

BYLAWS
OF
TEXAS CUC AGGREGATION PROJECT, INC.

ARTICLE I.

Name and Purpose

Section 1. Name. The name of this Corporation shall be Texas CUC Aggregation Project, Inc., which is referred to in these Bylaws as the Corporation.

Section 2. Purpose. The specific and primary purpose of the Corporation is to act as an agent to negotiate the purchase of electricity on behalf of the member political subdivisions with respect to their own electricity use for their respective public facilities, and to help them meet their on-going electric needs in the newly deregulated Texas market. Other purposes of the Corporation will be those permitted by law for political subdivision corporations.

ARTICLE II.

Powers

Section 1. In effectuating its purpose, the Corporation shall have all powers conferred by applicable law, specifically including, but not limited to, the following powers:

- a. To purchase, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with real or personal property, or any interest therein, wherever situated, as the purpose of the Corporation shall require, or as shall be donated to it.

- b. To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets.
- c. To make contracts and incur liabilities, borrow money at such rates of interest as the Corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property and income.
- d. To sue and be sued, complain and defend, in the name of the Corporation.

Section 2. Notwithstanding any of the foregoing statements of powers, this Corporation shall not engage in any activities which are not in furtherance of, and limited to, the purposes set forth in Section 2 of Article I.

ARTICLE III.

Members

Section 1. Qualifications. The initial members of the corporation shall be the Counties of Dallas, Harris, Jefferson and Tarrant. Thereafter, additional political subdivisions shall qualify for membership in the Corporation upon the following:

- a. Adoption by the governing body of the political subdivision of the Corporation's Bylaws and Articles of Incorporation, which, pursuant to Section 304.001 of the Texas Local Government Code, authorizes the Corporation to negotiate and execute a binding contract or contracts on behalf of its members for the purchase of electric energy, capacity, energy services, ancillary services, or other electric services for retail or wholesale consumption;

- b. Designation by the governing body of the political subdivision of account(s) for the public facilities of the political subdivision for which the Corporation is authorized to negotiate and execute a binding contract or contracts for the purchase of electric energy, capacity, energy services, ancillary services, or other electric services for retail or wholesale consumption; and,
- c. An affirmative vote of a majority of the Board of Directors of the Corporation approving the political subdivision as a member.

Section 2. Representatives. Each member shall appoint, by formal order of its governing body, a membership representative to the Corporation. Each representative shall serve until a successor is appointed by the governing body of the respective member political subdivision or as otherwise determined by the governing body of the member. Any such appointment shall be made in writing. Any notice to be sent to the membership shall be sent to the respective representatives. Only duly appointed representatives may act on behalf of members in the conduct of business of the Corporation.

Section 3. Title. The members of the Corporation and school districts contracting with the Corporation pursuant to Article VI shall be referred to collectively as the Membership.

Section 4. Withdrawal.

- a. Membership in the Corporation may be withdrawn without prejudice to any rights the Corporation may have under any contract to which the member is a party or to any membership dues and/or fees owed the Corporation.

- b. Membership in the Corporation may be withdrawn by providing the Corporation written notice comprised of a resolution duly adopted by the governing body of the member clearly stating that the member is withdrawing from the Corporation and the Corporation is not to aggregate electricity purchasing for any electricity accounts of the member.
- c. Membership in the Corporation may be withdrawn at any time before the date on which the Corporation begins a competitive procurement process for the aggregated group. The Corporation shall notify each member representative at least 30 days before the date on which the Corporation will begin a competitive procurement process for the aggregated group, unless a member executes a written waiver of such notice as to a specific procurement process.
- d. Membership in the Corporation may be withdrawn after the date on which the Corporation begins a competitive procurement process, but such withdrawal shall be effective at the end of the term of any contract procured in that competitive procurement process.
- e. Withdrawal of Membership also constitutes resignation from the Board of Directors of the Corporation.

Section 5. Meetings.

- a. The Membership shall meet annually and at such other times and locations as may be set by the Board of Directors.
- b. Upon receipt of a written petition by five (5) or more members and/or school districts contracting with the Corporation pursuant to Article VI requesting a

special meeting of the Membership, the Board of Directors shall call such meeting.

- c. Written notice of all meetings shall be sent to the Membership at least ten (10) days prior to the date of the meeting.
- d. The transactions taken at any meeting of the Membership, however called and noticed, shall be as valid as if taken at a meeting held after regular call and notice, provided at least 10 days written notice is sent to all members and school districts contracting with the Corporation pursuant to Article VI and a quorum is present.
- e. A majority of the representatives of the Membership shall constitute a quorum for the transaction of business at any meeting of the Membership. Unless otherwise provided in these Bylaws, meetings will be conducted in accordance with Robert's Rules of Order.

Section 6. Voting.

- a. Except for the election of representatives to the Board of Directors, each member of the Corporation shall be entitled to one vote, to be cast by the member's representative, on all matters voted upon by the Membership as decided by the Board of Directors. Proxy voting will be permitted, but only if a written proxy is presented to the Chairman prior to the call for a vote.
- b. Except as otherwise provided, action by the Membership shall require the affirmative vote of a majority of the Membership present at a meeting attended by a quorum.

- c. The method of voting – whether by voice vote, a show of hands, a roll call or by written ballot – shall be at the election of the Chairman of the Corporation in his/her discretion.
- d. The Chairman of the Corporation may initiate a vote on any matter by mail, telephone, facsimile, electronic mail or similar means, in which case a deadline for response shall be established and a lack of response within the designated time shall be recorded as “not voting.” Action by such means shall require an affirmative vote of a majority of the Membership.

Section 7. Liabilities. No member shall be personally liable for any indebtedness or liability of the Corporation, and any and all creditors shall look only to the assets of the Corporation for payment.

ARTICLE IV.

Board of Directors

Section 1. Number. There shall be a Board of Directors, referred to hereafter as the Board. The Board shall be composed of four directors who are representatives of members of the Texas Conference of Urban Counties (hereafter “CUC Director”), and up to three directors who are representatives of entities which are not members of the Texas Conference of Urban Counties (hereafter “Non-CUC Director”).

Section 2. Qualifications of CUC Directors.

- a. Each CUC Director shall be an appointed representative of a member of the Corporation that is a dues-paying member of the Texas Conference of Urban Counties.

- b. Initially, the four CUC Directors shall be the representatives for Dallas, Harris, Jefferson and Tarrant Counties, and shall serve successive two (2) year terms until recoupment of initial investments as provided for in Article XI, Section 3 of these bylaws. Upon final recoupment of initial investments by the initial members of the Corporation, and thereafter upon the expiration of the remaining term of each director from Dallas, Harris, Jefferson and Tarrant Counties respectively, the four CUC Directors will thereafter be elected from any eligible member.
- c. At no time may the total number of CUC Directors be less than four.

Section 3. Qualifications of Non-CUC Directors.

- a. Each Non-CUC Director shall be an appointed representative of a member of the Corporation that is not a member of the Texas Conference of Urban Counties, or shall be an appointed representative of a school district contracting with the Corporation pursuant to Article VI.
- b. At such time as the Non-CUC Corporation Membership reaches, and so long as it maintains, a combined yearly amount of electricity purchasing of at least \$50 million, one Non-CUC Director shall be elected from those eligible representatives.
- c. If the Non-CUC Corporation Membership reaches, and so long as it maintains, a combined yearly amount of electricity purchasing of at least \$100 million, two Non-CUC Directors shall be elected from those eligible representatives.

- d. If the Non-CUC Corporation Membership reaches, and so long as it maintains, a combined yearly amount of electricity purchasing of at least \$150 million, three Non-CUC Directors shall be elected from those eligible representatives.
- e. At no time may the total number of Non-CUC Directors be more than three.

Section 4. Election and Term of Office of CUC and Non-CUC Directors.

- a. Each Director shall serve for a term of two years and until a qualified successor is elected. However, the initial term of a Non-CUC Directorship created between annual meetings of the Membership shall expire at the next annual meeting. A Director shall not be precluded from being re-elected and serving consecutive terms.
- b. If a Directorship becomes vacant, or if a Non-CUC Directorship is created, the Board shall select an eligible representative, in accordance with these bylaws, to serve during the remainder of the term for which the vacating Director was elected, or until the next annual meeting of the Membership for newly-created Non-CUC Directorships.
- c. Only a representative of a member of the Corporation that is a dues paying member of the Texas Conference of Urban Counties may vote in the election of a CUC Director.
- d. Only a representative of a member of the Corporation that is not a dues paying member of the Texas Conference of Urban Counties and a representative of a school district contracting with the Corporation pursuant to Article VI may vote in the election of a Non-CUC Director.

- e. The voting strength of each member of the Corporation and contracting school district for the election of a CUC or Non-CUC Director shall be based solely upon the pro-rata share of that member or school district of the estimated total amount of electricity purchased through the Corporation of all members and school districts eligible to vote in the election for that Director as of the date of the proposed election. The Board of Directors, before any meeting of the Membership in which an election for director is scheduled, shall estimate annual electricity purchasing of the members and school districts eligible to vote in that election and determine the voting strength of each member and school district for that election.
- f. If the Non-CUC Membership falls below the applicable aggregated amount due to the withdrawal of one or more Non-CUC members or school districts, then all Non-CUC Director terms shall expire at the next annual meeting of the Corporation and the Non-CUC Membership shall hold elections for the then applicable Non-CUC Director positions, if any.

Section 5. Authority. The Board shall have the authority to manage the business affairs of the Corporation, including all lawful powers necessary, expedient and appropriate to:

- a. Issue policy statements on behalf of the Corporation;
- b. Determine the scope and extent of the activities of the Corporation in furtherance of its purpose and policies;
- c. Appoint and set the compensation of an Executive Director;

- d. Approve contracts, including interlocal agreements with school districts pursuant to Article VI;
- e. Initiate or respond to legal actions, including actions before the Public Utility Commission of Texas;
- f. Create committees in accordance with Article VII;
- g. Approve the publication and dissemination of any report or other document prepared by a component body of the Corporation, except where such approval is the responsibility of the Membership;
- h. Establish membership dues in accordance with Article XI; and
- i. Submit issues to a vote of the Membership.

Section 6. Meetings.

- a. The Board shall meet as often, at such locations, on such dates and upon such notice as it deems necessary and appropriate, but at least annually.
- b. A majority of the members of the Board shall constitute a quorum for the transaction of business.
- c. Executive sessions may be called either by a majority of the Board, or by the Chairman of the Corporation.
- d. Minutes of the meetings of the Board shall be available to all members of the Board and the Membership.

Section 7. Voting.

- a. Each member of the Board shall have one vote on every matter voted on by the Board. No proxy voting shall be permitted.
- b. A majority of the Board members shall constitute a quorum.

- c. Action by the Board shall require the affirmative vote of a majority of the members at the meeting attended by a quorum. The method of voting shall be at the discretion of the Chairman of the Corporation.
- d. The Chairman of the Corporation may initiate a vote on any matter coming before the Board by mail, telephone, facsimile, electronic mail or similar means, in which event a deadline for response shall be fixed and a lack of response within the designated time shall be recorded as “not voting.” Approval of any action by such means of voting shall require the affirmative vote of a majority of the members of the Board.

Section 8. Reimbursement. Each member of the Board shall be entitled to reimbursement for their expenses for attendance at official meetings of and official functions for the Corporation to the extent such expenses are not otherwise reimbursed from other sources.

ARTICLE V.

Officers

Section 1. Number, Title and Qualifications. The officers of the Corporation shall be those designated as follows:

- a. Number and Title. There shall be a Chairman, a Vice-Chairman, a Secretary / Treasurer, and an Executive Director.
- b. Qualifications. The Chairman, Vice-Chairman and Secretary / Treasurer shall be duly appointed representatives of members of the Corporation and members of the Board of Directors.

Section 2. Chairman.

- a. Election. At the first meeting of the Board of Directors and at each biennial meeting of the Board thereafter (to coincide with the annual meeting of the Membership), a Chairman of the Corporation, heretofore designated as Chairman, shall be elected by the Board for a period of two years and until a qualified successor chairman is elected. Notwithstanding, a member of the Board shall not be precluded from being re-elected and serving consecutive terms as Chairman. Should the Chairman resign or be unable to continue in office, his/her duties and responsibilities shall be assumed by the Vice-Chairman for the remainder of the term and until a qualified Chairman is elected at the next biennial meeting of the Board.
- b. Authority and Responsibilities. The Chairman shall preside at meetings of the Membership and the Board, performing the usual duties of the presiding officer at such meetings. The Chairman shall be the official representative of the Corporation when the Corporation is to be represented, unless the Board, by a majority vote, shall designate some other member(s) or officer(s) to serve in such capacity. Where authorized, the Chairman shall, with the approval of the Board, appoint individuals to committees to serve at the pleasure of the Board.

Section 3. Vice-Chairman.

- a. Election. At the first meeting of the Board of Directors and at each biennial meeting of the Board thereafter (to coincide with the annual meeting of the Membership), a Vice-Chairman of the Corporation, heretofore designated as Vice-Chairman, shall be elected by the Board for a period of two years and

until a qualified successor Chairman is elected. Notwithstanding, a member of the Board shall not be precluded from being re-elected and serving consecutive terms as Vice-Chairman. Should the Vice-Chairman resign or be unable to continue in office, the Chairman may designate a board member to serve as Vice-Chairman for the remainder of the term and until a qualified Vice-Chairman is elected at the next biennial meeting of the Board.

- b. Authority and Responsibilities. The Vice-Chairman shall, in the absence or disability of the Chairman, perform the duties of Chairman. He/she shall perform such other duties and have other responsibilities as may be delegated to him by the Board.

Section 4. Secretary / Treasurer.

- a. Election. At the first meeting of the Board of Directors and at each biennial meeting of the Board thereafter (to coincide with the annual meeting of the Membership), a Secretary / Treasurer of the Corporation, heretofore designated as Secretary / Treasurer, shall be elected by the Board for a period of two years and until a qualified successor Secretary / Treasurer is elected. Notwithstanding, a member of the Board shall not be precluded from being re-elected and serving consecutive terms as Secretary / Treasurer. Should the Secretary / Treasurer resign or be unable to continue in office, his/her duties and responsibilities shall be assumed by a successor to be appointed by the Chairman from among the members of the Board for the remainder of the term and until a qualified Secretary / Treasurer is elected at the next biennial meeting of the Board.

- b. Authority and Responsibilities. The Secretary / Treasurer, with such staff assistance as the Board shall deem appropriate to provide, shall perform all duties requisite of the Secretary / Treasurer of a Corporation, to include:
- (1) Keeping the minutes of the meetings of the Membership and of the Board;
 - (2) Maintaining custody and supervision of the records and the books of the Corporation;
 - (3) Providing oversight for the Board of financial transactions undertaken by the Executive Director; and
 - (4) Oversight of annual financial audits of the corporation to be conducted by an outside auditor and reporting of the findings to the Board.

Section 5. Executive Director.

- a. Selection and Term of Office. An Executive Director shall be selected and appointed by the Board to serve at the pleasure of the Board. At the discretion of the Board, the Executive Director may be an independent contractor or an employee of the Corporation.
- b. Authority and Responsibilities. The Executive Director shall be the chief executive officer of the Corporation, having all powers and performing all duties appropriate to the capacity and as may be further designated by the Board. Generally, he/she shall perform all acts and have all powers required or authorized by law for the chief executive officer of a corporation, including the signing or verifying of all documents required by law. The Executive Director shall maintain an annual budget and statement of objectives of the

Corporation, to be approved by the Board. He/she shall have authority to bind the corporation contractually, and to make expenditures on behalf of the corporation. He/she shall exercise authority over the selection, employment, compensation and direction of all personnel necessary to operate the Corporation and of all vendors and contractors, including legal counsel.

Section 6. Compensation of Officers.

- a. Other than as set forth in Article IV, Section 7 (Reimbursement), the Chairman, Vice-Chairman and Secretary / Treasurer shall receive no compensation for their services as officers of the Corporation.
- b. The Executive Director shall receive such compensation and other benefits as the Board may determine, and, additionally, shall be entitled to reimbursement of expenses for attendance at official meetings of and official functions for the Corporation.

ARTICLE VI.

School Districts

Section 1. Interlocal Agreements. Pursuant to Chapter 791, Government Code, and Chapter 44, Education Code, the Corporation may enter into interlocal agreements with school districts to purchase electricity and other goods and services as determined by the Board.

Section 2. Agreement Terms. The terms of interlocal agreements entered into pursuant to this Article shall grant school districts identical rights and responsibilities as are vested in the members of the Corporation as to voting and

Board eligibility. Fees assessed school districts shall be identical to fees assessed members of the Corporation.

Section 3. Effect of Agreements. Interlocal agreements entered into pursuant to this Article VI do not vest school districts with membership in the Corporation, and do not vest school districts with any rights not expressly set forth in the agreements.

ARTICLE VII

Committees

Section 1. Purpose. The purpose of any committee established shall be to provide information and recommend a course of action to the Board on matters relevant to the business of the Corporation.

Section 2. Establishment. The Board may establish such committees, and appoint representatives thereto from among the Membership, as it deems appropriate.

ARTICLE VIII.

Contractor Selection

Section 1. Competitive Bids. (a) Except as provided in subsection (b), the Corporation shall utilize a formal procedure of inviting and evaluating bids or proposals from as many providers as reasonably possible when acting to procure goods and services on behalf of the membership. However, when a procurement would not be subject to competitive bids if conducted by a county in

this state, the Board may vote to allow the corporation to make such procurement without competitive bids.

(b) With the written permission of the representative of a member or school district, the Corporation may negotiate with a contractor to add a new member or school district or a new electric account of an existing member or school district to an existing contract that was competitively procured, even if the pricing for such additions differs from pricing in the existing contract.

Section 2. Corporation Purchases. The Board shall set policies for the purchase of goods and services for the administration of the corporation consistent with all applicable laws.

ARTICLE IX.

Conflict of Interest and Ethical Standards

Section 1. Conflict of Interest. Any member or school district representative of the Corporation or its component bodies having the right to vote shall be disqualified from voting on any matter in which, or where, he/she has a financial interest.

Section 2. Ethical Standards. Any member or school district representative of the Corporation or of its component bodies having the right to vote shall disclose as to the decision-making body any past, current, or prospective association – personal, financial, or otherwise – if in his/her opinion such association may unduly influence his decision. Moreover, it shall be the policy that all employees shall be guided by this standard in making recommendations upon which any decision may be reached.

ARTICLE X.

Amendment

These Bylaws may be amended by the affirmative vote of a majority of the Board.

ARTICLE XI.

Membership Dues and Aggregation Fees

Section 1. Board Authority. The Board shall have the authority to establish membership dues, an aggregation fee, or both, to be applicable to all members of the Corporation and school districts contracting with the Corporation pursuant to Article VI. The Board may amend such dues and fee at its discretion.

Section 2. Method of Calculation and Payment. The Board shall determine the method of calculating membership dues, be it a fixed sum, a percentage of commodity usage, or any combination of these or other methods. An aggregation fee, if any, shall be set in accordance with applicable law. The Board shall determine the method of payment to the Corporation of any such dues and fees.

Section 3. Recoupment of Initial Investments. The initial members of the Corporation will be granted a credit against any membership dues or aggregation fee assessed equal to the amount of their respective initial contributions plus interest compounded annually at the prime rate of interest. The Board shall determine the period of recoupment, but it shall begin no later than January 1, 2003 and not exceed five (5) years.

Amendment History:

First adopted September 22, 2000.

Articles III & IV amended December 8, 2000.

Article III amended June 7, 2001.