

**SCHOOL AND MUNICIPAL ENERGY  
COOPERATIVE OF WESTERN NEW YORK  
MEMBERSHIP AGREEMENT**

This municipal cooperative agreement is made effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between *The School and Municipal Energy Cooperative of Western New York* (the "Cooperative") and , \_\_\_\_\_ a municipal corporation with offices at , \_\_\_\_\_New York, (hereinafter referred to as "Member").

**WITNESSETH:**

**WHEREAS**, Article 5-G of the General Municipal Law authorizes municipal corporations to enter into cooperative agreements for the performance of those functions or activities in which they could engage individually; and

**WHEREAS**, Section 119-n of the General Municipal Law defines the term "municipal corporation" to mean a county outside the city of New York, a city, a town, a village, a board of cooperative educational services, a fire district, or a school district; and

**WHEREAS**, the Members have determined they can save money by the joint purchasing of energy, and

**WHEREAS**, each Member has determined to its individual satisfaction that it can purchase energy through the use of a marketing firm; and

**WHEREAS**, each Member has obtained the necessary approvals to enter into this Agreement and perform its obligation hereunder,

## **ARTICLE I - ACCEPTANCE OF COVENANTS**

**NOW, THEREFORE**, in consideration of the mutual promises herein contained, the parties covenant and agree as follows:

- I. The Members collectively shall purchase energy for their facilities.
- II. The Members establish the School and Municipal Energy Cooperative of Western New York to act as administrator of this Agreement.
- III. The Members authorize the Cooperative to take such steps as are necessary, within the limits of applicable law and in accordance with this Agreement and the By-Laws of the Cooperative, to carry out the purpose of the Cooperative.

## **ARTICLE II- ADMINISTRATION**

- I. The Chairperson shall act as the administrator of the Cooperative and the Treasurer shall act as the fiscal officer of the Cooperative and disbursing agent for all payments made by the Cooperative.
- II. Each year the Board of Trustees and/or the Executive Committee shall:
  - A) Determine the consultants, if any, who are to assist in purchasing any energy;
  - B) Establish all necessary premiums, contributions, charges, and assessments against members as authorized herein and as may be necessary for the proper operation and administration of the Cooperative in accordance with the By-Laws, the terms set forth herein, and applicable law;

- C) Appoint such Service Agents (see Definitions) as the Committee deems appropriate to assist the Treasurer and other administrators in the operation and management of the Cooperative (including the Cooperative assets).
- 
- III. The Treasurer shall be bonded as an Erie 1 BOCES employee and/or independently through the Cooperative for all moneys received from the Members who shall collectively be designated as the Obligee. The amount of such bond shall be fixed by the Committee in such principle amount as it deems adequate to protect the interest of the Members.
  - IV. If a surplus/deficit exists after accounting for all claims for a specific Cooperative year, after provision for payments of all known unsettled claims, and after receipt of annual independent financial audits, the Committee may retain from such surplus an amount sufficient to establish and maintain a contingency fund. Any remaining surplus may be returned to the Members, subject to the approval of the Board of Trustees on a pro rata basis (in the same percentage that they contributed premiums for that specific Cooperative year). If a Member has been dropped from the Cooperative for non-payment of premiums or other assessments, such Member's share of such surplus to be returned shall be applied to the amount due to the Cooperative and any excess shall be returned to the former Member, in accordance with the rules and procedures established by the Board of Trustees.
  - V. All moneys paid to the Treasurer by the individual Members shall be co-mingled and administered as a common fund. Except as provided above, no refunds shall be made to a Member and no assessments shall be charged a Member. However, if it appears to the Board of Trustees that the liabilities of the Cooperative will exceed its cash assets, the Board shall determine the amount needed to meet such deficiency and shall assess such amount against all Members, their pro rata share based on energy used. Such special assessment shall be paid by each Member within sixty (60) days after written notification of such assessment from the Chairperson of the Board of Trustees.

- VI. All disbursements shall be approved by at least two members of the Executive Committee prior to payments. Nothing in this Section shall prevent the Executive Committee from entering into agreements requiring advance payments by the Cooperative or Members, to the extent advance payments are authorized by law.
- VII. Funds not required for payment of current obligations may be temporarily invested by the Treasurer as authorized by law.
- VIII. The Member agrees to remit the initial membership fee (Dues) to the Cooperative as detailed in Attachment A. This is a one-time fee per Member. Additional services or accounts added do not require an additional membership fee.
- IX. In accordance with Article IV, Section 1 (c) of the By-Laws of the Cooperative, the Member agrees to remit its payment for advance purchase of energy to the Cooperative as described in Attachment A of the Membership Agreement. These funds will be allocated as fifty percent (50%) to a reserve payable to the Member and fifty percent (50%) to the net assets of the Cooperative. Each metered account added after initial participation may require an additional payment for advance purchase of energy, as described in Attachment A, which will be allocated in the same manner as the initial payment.
- X. Upon termination of the Member's participation in the Cooperative (pursuant to SMEC By-Laws, Article III, Section 3), the Member is entitled to the return of its reserve payable. In addition to the reserve payable, the amount included in net assets, reduced by any amounts owed the Cooperative, and adjusted for the profit/loss of the Cooperative during the time period the Member is participating, as described herein in Article II (IV), will be returned to the Member. If the termination takes place prior to the completion of the first six (6) months of the Cooperative's fiscal year, the amounts to be returned to the Member will be determined by the information included in the Cooperative's previous fiscal year audit report. If the termination takes place after the completion of the first six (6) months of the Cooperative's fiscal year, the amounts to be returned to the Member will be determined by the information included in the audit for the current fiscal year.

[The Cooperative may make an initial payment for the return of the Member's funds upon receipt of the resignation letter with a final payment to be made after the acceptance of the audit report by the Board.] Regardless of timing of the Member's decision to terminate its participation in the Cooperative, a factor to be considered in determining the amount to be returned to the Member will be whether the Member is terminating its membership in the Cooperative in whole or in part.

In addition to the factors mentioned above, if a member who had committed to participating in a hedge exits the Cooperative, the member will be required to reimburse the Cooperative for any financial exposure relating to the hedge. This amount may be deducted from the member's reserve reimbursement. The exposure will be calculated based on current forward pricing as of the date of the reserve reimbursement.

## **SMEC MEMBERSHIP AGREEMENT**

### **DEFINITIONS**

<b>Member</b>	Each individual school district, town, village, fire district or other municipality with the ability to tax the community.
<b>Member Representative</b> (SMEC Official 1)	One designated representative for each Member.
<b>Board of Trustees</b> (The Board)	Elected by the Member Representatives every three years. The Board of Trustees is given the authority to manage and control the business affairs of the Cooperative. It shall consist of all four (4) Officers and other Trustees up to ten (10).
<b>Officers (Executive Committee)</b>	Elected or appointed by Board of Trustees and serve at the pleasure of the Board of Trustees: Chairperson Vice-Chairperson Secretary Treasurer (May be a non-member at discretion of the Board) Asst. Secretary or Treasurer (Optional)
<b>Service Agents</b>	These shall include, but are not limited to the following service providers: Banking Auditors Insurance Agents Third Party Administrators

**SMEC MEMBERSHIP AGREEMENT  
ATTACHMENT A**

**FEES/DUES/RESERVES BY-LAWS**

**ARTICLE IV-Method of Operation**

**SECTION 1. Operation**

c. At the time of joining the Cooperative and in order to carry out the functions of the Cooperative, each Member will be required to provide funds to the Cooperative for advance purchase of energy, plus an amount to cover administrative expenses of the Cooperative. The amount of this initial contribution and administrative fees shall be established and determined from time to time by the Board of Trustees.

**ARTICLE X-Finances**

**SECTION 1. Dues.** An initial, non-refundable membership fee (Dues) of \$400 shall be required for each new Member upon joining the Cooperative. This amount is the same whether participating in gas and/or electric and is used towards administrative expenses. [See BY-LAWS ARTICLE IV, Section 1 (c)].

**SECTION 2. Reserves.** There may be set aside out of any funds of the Cooperative, as the Board of Trustees in its sole discretion may from time to time deem proper, a reserve or reserves as the law allows to meet contingencies, or for repairing or maintaining any property of the Cooperative, or for such other purpose or purposes as the Board of Trustees shall deem conducive to the interests of the Cooperative; the Board of Trustees may modify or abolish any such reserve or reserves in the manner in which it was created.

**FEES/DUES/RESERVES SCHEDULE**

**ADMINISTRATIVE FEES:**

GAS MANAGEMENT/SMEC FEES:	\$0.10/MCF Monthly (Subject to change with Board approval).
ELECTRIC MANAGEMENT/SMEC FEES:	\$0.001/kWh Monthly (Subject to change with Board approval).

**DUES:**

INITIAL MEMBERSHIP FEE: \$400 / MEMBER (Non-refundable)

**RESERVES:**

DEPOSIT FOR GAS RESERVE FUND:	120% of the HIGHEST ANTICIPATED* TOTAL MONTHLY BILL including transportation, supply and fees for <u>each account</u> enrolled.
DEPOSIT FOR ELECTRIC RESERVE FUND:	120% of the HIGHEST ANTICIPATED* TOTAL MONTHLY BILL including supply and fees for <u>each account</u> enrolled.

\*At the discretion of the Cooperative, ANTICIPATED charges will be based on the enrolled account's historical monthly usage multiplied by either historical or forecasted market rates.

If a member has additional accounts to add after their initial participation, and usage of those additional accounts is 10% or more of the member's current annual usage, they will be required to make an additional payment for reserves which will be allocated in the same manner as the initial payment.

The AMOUNTS ON DEPOSIT FOR MEMBER RESERVE PAYABLE AND NET ASSETS are refundable to a Member upon a Member's leaving the Cooperative or upon dissolution of the Cooperative and may be adjusted by a surplus/deficit depending on the state of the Cooperative at such time.

Intentionally left blank for two-sided printing



## SMEC MEMBERSHIP AGREEMENT

### ACCEPTANCE

**IN WITNESS WHEREOF**, the undersigned has executed this Membership Agreement as of \_\_\_\_\_20\_\_\_, being a duly authorized officer of

\_\_\_\_\_ and  
Member Name

does hereby agree on behalf of this municipal corporation to be bound by all the terms and conditions of this Agreement between said Member and the Cooperative acting by and through the Board of Trustees.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_

By: \_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Print Name of Officer)

Title: \_\_\_\_\_, a duly authorized officer of

\_\_\_\_\_  
Member Name

Intentionally left blank for two-sided printing

## **SMEC MEMBERSHIP AGREEMENT**

### **CONFIRMATION**

**IN WITNESS WHEREOF**, the Board of Trustees of the *School and Municipal Energy Cooperative of Western New York*, acting on behalf of the Cooperative and all of its Members, does hereby agree to all the terms and conditions of this Agreement when duly signed by the Chairperson of the Board of Trustees and hereby accept:

\_\_\_\_\_  
Member Name

as a Member of and participant in the Cooperative as of 12:01 a.m. on this date:

\_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
Chairperson of the Board of Trustees  
School and Municipal Energy Cooperative of Western New York