

Articles of Incorporation



**Your Community.
Your Co-op. Your Choice.**

A Touchstone Energy® Cooperative 

*The updated and restated
Articles are attached.*

*Holy Cross Energy's Board of
Directors voted unanimously
to approve these changes
on March 16, 2022 and
recommends that you vote
in favor of their adoption.*

"Shall the Restated Articles of Incorporation unanimously approved by the Board of Directors of Holy Cross Electric Association, Inc. be adopted?"

The Articles of Incorporation of an electric cooperative association is the set of formal operating rules that is filed with the Secretary of State to legally document the formation of a cooperative association. It is the "constitution" of an electric cooperative.

Holy Cross Energy's current Articles of Incorporation were most recently updated in 1988. Holy Cross's Board of Directors and General Counsel undertook a review of those Articles and identified two sections that needed to be updated to conform with recent decisions by the Board of Directors and the past growth of Holy Cross Energy:

- The Board of Directors is the legal entity responsible for managing Holy Cross Energy and directing the cooperative. Serving on the Board can be time-consuming, and the learning curve for new Board Members can be long, especially given the increasingly complex nature of governing a modern electric utility. As a result, the Board of Directors voted to change Holy Cross Energy's Bylaws to lengthen the term of office for Board Directors from three to four years. The Articles of Incorporation should be updated to reflect that change, and the term of office is updated in Article V to be set in the Bylaws.
- When a group of farmers and ranchers joined together to bring electric service to the Roaring Fork and Eagle River valleys, the original limit on the number of members was set at 2,000 in 1939 and more recently it was limited to 50,000 members. Holy Cross Energy currently has over 45,000 Members and continues to grow, so Article VI of the Restated Articles of Incorporation has been updated to allow an unlimited number of Members.
- In addition to the amendments that address these two issues, Holy Cross Energy's General Counsel has proposed a complete update to the 1988 Articles of Incorporation with a top-to-bottom revision using current statutory language like other Colorado electric cooperatives that have recently amended their articles of incorporation.

Review the Articles and vote!

The updated and restated Articles are attached. Holy Cross Energy's Board of Directors voted unanimously to approve these changes on March 16, 2022 and recommends that you vote in favor of their adoption.

Amended Articles of Incorporation

ARTICLE I NAME

**The name of the Association is HOLY CROSS ELECTRIC ASSOCIATION, INC.
The Association has adopted a trade name of HOLY CROSS ENERGY.**

ARTICLE II OBJECTS, PURPOSES, POWERS AND TERM OF EXISTENCE

The object or objects and purpose or purposes for which the Association was formed are:

- (a) To generate, manufacture, purchase, acquire and accumulate energy and communication systems in electric and other forms for its Members and the public generally, including all Persons who may wish to purchase and receive such energy and energy and communication systems and to transmit, distribute, furnish, sell and dispose of such energy and energy and communication systems to its Members and the public generally, and 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, apparatus, equipment and electric transmission and distribution lines and other energy and communication systems necessary, convenient or useful for carrying out and accomplishing any or all of the foregoing purposes; to acquire, own, hold, use, exercise and, to the extent permitted by Law, to sell, mortgage, pledge, hypothecate and in any manner dispose of franchises, rights, privileges, licenses, rights- of-way and easements necessary, useful or appropriate to accomplish any or all of the purposes of the Association;
- (b) To purchase, receive, lease as lessee, or in any manner acquire, own, hold, maintain, use, convey, sell, lease as lessor, exchange, mortgage, pledge or otherwise dispose of any and all real and personal property or any interest therein necessary, useful or appropriate to enable the Association to accomplish any or all of its purposes;
- (c) To install electrical and other energy appliances, communication and other communication appliances, fixtures, machinery, supplies, apparatus and equipment of any and all kinds and character (including, without limiting the generality of the foregoing) and, in connection therewith and for such purposes, to purchase, acquire, lease, sell, distribute, install and repair electrical and other energy, communications, and plumbing appliances, fixtures, machinery, supplies, apparatus and equipment of any and all kinds and character (including, without limiting the generality of the foregoing, such as are applicable to communication, water supply and sewage disposal) and to receive, acquire, endorse, pledge, guarantee, hypothecate, transfer or otherwise dispose of notes and other evidences of indebtedness and all security therefor;
- (d) To borrow money, to make and issue bonds, notes and other evidences of indebtedness, secured or unsecured for moneys borrowed or in payment for property acquired, or for any of the other objects or purposes of the Association; to secure the payment of such bonds, notes 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 or all of the property, rights, privileges or permits of the Association wheresoever situated, acquired or to be acquired;
- (e) To do and perform, either for itself or its Members or its Patrons, and the public generally, all acts and things, and to have and exercise all powers, as may be necessary or convenient to accomplish all the foregoing purposes or as may be permitted by the statutes under which the Association was formed and as otherwise provided by Law.

The Association as a “cooperative association” shall have all the powers created by Colorado Revised Statutes, Sections 7-55-101 et seq., and amendments thereto and as otherwise provided by Law. The Association as an electric light power company, constructs and operates electric lines and electric plant, and the Association shall have all the powers created in Colorado Revised Statutes, Title 38, Articles 2 and 5, as amended.

The term of existence of the Association shall be perpetual.

If, and to the extent that, a Bylaw conflicts with Law or these Articles of Incorporation, then the Law or these Articles of Incorporation control. “Law” includes applicable:

- 1) local, state, and federal constitutions, statutes, ordinances, regulations, holdings, rulings, orders, and similar documents or actions, whether legislative, executive, or judicial; and
- 2) legally binding contracts enforceable by or against the Association, including legally binding contracts between the Association and an Applicant or Member.

ARTICLE III DIRECTORS

Section 1.

The number of Directors of the Association shall be not less than seven with the precise number prescribed from time to time by the Bylaws of the Association. The business and affairs of the Association shall be managed and controlled by the Board of Directors, the members of which shall be elected by and from the Members of the Association. The Board of Directors shall manage the affairs and business of the Association during their term of office and until their successors shall have been elected and shall have qualified according to Law and the Bylaws of the Association. Proxy or cumulative voting by Members shall be prohibited.

Section 2.

Directors shall serve for terms as provided by the Bylaws of the Association.

Section 3.

The Bylaws may make provision for the removal of Directors and the filling of vacancies so created.

Section 4.

The Bylaws may provide for division of the electric service territory served by the Association into voting districts, and for the election of Directors, directly by such voting districts, or by a body of delegates elected by such voting districts.

Section 5.

The Bylaws may provide for compensation of Directors.

Section 6.

The personal liability of a Director may be eliminated or limited as provided in the Bylaws of the Association to the extent permitted by Law. No Director or Officer of the Association shall be personally liable for injury to persons or property arising out of a tort committed by an employee of the Association unless the Director or Officer personally engaged in misconduct causing the injury.

Section 7.

The Association shall indemnify any individual made a party to a threatened, pending, or completed action, suit, civil, criminal, administrative, or investigative proceeding, whether formal or informal, because such

individual was or is serving as a Director or Officer. This indemnity extends to a Director or Officer upon a determination by the Board of Directors that the Director or Officer being indemnified acted in good faith and reasonably believed that the Director's or Officer's conduct was in the best interest of the Association.

In a criminal matter, the indemnity extends upon a determination by the Board of Directors that the Director or Officer being indemnified had no reasonable cause to believe that the Director's or Officer's action was unlawful. Indemnity does not extend to a Director or Officer if the Director or Officer is adjudged liable to the Association or is adjudged liable on the basis of having derived an improper personal benefit.

In addition to the indemnity provided to its Directors and Officers, the Association shall advance the costs of defense to a Director or Officer named in a proceeding, provided that the Board of Directors determines that the facts known to the Board do not preclude indemnification and that the Director or Officer furnishes the Association with a written affirmation that the Director or Officer has met the standard of conduct for a Director or Officer required by Law and that the Director or Officer will repay the advance if it is ultimately determined that the Director or Officer did not meet the standard of conduct required by Law.

It is the intent of the provisions of this Section to provide the Directors and Officers of the Association with (a) limitations of liability to the Association and its Members, (b) indemnification, and (c) covenants for the advancement of costs, all to the fullest extent allowed under Law.

ARTICLE IV COOPERATIVE OPERATION, MEMBERSHIP AND MEMBERS

Section 1.

The Association shall always be operated on a cooperative non-profit basis for the mutual benefit of its Patrons. No interest or dividends shall be payable by the Association on any capital furnished by its Patrons.

Section 2.

The Association shall have an unlimited number of Members and each Member shall have one vote. No Person and no Entity can own more than one Membership in the Association.

Section 3.

The Association's operations shall be so conducted that all Patrons will, through their patronage, furnish capital for the Association. To induce patronage and to assure that the Association will operate on a non-profit basis, the Association is obligated to account on a patronage basis to all its Patrons for all amounts received and receivable in excess of the sum of (a) operating costs and expenses properly chargeable, and (b) amounts required to offset any losses incurred during the current or any prior year. All such amounts in excess of operating costs and expenses at the moment of receipt by the Association are received with the understanding that they are furnished by the Patrons as capital. The Association is obligated to assign credits to a capital account for each Patron all such amounts in excess of operating costs and expenses. The books and records of the Association shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each Patron is clearly reflected and credited in an appropriate record to the capital account of each Patron, and the Association shall within a reasonable time after the close of the fiscal year notify each Patron of the amount of capital so credited to his account. All such amounts credited to the capital account of any Patron shall have the same status as though they had been paid to the Patron in cash in pursuance of a legal obligation to do so and the Patron had then furnished the Association corresponding amounts for capital.

In the event of dissolution or liquidation of the Association, after all outstanding indebtedness of the Association shall have been paid, outstanding capital credits shall be retired without priority on a prorata

basis before any payments are made on account of property rights of Members. At any time prior to dissolution or liquidation, the capital credited to Patrons' accounts may be retired in full or in part in a manner provided by the Bylaws. Capital credited to the account of each Patron shall be assignable only on the books of the Association.

In all cases where a Member or Patron fails to claim any deposits, dividends, capital credits, patronage refunds, or any other property or funds held for the Member or Patron by the Association, after the same have been declared payable to the Member or Patron, the Association may recover and use such property or funds for any purpose authorized by Law; provided, that the Association shall first give notice to such Member or Patron by first class mail at the address shown in the Association's records or by publication in a newspaper of general circulation within the service area of the Association. Such notice may not be given prior to six months after the date such amount is declared payable or the date such amount is paid by the Association by negotiable instrument whichever first occurs.

If such Member or Patron does not claim such amount after the date of mailing or publication of the notice, then such claim shall be extinguished and forever barred.

Section 4.

A "Patron" is any Person or Entity through, or which is furnished energy, commodities, or services by the Association pursuant to agreement between the parties, whether oral or written, express or implied.

A "Person" is any individual or Entity with the capacity to enter legally binding contracts.

An "Entity" includes a domestic or foreign: cooperative; business or nonprofit corporation; sole proprietorship; unincorporated association; limited liability company; partnership; trust; estate; persons having a joint or common economic interest; legal entity; and local, regional, state, federal, or national government, including an agency or division of a government.

Section 5.

In limitation of the above, it is specifically stipulated as follows: Except pursuant to Order by a Court of competent jurisdiction in condemnation or eminent domain proceedings, the Association may not sell or lease all or any substantial portion of its property unless such sale or lease is authorized by a vote of the Members by the affirmative vote of not less than two-thirds of all of the Member of the Association, and unless the notice of such proposed sale or lease shall have been contained in the notice of the balloting as provided in the Bylaws; provided, however: (1) that notwithstanding anything herein contained, the Board of the Association, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, or the pledging or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the Association, whether acquired or to be acquired, and wherever situated, as well as the revenues and income there- from, all upon such terms and conditions as the Board shall determine, to secure any indebtedness of the Association; and (2) that no exchange of electric facilities in connection with an exchange of service territory, with another utility, shall be deemed to be a "sale or lease" as herein above used.

Section 6.

Membership in the Association shall be evidenced by a Membership certificate which shall be in such electronic form and shall contain such provisions as shall be determined by the Board of Directors not contrary to, or inconsistent with, these Articles of Incorporation or the Bylaws of the Association.

Section 7.

Any Person may become a Member in the Association by compliance with the requirements of the Bylaws of the Association.

Section 8.

Each Member and each Patron shall pay all obligations which may from time to time become due and payable by such Member or Patron to the Association as and when the same shall become due and payable as set forth in the Bylaws, tariffs, rules, and regulations.

Section 9.

The Bylaws may provide for a method of withdrawal of Membership.

Section 10.

The Bylaws of the Association may define and fix other duties and responsibilities of the Members and prescribe other terms and conditions upon which Members shall be admitted to and retain Membership in the Association, make provisions for annual and special meetings of Members and Directors and notices thereof, provide for methods of voting, quorum requirements, and any other matters relating to the internal organization and management of the Association.

Section 11.

The private property of the Members of the Association shall not be subject to the payment of, and no Member shall be individually responsible for, debts of the Association.

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**CERTIFICATE OF ADOPTION
AMENDED AND RESTATED ARTICLES OF INCORPORATION**

Pursuant to Colorado Revised Statutes §7-55-109, the Board of Directors for Holy Cross Electric Association, Inc. (the “Association”), a Colorado cooperative association organized as pursuant to Colorado Revised Statutes §7-55-101 et seq., hereby certifies:

First: That at a meeting of the Board of Directors of the Association held on February 16, 2022, the Directors unanimously approved proposed Amended and Restated Articles of Incorporation and directed such Amended and Restated Articles of Incorporation to be submitted to the Members of the Association for consideration by mail ballot voting with balloting ending on June 2, 2022; and

Second: That notice of the balloting on the proposed Amended and Restated Articles of Incorporation, and member ballots were mailed to each active Member of the Association on May, 2022, more than ten days prior to the ballot receipt deadline; and

Third: That the Amended and Restated Articles of Incorporation was approved by an affirmative vote of a majority of the Members voting by mail, with votes for approval and votes against approval; and

Fourth: That the Amended and Restated Articles of Incorporation as approved by the Board of Directors and adopted by the Members of the Association are attached hereto for filing with the Colorado Secretary of State pursuant to Colorado Revised Statutes §7-90-301 and §7-90-304.5.

I, Robert H. Gardner, Secretary of Holy Cross Electric Association, Inc. do hereby certify that the above is true and correct and that the Restated Articles of Incorporation that was adopted in accordance with the requirements of the law of the State of Colorado and have been signed and executed by the duly elected Authorized Officer of Holy Cross Electric Association, Inc. on this 2nd day of June, 2022.



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