

## **PROPOSED**

# **FOURTH AMENDED AND RESTATED ARTICLES OF INCORPORATION OF NEBRASKA MUNICIPAL POWER POOL**

## **ARTICLE I**

### **Name**

The name of the corporation is Nebraska Municipal Power Pool (the "Corporation").

## **ARTICLE II**

### **Classification**

This Corporation is a mutual benefit corporation.

## **ARTICLE III**

### **Purposes and Powers**

3.1 **Purposes and Powers.** The purpose of the Corporation is to promote the common good and general welfare of communities served by municipal utilities by providing support to and coordination among organizations dedicated to supporting municipal utilities, engaging in legislative and regulatory advocacy, and rendering assistance in the fields of municipal utility oriented energy, communications and delivery of such other essential municipal utility services that enhance the quality of life of citizens of the communities served. Notwithstanding any other provision in these Articles of Incorporation, the Corporation shall have authority to undertake only those purposes and exercise those powers permitted to be undertaken or exercised by organizations exempt from Federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended and in effect (the "Code"), as an organization described in Section 501(c)(4) of the Code.

3.2 **Limitations.** Except upon dissolution and liquidation pursuant to the terms hereof and the Nebraska Nonprofit Corporation Act (the "Act") and as permitted by the Code, no part of the property or net earnings of the Corporation shall inure to the benefit of or be distributable to its Directors, officers or other private persons. However, the Corporation may pay reasonable compensation for services rendered to or for the Corporation in connection with the accomplishment of its exempt purposes and may reimburse reasonable expenses incurred on its behalf.

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### **ARTICLE IV** **Distributions and Dissolution**

In all events and under all circumstances, and notwithstanding merger, consolidation, reorganization, termination, dissolution, or winding up of this Corporation, voluntary or involuntary or by operation of law, the following provisions shall apply:

A. This Corporation shall engage only in activities which are essentially public in nature, consistent with its exempt purpose to promote the common good and general welfare of the community.

B. If the Corporation shall be dissolved, all assets of the Corporation that remain following payment of creditors shall be distributed to the Municipal Energy Agency of Nebraska, a Nebraska political subdivision created under the Nebraska Municipal Cooperative Financing Act ("MEAN"); the National Public Gas Agency, a public body corporate and politic of the State of Nebraska created under the Nebraska Interlocal Cooperation Act ("NPGA"); and the Public Alliance for Community Energy, a public body corporate and politic of the State of Nebraska created under the Nebraska Interlocal Cooperation Act ("ACE"), according to a plan to be adopted by the Board of Directors at the time of dissolution in accordance with the requirements of the Act.

### **ARTICLE V** **Members**

Effective with these Fourth Amended and Restated Articles of Incorporation, the Corporation shall not have members.

### **ARTICLE VI** **Management**

A. Powers Vested in the Board. The business and affairs of the Corporation shall be managed by its Board of Directors, in which shall be vested all of the powers conferred on the Corporation by the Act, these Articles of Incorporation, and the Bylaws.

B. General Rules for Directors. Effective with these Fourth Amended and Restated Articles of Incorporation, the Corporation shall have nine Directors, determined in the following manner, subject to Article VI, Section C:

1. MEAN shall be entitled to appoint three Directors, who shall consist of the Chair, Vice Chair, and Secretary-Treasurer of MEAN's Board of Directors.

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2. NPGA shall be entitled to appoint three Directors, who shall consist of the Chair, Vice Chair, and Secretary-Treasurer of NPGA's Board of Directors.

3. ACE shall be entitled to appoint three Directors, who shall consist of the Chair, Vice Chair, and Secretary-Treasurer of ACE's Board of Directors.

For purposes of this Article, MEAN, NPGA, and ACE are each an "Appointing Entity." The Directors shall serve terms coextensive with their respective terms of service in the offices indicated for the Appointing Entity. A change in the occupant of one of the foregoing offices shall automatically constitute removal of the corresponding Director and appointment of the successor officer to the corresponding position on the Corporation's Board of Directors.

C. Special Rules for Directors. In no event shall the same person serve as a Director appointed by more than one of the following entities: MEAN, NPGA or ACE, as in the example of X. Jones being both the Chair of MEAN and the Vice-Chair of NPGA. If the situation should occur that the same person holds more than one of the positions listed above in this Section B, such a person must choose one and only one position listed above in this Section B, which for purposes of the NMPP Board of Directors, said person will act as one of the appointed Directors. The Chair of the entity (MEAN, NPGA or ACE) which is then left with a vacancy on the NMPP Board of Directors shall appoint a Director from its Board of Directors, to fill any vacancy on the NMPP Board of Directors arising out of this paragraph.

D. Officers. The Board of Directors shall elect, annually, from among its members one President, one Vice President and one Secretary/Treasurer.

## **ARTICLE VII**

### **Registered Office/Agent**

The street address of the registered office of the Corporation is 8377 Glynoaks Drive, Lincoln, County of Lancaster, State of Nebraska, 68516; and the name of the Corporation's registered agent at such address is Robert Poehling.

## **ARTICLE VIII**

### **Bylaws**

Effective with these Fourth Amended and Restated Articles of Incorporation and notwithstanding anything in the Corporation's current Bylaws to the contrary, the Board of Directors may amend and restate its Bylaws as provided in Section 21-19,113 of the Act.

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### **ARTICLE IX**

#### **Amendments**

The Board of Directors shall have the power to amend these Articles by the affirmative vote of a majority of the Directors in office at the time of the amendment. However, no amendment or change in these Articles may be made at any time regarding the nonprofit status of the Corporation.

### **ARTICLE X**

#### **Original Incorporators**

The name and street address of each of the original incorporators of the Corporation are as set forth in the original Articles of Incorporation dated December 5, 1975, filed with the Secretary of State on December 8, 1975.

*(Signature page to follow.)*

**PROPOSED**

Pursuant to Section 21-19,110 of the Act, these Fourth Amended and Restated Articles of Incorporation shall supersede in their entirety the previous Articles of Incorporation and any and all amendments, restatements or revisions thereto.

Dated \_\_\_\_\_, 2023.

NEBRASKA MUNICIPAL POWER POOL,  
a Nebraska nonprofit corporation

By: \_\_\_\_\_  
\_\_\_\_\_, President

