

IN THE SUPREME COURT OF THE STATE OF GEORGIA

DWIGHT BROWN, *et al.*,

Appellants,

vs.

EDGAR "BO" POUNDS, *et al.*,

Appellees.

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Case No. S10C1343

APPELLEES' REPLY BRIEF TO BRIEF OF APPELLANTS

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Part One: Type Case and Jurisdiction

This is a case pending in the Supreme Court on *writ of certiorari* to the Court of Appeals. The underlying case is a derivative proceeding filed by members of the Cobb Electric Membership Corporation pursuant to O.C.G.A §46-3-272 in which the Appellants asserted claims against the officers and directors of Cobb EMC for breach of fiduciary duty, violation of the Electric Membership Cooperative Act O.C.G.A. §46-3-170, *et seq.*, violation of the Cobb EMC bylaws, and other breaches of legal and equitable duties.

Part Two: Judgment Appealed and Date of Entry

This is an appeal from the Georgia Court of Appeals' April 13, 2010 Opinion in which the Court of Appeals reversed the Cobb County Superior Court's decision and invalidated a proxy-voting amendment to the Bylaws enacted by Cobb EMC's Board of Directors as contrary to a Settlement Agreement previously entered into by the parties.

Part Three: Issue for Consideration on This Appeal as Directed by the Supreme Court

The Supreme Court directed the parties brief the following issue:

Did the Court of Appeals err in holding that the amendment to Cobb EMC's bylaws, allowing for voting by proxy, violated the Settlement Agreement previously entered into by the parties?

The answer is no. The amendment to the Cobb EMC bylaws adopted subsequent to the Settlement Agreement, which was made the Final Order and Judgment of the trial court, violated the parties' agreement in at least the following particulars:

1. It violated Section B 1.4 which provided that the Plaintiffs (not the Defendants) "will seek an amendment to the bylaws at the next meeting of Cobb EMC members, which will be held within sixty days" [parenthetical added, Exhibit A];
2. It violated Section B 1.4 because the amendment to be presented by the Plaintiffs was to be presented "at the next meeting of Cobb EMC members . . .", not by proxy voting requiring votes to be submitted five days prior to the meeting thus depriving the members of the right to discuss and consider the amendment (Exhibit A);
3. It violated Paragraph B 1.4 in that as Special Master Stoddard observed: **"Allowing a vote on the issue before the meeting by mail in proxies sent by management urging the members to approve the changes would allow a one sided presentation of the issues and preclude members from being able to fully discuss, consider and learn about the complete effects and ramifications of the proposals management urges them to adopt."** (Exhibit B, ¶ 8);

4. It violated the agreement because the notice of the settlement provided to the members provided that “ a proposed amendment to the bylaws will be presented for Cobb EMC member consideration and vote at the next meeting of Cobb EMC members . . . to allow members the right to vote for directors by mail in ballots” (Court approved Derivative Notice, Paragraph 5, Exhibit D); and
5. It violated Section 9.5 of the agreement which provided “This joint proposal and the exhibits attached hereto constitute the entire agreement among the settling parties and may be amended or modified only by a written instrument defined by or on behalf of **all the settling parties** or their respective successors in interest.” (Exhibit A, ¶ 9.5).
6. It violated the cooperation clause of the Final Order and Judgment, Paragraph 9 requiring the parties cooperate fully with each other in the implementation of the joint proposal R 308, ¶ 9;
7. It violated “duty of good faith and fair dealing that is implied in all contracts.” O.C.G.A. § 11-1-203; . . .” *John Q. West v. Douglas Kaufman*, 259 Ga. 505 (1989).

Part Four: Factual Background¹

Cobb EMC is a depression-era rural electric cooperative, created by statute

¹ The matters summarized in this Part Four were set out in their entirety in Appellees’ Brief below.

and governed by its members pursuant to the Georgia Electric Membership Corporation Act, O.C.G.A. § 46-3-170 et seq. (“GEMCA”). While the EMC movement was crafted to provide electricity in rural areas through a maze of small member-owned cooperatives, Cobb EMC now serves 174,000 members in multiple counties, and is in the top three largest EMCs in the country. Although an enormous utility, but for membership control under GEMCA, Cobb EMC is essentially unregulated notwithstanding its near-monopoly power and massive economic muscle in its designated areas.²

A. Breaches of Fiduciary Duties.

Since the EMC’s formation in 1938, voting has been “in person” at a meeting of members generally held at EMC headquarters. In the ten years preceding the filing of this Derivative Complaint all board members had been hand selected by the existing board and management. During that same time Petitioners:

- Attempted to circumvent the GEMCA limitations by forming Cobb Energy Management Corporation (“Cobb Energy”), a for profit entity owned in part by CEO Brown and certain board members. (R. 142-43, 148). The formation and continued operation of Cobb Energy was unlawful. *Flint v. Barrow*, 271 Ga. 636 (1999); (Flint EMC cannot “do indirectly what it could not do directly.”);

² The Georgia Public Service Commission has limited regulatory authority with regard to territorial assignments and certain loan approvals. (T. 37-38 Dec. 3, 2007).

- Caused the EMC to contract with their new for-profit entity *for forty years*, performing services that were previously performed by the EMC *at cost*, only then with a 2% adder fee, later increased to 11%. (R. 179, 150-51, 162-163);
- Caused Cobb EMC's CEO Brown to be named CEO of Cobb Energy and Chairman of the Cobb Energy board, and paid millions in undisclosed salary and interest-free loans never required to be repaid, all for performing the same duties, from the same office. (R. 166);
- Caused "adder fees" to be siphoned from the EMC purportedly to "manage the EMC" which resulted in *tens of millions of dollars* of EMC funds being rerouted to Cobb Energy, for nothing. (R. 152);
- Caused millions of dollars of EMC assets to be paid out to private investors in the for-profit which otherwise would have been available as patronage capital to the EMC members. (R. 151-57);
- Transferred all employees and non-transmission assets of the EMC to the for-profit with no consideration to the EMC or its members; (R. 151-57); and
- Concealed virtually all of the above from the EMC members (R. 179, 189).

Every independent EMC executive and accountant that looked at the arrangement uniformly condemned it as a profound conflict of interest. For instance, Benson Ham, an electric cooperative corporate governance expert with 34 years in the industry, and former General Counsel and Chairman of the Board

of Central Georgia EMC, described the Cobb EMC/Cobb Energy relationship as “the most profound and utter conflict of interest and breach of fiduciary duty that I can imagine.” (R. 281-284, 935-38).

This extraordinary conflict of interest was also noted in detail by renowned corporate governance expert John C. Knapp of the Center for Ethics and Corporate Responsibility of Georgia State University’s college of business. (R. 244-54, 281).

Indeed, the lower court found:

This litigation started where we had directors on both sides, where we had directors voting for adders that they then received some of the money from in their ownership of preferred stock. These things may have been okay ten years ago. They are not okay today. And this litigation has changed all that.

(T. 77-78 Dec. 2, 2008).

Perhaps most astonishing is that Cobb Energy never made a profit and instead, lost tens of millions of dollars in its business activities. Yet, Brown and certain directors caused dividends to be fully paid every quarter to themselves, their family and friends, funded by EMC cash flows, and at the same time, *never paid* a dime in dividends to Cobb EMC which supposedly owned 100% of Cobb Energy. (R. 184).

Thus, the settlement terms on practices and procedures for future voting were essential to Appellees (Plaintiffs below) so as to protect member rights from continued, direct and indirect, eradication by the EMC’s

management and board and further pilfering of the cooperative's (member's) assets. (T. 8-9 Oct. 30, 2008); (T. 16-17 Dec. 2, 2008).

B. The Settlement and Final Order and Judgment.

On October 30, 2008 the parties entered into a Joint Proposal for Resolution of Derivative Litigation (hereinafter "Settlement Agreement" or "Final Judgment") whereby the Cobb Energy entity, including all the meters, all the employees and tens of millions of dollars of other assets that had been siphoned to Cobb Energy over the years were brought back under the umbrella of Cobb EMC. The 40-year Operating Agreement was terminated and substantial changes in corporate governance, conflicts of interest and ethics were enacted. (R. 308-10, 319-44).

Relevant to the issues on appeal, section III (B) 1.4 of the Settlement, incorporated verbatim in the Final Order and Judgment, provides:

1.4 **Plaintiffs** will seek an amendment to the by-laws **at the next meeting of the Cobb EMC members** which will be held within 60 days of the date of the approval of the settlement by the Court. Such amendment will seek to allow the members the right to vote for directors by *mail-in ballots*, **subject to the development and implementation of appropriate security measures** (emphasis added, Exhibit A).

R-482³.

The Cobb County Superior Court entered a Final Order and Judgment

³ There were six additional specific obligations imposed on the parties which are listed in Exhibit A, page 7, 8.

incorporating the settlement terms on December 3, 2008. (R. 470-500). The core dispute in Appellees' appeal to the Court of Appeals was the trial court's order approving certain by-law changes by the board made after the entry of the Final Order and Judgment in this case:

- Unilaterally changing member voting procedures from in-person voting at member meetings to proxy voting;
- Removing the ability of members to bring up "new business" at a member meeting;
- Vesting the board with the sole authority to establish the agenda at member meetings; and
- Doubling the number of directors required to call a member meeting.

Specifically, the board met in secret on December 12, 2008, *even without consultation of its corporate governance committee*, and changed bylaw provisions relating to how directors would be elected in the future by unilaterally adopting proxy voting. (R. 572-81); (T. 38-39, 95 Mar. 13, 2009). The secret bylaw changes also removed "new business" from the agenda of the annual meeting and solely provided the board with the ability to set the agenda at all annual meetings in direct violation of O.C.G.A. § 46-3-263(b) which authorizes EMC members to transact any business of the EMC not inconsistent with the bylaws. (R 573-74). Petitioners attempted to enact these bylaw changes and others for the sole purpose of attempting to circumvent their obligations under the Settlement Agreement they

just entered.

Upon learning of the secret purported bylaw changes, Appellees promptly filed their motion to enforce the Final Judgment before the Special Master, Senior Superior Court Judge Michael Stoddard. (R. 533). Senior Judge Stoddard, who had previously been appointed to hear discovery matters, and was thus intricately familiar with the facts of the case, was subsequently appointed on December 30, 2008 to oversee the special meetings called for by the Settlement Agreement and the entire election process.

More specifically, Judge Stoddard was appointed to “address any issues related to the registration process, election process and procedures to be followed for voting at the annual meeting. Judge Stoddard, as Special Master, has the authority to enter rulings on the election process and by-law changes.” (R. 569-70).

Judge Stoddard (the fact finder on these issues) correctly ruled that the board’s actions violated well-established Georgia law, the Cobb EMC bylaws and the Final Judgment. (R. 697-722). A copy of his order is attached hereto as Exhibit

B. As to the proxy voting issue, Judge Stoddard says this:

6. Thus, this change [to proxy voting] is directly related to the election of directors and therefore, the enactment of Section 7A [the proxy Bylaw Amendment] violates O.C.G.A. 46-3-325 and Article XI of the Bylaws which provide that ‘the Board of Directors shall not have the power to alter, amend or repeal provisions of these Bylaws or adopt new bylaw provisions directly relating to the election of the Board of Directors . . . ’

8. The Special Master further finds that the enactment of Section 7A [proxy provision] was inequitably motivated so as to unfairly tilt the voting process and thus, improper and void . . . Allowing a vote on the issue before the meeting by mail in proxies sent by management urging the members to approve the changes would allow a one sided presentation of the issues and preclude members from being able to fully discuss, consider and learn about the complete effects and ramifications of the proposals management urges them to adopt . . . Therefore, mail in proxies will not be allowed for the issues to be addressed at this special meeting.

Petitioners appealed the Special Master's order to the Trial Court, and by order dated May 14, 2009, the trial court reversed the Special Master's order and grant of injunctive relief to Appellees. (R. 805-809). However, the trial court made no changes to Judge Stoddard's findings of fact. The trial court reversed the Special Master's order entirely, ruled that the December 12th bylaw changes were lawful and proper, and ruled that the proceedings at the first meeting to be held pursuant to the Settlement Agreement would be decided by proxy vote. Appellants appealed the trial court's Order and the Court of Appeals reversed finding at least five errors of law.

Part Five: Enumeration of Errors

1. Because the trial court presided over the underlying litigation for fourteen months, incorporated the Settlement Agreement into its own Final Order and Judgment after conducting a fairness hearing, and then conducted a full hearing on Plaintiffs' Emergency Motion to Enforce Final Order and

Judgment, the Court of Appeals should have deferred to the trial court's determination that Cobb EMC had not violated the Settlement Agreement.

2. Because the Amendment expressly provides that proxies will be voted "at any special meeting," and Georgia law further clarifies that proxies are voted at meetings and may be revoked at any time before a vote is cast, the Court of Appeals erred by finding that the proxy procedure results in an irrevocable vote before a meeting, rather than "at" a meeting.

3. Plaintiffs did not argue in the trial court that the Amendment violated the Settlement Agreement's requirement that the parties "fully cooperate." Nor did Plaintiffs raise this issue in an enumeration of error on appeal. The Court of Appeal erred in considering this factual issue for the first time on appeal, finding that the "cooperation" clause was enforceable and that the promulgation of the Amendment violated it, and entering injunctive relief on this basis.

Part Six: Argument and Citation to Authority

Petitioners make three assertions to support their Petition, each of which are addressed seriatim:

Introduction

As hereinafter discussed, the purported bylaw amendment turning over to management the board election process by proxy voting clearly violated the terms and conditions of the Final Order and Judgment. Moreover, it violated the existing

provisions of the Cobb EMC Bylaws XI and O.C.G.A. § 46-3-325, **both of which preclude the Board modifying bylaw provisions relating to the election of the Board of Directors as the same are reserved to the members, even without reference to the Final Order and Judgment.**

While wrapping their clandestine management entrenchment rascality in terms suggesting they were only concerned about the well being of the members (a novel argument given that they had robbed the members of at least \$120,000,000.00 in assets), Appellants make a profound misrepresentation to this Court suggesting that in person voting was the only means by which members could cast a vote: “. . . Cobb EMC’s practice of permitting only in-person voting, a long standing practice common among electric cooperatives resulted in inadequate participation of members in the governance of the cooperative and the disenfranchisement of all those who could not attend.” Appellants’ Brief, page 2, 3. Indeed, members decided decades ago what they wanted was a limited right to vote without attending in person. Prior to the Board of Directors’ shenanigans, members had a **member controlled** proxy procedure allowing for a member to designate an adult to vote for them by written proxy at the meeting. (Cobb EMC Bylaws, R538; ¶ 7). Thus, if a member really wanted to vote by proxy the member had that option in a member controlled proxy which the Board of Directors cancelled in favor of the Board’s management controlled proxy.

1. Appellant's contention that the Court of Appeals erred in not "deferring" to the trial court.

Under Georgia law, a trial court's construction of a settlement agreement is a matter of law and is subject to *de novo* review. *In re Estate of Huff*, 287 Ga. App. 614, 615 (2007); *Peacock v. Spivey*, 278 Ga. App. 338, 339 (2006); *City of Demorest v. Roberts & Dunahoo Properties*, 288 Ga. App. 708, 711-12 (2007).

Here, as the Court of Appeals ruled:

Because a settlement agreement is a contract, 'it is subject to the usual rules of statutory construction. While the cardinal rule of construction is to determine the intention of the parties, no construction is required or permitted when the language employed by the parties in the contract is plain, unambiguous, and capable of only one reasonable interpretation.'

City of Demorest, 288 Ga. App. at 711-12.

There is simply no authority in this state for the deference claimed by the Petitioners; nor do they cite any. Appellants' citation to *Roberts v. Roberts*, 206 Ga. App. 423 (1992) is completely inapposite. In *Roberts*, the Court dealt with a determination by the Court as to whether or not a party's interference with another party's easement was willful or not willful. The issue of willfulness was contested by conflicting evidence. Thus, the Court of Appeals deferred to the factual finding of the Court on willfulness. *Roberts supra* at 425. The Appellants citation to *Patten v. Miller*, 190 Ga. 152(1940) is also unpersuasive. In *Patten*, the Supreme Court was addressing, not the issue of the Court's ruling as a matter of law, but

rather the judges' interpretation and finding of facts in a contempt matter. The Court noted that:

In cases of contempt, the trial judge is vested with discretion in determining whether his orders have been violated, and how such infringement should be treated He was the trier of the facts Since we cannot say that there was no evidence from which the judge could conclude that his order had been violated by the defendant, we have no power to disturb his judgment.

Patten supra at 159, 160.

Likewise, the citation to *Stewart v. Tricord, LLC*, 296 Ga. App. 834(2009) is clearly inappropriate. Just as in *Patten*, the Court in *Stewart* was addressing the deference due the trial court on findings of fact relating to contempt actions. *Stewart supra* at 837. In an apparent and desperate measure to find any authority for this argument, Appellants turn to footnote 13 in *Local No. 93 v. City of Cleveland*, 478 U. S. (1986) observing the obvious: "A court that maintains continuing jurisdiction over a consent decree will have a more flexible repertoire of enforcement measures." This absolutely nothing to do with the issue as to whether or not the Court made an erroneous legal ruling, the standard appropriate for this *de novo* review of the trial court's interpretation of the settlement documents.

Here, the Court of Appeals did exactly what it was supposed to do. The trial court made at least five errors of law and the Court of Appeals properly addressed each of the errors of law under the correct *de novo* standard and reversed all five.

2. Appellants' Contention that the Court of Appeals found that the proxy voting amendment resulted in an irrevocable vote prior to a meeting rather than at a meeting.

Petitioners argue that the Court of Appeals wrongly concluded that the Final Judgment provided that the vote as to whether to adopt proxy voting was to be "at the Meeting." [R-482, Exhibit A]. It is impossible to see how the Court of Appeals could be in error on that issue as that is precisely what the Final Judgment provided: "Plaintiffs will seek an amendment to the by-laws **at the next meeting....**" (Final Judgment B. 1.4, R-482, Exhibit A). Importantly, it did not say "or by proxy five days before the meeting."

What the Court of Appeals ruled is that "...the trial court erred in allowing Cobb EMC to modify the voting procedures in a manner contrary to the plain and unambiguous terms agreed upon by the Parties." Opinion at 6.

Petitioners' secret bylaws, found to have been improperly adopted by the Court of Appeals, provide:

In order to vote by proxy, a member must sign and date a form appointing The Cooperative Proxy Manager (hand picked by management) to vote for the member by proxy and designating how the Cooperative Proxy Manger shall cast a vote for or against or to abstain from voting on the items on the agenda. The Cooperative Proxy Manager **shall receive the proxies until the close of business on the fifth business day prior to the meeting date, and shall count such proxies and present the proxies and the results to the Credentials and Election Committee**".

R-571-639 (Exhibit C). Petitioners assert boldly that the Court of Appeals held, “that voting by proxy occurs prior to a meeting rather than at a meeting.” Petitioners’ Brief, pg. 15. That assertion is ridiculous. The Court of Appeals merely pointed out that *the members* were required to submit their proxies *appointing a proxy manager* five days prior to the meeting. “However, the Bylaw amendment establishing proxy voting provides that members would **appoint** a proxy manager to vote their shares at least five business days prior to the meeting.” Opinion at 6. The Court of Appeals *said absolutely nothing about when the appointed proxy manager would actually cast votes*. Simply put, Petitioners’ attempt to craft a fictitious issue of serious importance where none whatsoever exists.

Indeed, the very next sentence of the opinion clarifies that the prior sentence was talking about “appointing” the proxy manager five days ahead of time and not about voting five days ahead of time. “Once the proxy manager **is appointed**, the Bylaw amendment does not provide any means for the members to consider and vote upon the resolution ‘at’ the special meeting.” This latter sentence also clarifies that Petitioners’ bylaw and proxy provisions were completely fouled up regarding revocation of proxies. In fact, Petitioners wrongly assert on page 18 of their brief that proxies under their secret changes were revocable because O.C.G.A. § 46-3-268(a)(3) provides that attendance and voting at a meeting by a member suspends all powers of the proxy holder. While that is exactly what O.C.G.A. §

46-3-268(a)(3) provides, Petitioners' proxy provisions are *directly contrary* to the statute. Specifically, Petitioners' proxy and the accompanying instructions titled "Questions and Answers for Members of Record About the Proposals" provide that the *only* method for revoking proxies is by *written revocation*:

You have the right to revoke your proxy any time by (i) *written* revocation or substitute proxy received by the Proxy Agent no later than (5) days prior to the date of the Special Meeting or (ii) by *written* revocation or substitute proxy delivered by you to the Proxy Agent at the Special Meeting prior to the taking of the vote. **However, you will not revoke your proxy simply by attending the Special Meeting.**

(R. 548, 553, 617)(copies of 548, 552-55 attached hereto). Two pages later the same document further details the legal gymnastics Petitioners' provisions require to revoke a proxy:

Revocation. The grant of a proxy on the enclosed form does not preclude you from attending the Special Meeting and voting in person, *provided* that you properly revoke your proxy. If you are a record holder of a Company Membership Interest, you may revoke your proxy **by a duly executed written notice of revocation or a substitute proxy** bearing a later date than your proxy and received by the Proxy Agent at least five (5) business days prior to the date of the Special Meeting, **or** by delivering to the Proxy Agent **a duly executed written notice of revocation or a substitute proxy** before the vote is taken at the Special Meeting.

Put another way, Petitioners' proxy provisions and procedures were drafted in direct violation of Georgia law.

In short, the *primary* ruling of the Court of Appeals was that the entire issue of proxy voting by means of appointing a proxy manager hand selected by Cobb

EMC's board and management was directly contrary to the Settlement Agreement.

“While the derivative defendants properly assert that proxy voting is common among Georgia companies, we find this amendment to be contrary to the terms of the Settlement Agreement.”

Separately and additionally, the Court of Appeals determined that Petitioners' secret proxy provisions were drafted improperly and contrary to existing law. Petitioner's argument that the Court of Appeals somehow violated O.C.G.A. § 46-3-268 by pointing out the specific language of the Petitioners' own draconian and improperly drafted bylaw changes is preposterous. That entrenchment-motivated, improperly drafted and draconian language is the precise language adopted by the Board in the secret meeting.

3. Appellants' contention that the Court of Appeals erred in finding the Board's adoption of the proxy-voting amendment was inconsistent with the Settlement Agreement's requirements that the parties fully cooperate.

The Court of Appeals correctly noted that the Petitioners were required to “cooperate fully” with Appellees in the implementation of the Settlement Agreement. The Court of Appeals also correctly noted that Petitioners' stealth adoption of bylaws changes aimed at gutting key provisions of the Settlement was inconsistent with that obligation. The trial court's order finding that the bylaw changes were appropriate flies in the face of this reality.

Petitioners further claim that the cooperation issue was not raised in the

Court of Appeals. The fallacy of this argument is that here again:

The correct rule with respect to the legal sufficiency of an enumeration of error is that it "need be only sufficient to point out the error complained of . . ." *Puckett v. Puckett*, 222 Ga. 653 (151 SE2d 767) (1966). "[T]he subject matter need be indicated only in the most general way", (*Wall v. Rhodes*, 112 Ga. App. 572 (1) (145 SE2d 756) (1965)).

Adams-Cates Co. v. Marler, 235 Ga. 606 (1975); *Hawthorne Indus. v. Addaway Assoc.*, 153 Ga. App. 155 (1980). Appellees' enumerations of error plainly indicate that the secret bylaw changes were not "lawfully adopted" and were not "consistent with the law." Because Petitioners' secret bylaws violated the cooperation clause, they were not "lawfully adopted," nor were they "consistent with the law" which requires compliance with contract terms/terms of the Settlement Agreement.

Additionally, Appellees' enumerations of error relate to the trial court's incorrect ruling that the secret bylaw changes were lawful and that the EMC management could present different bylaw changes than Appellees. Indeed, the issues as to the secret meeting and unilateral bylaw changes were briefed extensively by Appellees beginning at page 10 of Appellees' Brief below. They were revisited in Appellees' Reply brief:

The parties are ordered to cooperate fully with each other regarding the implementation of the terms of the Joint Proposal as approved in this Final Order and Judgment." (R. 474). In complete disregard of this, Petitioners' purportedly changed the

bylaws on December 12, 2008 in an effort to gut certain of their core settlement obligations (R. 572).

Appellees' Reply Brief to Petitioners Barnett et al., pp. 1-2.

As such, Petitioners' contention that cooperation issues were not fairly before the Court of Appeals is patently wrong.

The Appellants' cite *Stefano Arts v. Sui*, 301 Ga. App. 857 (2010), for the proposition that the trial court's direction to the parties to cooperate fully with each other regarding the implementation of the terms of the joint proposal is too general to be enforced. In *Stefano*, the Court addressed an agreement that provided that plaintiff's commitment to "**devote to make a successful tour and cooperate with DMUP against competitor during the co-business**" is too vague for enforcement. The language of the *Stefano* contract is not only vague, it is unintelligible.

Next, Appellants' cite the Court to *Albee v. Krasnoff*, 255 Ga. App. 738 (2002). In *Albee*, the Court addressed an oral contract "to manage their money and be involved with the management of Casko." Understandably the Court determined that these skeletal contractual terms were too indefinite for enforcement. The circumstances in *Stefano* and *Albee* are markedly different than the straightforward agreement here. The trial court in this case ordered the parties to "cooperate fully with each other regarding the implementation of the terms of the joint proposal as approved in this final order and judgment." *Art 572*. There

were 7 rifle barrel specific actions to be taken with respect to the agreement (sections 1.1 through 1.6 and 2) which are enumerated in Exhibit C for the convenience of the Court.

Relevant to the issues here is section 1.4 of Final Order and Judgment stating that “Plaintiffs [not defendants] will seek an amendment to the bylaws at the next meeting of Cobb EMC members, . . . [which] will seek to allow members a right to vote for directors by mail in ballot” [brackets added]. There is nothing whatsoever vague or indefinite or uncertain about this or any other provisions of the Agreement.

Next, Appellant’s jump to the near unfathomable contention that “if there had been a technical violation of the cooperation clause . . . all Cobb EMC would have to do is to ‘provide notice to the plaintiffs and then reinstate the amendment—a pointless exercise . . .’” Appellants brief, p. 24, 25. This bold assertion ignores totally and completely the irrefutable fact that only the plaintiffs were designated in the judgment with the authority to present to the members a methodology for mail-in voting. It further ignores that the Board’s amendment to the by-laws to allow proxy voting violates both section XI of the bylaws and O.C.G.A. § 46-3-325, both of which preclude the Board from modifying bylaw provisions relating to the election of directors.

Conclusion

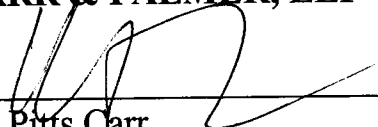
The Court of Appeals was quite right to determine that the shenanigans of the Board of Directors in pushing through the dark of night a bylaw amendment to allow them to control a “proxy voting” election in which management would be in charge of the voting process clearly violated the specific terms of the Final Order and Judgment. Further, it violated XI of the current Bylaws of Cobb EMC and O.C.G.A. § 46-3-325, both of which preclude the Board from modifying the Bylaws relating to voter elections, that task being reserved to the EMC members.

Further, the Court of Appeals correctly applied a *de novo* review for errors of law by the trial court. The Court of Appeals made no rulings as to when a proxy vote would be cast but noted the provisions in the Board’s amendment providing the proxy votes would have to be delivered no later than five days prior to the meeting.

The contention that the cooperation clause is too vague relating to the seven specific obligations of the parties under the Final Order and Judgment is completely unsupported.

Respectfully submitted this 13th day of December, 2010.

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CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the foregoing *Appellees' Reply to Brief of Appellants* upon opposing counsel in this matter by first class mail, prepaid, addressed as follows:

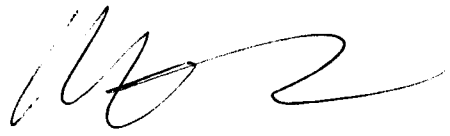
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This 19th day of December, 2010.



W. Pitts Carr

EXHIBIT A

deemed by operation of the Final Order and Judgment to have acknowledged that the foregoing waivers, release and forfeiture of rights are separately bargained for and are material components to the Settlement of which this release is a part.

B. Terms and Conditions of Settlement

1. The Settlement

1.1 Cobb EMC and Cobb Energy will carry out their obligations in accordance with the Amended Letter of Intent dated October 28, 2008, attached as Exhibit A hereto and incorporated herein. The parties acknowledge and agree that in the event the fairness opinion to be issued by the independent financial advisor referenced in the amended Letter of Intent reasonably and objectively fails to show, in the judgment of Plaintiffs, that the proposed transaction set forth in the Amended Letter of Intent is fair, adequate, reasonable and in the best interest of the EMC, this Joint Proposal may be terminated by the Plaintiffs. Plaintiffs will advise Defendants in writing no later than close of business on November 10, 2008 as to whether or not they will support approval of this Joint Proposal at the Fairness Hearing and at all other times. In the event Plaintiffs advise, on November 10, 2008, that they will not support approval of the Joint Proposal, then this Joint Proposal is null and void and of no further effect. Defendants have until November 10, 2008 to withdraw from this Joint Proposal by notice in writing to Plaintiffs' Counsel.

1.2 Pending the Court's ruling at the Fairness Hearing as defined in Section 4.2 below, Cobb Energy's Board of Directors will not approve or pay dividends to Cobb Energy's Class A and Class B preferred shareholders.

1.3 By June 1, 2009, Cobb EMC's Board of Directors will adopt a succession plan for Cobb EMC's CEO and President Dwight T. Brown to assure the orderly transition to a replacement CEO and President.

1.4 Plaintiffs will seek an amendment to the by-laws at the next meeting of Cobb

EMC members, which will be held within sixty days of the date of the approval of the Settlement by the Court. Such amendment will seek to allow members the right to vote for directors by mail-in ballots, subject to the development and implementation of appropriate security measures. Whether or not the amendment is approved by Cobb EMC members, a meeting to elect Cobb EMC directors for 2008 will take place within sixty days after the meeting of the members at which the proposed by-law amendment is considered. The parties will petition the Court at the Fairness Hearing to modify its Order dated August 27, 2008 to allow the election of Cobb EMC directors originally scheduled September 4, 2008 to proceed in accordance with the terms and conditions of this paragraph. If the Order is vacated by the Court, Derivative Defendants will dismiss their appeals of the August 27, 2008 Order.

1.5 Plaintiffs may seek an amendment to the by-laws at the next meeting of the Cobb EMC members referenced in paragraph 1.4 prohibiting the payment of retirement benefits for Cobb EMC directors prospectively; provided, however, that any such amendment, if adopted, shall not affect any lawfully vested rights of current or retired directors.

1.6 Plaintiffs' *Motion to Enforce Lawful Motions Made members at 2008 Cobb EMC Annual Meeting* filed on or about September 12, 2008 will be dismissed with prejudice within five days of the final approval of this Joint Proposal so long as the actions set forth in subparagraphs 1 through 7 below remain in effect. The member motions sought to be enforced therein have been addressed by the Cobb EMC Board of Directors or are addressed by the Settlement. More particularly:

1. The motion to rescind the resolution adopted by the EMC board on August 26, 2008 increasing the fee charged by Cobb Energy to Cobb EMC from 6% to 11% has been addressed by Cobb Energy's restructuring in which it becomes a wholly-owned subsidiary of Cobb EMC pursuant to this Joint Proposal and the attached amended Letter of Intent;

2. The motion to prohibit Cobb EMC officers, directors and others from having ownership interest in, or being employed with, Cobb Energy has largely been addressed by Cobb Energy's restructuring in which it becomes a wholly-owned subsidiary of Cobb EMC pursuant to this Joint Proposal and the attached amended Letter of Intent;
3. The motion made to request the EMC board of directors to reassess the relationship of Cobb Energy so to eliminate any appearance of conflicts of interest has been addressed by Cobb Energy's restructuring in which it becomes a wholly owned subsidiary of Cobb EMC pursuant to this Joint Proposal and the attached amended Letter of Intent;
4. The motion to hold future meeting of the Cobb EMC members on Saturdays has been addressed as Cobb EMC's Board of Directors has adopted a resolution to hold future annual meetings on a Saturday;
5. The motion to have the cost benefit analysis relating to the proposed Washington County, Georgia coal-fired power generation plant made accessible to the public and the Cobb EMC membership has been addressed as Cobb EMC's Board of Directors adopted a resolution requiring this information to be placed on Cobb EMC's website;
6. The motion to have Cobb EMC distribute and separate the financials of Cobb EMC and Gas South LLC in future annual reports has been addressed as Cobb EMC's Board of Directors adopted a resolution requiring this information to be placed on the EMC website; and
7. The motion that Cobb EMC director insurance, fringe benefits and compensation be listed in future annual reports has been addressed as Cobb EMC's Board of Directors adopted a resolution requiring such information to be posted on Cobb EMC's website with a reference in future annual reports that such information can be obtained by accessing Cobb EMC's website.

2. Corporate Governance

The corporate governance policies and provisions adopted by Cobb EMC's Board of Directors on September 4, 2008 and attached hereto as Exhibit B, will be fully implemented as soon as practicable. Cobb EMC shall maintain these corporate governance policies and provisions in effect for no less than five years. However, the provisions of this paragraph 2 shall not prohibit Cobb EMC's Board of Directors from amending such corporate governance policies and procedures to reflect best practices. These corporate governance policies and provisions shall be posted on Cobb EMC website within five (5) days of final approval of the Settlement. Any amendments thereto shall also be posted to Cobb EMC's website within fourteen (14) days

omission of any of the Released Derivative Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Class Derivative Persons may file this Joint Proposal and/or the Judgments in any related litigation as evidence of the Settlement and in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release or any other theory of claim or issue preclusion or similar defense or counterclaim.

9.2 Neither this Joint Proposal nor any of its terms nor provisions, nor the settlement of this Derivative Action shall be construed as a concession or admission by Derivative Plaintiffs that their claims lack merit or that the defenses asserted by the Defendants have merit.

9.3 Neither the Joint Proposal nor any of its terms nor provisions, nor the settlement of this Derivative Action shall be construed as a concession or admission by Derivative Defendants that the Derivative Plaintiffs' claims have merit or that the defenses asserted by the Derivative Defendants' lack merit.

9.4 All of the Exhibits to this Joint Proposal are material and integral parts hereof and are fully incorporated herein by this reference.

9.5 This Joint Proposal and the Exhibits attached hereto constitute the entire agreement among the Settling Parties and may be amended or modified only by a written instrument signed by or on behalf of all of the Settling Parties or their respective successors-in-interest.

9.6 The waiver by one Party of any breach of this Joint Proposal by any other Party shall not be deemed a waiver of any prior or subsequent breach of this Joint Proposal.

9.7 If there is any inconsistency between this Joint Proposal and the Exhibits attached hereto, the terms of the Joint Proposal shall control.

EXHIBIT B

**SUPERIOR COURT OF THE STATE OF GEORGIA
COUNTY OF COBB**

00 JAN 22 PM 4:29
[Signature]
COBB SUPERIOR COURT CLERK

**EDGAR "BO" POUNDS, individually and)
on behalf of the estate of Mary Jean Pounds,)
JOSEPH THOMPSON, FRANKLIN)
SMITH, EAGLE EYE FORENSICS, LLC,)
DIANNE BRACKIN, and WILLIAM)
SHARP, Derivatively On Behalf of COBB)
ELECTRIC MEMBERSHIP)
CORPORATION.)**

Plaintiffs,

vs.

**DWIGHT BROWN, DON BARNETT,)
DAVID MCGINNIS, KAY ANDERSON,)
AL FORTNEY, JR., FRANK BOONE,)
SARAH BROWN, LARRY CHADWICK,)
HENRY BALKCOM III, COBB ENERGY)
MANAGEMENT CORPORATION and)
DOES 1-15, inclusive,)**

Defendants,

-and-

**COBB ELECTRIC MEMBERSHIP)
CORPORATION, a Georgia Corporation,)**

Nominal Defendant.)

Civil Action File No. 07-1-9408-48

SPECIAL MASTER ORDER

Pursuant to Order of the Court dated December 30, 2008, the above-styled case came on for hearing on January 9, 2009 before the Special Master on Plaintiffs' Emergency Motion to Enforce Final Order and Judgment, For Injunction and for Appointment of Special Master dated December 29, 2008. After considering the filings of the parties, hearing argument of counsel and testimony presented, the Special Master hereby finds:

1.

The parties agreed in the Joint Proposal Resolution of Derivative Litigation dated October 30, 2008, which was made part of the Final Order and Judgment, as follows:

“Plaintiffs will seek an amendment to the by-laws at the next meeting of the Cobb EMC members, which will be held within 60 days of the date of the approval of the settlement by the Court. Such amendment will seek to allow members the right to vote for Directors by mail-in ballots, subject to the development and implementation of appropriate security measures.”

Thus, Plaintiffs were to draft the text for such amendment and the Plaintiffs were ordered to develop “appropriate security measures.” Nowhere were the Defendants vested with the authority to do either in Section III B 1.4 of Exhibit A to the Final Order and Judgment. Georgia courts follow the canon of construction *expressio unius est exclusio alterius*, “the express mention of one thing implies the exclusion of another.” Allen v. Wright, 282 Ga. 9 (2007); George L. Smith II Ga. World Cong. Ctr. Auth. v. Soft Comdex, 250 Ga. App. 461 (2001)(“under the maxim ‘expressio unius est exclusio alterius,’ the list of ‘Facilities Licensed’ in the contract is presumed to exclude any facility not specifically listed.”).

2.

Plaintiffs were further ordered to seek an amendment of bylaws for member consideration prohibiting payment of retirement benefits for directors, prospectively. Section III B 1.5 of Exhibit A to the Final Order and Judgment.

3.

Exhibit A hereto, the bylaw amendments prepared by the Plaintiffs on the issues addressed in 1 and 2 above, are hereby approved by the Court and Defendant Cobb EMC is hereby directed and ORDERED to cause only these proposed amendments and cover letter in this form and text to be submitted to the members with the call of the next meeting.

4.

On December 12, 2008, Cobb EMC’s Board of Directors enacted numerous bylaw changes, and did so without any notice to the members until January 1, 2009. The bylaw

changes made include, among others: (i) changes to Article II, Sections 1, 2, 3 and 8 precluding members from transacting, at any member meeting, any business that is not authorized and provided by the Board of Directors in the agenda of the meeting; (ii) changes to Article II, Section 2 increasing the number of directors necessary to call a special meeting; and (iii) the addition of Article II, Section 7a authorizing the Board, in its sole discretion, to provide that members may or may not be represented at member meetings by mail-in proxies rather than by proxies delivered in-person. See, December 12, 2008 bylaw amendments (attached as Ex. B to Pls' Jan. 8, 2009 memo).

5.

Certain of the bylaw amendments made on December 12, 2008 were improper under the Georgia EMC Act, O.C.G.A. §46-3-170 et seq., in particular, O.C.G.A. § 46-3-263(b) that authorizes members to transact "any matter relating to the affairs of the electric membership corporation" at annual meetings. Accordingly, Defendants stipulated that all bylaws made on December 12, 2008 relating to the elimination of new business and the right of the board to solely determine the meeting agenda would be withdrawn. Therefore, it is hereby ORDERED that all amendments to Article II, Sections 1, 2, 3, and 8 relating to the board providing for the business, purpose and agenda for meetings and the elimination of new business are void and revoked so that the bylaws will read as to those issues as they did before the changes on December 12, 2008.

6.

The addition of bylaw Article II, Section 7a was enacted by the Board for the primary purpose of allowing the Board to authorize mail-in proxies on the specific issue of whether to elect directors in the future by mail-in ballot. Thus, this change is directly related to the election

of directors and therefore, the enactment of Section 7a violates O.C.G.A. § 46-3-325 and Article XI of the bylaws which both provide that "The Board of Directors shall not have the power to alter, amend or repeal provisions of these bylaws or adopt new bylaw provisions directly relating to the election of the board of directors." Article II, Section 7a is thus void and mail-in proxies will not be allowed for the issues to be addressed at this special meeting.

7.

The Special Master separately finds that Section III(B)(1.4) and 1.5 of Exhibit A to the Final Order and Judgment directs that the proposed bylaw amendments would be addressed and decided "at the next meeting," rather than ahead of time by mail-in proxies, thus affording members the opportunity to fully discuss, debate, consider and learn of the practical effects of the various proposed changes to the bylaws before voting in-person at the next meeting. Therefore, mail-in proxies will not be allowed for the issues to be addressed at this special meeting.

8.

The Special Master further finds that the enactment of Section 7a was inequitably motivated so as to unfairly tilt the voting process and thus, improper and void.

The Supreme Court of Delaware and the Court of Chancery of Delaware have remained assiduous in carefully reviewing any board actions designed to interfere with or impede the effective exercise of corporate democracy by shareholders, especially in an election of directors...The *Schnell* doctrine, authorizing a court to set aside conduct that is inequitably motivated and that unfairly tilts the electoral playing field, is itself a potent tool of equity.

Portnoy v. Cryo-Cell Intl., Inc., 940 A.2d 43, 61-66 (Del. Ch. 2008).¹ Allowing a vote on the issue before the meeting by mail-in proxies sent by management urging the members to approve

¹ Where Georgia law is sparse or silent on corporate law issues Georgia Courts routinely look to Delaware law. Grace Bros. v. Farley Indus., 264 Ga. 817, 819 (1994); Millsap v. American Family Corp., 208 Ga. App. 230, 234 (1993); Phoenix Airline Services, Inc. v. Metro Airlines, Inc., 260 Ga. 584 (1990).

the changes would allow a one-sided presentation of the issues and preclude members from being able to fully discuss, consider and learn about the complete effects and ramifications of the proposals management urges them to adopt. Cobb EMC directors “are under a fiduciary duty to disclose fully and fairly all material information within the board's control when it seeks shareholder action. That disclosure obligation attaches to proxy statements and any other disclosures in contemplation of stockholder action. An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.” Cryo-Cell Int'l, Inc., 940 A.2d at 75; Zirn v. VLI Corp., 621 A.2d 773, 778 (Del. 1993) (quoting TSC Indus. v. Northway, 426 U.S. 438, 449 (1976)). Therefore, mail-in proxies will not be allowed for the issues to be addressed at this special meeting.

9.

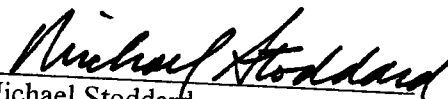
Certain Cobb EMC members have submitted proposed bylaw amendments to Cobb EMC's Secretary for distribution to the membership for consideration and vote at the upcoming meeting. O.C.G.A. § 46-3-325 provides in relevant part, “any bylaw provision adopted by the board of directors may be altered, amended, or repealed, and new provisions adopted by the members.” Article XI of Cobb EMC's bylaws contain this same language and additionally specifies when members may do so: “Any bylaw provision adopted by the board of directors may be altered, amended, or repealed, and new provisions adopted by the members present at a meeting at which a quorum is present, provided notice of such meeting containing a copy of the proposed amendment shall have been given.” Thus, at any meeting, not just annual meetings, members are entitled to take up or repeal bylaw changes made by the board so long as notice is given. The proposed bylaw amendments attached as Exhibit B hereto have been appropriately submitted to Cobb EMC's Secretary in accordance with the bylaws. The Defendants are hereby

ORDERED to send out these proposed bylaw amendments with the call of the next meeting to be held by pursuant to the Final Order and Judgment.

10.

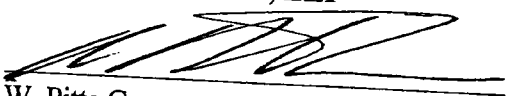
The Special Master retains continuing jurisdiction over the parties, counsel and all matters designated pursuant to the Court's December 30, 2008 Order.

SO ORDERED, this 22nd day of January, 2009


Michael Stoddard
Special Master

Prepared and presented by:

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EXHIBIT C

EXCERPTS

R-571

member. If less than a quorum is present at any meeting, a majority of those present in person, or represented by proxy, may adjourn the meeting from time to time without further notice.

Section 5. Voting. Each member shall be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the members. At all meetings of the members, at which a quorum is present, all questions shall be decided by a vote of a majority of the members voting thereon in person or by proxy, except as otherwise provided by law, the Articles of Incorporation of the Cooperative, or these bylaws. If a husband and wife hold a joint membership, they shall jointly be entitled to one (1) vote and no more, upon each matter submitted to a vote at a meeting of the members.

If a member is absent and his/her spouse is present, he/she may vote in the member's stead. Section 6. Credentials and Election Committee. The Board of Directors shall, at least ten (10) days before any annual meeting of the members, appoint a Credentials and Election Committee composed of members who are not officers or directors of the Cooperative or candidates for such positions nor employees of the Cooperative, which shall be responsible for determining the eligibility of candidates, counting of ballots or votes cast and ruling on the effect of any lot or vote irregularly marked or cast. The Committee shall be comprised of not less than seven (7) nor more than eleven (11) members. In the event a quorum isn't present at the annual meeting, sufficient replacement appointments may be made to assure a quorum.

Section 7.. Proxies. At any meeting of the members of the Cooperative, any member may be represented and vote by a written proxy executed and delivered by an adult member of his or her family residing in his or her home. (By adult is meant a person of 18 years of age or more.)

Section 7a. Proxies at Certain Special Meetings. At any special meeting of the members of the Cooperative at which the election of directors is not on the agenda, the Board of Directors may provide that a member may be represented and may vote by executing a written proxy authorizing the designated Cooperative Proxy Manager to cast his or her vote. A Cooperative Proxy Manager shall be a person or persons employed by an independent firm engaged by the Board of Directors of the Cooperative to administer proxy voting. In order to vote by proxy, a member must sign and date a form appointing the Cooperative Proxy Manager to vote for the member by proxy and designating how the Cooperative Proxy Manager shall cast a vote for or against or to abstain from voting on items on the agenda. The Cooperative Proxy Manager shall receive the proxies until the close of business on the fifth business day prior to the meeting date, and shall count such proxies and present the proxies and the results to the Credentials and Election Committee. A written proxy is only valid for a single meeting. Proxy voting as provided in this Section 7a is not permitted for matters where voting is by mail-in ballot.

Section 8. Order of Business. The order of business at the annual meeting of the members, and so far as possible at all other meetings of the members, shall be essentially as follows:

1. report on the number of members present in person, or represented by proxy, in order to determine the existence of a quorum;

QUESTIONS AND ANSWERS FOR MEMBERS OF RECORD ABOUT THE PROPOSALS

The following questions and answers are for your convenience only. They briefly address some commonly-asked questions about the Proposals. YOU SHOULD STILL CAREFULLY READ THIS PROXY STATEMENT IN ITS ENTIRETY, INCLUDING THE ATTACHED ANNEX.

As used herein, unless the context otherwise requires or provides, the phrases "the Company," "we," "us," and "our" refer to Cobb Electric Membership Corporation, a Georgia not-for-profit Electric Membership Cooperative (the "Company"). Each statement herein regarding the amendments to the Company's bylaws is qualified in its entirety by reference to the affected articles of the Company's bylaws, clean and marked copies of which are attached to this Proxy Statement as Annex A. These proposed Amendments are also posted at the Company's website at www.cobbemc.com. (on which website the Company's bylaws as proposed to be amended are found in their entirety). YOU ARE STRONGLY URGED TO READ THE BYLAWS, AS PROPOSED TO BE AMENDED, CAREFULLY.

WHAT ARE MEMBERS OF RECORD BEING ASKED TO VOTE ON?

Members of the Company are being asked to approve amendments to the Company's bylaws, including (i) amendments that require voting in future contested board member elections solely by mail-in ballot and provide for related changes and additions to member meetings and voting and (ii) an amendment that would place limitations on retirement benefits for new members of the Company's Board of Directors. See "*Proposals 1 and 2 – Approval and Adoption of the Amendments to the Bylaws.*"

WHY IS THE BOARD OF DIRECTORS RECOMMENDING THAT MEMBERS VOTE IN FAVOR OF BOTH PROPOSALS?

Our Board of Directors believes that the amendments to the Company bylaws are advisable and fair and in the best interest of the Company. See also "*Special Factors – Recommendations of the Board of Directors.*"

WHEN AND WHERE IS THE SPECIAL MEETING?

The Special Meeting will be held on Saturday, January 31, 2009 in Ballroom-E of the Cobb Galleria Centre, Two Galleria Parkway, Atlanta, Georgia. Registration and voting shall be between 9:00 a.m. and 11:00 a.m. Eastern Daylight Time, and the Business Meeting will begin at 11:00 a.m. Eastern Daylight Time.

WHO IS ENTITLED TO VOTE?

The record date for the Special Meeting has been set as December 15, 2008. Only members of record as of the close of business on the record date are entitled to notice of, and to vote at, the Special Meeting. Each member so entitled to vote at the Special Meeting is entitled to one vote.

WHAT IS PROPOSAL 1?

Proposal 1 includes amendments to the bylaws that allow voting in future contested board member elections by mail-in ballot and revises certain provisions relating to member meetings and voting, which amendments may be summarized as follows:

- Amendments which provide, in the case of contested director elections (as well other times when deemed appropriate by the Company's Board of Directors), that voting will be conducted only through the use of "mail-in ballots" mailed to members as of the record date set by the Board of Directors. In such cases the Company's Credentials and Election Committee shall designate the manner in which mail-in ballots shall be cast, and timely receipt of mail-in ballots from at least one hundred fifty (150) members (or spouses of members) shall constitute a minimum participation. Contested director elections will be decided by a plurality of the members voting and ties shall be determined by run off special election.

- An amendment specifying that unless a different margin is specified by law or the Company's Articles of Incorporation or Bylaws, matters submitted to a vote shall be determined by majority vote.
- Amendments which provide that the casting of a mail-in ballot by any joint member shall be deemed the vote of the member, and any subsequent ballot received from the same member shall be invalid. Further, if the minimum participation for a matter submitted to a vote by mail-in ballot is not achieved on the date and time prescribed for the receipt of ballots, another vote shall be conducted as soon as reasonably feasible, as determined by the Company's Board of Directors.
- Amendments that specify, among other things, the required information to be set forth in the ballot, the qualifications for, and duties and responsibilities of, the Company's Credentials and Election Committee, and that decisions of the Credentials and Election Committee shall be final and unappealable.
- An amendment permitting voting at meetings of the Company by any member that is a corporation, partnership, association or other legal entity by a duly executed written proxy appointing an officer of the entity to represent, and vote on behalf of, such entity at such meeting.
- Amendments changing the time period within which the Company's Board of Directors must appoint a Nominating Committee, the posting requirements for the list of nominees, and the time period within which members may make other nominations.

WHAT VOTE IS REQUIRED TO APPROVE PROPOSAL 1?

In order for Proposal 1 to be approved, it must be approved by the affirmative vote of members holding a least a majority of the members, voting, in person or by proxy, at the Special Meeting. A minimum of 150 members constitutes a quorum which must be met so that a vote of such members can be taken.

WHAT IS PROPOSAL 2?

Proposal 2 is an amendment to the Company's bylaws that would provide limitations on retirement benefits for new members of the Company's Board of Directors.

WHAT VOTE IS REQUIRED TO APPROVE PROPOSAL 2?

In order for Proposal 2 to be approved, it must be approved by the affirmative vote of a majority of the members, voting in person or by proxy, at the Special Meeting. A minimum of 150 members constitutes a quorum which must be met so that a vote of such members can be taken.

HOW DO MEMBERS VOTE BY PROXY OR REVOKE A PROXY?

Sign and date each proxy form you receive and return it in the prepaid envelope. If you return your signed proxy, but do not indicate your voting preferences, we will vote on your behalf FOR the approval and adoption of Proposal 1 and FOR the approval and adoption of Proposal 2.

Sign your name exactly as it appears on the proxy form. If you are signing in a representative capacity (for example, as an attorney, executor, administrator, guardian, trustee or officer or agent of a company or partnership), indicate your name and your title or capacity.

You have the right to revoke your proxy any time by (i) written revocation or substitute proxy received by the Proxy Agent no later than five (5) days prior to the date of the Special Meeting or (ii) by written revocation or substitute proxy delivered by you to the Proxy Agent at the Special Meeting prior to the taking of the vote. However, you will not revoke your proxy simply by attending the Special Meeting. See "*The Special Meeting -- Voting, Revocation and Solicitation of Proxies.*"

HOW DO MEMBERS VOTE IN PERSON?

If you are a member of record as of the record date for the Special Meeting, you may vote in person at the Special Meeting. HOWEVER, WE ENCOURAGE YOU TO VOTE BY PROXY, EVEN IF YOU PLAN TO ATTEND THE SPECIAL MEETING.

WHAT DOES A MEMBER NEED TO DO NOW?

After you have carefully reviewed this Proxy Statement, including the attached Annex, you should indicate on your proxy form how you want to vote and sign, date and mail it in the enclosed return envelope as soon as possible. This will ensure that your membership interest will be represented at the Special Meeting. If you sign and return your proxy form and do not indicate how you want to vote, your proxy will be voted FOR the approval and adoption of Proposal 1 and FOR the approval and adoption of Proposal 2. Only votes, in person or by proxy, voting at the Special Meeting will be counted toward Proposals 1 and 2.

WHO WILL BE SOLICITING PROXIES AND WHO WILL BEAR THE COST?

The Company will bear the cost of the Special Meeting and the cost of soliciting proxies from members, including the cost of mailing this Proxy Statement and related materials. The Company has retained the services of VR Election Services), a division of Voice Retrieval & Information Services, Inc., acting through its duly authorized employee(s) (the "Proxy Agent,") to solicit proxies on the Company's behalf. In addition to solicitation by mail, the Proxy Agent or the Company, may solicit proxies by telephone or otherwise.

SHOULD I READ THIS ENTIRE PROXY STATEMENT?

YES, YOU SHOULD READ THIS ENTIRE PROXY STATEMENT, INCLUDING THE ATTACHED ANNEX. THE INFORMATION PROVIDED ABOVE IN "QUESTION AND ANSWER" FORMAT IS FOR YOUR CONVENIENCE ONLY, AND IT MERELY SUMMARIZES INFORMATION. FURTHER, EACH STATEMENT IN THIS PROXY STATEMENT REGARDING THE BYLAW AMENDMENTS, IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE AFFECTED ARTICLES OF THE BYLAWS, AS PROPOSED TO BE AMENDED, CLEAN AND MARKED COPIES OF WHICH ARE ATTACHED TO THIS PROXY STATEMENT AS ANNEX A. YOU ARE STRONGLY ENCOURAGED TO READ CAREFULLY THIS ENTIRE PROXY STATEMENT, INCLUDING ANNEX A.

THE SPECIAL MEETING

TIME, PLACE AND DATE

This Proxy Statement is being furnished to members of the Company as part of the solicitation of proxies by our Board of Directors for use at a Special Meeting of Members of the Company to be held on Saturday, January 31, 2009 in Ballroom-E of the Cobb Galleria Centre, Two Galleria Parkway, Atlanta, Georgia and any postponement or adjournment thereof. Registration and voting shall be between 9:00 a.m. and 11:00 a.m. Eastern Daylight Time, and the Business Meeting will begin at 11:00 a.m. Eastern Daylight Time.

RECORD DATE, QUORUM AND REQUIRED VOTE

The record date for the Special Meeting is December 15, 2008. Only members of the Company at the close of business on the record date will be entitled to notice of, and to vote at, the Special Meeting. Each Company Membership Interest entitles the holder thereof to one vote, which may be cast at the Special Meeting either in person or by properly executed proxy.

The presence, in person or by properly executed proxy, of not less than 150 members entitled to vote at the Special Meeting is necessary to constitute a quorum at the Special Meeting. The members as of the record date present in person or by proxy at the Special Meeting will be counted for the purpose of determining whether there is

a quorum for the transaction of business at the Special Meeting, whether or not such members vote at the Special Meeting.

Abstentions and non-votes will not count against the vote on Proposals 1 and 2, as the affirmative vote of a majority of the members voting, in person or by proxy, at the Special Meeting shall be sufficient to approve such Proposals.

VOTING, REVOCATION AND SOLICITATION OF PROXIES

Voting. All members entitled to vote at the Special Meeting and represented by properly executed proxies received at least five (5) days before the date of the Special Meeting, unless properly revoked, will be voted at the Special Meeting in accordance with the instructions indicated on such proxies. (See "The Special Meeting – Voting, Revocation and Solicitation of Proxies.")

The Board of Directors does not know of any matters to be presented at the Special Meeting other than those described in the Notice of Special Meeting of Members. If any other matters are properly presented at the Special Meeting for consideration, including consideration of a motion to adjourn the Special Meeting to another time and/or place, the Proxy Agent generally will vote on such matters in accordance with the recommendations of the Company's Board of Directors.

Revocation. The grant of a proxy on the enclosed proxy form does not preclude you from attending the Special Meeting and voting in person, *provided* that you properly revoke your proxy. If you are a record holder of a Company Membership Interest, you may revoke your proxy by a duly executed written notice of revocation or a substitute proxy bearing a later date than your proxy and received by the Proxy Agent at least five (5) business days prior to the date of the Special Meeting, or by delivering to the Proxy Agent a duly executed written notice of revocation or a substitute proxy before the vote is taken at the Special Meeting.

Attendance at the Special Meeting will not, in and of itself, constitute a revocation of a proxy.

Solicitation. All expenses of our solicitation of proxies for the Special Meeting will be borne by the Company. The Company has engaged the Proxy Agent to assist with the solicitation of proxies and voting at the Special Meeting. In addition to solicitation by use of the mails, proxies from members of record may be solicited by the Proxy Agent, in person or by telephone, telefax or other means of communication.

PROPOSAL 1

AMENDMENTS TO BYLAWS TO REQUIRE VOTING IN CONTESTED BOARD ELECTIONS ONLY BY MAIL-IN BALLOTS AND PROVIDE FOR CHANGES AND ADDITIONS RELATING TO MEMBER MEETINGS AND VOTING

Pursuant to Proposal 1, members will be asked to consider and vote on approval and adoption of amendments to the bylaws that require voting in future contested board member elections solely by mail-in ballot and provide for changes and additions relating to member meetings and voting, which amendments may be summarized as follows:

- Amendments which provide, in the case of contested director elections (as well other times when deemed appropriate by the Company's Board of Directors), that voting will be conducted only through the use of "mail-in ballots" mailed to members as of the record date set by the Board of Directors. In such cases the Company's Credentials and Election Committee shall designate the manner in which mail-in ballots shall be cast, and timely receipt of mail-in ballots from at least one hundred fifty (150) members (or spouses of members) shall constitute a minimum participation. Contested director elections will be decided by a plurality of the members voting and ties shall be determined by run off special election.

EXHIBIT D

development and operation of certain software and related computer equipment. All proceeds from the above sale and/or liquidation of Cobb Energy subsidiaries will be paid to Cobb EMC;

2. Cobb Energy will become a wholly-owned subsidiary of Cobb EMC, which will result in the return of all meters and employees under the corporate umbrella of Cobb EMC;

3. Termination of the remaining approximately thirty-two year term of the Operating Agreement between Cobb Energy and Cobb EMC, which will eliminate all management fees paid by Cobb EMC to Cobb Energy;

4. By June 1, 2009, Cobb EMC's Board of Directors will adopt a succession plan for Cobb EMC's CEO and President Dwight T. Brown to assure the orderly transition to a replacement CEO and President.

5. A proposed amendment to the by-laws will be presented for Cobb EMC member consideration and vote at the next meeting of Cobb EMC members, which will be held within sixty days from the date of the final approval of the Settlement by the Court, to allow members the right to vote for directors by mail-in ballots. Whether or not this by-law amendment is approved by Cobb EMC members, a meeting to elect Cobb EMC directors for 2008 will take place within sixty days after the meeting of the members at which the proposed by-law amendment is considered. An amendment to the by-laws may also be presented at the next meeting of the Cobb EMC members seeking to address the payment of retirement benefits to Cobb EMC directors in the future.

6. The motions made by members at the September 4, 2008 Cobb EMC Annual Meeting have been addressed by the Cobb EMC Board of Directors or are addressed by the Settlement. More particularly:

(i) The motion to rescind the resolution adopted by the Cobb EMC board on August 26, 2008 increasing the fee charged by Cobb Energy to Cobb EMC from 6% to 11% is addressed by Cobb Energy's restructuring in which it becomes a wholly-owned subsidiary of Cobb EMC and such fees will not be charged in the future;

(ii) The motion to prohibit Cobb EMC officers, directors and others from having ownership interest in, or being employed with, Cobb Energy has been addressed by Cobb Energy's restructuring in which it becomes a wholly-owned subsidiary of Cobb EMC;

(iii) The motion made to request the EMC board of directors to reassess the relationship of Cobb Energy so to eliminate any appearance of conflicts of interest has been addressed by Cobb Energy's restructuring in which it becomes a wholly owned subsidiary of Cobb EMC;

(iv) The motion to hold future meetings of the Cobb EMC members on Saturdays has been addressed as Cobb EMC's Board of Directors adopted a resolution to future meetings of members on Saturdays;

(v) The motion to have the cost benefit analysis relating to the proposed Washington County, Georgia coal-fired power generation plant made accessible to the public and the Cobb EMC membership has been addressed as Cobb EMC's Board of Directors adopted a resolution requiring this information to be placed on Cobb EMC's website;

(vi) The motion to have Cobb EMC distribute and separate the financials of Cobb EMC and Gas South LLC in future annual reports has been addressed as Cobb EMC's Board of Directors adopted a resolution requiring this information to be placed on the EMC website; and

(vii) The motion that Cobb EMC director insurance, fringe benefits and compensation be listed in future annual reports has been addressed as Cobb EMC's Board of Directors adopted a resolution requiring such information to be posted on Cobb EMC's website with a reference in future annual reports that such information can be obtained by

