

CARR & PALMER

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ATTORNEYS AT LAW

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ATLANTA, GEORGIA 30327

September 14, 2007

Cobb EMC Board of Directors
c/o Dwight Brown
President and Chief Executive Officer
1000 EMC Parkway
Marietta, Georgia 30061

Re: Member Demand pursuant to O.C.G.A. §46-3-272 and §46-3-304

Dear Board of Directors:

We are writing on behalf of Edgar “Bo” Pounds, Joseph “Butch” Thompson, Franklin Smith, Jim Gladstone (individually and on behalf of Eagle Eye Forensics, LLC), Dianne Brackin, and William Sharp, members of Cobb EMC (“Cobb EMC” or “EMC”).

The purpose for which Cobb EMC was formed is to engage in rural electrification by any one or more of the following methods:

- (1) furnishing of electric energy to persons in rural areas who are not receiving electric services from any corporation subject to the jurisdiction of the Georgia Public Services Commission, or from any municipal corporation;
- (2) assisting in wiring of the premises of its members or in the installation therein, or the acquisition or supplying, of electrical or plumbing equipment; and
- (3) furnishing of electric energy, wiring facilities, electrical or plumbing equipment or services to any member corporation organized under the Electric Membership Corporation Act.

Cobb EMC Articles of Incorporation, Section II (May 20, 1937).

Cobb EMC, as an electric membership corporation, is governed by the Georgia Electric Membership Corporation Act, O.C.G.A. §46-3-170 et seq. The statutory authorization for Cobb EMC, O.C.G.A. §46-3-200, provides:

An electric membership corporation may serve any one or more of the following purposes:

- (1) To furnish electrical energy and service;
- (2) To assist its members in the efficient and economical use of energy;
- (3) To engage in research and to promote and develop energy conservation and sources and methods of conserving, producing, converting, and developing

- energy; and
- (4) To engage in any lawful act or activity necessary or convenient to effect the foregoing purposes.

An electric membership corporation's operations are limited to those of a non-profit corporation. §46-3-340. In the event an electric membership corporation engages in an unauthorized or illegal act, the courts of this state are authorized to set aside the action(s) and award such damages as are appropriate. O.C.G.A. §46-3-202.

With respect to director's actions, O.C.G.A. §46-3-303.1(a)(1) provides:

A director shall discharge his duties as director, including his duties as a member of a committee:

- (A) In good faith; and
- (B) With the care an ordinary prudent person in a like position would exercise under similar circumstances.

In addition, the Cobb EMC bylaws provide that directors shall at all times:

- (g) Be loyal to the Cooperative, acting at all times in good faith for its best interest;
- (h) Be unaffected by any continuing and substantial personal interest that is in conflict with the best interests of the Cooperative;
- (m) Represent the entire membership on an impartial basis, not just those in his/her area;
- (n) Not be a member of any organization which in any way opposes the missions and objectives of Cobb EMC;

Cobb EMC bylaws, Art. III, sec. 2.

Moreover, under well-established Georgia law, the officers and directors owe a fiduciary duty to the mission of the nonprofit that require them to faithfully pursue the interest of the EMC and its nonprofit purpose, rather than his or her own financial or other interests, or those of another person or organization. These duties owed by all directors and officers require, among other things, candor, honest and fair dealing, full disclosure and refraining from self-dealing.

Furthermore, the bylaws specifically provide:

All such amounts, in excess of operating costs and expenses at the moment of receipt by the Cooperative, are received with the understanding that they are furnished by the patrons as capital. The Cooperative is obligated to pay the credits to a capital account for each patron, all such amounts in excess of operating costs and expenses...the terms and provisions of the Articles of Incorporation and the bylaws shall constitute, and be a contract between, the Cooperative and each patron, and both the Cooperative and the patrons are bound by such contract, as fully as though each patron had individually signed a separate instrument containing such terms and provisions.

Bylaws, Art. VII. In other words, patron's capital belongs to the members, not Cobb EMC. By virtue of the contractual relationship created by the bylaws, the EMC holds the patronage capital in trust for the benefit of the patrons. Under this arrangement, the EMC and officers and directors of the EMC are the trustees of that trust and held to the highest standard of fiduciary duty owed to the members of the Cooperative.

Article III, sec. 2 of the bylaws further provide:

Upon the establishment of the fact that **any person** being considered for, or already holding, **a position of trust** in the Cooperative lacks eligibility under this Section, **it shall be the duty** of the Board of Directors to withhold such position from such person, or to cause him to be removed therefrom, whichever be the case. Upon the establishment of the fact that a director is holding office in violation of this Section, **it shall be the duty** of the remaining directors on the Board to remove such director from office.

(emphasis added).

It is our clients' opinion that:

1. The multi-year contract between Cobb EMC and Cobb Energy, whereby Cobb EMC has conveyed, among other things, virtually all functions, operations and management of the EMC to Cobb Energy ("Cobb Energy Transaction"), violates Georgia law, including, at least, O.C.G.A. §46-3-200, § 46-3-340. The Cobb Energy Transaction also violates general principles of equity law, including, at least, the well established principal that you may not do indirectly what you are legally precluded from doing directly.
2. The Cobb Energy structure is being used by the board of directors and certain key officers of the EMC so to preclude full and accurate information as to the financial affairs of the EMC to the EMC and its members in violation of §46-3-305 and §23-2-53, the bylaws of the EMC and principles of equity law. For instance, at the recent 2007 EMC annual meeting, Mr. Dwight Brown stated he would not discuss or disclose information about Cobb Energy, including the compensation and stock ownership structure of Cobb Energy, even though Cobb EMC has a substantial ownership interest and creditor interest in Cobb Energy. As a result, hundreds of millions of dollars of EMC revenues have been funneled through Cobb Energy with little or no accounting to the EMC or its members.
3. The board of directors approved and/or acquiesced in the operation of Cobb EMC illegally and in violation of the terms and conditions of the Georgia Electric Membership Corporation Act, and the articles of incorporation and bylaws of the EMC including, at least, approving, participating and/or acquiescing in business transaction beyond the scope allowed by the EMC's non-profit authority under O.C.G.A. §46-3-200 and §46-3-340, including approving, participating and/or acquiescing in the Cobb Energy Transaction.
4. Certain members of the board of directors and Mr. Dwight Brown approved,

participated and/or acquiesced in the transfer of, at least, \$7,000,000.00 of Cobb Energy stock to Mr. Dwight Brown, Mary Ellen Brown, David McGinnis, Frank Boone and Cobb EMC, among others and as shown by the Regulation D sale of securities form enclosed herewith. Cobb Energy is funded in large measure, and indeed owes its existence to Cobb EMC, including revenues and loans of Cobb EMC to Cobb Energy. The issuance of this stock in a private placement, and with virtually no accounting to Cobb EMC or its members, creates an inappropriate and unlawful conflict of interest, violates §46-3-290, §46-3-305, §23-2-53 violates principles of equity law, violates the duties owed by the officers and directors to the EMC (including provisions of the EMC bylaws that prohibit self dealing), dilutes any interest of Cobb EMC, and has damaged the EMC.

5. The board of directors approved and/or acquiesced in a transfer of \$10 million of Cobb EMC assets to Cobb Energy, including a \$5 million interest-free note reported by Mr. Brown at the 2007 annual meeting. These transfer violate Georgia law, including at least, O.C.G.A. §46-3-200, §46-3-303.1, §46-3-305, §46-3-340, constitute a waste of corporate assets, usurpation of corporate opportunity and violate applicable principles of equity law.
6. The board of directors approved, participated and/or acquiesced in the payment of excessive compensation to board members and Mr. Brown. Perfectly capable members of the EMC have been and continue to be willing to serve on the EMC board at no compensation. The board has made no effort to identify competent members who could serve as directors at no cost to the EMC.
7. The board of directors has approved and or acquiesced in the failure to properly comply with the reporting requirements set out in IRS Form 990, Return of Organization Exempt From Income Tax, since at least 1998 for all directors and key employees. Specifically, the average hours worked per week, contribution to employee benefit plans, deferred compensation, expense accounts and other allowances required to be reported have not been provided in virtually all cases.
8. The board of directors has approved and/or acquiesced in the failure of the EMC to follow Roberts Rules as required by the bylaws at all meetings of members and directors. As a result, at the 2007 annual meeting, no motions were allowed to be made.
9. The board of directors has approved and/or acquiesced in the operation of the EMC in a manner that jeopardizes the exemption granted the EMC under Internal Revenue Code 501(c)(12).

This letter is being sent pursuant to O.C.G.A. §46-3-272 and §46-3-304. We hereby demand that the board of directors commence legal proceedings against each Cobb EMC director who has served during the applicable limitations periods and Mr. Brown for damages, including punitive damages, for their negligence and gross negligence, their breaches of fiduciary and other duties, their breaches of contractual obligations under the bylaws and articles of incorporation in their operation, administration and management of the EMC as set forth above.

In addition, we hereby demand that the board of pursue an action for declaratory judgment to seek a judicial declaration that: (i) the Cobb Energy Transaction is unlawful for at least the reasons set forth in items 1-3 above; (ii) a trust is created with respect to the patron capital under which the board of directors and key officers of the EMC are held to the highest fiduciary duty; and (iii) the EMC and board violated their contractual and legal obligations regarding compensation and other benefits provided to the directors of the EMC and Mr. Brown for at least the reasons set forth in items 4 and 6 above.

Furthermore, we demand an action for a complete accounting as to all aspects of the Cobb Energy Transaction, including but not limited to: (i) all financial reports of Cobb Energy from the date of inception; (ii) all funds and assets transferred or received by Cobb Energy from Cobb EMC and vice versa; (iii) all monies of Cobb EMC retained by Cobb Energy; (iv) the complete ownership structure of Cobb Energy and all evidence thereof including all stocks, debentures, warrants, options, etc; (v) any amount of money paid by Cobb Energy to any individual who is also a director or officer of Cobb EMC; (vi) all political and charitable donations made by Cobb Energy.

A complete accounting is also demanded as to all patronage capital and the need to retain patronage capital, as well as all compensation of any kind paid by the EMC to directors and officers of the EMC during the applicable period of limitations.

The legal proceedings commenced should seek, at least, the following:

1. the return of all funds or assets improperly paid or transferred by Cobb EMC to Cobb Energy during the applicable period of limitations;
2. all losses sustained by Cobb EMC as a result of the unlawful conduct and activities described above;
3. the recovery of all excessive and unlawful compensation paid to the EMC directors;
4. the recovery of all monies received by Cobb Energy board members and key executives as a result of unlawful transactions, self-dealing and conflicted transactions of Cobb EMC; and
5. to enjoin the directors and officers of the EMC from conducting further meetings not in compliance with Robert Rules as adopted under the EMC bylaws.

In making the foregoing demand to commence litigation, our clients do not concede that the board or any member thereof is independent or competent to consider these demands.

Our clients, EMC members, thank you and the rest of the directors for your prompt attention to this serious matter. The officers and directors owe strict duties to the EMC and its members. It is incumbent on them to hold accountable all those responsible for the harm done to Cobb EMC and to ensure a prosperous future for the EMC. It is also incumbent on them to preserve all information, whether in electronic or other form, relevant to matters herein and potential litigation.

Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to be 'W. Pitts Carr', written over a horizontal line.

W. Pitts Carr
David M. Cohen

cc: all Cobb EMC Directors