

Why Reform is Needed at Rappahannock Electric Cooperative

Introduction

Rappahannock Electric Cooperative traces its roots to two rural electric co-ops that started in the 1930s, aided by the rural electrification program that was part of President Franklin D. Roosevelt's New Deal.¹ Those two co-ops grew and eventually merged in 1980 to become REC. As a result of growth, continuing suburbanization of formerly rural areas, and other acquisitions, the co-op is now one of the largest electric co-ops in the nation, with over 165,000 connections in 22 Virginia counties. The co-op's service area spreads west and north from Virginia's Middle Peninsula near the Chesapeake Bay up to the commonwealth's border (in Clarke County) with West Virginia.² The most recent significant growth for the co-op was in 2010, when it acquired 51,000 new members from Allegheny Power, an investor-owned utility.

With greater size come many efficiencies, and REC has no doubt been able to operate more efficiently as a result of its larger size, which has benefited REC customers. But larger size for an electric co-op requires greater vigilance to ensure that the business is truly run as a cooperative, following the seven cooperative principles that guide and define the cooperative movement.³ Unfortunately, REC's board and management have failed at times to exercise such vigilance, and in fact have implemented formal and informal policies that discourage or even block informed member involvement in the co-op.

That is why REC needs to change. Reforms are needed to ensure that REC's board members and management are truly accountable to an informed co-op membership, and that the board is elected by informed co-op members in a transparent and democratic fashion.

The key feature of any electric cooperative is that its customers own the business, and that it should be operated democratically. There are no shareholders. The electricity consumers or customers are the co-op's members, who as owners elect the co-op's board of directors. This is expressed in the cooperative principles, particularly in the ones excerpted here:

¹ REC's history is detailed in a [brochure](#) the co-op prepared and distributed at the time of its 70th anniversary in 2008. Additional details of the co-op's history are on its website at <http://www.myrec.coop/aboutus/history.cfm>.

² A map of REC's service area and list of the 22 counties served can be seen at <http://www.myrec.coop/aboutus/service-area.cfm>.

³ REC acknowledges that it is supposed to operate under these principles, and posts them on its website at <http://www.myrec.coop/aboutus/cooperative-principles.cfm>.

2. Democratic Member Control — Cooperatives are democratic organizations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives [i.e., the board of directors] are accountable to the membership. In primary cooperatives [such as REC], members have equal voting rights (one member, one vote)

5. Education, Training and Information — Cooperatives provide education and training for their members, elected representatives [i.e., the board of directors], managers and employees so they can contribute effectively to the development of their cooperatives. ***

Democracy, co-op-member education, and informed co-op-member participation in turn, require transparency. As the saying goes, Democracy Dies in Darkness. For co-op members to participate meaningfully and knowledgeably they have to have access to sufficient accurate information about their co-op, its affairs (especially its board's affairs), and its board candidates. The information that the co-op provides to its members should be accurate, complete, and not slanted. Information should not be withheld from co-op members to steer them to support or oppose particular candidates, policies, or actions, or to overlook or ignore problems at the co-op.

Moreover, important information about a co-op's affairs should be easily available to all co-op members, as opposed to being available only to those who can figure out how to find it, or know whom to ask for it. It is in this area in particular that REC's performance has fallen far short in recent years. Too many of the co-op's affairs are run in virtual or actual secrecy, keeping co-op members in the dark about how their co-op, and especially their board of directors, operates. If co-op members are in the dark about how their board operates, the board is effectively accountable to no one.

Below we list some of the transparency and democracy issues that prevent REC from functioning as a true democracy. The result, we believe, is a board that is largely not accountable to co-op members, a board that by most appearances is effectively controlled by senior co-op management.

REC's failure to make information available to its members is particularly inexcusable in the age of the Internet. The transparency we urge could in large part be provided at relatively little cost by posting documents and other information on REC's website. It is illuminating to compare REC's website with that of another large electric co-op, Pedernales Electric Cooperative.⁴ Pedernales is the largest electric cooperative in the United States, while REC is a bit smaller—but still likely in the top five or top ten in the U.S. in size. Ironically, an *REC* member (or anyone else) can find

⁴ REC's website is at <http://www.myrec.coop>. PEC's website is at <https://www.pec.coop>.

all sorts of information about the *Pedernales* co-op by perusing that co-op's website. REC members, in contrast, are barred entirely from obtaining much of the important information about their own co-op that Pedernales makes easily available to all. And much of what REC does make available to members is available only on request, and only after signing a form in which the "the Member expressly agrees to reimburse the Cooperative for all cost [sic] and expenses, including attorney's fees, associated with the Cooperative's efforts to enjoin the unauthorized use of Cooperative records or the recovery of related damages and/or profits." We discuss specific transparency and democracy problems in detail below, often comparing REC's needlessly restrictive and opaque policies with Pedernales's open and transparent policies.

In sum, Pedernales Electric Cooperative has made every effort to ensure easy and inexpensive member access to key information, while REC refuses to provide much of the same information to its members at all. And where REC does agree to provide information it does so grudgingly, making the process cumbersome, and threatens its members with possibly ruinously expensive litigation and monetary sanctions if REC determines that the member is using the information in an "unauthorized" manner. The difference in policy and culture between these two large co-ops is stark.

Transparency Issues

Lack of Transparency involving board meetings and incumbent board members

REC members' primary ability to affect decisions in their co-op is through the annual elections for board of directors. Each year roughly one-third of the board positions come up for election for a three-year term. To make wise and informed decisions at election time, co-op members need to know about candidates' strengths and weaknesses, and their positions on important issues. An informed decision about whether to vote to re-elect an incumbent board member necessarily requires some knowledge about how he or she has been doing in the job. After all, a large electric co-op is a complex business, and most new board members have little experience with cooperatives or electric utilities. They are supposed to educate themselves once they attain a board seat, but do they? Do they go beyond the basic training that the National Rural Electric Cooperative Association (NRECA) provides? Are they informed and engaged at board meetings? Do they ask tough questions of management? Do they challenge management and show that they are looking out for co-op members' interests? Do they master the details of capital credits and retiring those credits?

It's very hard, if not impossible, for REC members to know the answers to these questions, because the board operates in such secrecy. There is no contact information for REC board members on the co-op's website or in its monthly

Cooperative Living magazine. Co-op members are told they must go through co-op management to reach board members. This is one of several ways in which co-op management inserts itself between co-op members and the board.

Pedernales Electric Co-op, in contrast, publishes its board members' email addresses on its website for all to see.⁵

The best way to ascertain whether incumbent co-op board members are doing their jobs well is to observe them at board meetings. But REC's board meetings are not open for co-op members to attend or observe. Co-op members who think to ask, and who submit the REC form agreeing to pay monetary fees if the co-op sues them, can obtain a copy of board meeting minutes after the meeting has occurred. But minutes are generally sanitized. Instead of going into details about what different board members said or what the nature of discussion of an item was, the minutes typically say something like "the resolution was discussed and approved unanimously." One can tell from the minutes whether a particular board member showed up, but not whether he or she was informed or engaged at the meeting.

Pedernales, in contrast, allows any and all co-op members to attend its board meetings in person. Meeting agendas are posted online before the meeting, enabling co-op members to see ahead of time what issues will be considered. Additionally, Pedernales live-streams its board meetings, so that co-op members unable to travel to the meeting location can observe them online. Pedernales also posts on its website audio and video recordings of its board meetings, allowing anyone who couldn't watch the meeting live to view or listen to it later. Pedernales also posts board meeting materials for all to see.⁶

In 2012 an REC member, following Virginia law and the procedures in REC's then-current bylaws, applied to have REC members vote at the co-op's annual meeting on a proposed bylaw amendment that would require REC to open its board meetings to co-op members. Rather than put the proposal on a ballot for members to consider and vote on, as REC's bylaws then provided (and Virginia law requires), the board retained a lawyer to write a five-page letter that claimed the proposed bylaw amendment somehow violated Virginia law and so could not be put up for membership vote.

REC's lawyer made two dubious arguments in support of his claim that REC's members cannot vote to make their co-op's board meetings open to members. First he noted that Virginia law says that electric co-ops should work "for the principal purpose" of providing electricity "at the lowest cost consistent with ... prudent management of the business" From this he concluded that since it would likely

⁵ See <https://www.pec.coop/about-us/your-cooperative/board-of-directors/meet-your-directors/>.

⁶ See <https://www.pec.coop/about-us/your-cooperative/board-of-directors/board-meetings/board-meeting-agendas-video/>.

cost some money for the board meetings to be open to co-op members, Virginia law bars co-ops from opening their board meetings to co-op members. Virginia legislators would surely be surprised to hear that interpretation.

Second, the REC board's lawyer noted that Virginia law provides that a co-op's board "shall have power" to "make its own rules and regulations as to its procedure." This, REC's lawyer reasoned, means that a co-op's members are barred by Virginia law from amending their own co-op's bylaws to require that board meetings be open for members to observe. Again Virginia legislators would be surprised at that interpretation.

That REC's board used such far-fetched arguments to prevent the co-op's members from voting on a reasonable transparency provision demonstrates that the board truly is afraid to have co-op members observe the board in action. One cannot help but conclude that the board feels it has something to hide. We of course don't know what that is. It may simply be that the board wants to hide that its meetings are pro forma affairs where disengaged, ill-informed, but well-compensated board members rubber-stamp proposals submitted by co-op management.

After REC's board refused to put a co-op member's legitimate proposed bylaw amendment on the annual-meeting ballot in 2012 the board swiftly moved to further limit co-op member input. Acting with its usual secrecy and without advance notice to co-op members, the board changed the co-op's bylaws to make it nearly impossible for any co-op member in the future to propose a bylaw amendment for co-op members to vote on. The board did this despite a requirement in Virginia law that co-op members are permitted to propose and vote on bylaw amendments. Until 2012, REC bylaws had long permitted any co-op member to propose a bylaw amendment for the full co-op membership to vote on. The board in 2012 changed the bylaws to require that any member wishing to submit a proposed bylaw amendment must provide the signatures and full addresses of 500 other co-op members supporting the proposal. That in itself is onerous, but not impossible to satisfy on occasion. But the board also required that the 500 signatures must come from all over REC's 22-county area. There have so far been no bylaw amendment proposals from co-op members that have met this standard, and which seems to be what the board intended. REC's board is afraid of true co-op democracy.

Transparency involving candidates for REC's board

As noted above, REC has many policies and its board has taken a number of actions that bar co-op members from evaluating incumbent board members' performance. But for board elections to be democratic, co-op members also need pertinent information about non-incumbent candidates who are either running for a vacant seat or running to challenge an incumbent. Here again, REC woefully fails to provide needed information to co-op members, making board elections all but

meaningless. And here again, a look at Pedernales's policies provides a stark contrast.

REC provides three absurdly limited opportunities for board candidates to communicate with co-op members before an election. Each of the three is wholly inadequate, leaving co-op members in the dark as to which of the candidates might be best for the job. The primary method is through a short biographical statement, published in REC's *Cooperative Living* magazine one month before the co-op's annual meeting. (That same magazine issue also has the proxy form that the vast majority of co-op members who vote use for their voting. Typically only a few dozen members vote in person at the annual meeting while thousands vote by proxy.) The biographical information is far too little to inform co-op members about important issues. For example there is no contact information provided for each board candidate. Moreover, the limited space allowed each candidate in the magazine bars candidates from discussing issues or positions that a board candidate has views on. Such issues might include things like the need for more transparency, or clean energy, or larger capital-credit retirements, or lower rates, or lower board compensation, or any of a number of other topics that a board candidate might want to say to co-op members to help them cast an informed vote.

Additionally, REC's board and management discourage board candidates from including positions on issues, urging them to limit their short statement to basic biographical information, as evidenced by REC's Director Candidate Profile for the 2018 board election. This Profile form clearly states that "Candidate statements are limited to 250 words for publication requirements (the 250-word limit should include factual candidate information in the following order - occupation, education, civic and public affairs activities). If necessary, editorial staff may alter the statement in order to meet space and publication requirements."

Limiting candidates to providing only brief biographical information is a corruption of the democratic process, as co-op members have almost no pertinent information to make an informed decision when voting for board candidates. Moreover, the board knows the short biographical information is inadequate. That is why the board interviews each board candidate extensively before the board members vote on how they board should cast member proxies that are deemed to authorize the board to vote on those members' behalf. Even if cost considerations limit the space for election information in REC's magazine, there is no reason why the co-op couldn't direct magazine readers to the co-op's website to learn more about each candidate.

The second way REC board candidates can communicate positions to the electorate is by direct contact. In the past REC has offered to make available to board candidates a list of all of the co-op's approximately 160,000 members. But in past years the list has been offered only on paper (as opposed to electronic format), making it essentially impossible for a candidate to mail a letter to more than a fraction of the co-op membership. The easiest solution, of course, would be for the

co-op to provide member email addresses to board candidates, but that is not done. Nor does REC list candidates' email addresses in the co-op's magazine or on its website, which would allow candidates to interact directly with co-op members. The theme is clear—REC policies and practices block or minimize communications between board candidates and the co-op members who elect the board. This tight restriction on member-candidate information flow allows REC's board to manipulate election results by way of the proxy ballot system.

The third way REC board candidates can communicate with co-op members is at the co-op's annual meeting, where board candidates are given two minutes each to speak to the audience. But only a few dozen or so votes are cast in-person at the annual meeting, with the vast majority (thousands) already having been cast on the mailed-in proxy form. Moreover, two minutes is insufficient time for a candidate to explain his or her positions and views. REC's board knows this. That's why its secret interviews of board candidates tend to take an hour or so.

As with most other issues, the manner in which Pedernales Electric Co-op handles board-candidates' communications with co-op members shows how a forward-thinking, truly democratic co-op can facilitate meaningful candidate-voter interactions and promote the cooperative principle of democratic governance.⁷ At Pedernales, candidate names are announced well ahead of the election, giving candidates more time to communicate with co-op members. That time is put to good use. Pedernales holds candidate forums and meet-the-candidate events well before the voting deadline to allow candidates and co-op members adequate time to publicly discuss and debate important issues in front of other interested co-op members.⁸ Candidate videos are recorded for posting on the co-op website for viewing by members who can't make it to the in-person events. And Pedernales permits both online and mail-in voting, as well as in-person voting at the co-op's annual meeting.

Additionally, Pedernales provides an election email list to board candidates so they can affordably communicate directly with co-op members by email. Co-op members who don't want to receive these emails can choose not to receive them if they wish.

Finally, Pedernales holds its annual meeting on a Saturday to encourage maximum attendance. Door prizes are awarded at the annual meeting to further encourage attendance. REC used to do this, but a few years ago it changed its annual meeting date to a weeknight evening, making it far more difficult for co-op members with jobs to attend from across REC's 22-county service area. REC also eliminated door prizes at the annual meeting, further discouraging members from attending.

⁷ See <https://www.pec.coop/about-us/your-cooperative/board-of-directors/elections-voting/>.

⁸ See <https://www.pec.coop/news/2018/board-election/>.

The overall message is clear: Pedernales goes to considerable lengths to encourage and facilitate informed voting and candidate-co-op member interaction before each election. REC does just the opposite, keeping up at best a surface appearance of democracy while engaging in subtle and not-so-subtle measures to ensure that the democratic image is mostly a facade.

Lack of transparency involving REC's audited financial statements

REC's finances are audited annually by an independent accounting firm. Audited financial statements contain a wealth of useful information that would allow concerned co-op members to better understand their co-op. REC could easily make these available to members on its website, but it doesn't. Instead, members who know enough to ask for a copy can obtain one from the co-op, after first signing the co-op's form agreeing to be liable for possibly ruinous fees for "unauthorized" use of the statements. Pedernales Electric Co-op posts its audited financial statements online for all to see.⁹ So do all publicly traded corporations in the U.S. There is no reason why REC couldn't do this too. REC's board and management's practices discourage co-op members from looking closely at their co-op's finances.

Lack of Transparency involving REC board policies

REC's board has a number of policies that are implemented in virtual secrecy and certainly not disclosed on the co-op's website or in its *Cooperative Living* magazine. We discuss several of them below. By failing to disclose these policies REC's board makes it hard if not impossible for co-op members to know what their board is doing, and how and why it makes decisions. In contrast, Pedernales Electric Co-op lists all of its policies on its website for all to see.¹⁰ Pedernales even has a "policy on policies," also disclosed to all.

REC's board compensation. REC's board sets board members' own pay and other compensation such as health benefits and travel expenses. The board does this at its meetings, which are not open to co-op members to observe. There is absolutely no oversight of the board's decisions concerning its compensation except that which concerned co-op members are able to provide. Needless to say, co-op members cannot exercise this essential function unless they have easy access to complete information about the whole compensation process.

Until 2012, REC did not even disclose to co-op members the fact that its board members were compensated, much less how much their compensation was, and how it was determined. Board pay is disclosed on the co-op's Form 990 federal tax returns, but as noted above, REC, unlike Pedernales, does not post its 990 forms on the co-op's website. In 2012 an REC member who asked to review REC's 990 forms was advised by REC that the co-op would not provide them because he could

⁹ See <https://www.pec.coop/about-us/your-cooperative/document-center/>

¹⁰ See <https://www.pec.coop/about-us/your-cooperative/document-center/>.

get them from the nonprofit website Guidestar.org. To do that he had to set up a password-protected account with Guidestar. He learned upon getting the 990 Forms from Guidestar that REC board members were paid. This surprised him, because neither the co-op website nor *Cooperative Living* magazine disclosed this essential information. He then sought, following Virginia law and REC's bylaws, to have the co-op membership vote to amend the bylaws to require the co-op to annually disclose each board member's total compensation. The board refused to put this question on the 2012 annual meeting ballot, claiming, absurdly, that such required disclosure would improperly interfere with the board's power, under REC bylaws, to set its own pay.

REC then did put some general information on its website as to how board pay is determined, but did not and has not disclosed to all members the total compensation paid to each board member. And REC makes no mention of amounts paid for board members' healthcare benefits or travel. REC does now provide copies of its 990 forms to co-op members who think to ask for them and who sign a form agreeing to be liable for all attorney fees and damages for "unauthorized" use of the forms. Since 990 forms are available publicly (although not easily) at the IRS and Guidestar, it is hard to imagine what sort of "unauthorized" use of a 990 form there could possibly be.

Again the theme is clear, REC makes it hard for co-op members to learn each director's annual compensation. As a result it is likely that very few REC members even know that board members are paid anything, much less how much is paid to each board member each year. Over the past eleven years REC has paid more than \$4 million to board members as compensation.

Board term limits. Three of REC's nine current board members have been on the board for 20 years or more. Two of those three have served for over 30 years. Many board members stay on the board for decades, often for life. One REC board member died in 2017 having served nearly 40 years on the board. Given the generous compensation, it's not surprising that board members stay on for decades.

REC's bylaws have no term limits for board members. Sometime in the past few years REC's board apparently implemented a board policy with some sort of term limits. And apparently long-serving board members were exempted from this policy in some manner. If in fact the board has implemented some sort of term limit it has not announced that in the cooperative's magazine or on its website.

This raises interesting and disturbing questions. First, if board term limits were implemented, why was this done by way of a secret board policy, rather than by a bylaw amendment? Board term limits are the sort of matter that should be in bylaws in a properly governed organization. That way all members can be aware of them. The board has authority to amend the bylaws, so why did it choose not to do that in this instance involving a significant change in board governance? The only reason we can think of is that the board wanted to keep the term limits secret, or

virtually secret, from the co-op's members. REC's bylaws are posted on the co-op's website, while many of its policies, including this one, are not. Why the secrecy? Perhaps the board was embarrassed that it grandfathered in its existing members to exempt them in some way from the term limits? But who knows? Because of REC's board's lack of transparency, co-op members are left guessing and wondering how their board is operating and what it is trying to hide.

Capital credits and retirement of those credits

A unique feature of the cooperative form of business is capital credits. These are the funds that the co-op collects in excess of expenses. As a nonprofit business, REC cannot legally keep these for itself as profits. Instead those excess funds are assigned annually to a "capital credit" account for each co-op member, in proportion to the member's electricity consumption during the year. The co-op can retain a portion of members' total capital-credit allocation for capital needs of the business, and can "retire" (refund or pay back, usually as a credit on members' November or December bills) a portion of each member's total capital-credit account if the board votes to do so, based on a determination that the co-op has sufficient capital to permit the retirement.

This is a complex and important function for the REC board, one that should be exercised with full discussion and transparency. Board members are supposed to be looking out for the interests of co-op members, and should be well-informed enough to challenge management on this issue when appropriate, since co-op management has incentives to retain excess amounts for the co-op's use. This is too complex an issue to go into in detail here. Fortunately U.S. Congressman Jim Cooper, an expert on cooperative governance, has written an excellent essay that describes the issue in full.¹¹ He concludes that many U.S. rural electric co-ops retain far more of their members' capital-credit accounts than is needed. His essay's closing words are instructive: "Carefully considered, member-friendly reforms are long overdue in order to protect the rights of [American rural electric] co-ops' legal owners [i.e., co-op members], including members' rights [nationwide] to receive refunds of \$3 billion to \$9 billion of capital credits."

We honestly don't know whether REC is retaining excessive capital credits, in large part because of REC's lack of transparency about its affairs. Each year when credits are retired, REC mentions the total amount retired in *Cooperative Living*. But in the magazine REC focuses almost exclusively on the amount that is *retired*, rather than the total amounts of members' capital credits that the co-op *retains and accumulates* (i.e., the amount that is *not* retired). In fact neither *Cooperative Living* nor the REC website reveal how much in total capital credits are allocated to

¹¹ Congressman Cooper's essay, titled *Electric Cooperatives: From New Deal to Bad Deal*, is published in the Harvard Journal on Legislation, and is available online here: <http://www.informedcynic.com/2009-2012-documents/2009-Policy-Coops-Harvard-Aug09-335-376-%20Cooper.pdf>.

members' accounts each year, or the total accumulated capital credits that are on the co-op's books. Each member is informed on his or her November or December bill how much his or her individual credit allocation is for that year, and how much his or her retirement amount is for the year. But the bill does not list the member's *total* accumulated capital credit balance. Nor is that total included on information provided on REC's password-protected SmartHub website, where co-op members can see billing and other information about their accounts.

For elderly, longtime co-op members, and for large users, those accumulated capital-credit balances can be quite substantial. It's hard to avoid the conclusion that REC withholds easy access to that information from co-op members because it doesn't want them to be thinking about or asking questions about how much of their capital credits are being retained by REC.

Once again, a comparison with Pedernales Electric Co-op helps to illuminate REC's lack of transparency. REC does not disclose to members how it determines what portion of capital credits to retire in a given year, other than stating vague bromides, such as in the November/December 2017 issue of *Cooperative Living* (p. 18) where REC says it retires amounts that are "left over" after "providing for the strong future of our cooperative." Pedernales, on the other hand, is far more transparent, posting its policy on capital credit retirement on its website for all to see.¹² And of course, because Pedernales has open board meetings, Pedernales co-op members can easily see all discussion by board members and management about how the annual capital-credit retirement amount is determined.

Misinforming co-op members

True transparency requires not only disclosure of information, but ensuring that the information disclosed is accurate and unbiased. REC has on occasion presented slanted or misleading information to its members, in an apparent effort to steer them towards favoring one policy over another. One area where we have observed this is in the co-op's discussion of the relative merits to REC members and the co-op as a whole of homeowner solar installations. Homeowner solar provides substantial benefits to REC, particularly on hot summer afternoons when REC sends out "beat the peak" messages to co-op members, to avoid having to purchase electricity at very high cost at times of peak load. As best we can tell REC has never publicly acknowledged this substantial benefit.

Similarly, in October 2010, when REC and fellow co-ops were planning to build a new coal power plant, REC's *Cooperative Living* magazine published a full-page opinion column by a brand-new REC member containing inaccurate information about climate change. When a concerned REC member asked to submit a column of equal length with accurate information, the magazine's editor said there

¹² See <https://2bqwe7212tygr0q3a7b9e1bv-wpengine.netdna-ssl.com/wp-content/uploads/2017/12/capital-credits-policy.pdf>.

was no room for such a column, and suggested the member submit a much shorter letter to the editor. Instead the REC member wrote a longer piece pointing out REC's promotion of science disinformation. The REC member's column was published in several area newspapers.¹³

Failure to consult with or listen to concerned co-op members before implementing major rate restructuring

In July 2017 REC announced to co-op members that the co-op's board had approved a doubling of the monthly access charge that all residential customers must pay, regardless of how much or how little electricity they consume. REC said it would seek permission from its state regulator (the Virginia State Corporation Commission) to approve the REC board's decision. (The co-op sought to increase some commercial customers' monthly access charges as well.)

Nothing in REC's announcement to members stated that the board had implemented this change out of concern that homeowner solar installations were adversely affecting the co-op's financial position, but the co-op's CEO did mention that as the primary factor for the change when he spoke in August 2017 at the co-op's annual members' meeting.

The board acted within its rights under Virginia law and REC bylaws in approving this access-charge doubling at a secret board meeting (like all REC board meetings) without first seeking member and stakeholder comment. But the fact that the board had the power to implement such a drastic change in how the co-op is funded without first consulting with members doesn't mean the board's decision to act in secrecy was wise or fair. A doubling of the access charge significantly favors some of REC's members (larger-volume electricity consumers) over others (smaller-volume consumers). Increasing fixed charges also disincentivizes REC members from reducing their bills through efficiency measures or conservation or solar installations. It also disproportionately harms lower-income co-op members.¹⁴

Because of REC's secret-board-meeting policy, we have no way of knowing whether the board was aware of or discussed these issues, or whether any of the board members spoke up to oppose the drastic measure. We cannot know whether the board knew of or considered the fact that many consumer groups, the NAACP, and the AARP all oppose increases in electricity fixed access charges as anti-consumer measures.

Fortunately the office of consumer counsel in the Virginia Attorney General's office was involved in the SCC rate proceeding, as was as an environmental group,

¹³ See <http://rappnews.com/2010/11/24/letter-rec-bases-future-on-coal/>.

¹⁴ More information on REC's attempt to double residential access charges can be found here: <https://powerforthepeopleva.com/2017/10/25/electric-co-op-seeks-to-double-fixed-access-charge-in-move-against-solar/>.

which opposed the access-charge doubling. In a settlement, the parties agreed to roll back the REC board's proposed access-charge doubling, reducing the increase from 100 percent to 40 percent. Additionally, REC agreed to give advance notice to allow member input to board members before the board in the future votes on a proposed access-charge doubling.

Inserting co-op management between co-op members and board members

An REC board policy requires that co-op members wishing to appear before the co-op board first "thoroughly discuss" their issue with the co-op's CEO before appearing before the board. It's likely that most REC members are unaware that they have a right to appear before the co-op's board to discuss an issue or air a grievance. A large co-op obviously must have procedures to ensure that co-op members do not raise frivolous or minor issues that waste the board's time at a board meeting. But it should be the board, not the CEO, that determines which co-op members have issues of sufficiently serious importance to be permitted to appear and speak at an REC board meeting. REC board members are very well compensated. The policy of trying to insert REC management between co-op members and the board is undemocratic and not transparent. It makes it harder for co-op members to ascertain how their board is doing, and insulates board members from co-op member concerns.

Democracy Issues

In addition to all the transparency issues discussed above that work to make REC undemocratic, there are also some election and governance issues that are overtly undemocratic.

Treatment of blank proxy ballots and failure to offer online voting

The most significant of the REC board's anti-democratic practices is its policy of giving itself de facto power to choose the winners in board elections, even though Virginia law requires that co-op members elect the board. How REC's board does this while keeping the appearance of a democratic election requires some explanation.

It is a fact of life in a large cooperative serving a 22-county area that most co-op members, if they are to vote at all, will need to vote by mail or online. By not offering online voting, REC's board engages in anti-democratic behavior. Online voting, accompanied by detailed online candidate information not subject to a magazine's space limitations, would allow REC members to be properly informed about board candidates before voting. Other co-ops offer this, but REC's board has failed to do so.

REC offers only two voting options: (1) in-person voting at the annual meeting, and (2) voting on paper proxy forms mailed in before the meeting. The REC

board has authorized use of co-op funds to offer a \$500 prize (selected in a drawing of all ballots) to encourage co-op members to send in their proxy ballots. Virginia law and REC bylaws require that 2.5 percent of members be present for a quorum at the annual meeting and board election. It is a sad sign of co-op member disengagement that the board has to offer money to get 2.5 percent of co-op members to send in their proxy ballots. Ironically, that member disengagement is no doubt partly attributable to the board's lack of transparency on all the matters described above.

What makes the voting process so unfair and undemocratic is the board's policy of treating signed but otherwise blank proxies as default votes to have the board choose the candidates for whom the blank proxies will be voted. Nothing in REC's bylaws requires this. A far fairer treatment would be to have a box for voting members to check indicating if they affirmatively want to have the board vote for candidates on their behalf. Signed, blank proxies could then by default be treated as votes to abstain. This would allow the blank proxies to be counted for quorum purposes, and would allow co-op members to designate the board to vote on their behalf *if* the co-op members want that. But it would avoid using co-op funds (which, after all, ultimately belong to co-op members, not to the board) to encourage disengaged co-op members to send in blank proxies that give the board de facto power to choose election winners.

This unfair practice is made all the worse by the board's practice of not disclosing to co-op members how the board votes the blank proxies. The lack of transparency here is disturbing, and keeps co-op members uninformed about who is really choosing election winners.

The 2017 board election is a perfect example of how the board's secret, opaque, and undemocratic practices enable the board to change the outcome of an election. Several members of the board evidently determined in 2017 that they wanted to remove one of their fellow board members from the board. He was up for reelection to a new term. The bylaws have procedures for the board to remove a board member for cause, but the board didn't use that. Instead several board members apparently maneuvered in secret to have the board conduct a secret vote as to how the board would vote all the blank proxies in the August election. (All of the blank proxies are voted for the candidate who receives a majority of the board's votes.)

The secret maneuver involved changing the board's procedures on how it would conduct its vote pertaining to how to vote the blank proxies. In 2017 the board members apparently cast their votes on this crucial issue in a manner such that there would be no record of how each board member voted. Thus co-op members apparently have no way of determining how each board member voted with regard to how the board as a whole would cast the blank proxies. Additionally, the board apparently exercised this secret vote *before* the board candidates made their speeches at the annual meeting. If so, this is highly irregular. REC members

have a right to know how each board member voted with respect to how the board would vote blank proxies.

The upshot of the secret maneuver in 2017 was that a majority of the board voted to cast all blank proxies for a candidate who came in second (to the incumbent board member that other board members wanted to remove) in actual votes by co-op members who voted for a candidate. Stated another way, the board, using co-op members' funds to solicit blank proxies, took advantage of those blank proxies to swing the election to a candidate who was not the first choice of co-op members who voted for a specific candidate. The fact that this happened was not revealed to co-op members because the co-op does not publish information about how the board as a whole votes the blank proxies, or how each board member votes in determining how the board as a whole will act. Such secret maneuvering is of course not transparent. It is also not a democratic practice.

Conclusion

As Congressman Cooper's essay reveals, many of the transparency and governance issues that plague REC are present at many other rural electric cooperatives. In fact the National Rural Electric Cooperative Association (NRECA) recently convened a task force to study governance issues at electric co-ops, an implicit acknowledgment that there are significant problems to be addressed.¹⁵

There has been no mention of the NRECA study in REC's *Cooperative Living* magazine, on the REC website, or at the 2017 REC annual meeting. There likely never will be unless REC reforms itself to offer real transparency, democracy, and member education.

A more transparent, honest, and democratic cooperative would have its magazine cover governance and transparency issues and issue periodic reports on NRECA's governance task force. It would publish the task force's final report and encourage REC members to read it and discuss it with board members and at the annual meeting. After all, co-ops are supposed to use their magazines to *educate* their members, not to serve as an upbeat public relations brochure that ignores serious governance issues.

The REC magazine's editors seem to view their mission as painting a rosy (but inaccurate) picture of REC and other Virginia electric co-ops as flourishing democracies where all is well all the time. In an irony of ironies, a flowery editorial in the June 2012 issue of REC's magazine described electric cooperatives' annual meetings as events where co-op members "make decisions about their customer-owned utility" and "vote on changes to the bylaws that govern the utility they own." This, the editorial said, was "an old-fashioned exercise in democracy that's both

¹⁵ See <https://www.electric.coop/examining-electric-cooperative-governance-nreca/>.

refreshing and resilient, a living reminder . . . of when citizens would get together to make important decisions about their shared welfare . . . ” Yet just a month before REC mailed that magazine to its members, REC’s board had improperly blocked a co-op member’s effort to have bylaw amendments voted on at REC’s annual meeting. Those amendments, had the co-op members been allowed to approve them, would have required REC’s board to be more transparent.

It is worth noting that Pedernales Electric Co-op’s impressive transparency and democratic practices didn’t just happen. They came about as reforms implemented after a scandal involving serious malfeasance and mismanagement. The *Austin American-Statesman* reported in 2015 that Pedernales’s scandal was facilitated by a lack of transparency, including “secret dealings at the Johnson City-based utility” and a co-op board “that selected its own members and collected exorbitant salaries for little work.”¹⁶ The *American-Statesman* quoted a Texas state representative as saying that Pedernales before the reforms “was an organization that was previously very insular and very closed off from any transparency.” The *Statesman* further quoted the new reform board chair’s statement that after reforms occurred “the co-op has issued more than \$65 million in capital credits back to members since 2009.”

In seeking the reforms we urge for REC, we are not suggesting that REC has all the same problems that Pedernales had before it was reformed. But REC’s board could learn a lot by studying the Pedernales reforms. Why wait for a major scandal before taking steps to make REC fully transparent and democratic, as cooperative principles require?

¹⁶ See <http://www.mystatesman.com/business/after-reforms-electric-transformed/PCugtYBcyRxiloc2pcy1RN/>.