee of, elected or appointed official of, or otherwise represents, a participating municipality.

Section 2. Directors and alternate directors will immediately disclose to the Board any known Conflict of Interest or any that may arise in the future. No director or alternate director will be permitted to vote on any specific issue in which he or she has a Conflict of Interest. The Board will vote on whether the director or alternate director disclosing a Conflict of Interest will or will not be allowed to be present for discussion of the issue. If the Board votes to exclude the director or alternate director from the room during the discussion, the director or alternate director will be permitted to make a statement on the issue prior to leaving the room. If the director or alternate director in question disputes as to whether a Conflict of Interest is present, the matter shall be decided by the affirmative vote of a majority of the votes cast in any regular or special meeting of the Board. A director or alternate director may be removed from the Board for failure to comply with this policy.

Section 3. The fact that a director or alternate director with a conflict of interest fails to disclose the conflict, as required, and participates in a vote on an issue in which he or she has a conflict of interest shall not affect the validity of the action taken by the Board on the issue.

Section 4. For purposes of Article XIII, the following definitions apply:

A. Business shall mean any corporation, partnership, limited liability company, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint-stock company, receivership, trust, activity, or entity.

B. Business with which the individual is associated or business association shall mean a business: (1) In which the individual is a partner, limited liability company member, director, or officer; or (2) in which the individual or a member of the individual's immediate family is a stockholder of closed corporation stock worth one thousand dollars or more at fair market value or which represents more than a five percent equity interest or is a stockholder of publicly traded stock worth ten thousand dollars or more at fair market value or which represents more than ten percent equity interest. An individual who

occupies a confidential professional relationship protected by law shall be exempt from this section. This section shall not apply to publicly traded stock under a trading account if the director or alternate director reports the name and address of the stockbroker.

C. Immediate family shall mean a child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual or that individual's spouse as a dependent for federal income tax purposes.

#### ARTICLE XIV. SUSPENSION, TERMINATION OR WITHDRAWAL

Section 1. Participation in MEAN's Charter in the Agency may be suspended or terminated by the Board, by at least a two-thirds vote of the votes cast in any regular or special meeting of the Board, for any participating municipality for reasons outlined by the Board or which is in violation of the Bylaws as adopted by the Board. Such suspension or termination shall be made pursuant to the following procedure, in accordance with § 18-2439 of the Act:

A. The Agency will provide to the participating municipality not less than fifteen (15) days prior written notice of the suspension or termination and the reasons therefor. Any written notice given by mail must be given by first-class or certified mail sent to the last-known address of the participating municipality shown on the Agency's records.

B. Such participating municipality shall have an opportunity to be heard, orally or in writing, not less than five days before the effective date of the suspension or termination by the Executive Director or other person authorized by the Board to decide that the proposed suspension or termination not take place.

C. Any suspended participating municipality may be reinstated by at least a two-thirds vote of the votes cast in any regular or special meeting of the Board or may be terminated as provided above.

Section 2. Suspension or termination pursuant to Article XIV, or voluntary withdrawal of participation in MEAN's Charter, shall not relieve the participating municipality from any contractual obligations it may have with the Agency or from its liability to pay any dues, assessments, or fees incurred or commitments made prior to such suspension, termination or withdrawal.

Section 3. Notwithstanding any provision of these by-laws to the contrary, a director of a participating municipality that has been suspended pursuant to Article XIV shall not, for the period of the suspension, be eligible to vote or participate as a member of the Board or subcommittees at meetings of the Board or subcommittees of the Board and shall not be counted in determining the number required

for a quorum of the Board or subcommittee for conducting business at any meeting of the Board or any subcommittee.