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Insurer to pay only part of PEC settlement

By Jodi Lehman

The directors of the Pedernales Electric Cooperative have agreed to reach into PEC coffers to help pay the proposed \$4 million settlement of the class action law suit filed against them and the cooperative last summer.

Because the PEC carries a Directors and Officers Insurance Policy with AIG with a \$15 million limit, many members and observers assumed that AIG would pay the \$4 million settlement less the \$125,000 deductible.

PEC in-house attorney Kimberly Paffe confirmed that the insurer will only be contributing \$2.6 million of the \$4 million agreed settlement figure. Paffe said that PEC will pay \$1.4 million, which includes the deductible.

PEC Marketing Manager Michael Racis explained the arrangement Tuesday. "The amounts being paid by AIG and PEC are as the result of a negotiated settlement between insurer and insured. The amounts themselves are not tied to any specific issues or claims made in the lawsuit, and the settlement avoids any potential litigation regarding coverage disputes."

In addition to paying part of the settlement to the plaintiffs, Paffe said that AIG has paid to date "approximately \$1 million towards PEC's own attorneys' fees."

The proposed settlement does not require any of the 19 individuals named as defendants to contribute money towards the \$4 million pay out.

State Senator Troy Fraser expressed concern about the settlement terms in an interview Wednesday. "It is customary for an insurer to pay the entire claim - in this case it would be \$4 million less the \$125,000 deductible. The fact that PEC's insurer refused to pay \$1.4 million of the claim sends a message that the insurer found sufficient wrongdoing to deny paying part of the claim."

Fraser has questioned the wisdom of allowing the current PEC board to oversee the litigation on behalf of the cooperative, often characterizing the situation as "the foxes guarding the hen house."

On Wednesday, Fraser said, "The PEC directors were quick to agree to pay the \$1.4 million with the members' money and none of it coming out of the directors' pockets. Why should cooperative members have to pay for any part of this settlement? Either the insurance policy should pay the entire amount, less the deductible, or the board of directors and former General Manager Bennie Fuelberg should personally be responsible for paying the remaining portion."

Many of Fraser's constituents are PEC members, and he said he wants any resolution of the law suit to be fair to the members. "The cooperative members didn't do anything wrong, but they are the ones being penalized for a Board of Directors that is attempting to indemnify themselves for potential wrongdoing. Someone needs to convince me why this settlement isn't a rotten deal for cooperative members."

The \$1.4 million sum represents about \$7.60 out of the pockets of the 184,372 individual member-owners of the cooperative; or, the sum represents about two years' compensation paid to the 17 directors of the non-profit cooperative who shaped the course of events that led to being sued.