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Senate begins inquiry into unregulated cooperatives

By Jodi Lehman

A new face appeared in the Pedernales Electric Cooperative line-up last Thursday at the Senate Business and Commerce Committee hearing. Chris Gunter was introduced as one of the attorneys representing the PEC. Gunter is a well-known criminal defense lawyer who practices in Austin.

Senator Troy Fraser chairs the committee and convened the hearing to discuss the current governance structure of electric cooperatives and determine whether there is a need for statutory changes to protect customers of electric cooperatives in Texas.

Fraser explained that Thursday's hearing was for "invited testimony only" and was not scheduled for public comment. Responding to the committee's invitation on behalf of the PEC were directors E. B. Price who is acting president of the board and R. B. Felps who represents the district which includes Horseshoe Bay, advisory director Stuart Nunnally who represents the district which includes Marble Falls, and advisory director at large Libby Linebarger who has homes in Austin, Horseshoe Bay and Menard.

PEC General Manager Juan Garza said in his opening statement that the PEC facilities, trucks and grounds are well maintained. Senator Leticia Van de Putte jumped on Garza's comments saying he described "very eloquently" the beauty of the facilities, but that her fear is that "on the outside the apple looks really good, but on the inside it was really rotten."

The senators were not able to obtain an answer from the PEC directors as to why they did nothing to rein in the expenses and salaries at the cooperative. Van de Putte said, "The only thing we can conclude is that you liked the money and he paid you off."

Van de Putte asked, "Where was the responsibility you have as board members? Was anyone awake?"

The senators got no response to their questions as to why the PEC board has recently changed some of its policies relating to the election process, open meetings and the return of capital credits. Fraser and Van de Putte repeatedly asked if the recent reforms were only "because you got caught" or whether the reforms were a result of the board finally realizing that it had been wrong in its governance. None of the PEC representatives would respond to those queries.

PEC Board President Price came close to giving the committee an apology, but said he was not speaking on behalf of the board. "We've done several things we could have done better, that were wrong, and for that I'm sorry for not speaking up, for not taking a more active role. But I sat back in the crowd and let things go by and for that I am truly sorry."

Representative Patrick Rose did not appear satisfied with Price's remarks. "The abuse at the top that has existed for decades is an offense not only to your members, but also to your employees, and an offense to everybody who looks to PEC for leadership. You are the biggest co-op in the state and in the country. And it is offensive to me that we are here today. And I think nothing short of an apology about the behavior of the past is sufficient for us to move forward."

Price seemed to indicate that he wanted to stop some of the abuses by the governing powers at the PEC, but said “I never had the votes or the people to get it done.”

While many have put faith in Juan Garza’s reputation for transparency and openness to bring the PEC back in touch with its members, Garza’s testimony showed that the board will not always follow his recommendations.

Fraser and Rose sent a letter to the PEC in January asking them to invite a State Auditor Office review of PEC business practices. Garza said he was in favor of having an SAO review and he told Fraser and Rose that he had the votes on the board to approve the request. But by the next morning, the board voted against inviting an SAO audit because their attorneys advised against it. At the time, Garza had been hired as the general manager, but had not officially begun his tenure.

Price listed the reforms made by the PEC board in the past months. They hired Garza to replace Bennie Fuelberg, eliminated proxy voting and opened the election process so members other than those hand-picked by the board could stand for election. They have established an expense and finance committee, set up a travel and entertainment policy that prohibits reimbursement for spouse expenses and alcohol, settled the class action lawsuit, and opened the board meetings to the public.

While giving the PEC credit for making some changes, Fraser pointed out that the one area the board has failed to address is board compensation. “You’ve gotten used to the money. You like the payola and you are refusing to address it.”

Price said that the board plans to address director compensation after holding public meetings, and will make any changes “retroactive to March 10, 2008, the date the lawsuit settled.”

Fraser admonished the board members, saying that of all the issues facing the PEC, board compensation is the most sensitive subject. Fraser warned the PEC that until they address board compensation, they will not achieve any credibility with the public.

Fraser pointed out that board member compensation includes \$750 for each meeting that directors attend and that the board has in the past held one meeting, adjourned it, and convened another meeting back-to-back and paid the directors for attending more than one \$750 meeting in one day.

To demonstrate that board compensation includes more than just the meeting payments, Fraser cited Libby Linebarger’s use of the PEC insurance paid for by PEC members to cover not only herself but also her husband, Dale Linebarger, a name partner in a large, successful law firm.

By comparison, Fraser said that the LCRA directors receive \$150 per meeting for a whole day and receive no free insurance.

Nunnally, a dentist in Marble Falls, challenged the committee’s assessment that PEC board meetings were not open to the public until recent months, saying “As far as I know, the meetings have never been closed....no one has ever told me he was denied access to our meetings.”

Fraser responded, “I was personally denied entry into your meeting.”

Senator Eddie Lucio, Jr. said that by choosing to hold board meetings on the second floor of the PEC headquarters building in an area not open to the public rather than in the first floor auditorium, he could reasonably infer that the board intended to have secret meetings and deter member participation.

Van de Putte asked the PEC, “How can a cooperative that is so well run never give capital credits to its members...when every other co-op has done so?”

Nunnally defended the board’s decision to not return capital credits to members as “good business practice” in order to fund capital expenses and maintain lower rates.

Fraser responded, “It may be good business to overcharge members...but it is not right.”

District 5 Director R. B. Felps’ testimony that the board’s fiduciary duty is to the entity (PEC), not to the members, elicited a strong reaction from Fraser and a refresher course on the PEC’s own bylaws from Senator Chris Harris who is vice-chair of the committee. Harris read Article III, Section 2(i) of the PEC Bylaws which says that directors must “represent the entire membership on an impartial basis.”

The hearing lasted 4 hours and focused on the PEC business practices for 90 minutes. Fraser said the Texas Legislature has the authority to regulate electric cooperatives, to order an audit of the co-op and to enact a statute dismissing the PEC board of directors if needed.

Fraser reiterated that he is a proponent of local control, but when abuses arise, he said the legislature must act to protect the public. Citing the PEC history of excessive salaries and benefits for board members and top executives, generous health insurance and annual Cooper Clinic visits for board members and their spouses, putting people on “emeritus status” and paying them money for life and to their families after their death, providing first class travel and entertainment for board members and their spouses “or girlfriends,” and paying for in-room movies for board members, Fraser said his committee would continue its investigation into the PEC business practices and watch to see if meaningful reforms continue.

State Representative Mark Strama noted the presence of PEC television ads, and said they seem to be a bizarre expense when their customers are captive and have no other electricity provider options.

Texas Electric Cooperative President Mike Williams testified that the PEC is a member of the TEC, but that as a “voluntary trade association” the TEC has no authority to control or advise PEC on business practices. He said the TEC could only “facilitate discussions” with its members.

While PEC has never returned any capital credits to its members, Williams said that every other electric cooperative in the state returns capital credits to their members.

Williams presented the thick report of a survey of member owned electric cooperatives in Texas which showed that salaries for staff and directors at PEC far exceed all other cooperatives.

The committee members were clear in their message to Williams and the TEC. The committee is interested in the business practices of the members of the TEC and whether the abuses being unveiled at the PEC are isolated to that one cooperative or represent an industry standard.

The committee’s last witness was Mark Rose, General Manager of the Bluebonnet Electric Cooperative. Rose receives \$457,000 in annual compensation from Bluebonnet, but also maintains one outside consulting client referred to as “the O’Connor family.”

In representing the O’Connor family, Rose has been active in lobbying against a proposed nuclear power plant near Victoria, outside the territory served by Bluebonnet. Victoria Mayor Will Armstrong supports the Exelon Nuclear project. The committee

challenged Rose's opposition to a project that would add 3,000 megawatts to the electric grid and possibly lower Bluebonnet customer's rates.

Rose said he had checked with three attorneys and all told him that his consulting job was not a conflict of interest to his job as general manager of Bluebonnet. Fraser said that Bluebonnet has made a "grave error" in allowing Rose to maintain an outside client whose interests may run contrary to those of the cooperative's members.

"You have the right to stuff as much money into your pockets as you can...my concern is with Bluebonnet" for permitting such an arrangement, Fraser told Rose. After persistent questioning from the committee, Rose said he would end his financial relationship with the O'Connor family.

Eight of the nine members of the Senate Business and Commerce Committee attended Thursday's hearing, as did five state representatives who were invited to participate, including Representatives Rose, Strama, Donna Howard, Valinda Bolton and Geanie Morrison.

Fraser said 21 senators have an unregulated electric cooperative in their district, so the concerns about transparency, openness and fairness is of major concern to the state's lawmakers.

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Senator Leticia Van de Putte: "Understand that you had a corrupt board, so fix it."

PEC Board President E.B. Price: "We've made some glaring mistakes along the way."

Texas Electric Cooperative President Mike Williams: "All of the PEC service area is a monopoly."

Senator Troy Fraser: "Why should we have confidence in the board's ability to lead? Why trust you now?"

PEC Board President E. B. Price: "Because of all the changes we have made."

Fraser: "Why did you make the changes?"

Price: (no answer given)