

PRIMARY ENTITY OPTIONS FOR CONSIDERATION

	For-Profit AS 10.06, <i>et seq.</i>	Non-profit Corporation AS 10.20, <i>et seq.</i>	Electric & Telephone Cooperative AS 10.25, <i>et seq.</i>	Limited Liability Company AS 10.50, <i>et seq.</i>
Purposes	Any lawful purpose.	Any lawful purpose including commercial or industrial.	Supplying electric energy or telephone service and extending the use of these services.	Any lawful purpose.
Ownership	Anyone who owns stock.	Members.	Members.	Members who own interests.
Management	Board of Directors elected by shareholders.	Board of Directors elected by members.	Board of Directors.	Manager, all members, or Board of Directors.
Voting	Equal vote per share within class; Number of shares based on consideration paid in money, other property, or services. - Could lead to unequal voting rights between stockholders; different people may own different amounts of stock.	+ One vote per member, usually. - But can be varied in the articles or bylaws.	+ One member, one vote.	As per operating agreement.
Limited Liability for Owners	Yes.	Yes.	Yes.	Yes.
Proxies	Allowed.	Allowed.	Not allowed.	Allowed.
Districts	N/A.	N/A.	Allowed.	N/A.
Quorum	50% of shares is default rule; no less than 33% of shares allowed by law.	10% of votes eligible.	5% of members.	Not specified; as per Operating Agreement.

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Profit Distribution	Based on shares, but there can be different types of shares with different rights.	Not allowed to issue stock or pay dividends to members or officers.	Capital credits distributed based on patronage.	As specified in Operating Agreement.
Users of Interties Able to Become Members	Yes.	Yes.	Yes.	Yes.
IOUs, JAAs, Cooperatives, & Municipal Utilities Able to Become Members	Yes.	Yes.	Yes.	Yes.
Able to own and operate new and existing interties	Yes.	Yes.	Yes.	Yes.
Shield members from liability and risk	Limited liability.	Limited liability.	Limited liability.	Limited liability.
Capable of receiving grant funds	- Less politically practical.	+ More politically practical.	+ More politically practical.	- Less politically practical.
Mission statement: own and operate intertie segment	Can be put in articles and bylaws.	Can be put in articles and bylaws.	Can be put in articles and bylaws.	Can be put it articles and operating agreement.

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Can be formed without amending federal or state statute	Yes.	Yes.	Yes.	Yes.
Members not considered “tax owners” of intertie segments by IRS	True, but some risk for member who is contract-builder (regardless of type of entity formed). Risk can be reduced by clarifying the intent and nature of the service contract relationship. - Risk may increase if contractor-member has unequal control over entity (unequal voting based on shares).	True, but some risk for member who is contract-builder (regardless of type of entity formed). Risk can be reduced by clarifying the intent and nature of the service contract relationship	True, but some risk for member who is contract-builder (regardless of type of entity formed). Risk can be reduced by clarifying the intent and nature of the service contract relationship To some extent, risk of tax owner determination may be less because of statutory & IRS democratic control requirement.	True, but some risk for member who is contract-builder (regardless of type of entity formed). Risk can be reduced by clarifying the intent and nature of the service contract relationship - Risk may increase if member has unequal control over entity (but control can be addressed in articles & operating agreement).
Legally mandated minimum staffing requirements	No.	No.	No.	No, unless “manager-managed” under statute.
Can “open access” be ensured?	Yes, in articles or bylaws.	Yes, in articles or bylaws.	Yes, in articles or bylaws.	Yes, in articles or operating agreement.

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Exempt from federal income taxation	- Not generally.	- More difficult. Usually 501(c)(3) charitable or 501(c)(4) social welfare exemptions. More difficult to get 501(c)(12) electric cooperative exemption.	+ Much easier, quicker. AS 10.25 cooperatives are commonly issued 501(c)(12) electric cooperative exemptions.	- Not generally. Can avoid “double taxation” by electing to “pass-through” tax to owners. Possible to reduce tax liability by being treated as a taxable (not 501(c)(12)) cooperative. But, 501(c)(12) exemption would likely be difficult, time-consuming, and costly.
Exempt from state taxes	- No.	- No, unless operating solely for religious, charitable, etc. purposes.	+ Yes, generally. Not exempt from ad valorem taxes for property of business that is “incidental to central station electric service.” Coops must pay 0.25 mil/kWh gross revenue tax, but only on “electricity sold at retail.”	- Not generally.
Access to debt financing	Yes, but taxable debt.	Yes.	Yes. Low-cost, low-margin, subsidized debt (RUS, CFC, CoBank).	Yes, but taxable debt.
Capable of operating intertie segments on stand-alone basis—no subsidization	Yes.	Yes.	Yes.	Yes.

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Capable of also providing fiber optic service; possibly generation	Yes.	Yes.	Yes.	Yes.
One person—one vote	- No. Voting based on shares within a class.	+ Yes, but can be altered in bylaws.	+ Yes, required by statute and IRS.	Yes, if required in articles or operating agreement.
Time and cost to form entity, adopt bylaws, and get tax status	Simple articles to get entity formed: 3 weeks. Detailed bylaws: Up to 1 month (depending on level of negotiation). Tax exemption: 3-5 months (but retroactive). Estimated total cost: \$15,000+/- (depending on level of negotiation & whether tax exemption is attempted).	Simple articles to get entity formed: 3 weeks. Detailed bylaws: Up to 1 month (depending on level of negotiation). Tax exemption: 3-5 months (but retroactive). Estimated total cost: \$15,000+/- (depending on level of negotiation & whether tax exemption is attempted).	Simple articles to get entity formed: 3 weeks. Detailed bylaws: Up to 1 month (depending on level of negotiation). Tax exemption: 3-5 months (but retroactive). Estimated total cost: \$15,000+/- (depending on level of negotiation).	Simple articles to get entity formed: 3 weeks. Detailed operating agreement: Up to 2 months (depending on level of negotiation). Tax exemption: 3-5 months (but retroactive). Estimated total cost: \$20,000+/- (depending on level of negotiation and whether tax exemption is attempted).
Ability to contract with member utilities for O&M, accounting functions, etc.	Yes.	Yes.	Yes.	Yes.

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When members can join with respect to future segments	Anytime, but might want to structure articles or bylaws to have it coincide with when detailed planning for segment is imminent.	Anytime, but might want to structure articles or bylaws to have it coincide with when detailed planning for segment is imminent.	Once member agrees to use services when they become available. Might want to structure articles or bylaws to have it coincide with when detailed planning for segment is imminent.	Anytime, but might want to structure articles or bylaws to have it coincide with when detailed planning for segment is imminent.
Interface with S.E. Conference regarding prioritization of intertie segments	Can be incorporated into the articles or bylaws.	Can be incorporated into the articles or bylaws.	Can be incorporated in the articles or bylaws.	Can be incorporated into the articles or operating agreement.
Subject to RCA jurisdiction.	Yes, generally. But, exempt from economic regulation until it grosses \$50,000 annually. If it does not gross \$500,000 annually, customers can elect to be deregulated. Also, public interest exemption is possible.	Yes, generally. But, exempt from economic regulation until it grosses \$50,000 annually. If it does not gross \$500,000 annually, customers can elect to be deregulated. Also, public interest exemption is possible.	Yes, generally. But, exempt from economic regulation until it grosses \$50,000 annually. +Regardless of revenue, a cooperative's customers can always elect to be deregulated. Also, public interest exemption is possible.	Yes, generally. But, exempt from economic regulation until it grosses \$50,000 annually. If it does not gross \$500,000 annually, customers can elect to be deregulated. Also, public interest exemption is possible.

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Generating utilities ability to have power sales agreements with power purchasers, and pay the entity wheeling charges to build a reserve for O&M and repairs	Yes.	Yes.	Yes.	Yes.
Members have an active role in determining wheeling rates	Yes.	Yes.	Yes.	Yes.
Simple governance procedures	- By vesting voting power in relation to stock ownership and capital, member voting issues may be more complex.	Relatively simple.	+ Relatively simple. Mandatory one member - one vote rule. - Requires regular tracking of patronage and capital accounts.	- Although providing significant flexibility, requires more careful drafting and revision of governance procedures