

Subject: REGULATION GOVERNING COMPLAINTS		Policy No: 52
Original Issue: 08/22/1986	Last Revised: 1/21/2008	Last Reviewed: 06/14/2019

I. REGULATION - SCOPE AND PURPOSE

- A. By this Regulation, Empire Electric Association, Inc., sets forth a procedure for members and consumers to register complaints and be given an opportunity to be heard by the Board of Directors, or its designee, regarding the rates charged by the Cooperative, the manner in which the electric service is provided, and proposed changes in the rates or regulations, in compliance with § 40-9.5-109, C.R.S. (1993), as amended.
- B. This Regulation is promulgated in the best interests of this Cooperative and its members and consumers. This Regulation shall be liberally construed to secure the just, speedy and inexpensive determination of matters presented under the foregoing statute and this Regulation. So long as not contrary to law, deviation from this Regulation may be permitted for good cause shown or if compliance therewith is found to be impossible, impracticable or unreasonable.

II. DEFINITIONS

- A. As used in this Regulation, the following words shall have the meanings indicated unless the context otherwise requires:
- B. “Board” shall mean the Board of Directors of Empire Electric Association, Inc.
- C. “Board Decision” means the decision made by the Board on a Complainant’s Appeal.
- D. “Cooperative” shall mean Empire Electric Association, Inc.
- E. “Consumer” shall mean any person who is not a member but who directly receives and is billed for electric service from this Cooperative.
- F. “Complainant” means the Person who files an Informal Complaint or Formal Complaint with the Cooperative.
- G. “Formal Complaint” means a complaint filed by a Member or Consumer after the Informal Complaint and pursuant to this Regulation.
- H. “Manager” means the general manager of the Cooperative.
- I. “Manager’s Response” means the response of the General Manager to an Informal Complaint.
- J. “Informal Complaint” means a complaint filed by a Member or Consumer pursuant to this Regulation.
- K. “Member” shall mean any person who has executed an application for membership with this Cooperative, whose application has been accepted and who directly receives electric service from this Cooperative.
- L. “Party” shall mean any Person named in the formal complaint, including the Complainant and the Cooperative.
- M. “Person” shall mean any natural person, firm, partnership, corporation, company, Cooperative, joint venture, or any other legal entity.
- N. “Presiding Officer” shall mean such person as may be designated by the Board to conduct a hearing under the foregoing statute and this Regulation. A Presiding Officer need not be a director, Member or Consumer of this Cooperative.
- O. “Presiding Officer’s Decision” shall mean the decision made by the Presiding Officer regarding the Formal Complaint.

- P. “Pro se” shall mean any person appearing on his or her own behalf without legal counsel in a proceeding under the foregoing statute and this Regulation.

III. REGULATION

A. INFORMAL COMPLAINT PROCESS

1. Any Consumer or Member may file a complaint with the Cooperative. The Informal Complaint must be in some form of legible writing and be signed by the Complainant and state that it is being filed pursuant to this Regulation. The Informal Complaint must set forth the facts and other information forming the basis for the complaint and set forth the relief the Complainant seeks. The Informal Complaint must be addressed to the Manager. The Manager must notify the Complainant of the receipt of the Informal Complaint within seven (7) days of receipt. The Manager may request additional information from the Complainant. The Manager will provide the Complainant with a written response to the Informal Complaint within thirty (30) days of receipt of the Informal Complaint, or within thirty (30) days of receipt of the additional information requested. If the Complainant is not satisfied with the Manager’s Response, then the Complainant may file a Formal Complaint. The Formal Complaint will only be reviewed if the Complainant has completed the Informal Complaint process.

B. FORMAL COMPLAINT PROCESS

1. Formal Complaint. After the Complainant has completed the Informal Complaint process, the Complainant may file a Formal Complaint with the Cooperative. The Formal Complaint must be addressed to the Board. The Complainant must provide copies of the Formal Complaint to the Cooperative and any other Party. A Formal Complaint shall be in legible writing and shall be signed by the Complainant. The Formal Complaint shall include the Informal Complaint and the Manager’s Response as supplemental documents. The Formal Complaint shall state the name and address of the Complainant, set forth a clear and concise statement of the facts supporting the Formal Complaint, and set forth the relief the Complainant seeks. The Formal Complaint may be dismissed by the Complainant at any time during the Formal Complaint Process. The Complainant may appear Pro Se, or if the Complainant is a business entity of any type may be represented by its owner or any officer, manager, or duly-authorized employee. If the Complainant is represented by an attorney, the Formal Complaint shall be signed by the attorney and set forth his/her registration number, address and telephone number. The signature of the attorney certifies that he/she has read the Formal Complaint; that to the best of his/her knowledge, information and belief there are good grounds to support it; and that it is not interposed for purposes of delay. An attorney of record may withdraw from a proceeding only upon motion and notice to all Parties, including the Party represented by such attorney.
2. Presiding Officer. The Board shall select the Presiding Officer within ten (10) working days of the date the Formal Complaint has been filed with the Cooperative.
3. Formal Response. A Formal Response shall be filed by the Cooperative and/or other Parties within fifteen (15) working days of receipt of the Formal Complaint unless the Presiding Officer enlarges or shortens the time for filing a response.
4. Setting of Hearing. The Presiding Officer shall set a hearing date at the earliest practicable time after the Formal Response has been received by the Complainant.

5. Notice of Hearing. The Presiding Officer shall give written notice of the Hearing on the Formal Complaint by mailing a copy of the notice setting the matter for hearing at least ten (10) working days before the first day of the Hearing, unless shortened by the Presiding Officer, to (i) each Party, (ii) any other person who, in the opinion of the Presiding Officer, would be interested in or affected by the proceeding involved in the Hearing, and (iii) any Consumer or Member who has asked to receive notice of the hearing. The Notice of Hearing shall state the time, place and date of the hearing.
6. Pre-Hearing Conference. At any time before the commencement of the Hearing, the Presiding Officer may order that a pre-hearing conference be held to expedite the Hearing or settle issues, or both.
7. Hearing. Hearings shall be conducted by the Presiding Officer, and shall be held at the Cooperative's principal place of business, or at such place or places in the service territory of the Cooperative as may be designated in the Notice of Hearing, or at such other place or places in the State of Colorado or Utah as may be considered appropriate. All Hearings shall be open to the public. Any person who is disruptive, abusive, or disorderly at a Hearing may be excluded from the Hearing by the Presiding Officer. Any Hearing shall be recorded at the request of any Party; the cost of such recording shall be borne by the Party who requested that the Hearing be recorded. At the commencement of the Hearing, the Presiding Officer shall call the Hearing to order, take appearances, and act upon any pending preliminary matters. The Parties may then make opening statements or reserve them to a later time in the Hearing. Witnesses, before being permitted to testify, shall be required to swear or affirm that the testimony he/she is about to give is true. Where the Hearing will be expedited, and the interest of the Parties will not be substantially prejudiced thereby, the Presiding Officer may receive all or part of the evidence in written form.
8. Admissibility of Evidence. The Presiding Officer shall not be bound by the technical rules of evidence, and no informality in any proceeding or in the manner of taking testimony shall invalidate any order entered. However, to the extent practicable, the Colorado Rules of Evidence applicable in civil non-jury cases in the district courts of Colorado will be followed, in order to promote uniformity in the admission of evidence. Notwithstanding the foregoing, when necessary to ascertain facts affecting the substantive rights of Parties to the proceeding, evidence not admissible under such rules may be received and considered if such evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. Unless the context otherwise requires, whenever the words "court," "judge" or "jury" appear in any of the Colorado Rules of Evidence, such words shall be construed to mean the Presiding Officer.
9. Burden of Proof. The burden of proving the claims in the Formal Complaint shall be on the Complainant. After the Complainant has presented her/his evidence, any Party who appears in support of the position of the Complaint shall present his/her case. Then the Cooperative or its representative, followed by any Party who appears in support of the position of the Cooperative, shall present its case. The Complainant shall then have the right to present rebuttal evidence. The Cooperative may present evidence to rebut Complainant's rebuttal evidence, but such evidence shall not be cumulative. In proceedings other than complaint proceedings, the burden of going forward and the burden of proof shall be determined by the Presiding Officer.
10. Stipulations. Parties may stipulate as to any fact in issue, or otherwise reach agreement as to matters in issue, of substance or procedure, by written stipulation or agreement

offered into evidence as an exhibit. The Presiding Officer shall enter a decision approving or not approving any such stipulation or agreement or recommending modification thereof as a condition to approval. An oral stipulation or agreement may be made upon the record, subject to the terms and conditions of this Regulation.

11. Documentary Evidence. Except as otherwise provided herein, a Party offering an exhibit into evidence shall furnish a copy thereof to each Party present and to the Presiding Officer at the Hearing. The Presiding Officer may limit the number of copies required to be furnished where reproduction is impossible, extremely difficult or unduly burdensome.
12. Interim Orders. The Presiding Officer, during the course of a proceeding and prior to entering the Presiding Officer's Decision, may issue one or more written interim orders.
13. Briefs. At the conclusion of the presentation of evidence at the Hearing, the Presiding Officer, upon his own motion or upon request by a Party, may order written briefs or statements of position to be filed and served on each Party.
14. Reopening the Hearing. The Presiding Officer, upon his/her own motion or upon motion of a Party for good cause shown, may order that the Hearing be reopened for further proceedings at any time after a matter is taken under advisement after the Hearing and before the Presiding Officer's Decision is entered on the merits; or at any time after the Presiding Officer's Decision is entered on the merits and neither administrative nor judicial review is pending with respect to the subject matter of said decision.
15. Decision of Presiding Officer. The Presiding Officer shall proceed with reasonable dispatch to decide the Formal Complaint after the Hearing. The Presiding Officer's Decision shall include a statement of findings and conclusions upon all material issues of fact, law, or discretion presented by the evidence and the appropriate order, sanction, relief, or denial thereof. The Presiding Officer's Decision will be issued as soon as practicable and in any event within forty-five (45) days after the Hearing is closed. The Presiding Officer's Decision shall be served on each Party by personal service or by mailing by first-class mail to the last address furnished to the Cooperative by such Party and shall be effective as to such Party on the date mailed or such later date as is stated in the Presiding Officer's Decision.
16. Requests for Reconsideration. If a Party considers itself to be aggrieved by the Presiding Officer's Decision, it may request the Presiding Officer to reconsider the same by filing a written Request for Reconsideration. The Request for Reconsideration must be filed within twenty (20) days after the Presiding Officer's Decision is issued, and it shall specify each ground upon which the request is based and the relief requested. The Request for Reconsideration shall be determined within thirty (30) days after it is received by the Presiding Officer and, if not so determined, reconsideration shall be deemed denied.
17. Appeals. If a Complainant's Request for Reconsideration is denied, the Complainant may appeal the Presiding Officer's Decision to the Board. The Complainant's Appeal must be in legible writing and set forth the grounds for which the Complainant believes the Presiding Officer's Decision should be overturned. The Complainant's Appeal shall include the Informal Complaint, the General Manager's Response, the Formal Complaint, the Formal Response(s), and the Presiding Officer's Decision. If the Hearing was recorded, the Complainant may include portions of the transcript of the Hearing, printed at Complainant's expense. Within twenty-five (25) days of receiving the Complainant's Appeal, the other Parties may file a written response which may

include portions of the transcript of the Hearing, printed at that Party's expense. At the regular Board meeting following receipt of the Complainant's Appeal and the responses, the Board shall review the appeal and by majority vote of the quorum of the Board shall decide if the Presiding Officer's Decision shall be upheld, reversed, or remanded to him/her for further review. During its review, the Board may allow argument from all Parties, or it may elect to render its decision without hearing from the Parties. The Board Decision shall be the final position of the Cooperative regarding the Complainant's complaint.

IV. EXHAUSTION OF REMEDIES

- A. No Member or Consumer may make a complaint to any agency or court about any matter within the scope of this Regulation without first following the procedures and exhausting his remedies as set forth in this Regulation, except Utah consumers may make formal complaint on all matters, except rates, to the Utah Public Service Commission without having first complied with the Formal Complaint procedure in this Regulation.

V. RESPONSIBILITY

- A. The Board shall be responsible for administration applicable to their responsibility and for any change or revision of this Regulation.
- B. The Manager is responsible for administrating those portions applicable to his/her responsibility and for making recommendations on necessary or required changes.

_____ President's Signature	Date: 06/14/2019
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