

April 26, 2011

Honorable Kimberly D. Bose
Secretary, Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Re: *Cobb Electric Membership Corp.*, Docket Nos. ER01-1860-000, 001, 002 and 003;
Cooperative Energy Inc., Docket Nos. ER08-371-000, 001 and 002; *W.T. Nelson III*,
Docket No. ID-5727-000

Dear Secretary Bose:

Cobb Customer Requesters (“CCR”) request an investigation with respect to matters associated with the referenced dockets. This request follows up on the meeting on March 16, 2011 between counsel for CCR, and representatives from the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Office of Enforcement, Office of General Counsel and Office of Energy Market Regulation.

1. INTRODUCTION AND SUMMARY

A. Introduction

Pursuant to the Federal Power Act (“FPA”), and Section 1b.8 of the Commission’s “Rules Relating to Investigations”, 18 C.F.R. § 1b.8, CCR request an investigation into the apparently unlawful acts involving the failure to comply with the FPA and the Commission’s regulations of the following: Cobb Electric Membership Corporation (“Cobb EMC”), an electric cooperative in Georgia and a FERC-jurisdictional “public utility”; Cobb Energy Management Corporation (“Cobb Energy”); Cooperative Energy Inc. (“CEI”), also a FERC-jurisdictional “public utility”; Power4Georgians LLC (“P4G”); Mr. Dwight T. Brown and Mr. W.T. Nelson III. Such entities and individuals, when discussed as a group, are referenced as “Cobb Respondents”. CCR are two individual customers of Cobb EMC which receive electric service from Cobb EMC.

CCR request an investigation due to an apparent series of misstatements, omissions and inaccurate filings with the Commission in relation to Cobb EMC’s, and its affiliate, CEI’s, request for and FERC’s authorization of market-based rate authorization, and the request for and FERC’s authorization of the holding of interlocking positions by an official of both Cobb EMC and CEI. Cobb EMC also appears to have violated the Commission’s rules prohibiting affiliate cross-subsidization and other affiliate abuses through its pattern of dealings with Cobb Energy.

The factual basis for this request primarily lies in the FERC filings and the Cobb EMC Annual Reports, which can be found for 2002-2010 at <https://www.cobbemc.com/en/About-Cobb-EMC/Company-Reports.aspx>. Having embraced FERC’s regulatory field as a source of profit, the Cobb Respondents should now be required to answer to this Commission for what appear to be material

misstatements, possible abusive affiliate transactions, and other matters squarely within FERC's jurisdiction.

B. Apparent Violations Subject to Commission Regulation

1. Apparent Violation of Market-Based Rate Reporting Requirements

The Commission should investigate whether Cobb Respondents have imposed upon ratepayers unjust and unreasonable rates, contrary to the requirements of FPA Section 205 (a). Although market-based rates are involved, the Commission's approval of a market-based tariff "cannot be structured to virtually deregulate an industry and remove it from statutorily required oversight," and instead such tariffs must be "coupled with enforceable post-approval reporting that would enable FERC to determine whether the rates were 'just and reasonable' and whether market forces were truly determining the price."¹ Indeed, transaction-specific reporting is required to evaluate the reasonableness of the charges and to provide ongoing monitoring of the marketer's ability to exercise market power.²

Here, an investigation is appropriate to determine whether the Cobb Respondents have complied with the reporting requirements of market-based tariffs.³ CCR have been unable to find reports filed by Cobb EMC relative to market-based sales, despite declarations in its two applications submitted in 2004 and 2008, after the initial 2001 market-based filing, that "Cobb sells power at wholesale to non-members at market-based rates and facilitates wholesale power transactions between unaffiliated buyers and sellers as a marketer", and also "engages in other non-jurisdictional activities to facilitate efficient trade in the bulk power market".⁴

As in *Lockyer*, here there does not appear to have been reporting to FERC of Cobb EMC's market-based tariff sales, despite declarations that such sales are being made under the market-based tariff. *Lockyer* rejected FERC's finding there that "violation of tariff reporting requirements is merely a technical 'compliance' issue", and instead "the reporting requirements were an integral part" so a market-based tariff "could pass legal muster", and therefore "FERC cannot dismiss the requirements as mere punctilio", and instead FERC had the power under Section 205 to provide for retroactive refunds under a market-based tariff.⁵

At a minimum, the Commission should investigate whether Cobb EMC has violated the reporting requirements of its market-based tariff. If no sales were made, then FERC should apply Sections 1c.2 and 35.42 of its regulations, and find that there were material misrepresentations made in its 2004 and 2008 market-based rate applications, which claimed that Cobb EMC engaged in such sales.

¹ *California ex rel Lockyer v. FERC*, 383 F.3d 1006, 1014 (9th Cir. 2004).

² *Id.*

³ See Section IV.A below.

⁴ 2004 Application in Docket No. ER01-1860-001 at 3.

⁵ 383 F.3d at 1015.

2. Apparent Violation of FERC Regulations Respecting Omission of Material Facts and Changes in Status

The Cobb Respondents also appear to have violated FERC's regulations, because of the failure to disclose relevant information to the Commission in Cobb EMC and CEI market-based rate applications and failure to inform the Commission of pertinent material facts that subsequently arose. Specifically, 18 C.F.R. § 1c.2, entitled "Prohibition of Energy Market Manipulation," renders unlawful (1) the use of a scheme or artifice to defraud, (2) the making of untrue statements of material facts or the omission of material facts, and (3) engagement of any act, practice or course of business that operates or would operate as a fraud, or deceit upon any entity.

There also appear to be violations of 18 C.F.R. § 35.41 (b) ("Market behavior rules"), and 18 C.F.R. § 35.42 (a) ("Change in status reporting requirement"), which provide that a market-based rate seller must provide accurate information, and not omit material information in communications with FERC, and that market-based rate authority is conditioned upon the seller timely reporting to FERC any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based authority. The apparent non-disclosure of material facts and omission of material facts here, appear to constitute a violation of these regulations, as well as the market-based rate tariffs of the public utilities, Cobb EMC and CEI.⁶

3. Apparent Violations of FERC Regulations Prohibiting Affiliate Cross-Subsidization

Cobb EMC also appears to have violated 18 C.F.R. § 35.44 (b) (2), which provides that, unless permitted by FERC, "a franchised public utility with captive customers", which fits Cobb EMC precisely, "may not purchase or receive non-power goods and services from ... a non-utility affiliate at a price above market." Cobb Energy was no more than approximately 30% owned by Cobb EMC from 1997 until late 2008, with the rest owned by Mr. Brown and perhaps others.

In this manner, shareholders of the majority interest in Cobb Energy appear to have benefitted from costs thrust upon the utility Cobb EMC and its customers, such as charging the coop mark ups ranging from 2% to 50% above cost for services rendered amounting to millions of dollars per year. The effect of this cross-subsidization has been to divert millions of dollars from Cobb EMC and its members to Cobb Energy and its officers (some of whom drew salaries from both Cobb EMC and Cobb Energy), majority owners and affiliates.

Cobb Energy, when owned only about 30% by Cobb EMC, also appears to have usurped Cobb EMC business opportunities by selling Cobb EMC assets (including its customer lists) to a third party gas marketer, which resulted in Cobb Energy obtaining payments of millions of dollars per year, which properly should have gone to Cobb EMC. Other shareholders of Cobb Energy therefore appear to have benefitted from these transactions.

The pattern of self-dealing suggested above appears to be a continuing concern with likely ongoing adverse consumer rate impacts. Cobb EMC, CEI and P4G plan to construct a new \$2.1 billion 850 MW coal-fired power plant known as Plant Washington that will increase already high electricity

⁶ See Section IV B.2 below.

costs. The same group is considering construction of another 850 MW coal-fired plant known as Plant Ben Hill in Ben Hill County, Georgia. Cobb EMC and other P4G members have already committed more than \$37 million to initial plant development respecting these two projects.

4. Apparent Violation of Bar on Interlocking Positions That Harm the Public Interest

It appears that W.T. Nelson III, the Chief Operating Officer of Cobb EMC, may have violated FPA Section 305(b), and the Commission's filing requirements respecting persons holding interlocking positions. That is, it appears that Mr. Nelson failed to provide information respecting material facts at the time of his filing, and failed to supplement such application to reflect material facts that arose later, contrary to Section 1c.2 and 18 C.F.R. Part 45. The Commission therefore should investigate whether such actions violated the FPA and FERC's regulations. Additionally, the Commission should investigate whether Mr. Brown held interlocking positions with Cobb EMC and CEI without FERC approval, as certain facts suggest.

C. Commission Duty to Act and Recent Cobb EMC Affiliate Abuse Concerns Arising in the Public Record

While one could suggest that all of the failures to inform FERC described above may be of little moment, CCR submit that the sanctity of the Commission's processes and regulations must be preserved. Particularly in this instance, where there is no state overview of rates and practices of Cobb EMC, it is appropriate for the Commission to investigate whether there is a pattern of ignoring its regulatory regime.

The concerns of Cobb Customer Requesters have arisen over the last few years respecting the management of Cobb EMC that have in part become a matter of public record. Several Cobb EMC member/customers in 2007 filed a derivative suit against Cobb EMC and its President and CEO, Dwight T. Brown, as well other directors, which resulted in a court-approved settlement.

Further, a criminal "General Bill of Indictment" of Mr. Brown was rendered by a Grand Jury on January 6, 2011 in the Superior Court of Cobb County, Georgia, after a multi-month investigation. The Grand Jury contended that Mr. Brown, as the President and CEO of Cobb EMC, used the cooperative as a source of significant individual profit and essentially stole monies from the cooperative, through a series of abusive affiliate transactions and other activities. The Indictment was dismissed on March 22, 2011 by a different judge on the sole ground that the courtroom was allegedly not open to the public when the Indictment was read.⁷ The Cobb County District Attorney has publicly stated his intent to appeal.

CCR's request for an investigation should proceed independent of the Georgia criminal investigation. The issues raised here concern matters within FERC's exclusive jurisdiction that cannot be addressed by the criminal investigation. Moreover, the Commission has a clear need to act to assure compliance with its own rules and regulations. While the Indictment does not establish proven fact, it

⁷ See <http://www.ajc.com/news/cobb/cobb-da-said-emc-883622.html>. The Indictment was announced on January 6, 2011, a Thursday, in the new courthouse in Cobb County, though the courthouse was not to officially open until the following Tuesday, January 10. The public could access the new courthouse by a catwalk from the old courthouse, but only with an escort from court or police personnel.

nevertheless supplies good cause for investigating whether the Cobb Respondents have contravened the FPA and FERC regulations.

Cobb Customer Requesters seek such remedies as the Commission believes are appropriate after its investigation. Consideration of relief obviously must take into account that a remedy imposed on Cobb EMC should not be detrimental to the customer/owners of that entity, because they have been harmed, and are not the beneficiaries of the apparent self-dealings. Potential remedies are discussed below.

II. PARTIES

Cobb Customer Requesters are customers of Cobb EMC.

Cobb EMC was initially incorporated in 1938 as the Cobb Rural Electric Membership Corporation under the Georgia Electric Membership Corporation Act, and its name was changed in 1976 to Cobb Electric Membership Corporation (Cobb EMC) to reflect the change to a suburban Atlanta coverage. In 1942, the IRS recognized it as a tax-exempt organization, but it lost its tax-exempt status commencing with the 12-month period ending April 30, 2008.

In 1996, Cobb EMC prepaid approximately \$100 million in loans to the Rural Utilities Service, so is now a public utility under FPA Section 201 (e), and therefore is subject to FERC jurisdiction based on its annual electricity sales.⁸ Georgia does not regulate its rates or services, even with regard to local distribution activities.⁹

Dwight T. Brown was the President and CEO of Cobb EMC from 1993 until he was required by court-approved settlement to resign these positions, effective February 28, 2011. The Board of Directors of Cobb EMC has sought to have a court overrule the terms of that settlement, and permit Mr. Brown again to become President and CEO of Cobb EMC.¹⁰ As of May 2008, Mr. Brown was Secretary/Treasurer and Director of CEI, as well as President and CEO of Cobb EMC.

W.T. Nelson III was the Chief Operating Officer of Cobb EMC in May of 2008, when he filed a petition with FERC to holding interlocking positions of two public utilities. He also was Senior Vice President and an alternate director of CEI, which became a public utility affiliate of Cobb EMC in 2008. As of March 1, 2011, Mr. Nelson became the CEO and President of Cobb EMC.

Cobb Energy was incorporated in 1997, and has since provided services for Cobb EMC, often at a markup above actual cost. Cobb EMC owned about 30% of Cobb Energy from the late 1990's until late 2008, when it became a wholly owned affiliate of Cobb EMC.

CEI was incorporated as a not-for-profit electric membership corporation ("EMC"), owned by Cobb EMC and other Georgia EMC's. CEI provides full requirements energy and capacity to its

⁸ *Cobb Electric Membership Corp.*, Letter Order, Docket No. ER01-1860-000 (June 22, 2001).

⁹ See Cobb EMC Application for Market-Based Rates of April 24, 2001 in Docket No. ER01-1860-000 at 4 ("2001 Application"), and Ga. Code Ann. § 46-3-177.

¹⁰ *Marietta Daily Journal*, March 1, 2011: "[EMC board files to rehire Brown on retirement day](#)" by Brandon Wilson.

members through a combination of scheduling existing contract resources of its members and newly acquired supply sources.

Power4Georgians, an “affiliate” of both Cobb EMC and CEI¹¹ is a consortium of five EMCs in Georgia, including Cobb EMC. It was organized by Dwight Brown on January 15, 2008, and created for the purpose of developing Plant Washington, a proposed 850 MW coal-fired power plant in Washington County, Georgia projected to cost \$2.1 billion, and Plant Ben Hill, also a 850 MW coal-fired plant, proposed to be built in Ben Hill County, Georgia, at an estimated cost of \$2 billion. Cobb EMC has a 42.56 % interest and 40.399% interest in the development phase of Plant Washington and Plant Ben Hill, respectively.¹²

III. STATEMENT OF FACTS

A. Cobb EMC Commission Filings And Resulting Orders

Cobb EMC has a long history of filings requesting authorizations from this Commission. Thus, in 2001, Cobb EMC filed an application with FERC, with Mr. Brown as the in-house contact person as President and CEO, requesting that FERC permit it to sell power in the wholesale markets at market-based rates, so that it could engage in “buying and selling in the wholesale bulk power market and by marketing sales of its own generation.”¹³ The application was granted by unpublished letter order of June 22, 2001 in Docket No. ER01-1860-000 (“2001Application”).

Cobb EMC filed for market-based rates in 2004 in accordance with the FERC’s triennial rate review requirements, with Mr. Brown again as the in-house contact, which filing also included the required affiliate sales language and the Commission’s market-based market behavior rules.¹⁴ Additionally, on December 31, 2008, Cobb EMC submitted another triennial market-power rate analysis and filing to comply with the affiliate regulations of Order No. 697 in Docket No. ER01-1860-003 (“2008 Application”), which was approved by letter order of July 14, 2009.

B. CEI Filings At The Commission

On December 21, 2007, CEI filed a petition with the Commission for authority to sell power at market-based rates in anticipation of CEI becoming a public utility subject to regulation under the volumetric sales threshold, which it surpassed on June 22, 2008.¹⁵ CEI’s application acknowledged that FERC in Order No. 697 “codified affiliate restrictions to be applied on an ongoing basis as a condition

¹¹ The definition of an affiliate under the Federal Power Act is set forth in the Public Utility Holding Company Act of 2005 as “any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.”

¹² Page A-2 of attachment to Appendix A.

¹³ 2001 Application at 3.

¹⁴ July 12, 2004 application in *Cobb Electric Membership Corp.*, Docket No. ER01-1860-001 (“2004 Application”), approved by letter order of June 5, 2005 in Docket Nos. ER01-1860 and 002.

¹⁵ CEI Petition to Sell Power at Market-Based Rates, Docket No. ER08-371-000 (filed Dec. 21, 2007) (“CEI Application”), and letter of July 2, 2008. *See also* 16 U.S.C. 824(f) as to volumetric limitation.

to obtaining and maintaining market-based rate authority.”¹⁶ FERC granted CEI such authority by unpublished letter order in February of 2008 based on the claims in the CEI Application.¹⁷

C. Petition Filed At FERC By Mr. Nelson To Hold Interlocking Positions

On May 27, 2008, Mr. Nelson filed an application pursuant to FPA Section 305(b), requesting Commission authorization to hold interlocking positions as Senior Vice President and alternate director of CEI, and Chief Operating Officer of Cobb EMC. The Commission authorized the interlocking positions on June 12, 2008.¹⁸

D. Allegations Of Civil And Criminal Wrongdoing Related To Dwight Brown, Cobb Energy And Cobb EMC

On October 22, 2007, a group of Cobb EMC member/customers filed suit in state court against Dwight Brown, Cobb Energy, Cobb EMC and members of the Cobb EMC board of directors alleging “breaches of fiduciary duties, abuse of control, gross mismanagement, waste of corporate assets, unjust enrichment...”¹⁹ This suit resulted in an October 30, 2008 “Joint Proposal for Resolution of Derivative Litigation” approved by the Cobb County Superior Court in December 2008.²⁰ Among other matters, the Resolution provided that Cobb EMC would purchase from individuals all shares of Cobb Energy that it did not previously own (approximately 70 percent), at a cost of \$12 million, and therefore become the sole owner of Cobb Energy.

CCR concerns were heightened by the Cobb County District Attorney’s announcement on January 6, 2011 of a 31-count Indictment of Dwight Brown, which opens by stating that “[f]or over a decade”, Mr. Brown “engaged and participated in a pattern of racketeering activity that included, but was not limited to, the theft of millions of dollars from Cobb EMC, the theft of millions of dollars in patronage capital from Cobb EMC’s members ... and false statements to conceal these thefts from Cobb EMC’s members.”²¹

The Indictment concerns January 1, 1997 to October 31, 2009, and claims violations under the “Georgia Racketeer Influenced and Corrupt Organizations Act,” making false statements and writings, and theft of millions of dollars from Cobb EMC. While only Mr. Brown is charged, the Indictment also states that the “pattern of racketeering activity” included Mr. Brown, “together with others known and unknown to the Grand Jury.”²² As noted, the Indictment was dismissed based on the sole ground that it was handed down in a courtroom that allegedly was not open to the public.

¹⁶ 2007 Application at 5.

¹⁷ *Cooperative Energy Inc.*, Docket Nos. ER08-371-000 and 001 (Feb. 26, 2008).

¹⁸ *W.T. Nelson III*, 123 FERC 62,216 (2008).

¹⁹ *Edgar (“Bo”) Pounds, et al., derivatively on behalf of Cobb Electric Membership Corp. v. Dwight Brown [and other members of Board] and Cobb Energy Management Corp.* (filed Oct. 22, 2007).

²⁰ 2010 Annual Report.

²¹ Indictment at 2 (the Indictment is attached as Appendix A).

²² *Id.* at 9.

IV. BASIS FOR COMMISSION INVESTIGATION

A. To Enforce The Market-Based Rate Structure, And Prevent Unjust And Unreasonable Rates And Charges, As Well As Practices And Contracts That Affect Such Rates And Charges

Section 205 of the FPA provides that public utilities such as Cobb EMC and CEI must collect only just and reasonable rates and charges and rules and regulations affecting or pertaining to such rates and charges, and any such rate or charge that is not just and reasonable “is hereby declared to be unlawful.”²³ The Commission’s primary task “is to guard the consumer from exploitation by non-competitive electric power companies” and that “Congress's central concern with exploitation is of course reflected in the statute's emphasis on just and reasonable prices....”²⁴

The Commission has a duty here to enforce its market-based rate structure. As reflected in *Lockyer, supra*, market-based rate authority requires Commission monitoring through its reporting requirements. The Commission should investigate whether reporting duties were met by Cobb EMC and CEI. As *Lockyer* held, reporting is not simply a “compliance technicality” or a “punctilio,” but instead a central requirement of market-based rates.²⁵ Indeed, transaction-specific reporting is required to evaluate the reasonableness of the charges and to provide ongoing monitoring of the marketer’s ability to exercise market power.²⁶

Here, an investigation is appropriate to determine whether Cobb EMC and CEI have complied with the reporting requirements of market-based tariffs. CCR have been unable to find reports filed by Cobb EMC or CEI relative to market-based sales. Nevertheless, in the two applications submitted in 2004 and 2008, after the initial 2001 market-based filing, Cobb EMC declared that “Cobb sells power at wholesale to non-members at market-based rates and facilitates wholesale power transactions between unaffiliated buyers and sellers as a marketer”, and also “engages in other non-jurisdictional activities to facilitate efficient trade in the bulk power market”.²⁷ FERC should investigate whether reports were filed for the sales noted. If market-based rates were not actually made, then FERC should enforce its regulations discussed below, which prohibit such false statements to the Commission.

The matters described herein appear to reflect a clear effort to engage in activities that have resulted in unjust and unreasonable rates, charges, practices and contracts for the consumer/members of Cobb EMC, and consumers under FERC-approved tariffs. The Commission should therefore investigate the rates, charges, contracts and practices of Cobb EMC and CEI, and determine whether their rates are lawful under the FPA.

²³ 16 U.S.C. 824d(a).

²⁴ *NAACP v. FPC*, 520 F.2d 432, 438 (D.C. Cir. 1975), *aff'd*, 425 U.S. 662 (1976).

²⁵ 383 F.3d at 1015.

²⁶ *Id.* at 1014.

²⁷ 2004 Application at 3.

B. To Enforce FERC Regulations And Orders Relating To Cobb EMC and CEI

1. To Remedy Cobb EMC's Apparent Violation Of FERC's Regulations On "Prohibition Of Energy Market Manipulation", "Market Behavior" And Market-Based Rates, As Well As Its Tariff

Cobb EMC appears to have violated Commission regulations addressing "prohibition of energy market manipulation," "market behavior rules," and market-based rate regulations concerning "change in status reporting requirements," as well as its tariff. This arises because of the apparent failure to include material facts in the market-based rate filings in 2001, 2004 and 2008, and failing to inform FERC of material facts which arose after such filings.

First, these actions appear to violate the electric market anti-manipulation regulations in Section 1c.2, which provide:

- (a) It shall be unlawful for any entity, directly or indirectly, in connection with the purchase or sale of electric energy ... subject to the jurisdiction of the Commission,
 - (1) To use or employ any device, scheme, or artifice to defraud,
 - (2) To make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
 - (3) To engage in any act, practice, or course of business that operates as a fraud or deceit upon any entity.

Second, Cobb EMC appears to have violated Section 35.41 (b), which provides that a market-based rate seller "must provide accurate information and not submit false or misleading information, or omit material information, in any communication with the Commission.

Third, Cobb EMC also appears to have violated Section 35.42 (a) of FERC's regulations, which provides that as a "condition of obtaining and retaining market-based rate authority, a Seller must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority."

a. *Cobb EMC's Failure to Disclose its Relationship With its Minority Interest Affiliate and Apparent Affiliate Abuse*

In its 2001 Application, Cobb EMC declared that the filing "raises no concerns with affiliate abuse," and essentially claimed that there can be no abuse because Cobb EMC is a cooperative, and "there are no affiliate abuse concerns raised by market-based rate petitions filed by electric cooperatives."²⁸ Thus, it simply assumed that its "cooperative" status insulated it from affiliate abuse concerns. Cobb EMC also declared in its 2004 Application that there was no danger of affiliate abuse because FERC has held there are not affiliate abuse issues with market-based rates by cooperatives.²⁹ Moreover, in Appendix 1 to the 2004 Application, it committed to comply with the Commission Market Behavior Rules, which, *inter alia*, prohibit "[a]ctions or transactions that are without a legitimate

²⁸ 2001 Application at 7.

²⁹ 2004 Application at 2, 7.

business purpose and that are intended to or foreseeably could manipulate market prices, market conditions or market rules for electric energy.”³⁰

The Commission should investigate the accuracy of these representations. In fact, it appears that Cobb EMC omitted material facts that should have been disclosed so as not to make its declarations misleading and its representations false. For example, Cobb EMC should have disclosed that Cobb Energy had been formed as an affiliate in 1997, but that Cobb EMC owned only a minority interest from no later than April 30, 1999 until late 2008.³¹ Thus, as of April 30, 2005, Cobb EMC owned only 29.43% of Cobb Energy’s stock, and by April 30, 2008, its ownership had increased to 31.25%.³²

Cobb EMC should have disclosed that Cobb EMC and Cobb Energy executed an Operating Agreement that provided for the transfer, as of December 29, 1997, of all Cobb EMC employees to its minority interest affiliate, Cobb Energy, and which obligated Cobb EMC to pay Cobb Energy “a surcharge, called an ‘adder fee’, on the combined weekly salaries and fringe benefits of what are now Cobb Energy’s employees,” and such “adder fee was initially two percent, but later increased to six percent, and ultimately to 11%.”³³ As described in Appendix C, Section 19, these adder fees totaled \$27,506,101 through December 31, 2007.

Cobb EMC should have also disclosed the material fact that in 2000 Cobb Energy established ProCore Solutions, LLC as an affiliated call center, and that Cobb EMC paid ProCore \$1,477,159.45 in 2000, which included a markup of approximately 50% in the hourly pay of ProCore employees.³⁴

Of note in this regard is Appendix C, the affidavit in the civil proceeding of Mr. Middlebrooks, who has more than 26 years of experience auditing EMCs, and has audited or reviewed about 1,300 audits of EMCs and public power districts.³⁵ He notes that the value of Cobb EMC’s investment in Cobb Energy had grown from \$5,031,000 to \$5,097,000 as of April 30, 2007, a paltry return of 0.1% per year, with no dividends paid to Cobb EMC.³⁶ During this same time, however, Cobb Energy preferred stock owners had been paid \$5,130,000.³⁷

Further, Cobb EMC should have disclosed the existence of a multi-million dollar forgiven loan to its President and CEO, Dwight T. Brown. According to the Indictment, Mr. Brown drew “a separate and additional salary from Cobb Energy” at the same time that he was President and CEO of Cobb EMC.³⁸ In addition to these two salaries, Cobb EMC gave Mr. Brown “and his wife \$1,000,000 in the form of a forgiven loan on which the Browns paid no principal and no interest,” and Cobb Energy gave Mr. Brown “and his wife \$2,000,000 in the form of a forgiven loan on which the Browns paid no principal and no interest.”³⁹

³⁰ *Id.* at Appendix 1, Orig. Sheet No. 2.

³¹ See Affidavit of Wayne Middlebrooks in *Pounds, et al v. Brown, et al.*, No. 07-1-9408-48, Cobb County Superior Court.

A redacted version of the affidavit is attached as Appendix C.

³² 2010 Annual Report at 10.

³³ Indictment at Count 1.

³⁴ *Id.* at Count 9.

³⁵ Appendix C at section 3.

³⁶ *Id.* at section 13.

³⁷ *Id.*

³⁸ *Id.* at Count 1.

³⁹ *Id.*

The Indictment further states that Mr. Brown “and his wife used the loan proceeds from Cobb Energy and Cobb EMC to buy \$3,000,000 of preferred stock in Cobb Energy, which paid them \$256,000 in dividends per year.”⁴⁰ The Indictment also notes that, in addition to the \$3,000,000 benefit of the forgiven loan plus interest,⁴¹ the Browns received dividends totaling \$1,836,375 on their shares of Cobb Energy preferred stock from February 1, 2002 through December 31, 2008.⁴²

Additionally, in its 2008 triennial market power rate and compliance filing, Cobb EMC should have disclosed the settlement dated October 30, 2008 of state litigation, which alleged multiple contentions of affiliate abuse by Mr. Brown and Cobb EMC respecting its minority share affiliate Cobb Energy and other matters.⁴³

b. *Cobb EMC’s Failure to Disclose Apparent Natural Gas Market Manipulation and Dealings Benefitting its Minority Owned Affiliate to the Detriment of Cobb EMC*

The 2001, 2004 and 2008 Applications also failed to disclose that Cobb EMC’s transactions with its minority interest affiliate provided Cobb Energy income averaging millions of dollars per year for the period from 1998 through at least 2006 – income to which Cobb EMC was entitled.

The Indictment recounts that on May 29, 1998, a Natural Gas Retail Service agreement was executed by Cobb Energy (signed by Dwight Brown) and SCANA Energy Marketing, but not Cobb EMC.⁴⁴ Under that contract, SCANA paid Cobb Energy millions of dollars “in exchange for the right to market and sell natural gas to customers of Cobb EMC.”⁴⁵ Although it was not a party to the contract, valuable Cobb EMC property, including customer information, was given to SCANA. Cobb EMC “was neither paid for the use of its property and assets nor did it receive any of the revenues from the SCANA contract,” despite the fact that such Cobb EMC property could not be given to Cobb Energy without a two-thirds affirmative vote of Cobb EMC’s members – a vote “which never occurred.”⁴⁶

The Indictment concluded that Cobb Energy thereby usurped the business opportunity of Cobb EMC relative to SCANA. It states that such actions involved theft of approximately \$455,143 for 1998, \$8,332,631 for 1999, \$8,120,692 for 2000, \$9,524,010 for 2001, \$7,526,423 for 2002, \$8,150,851 for 2003, \$9,875,435 for 2004, \$9,511,173 for 2005, and \$4,000,000 for 2006.⁴⁷ Moreover, the Indictment charged Mr. Brown with theft by causing Cobb EMC to pay Cobb Energy \$3,400,000 in connection with the termination of the SCANA contract, and that SCANA made service fee payments to Cobb Energy of \$3,200,000 in 2005, and \$4,000,000 in 2006, which were rightfully the property of Cobb EMC consumer/members.⁴⁸

⁴⁰ *Id.*

⁴¹ *Id.* at Counts 30 and 31.

⁴² *Id.*

⁴³ 2010 Annual Report at 30-31.

⁴⁴ *Id.* at Counts 4, 6, 8, 10, 14, 16, 18, 20 and 22.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at Counts 20 and 22.

Further, the Indictment charged Mr. Brown with making false statements in 2005 and 2006 by covering up in the Cobb EMC 2005 and 2006 Annual Reports “the material fact that Cobb EMC was not a party to the SCANA contract, Cobb EMC did not receive any revenue from the SCANA contract, and Cobb EMC was not paid for ... use of its customer information by Cobb Energy in connection with the SCANA contract.”⁴⁹ The Indictment further states that on October 31, 2006, SCANA paid Cobb Energy a “release and non-competition payment” of \$2,000,000, which monies were in fact the property of Cobb EMC.⁵⁰

These contentions raise issues as to whether FERC’s natural gas market manipulation regulations in Section 1c.1 were violated, which prohibit “any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity” with respect to natural gas transactions. The usurpation by the minority-owned Cobb Energy of millions in revenues from Cobb EMC, paid by SCANA for access to Cobb EMC’s customers, would appear to fit within the prohibitions of Section 1c.1.

c. *Cobb EMC’s Failure to Disclose Other Apparent Affiliate Abuse Relationships Concerning its Minority Interest Affiliate Cobb Energy*

According to the Indictment, Cobb Energy was losing millions of dollars per year, which losses were absorbed by Cobb EMC.⁵¹ Without those losses, the member/consumers of Cobb EMC, and buyers under its market-based tariff, could have seen lower electric rates, or, in the case of its members, an increase in patronage capital.

Indeed, Cobb EMC’s actions may violate Section 1c.2, which prohibits “any entity, directly or indirectly, in connection with the purchase and sale of electric energy”, from making “any untrue statement of a material fact or to omit to state a material fact” so as to make the statement misleading, or to engage in “any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity.” Cobb EMC, in its annual reports and in other statements, declared that the non-profit Cobb EMC would not subsidize the minority share affiliate Cobb Energy, but that is exactly what happened, and that its affiliate would help keep electric rates low, which was not accurate because that affiliate incurred losses every year.⁵²

The relationship between Cobb EMC, Cobb Energy and three Cobb Energy subsidiaries is representative of the losses incurred. Between 2002 and 2007, Cobb Energy appears to have lost more than \$11 million on the operations of three subsidiaries: Allied Utility Network, Allied Energy Services and Cobb Energy Mortgage. All three were under the direction of Dean Alford, a one-time member of the Cobb Energy Board of Directors.

Allied Utility Network: Allied Utility Network (“AUN”) was initially formed by Cobb EMC, Colorado Springs Utilities, Idaho Power and Omaha Public Power District. In 1998, it purchased the

⁴⁹ *Id.* at Counts 21 and 24.

⁵⁰ *Id.* at Count 23.

⁵¹ Indictment at Counts 11,13,15 and 17.

⁵² *Id.* at Counts 1, 7, 9, 11, 13, 15 and 17.

assets of A&C Enercom, Mr. Alford's prior firm.⁵³ As of January 31, 2001, Cobb Energy owned 21.2% of AUN.⁵⁴

By December 1, 2002, however, Cobb Energy owned 93% of AUN. Moreover, according to its 2003 financial statements, Cobb Energy funded "100% of AUN losses, but shares in 93% of its profits."⁵⁵ In January 2003, Cobb Energy provided AUN with \$575,000 in working capital and in the following fiscal year provided approximately \$1.3 million in additional working capital.⁵⁶ As of Cobb EMC's 2010 Annual Report, the Cobb Energy Liquidating Trust continues to own 93% of AUN and funds 100% of losses while sharing in 93 % of income.⁵⁷

Between 2002 and 2007, it appears that Cobb Energy was the primary client of AUN and that the firm actually incurred an operating deficit that had been funded by Cobb Energy and – indirectly – Cobb EMC. As shown on Table 1 of Appendix C, which is based on data from Cobb Energy financial statements, between 2002 and 2007, AUN generated \$20.757 million in revenue – all of it from related parties (e.g. Cobb Energy). During the same period, AUN had operating expenses totaling \$26.527 million – a net loss of \$5.8 million.⁵⁸

Allied Energy Services: In January 2004, Cobb Energy formed Allied Energy Services ("AES") as a wholly owned subsidiary.⁵⁹ According to Cobb Energy financial statements, summarized in Table 2 of Appendix C, between 2004 and 2007 AES had total operating revenue of \$704,000, \$595,000 of which was related party revenue. During the same period, operating expenses totaled \$5.034 million, yielding a loss of \$4.33 million.⁶⁰

Cobb Energy Mortgage Company: In February 2005, Cobb Energy formed a new subsidiary, Cobb Energy Mortgage Company.⁶¹ As set forth in Table 3 of Appendix D, from its formation in February 2005 through 2007, Cobb Energy Mortgage had total operating revenue of \$554,000. Operating expenses totaled \$1.424 million, yielding a loss of \$870,000.

Had Cobb EMC disclosed the financial losses of its affiliate Cobb Energy and sub-affiliates described above, the Commission could have applied the appropriate level of scrutiny and review to Cobb EMC's filings. That is, FERC could have scrutinized whether the apparent siphoning of Cobb EMC assets to money-losing minority-owned affiliates permitted it to find that issuance of market-based rate authority was appropriate. CCR submit that the Commission would not have issued market-based authority if it had known these facts.

⁵³ "Four Utilities, Including Cobb, Form ESCO to Market Services Nationally," *Southeast Power Report*, February 20, 1998.

⁵⁴ Cobb Energy Management Corporation and Subsidiaries, Consolidated Financial Statements as of January 31, 2002 and 2001.

⁵⁵ Cobb Energy Management Corporation and Subsidiaries, Consolidated Financial Statements and Schedules Year Ended January 31, 2003.

⁵⁶ Cobb Energy Management Corporation and Subsidiaries, Consolidated Financial Statements and Schedules, Years Ended January 31, 2004 and 2003.

⁵⁷ Cobb Electric Membership Corporation, 2010 Annual Report at 29.

⁵⁸ *Id.*

⁵⁹ Cobb Energy Management Corporation and Subsidiaries, Consolidated Financial Statements and Schedules, Years Ended January 31, 2005 and 2004 (Restated).

⁶⁰ *Id.*

⁶¹ Cobb Energy Management Corporation and Subsidiaries, Consolidated Financial Statements and Schedules, Years Ended December 31, 2005 and January 31, 2005.

In sum, Cobb EMC in the 2001, 2004 and 2008 Applications repeatedly failed to disclose to the Commission material facts, and failed to supplement its market-based filings when material facts subsequently arose. Such actions appear to have violated Sections 1c.2 and 35.42 of FERC's regulations, the FPA and Cobb EMC's tariff.

2. To Remedy Cobb EMC Violations Of The Commission's Regulations That Protect Against Affiliate Cross-Subsidization

The relationships of Cobb EMC with its minority share affiliates also appear to violate Section 35.44 (b) (2) of FERC's regulations, entitled "Protections against affiliate cross-subsidization." From 1998 until the end of 2008, Cobb EMC contracted with Cobb Energy, of which it owned no more than about 30%, for labor and other services at a significant markup. It is not unusual for a utility to have a wholly owned service company affiliate that provides overhead services. What is unique is that here the utility owned only about 30% of the service company until late 2008. The majority interest owners of the service company, such as Mr. Brown, were apparently able to pay themselves salaries as officers and dividends as shareholders.

Section 35.42 expressly provides that, unless permitted by FERC order, a "franchised public utility that has captive customers," such as Cobb EMC, "may not purchase or receive non-power goods and services from a ... non-utility affiliate at a price above market," and instead "may only purchase or receive non-power goods and services from a centralized service company at cost."⁶² Instead of providing protection against affiliate cross-subsidization, "Cobb EMC was subsidizing Cobb Energy to the tune of millions of dollars per year, a situation that continued for a decade."⁶³ As demonstrated above, Cobb EMC purchased services from Cobb Energy and ProCore at markups above cost ranging from 2 % to 50%. In this regard, Cobb EMC has a franchised service obligation under state law, and it has captive customers.⁶⁴

Remarkably, Cobb EMC touted its relationship with Cobb Energy. Its 2008 Annual Report declares that "[o]ne of the most effective ways we control our in-house costs and expenses is through our unique affiliation with" Cobb Energy, noting further that "[w]e use Cobb Energy and its affiliates as sub-contractors to handle much of our business."⁶⁵ Of course, no admission is made that deals with affiliates such as Cobb Energy including markups above cost for services, nor that Cobb Energy was majority-owned by outside interests until late 2008, nor that Mr. Brown and his wife were given a loan of \$3,000,000, that was then forgiven, nor that Cobb Energy paid dividends to Mr. Brown and his wife amounting to almost \$2 million.

3. To Remedy Cobb EMC's Sales Of Power To Its Affiliate CEI Without Commission Section 205 Authority

In 2008, Cobb EMC entered into an agency agreement with its affiliated public utility, CEI, which provides that Cobb EMC would sell to CEI all capacity and energy rights under its power supply

⁶² 18 C.F.R. §35.44(b).

⁶³ Indictment at Count 1.

⁶⁴ See Article 1, Part 1 of Title 46 of Georgia code ("Allocation of Territorial Rights to Electric Suppliers"). O.C.G.A. §46-3-2, *et. seq.*

⁶⁵ 2005 Annual Report at 2.

contracts, and CEI would sell to Cobb EMC the latter's required power.⁶⁶ As far as CCR can determine, Cobb EMC never filed with the Commission to authorize this arrangement under FPA Section 205.

The Commission should investigate whether Cobb EMC has Section 205 authority to make sales for resale to CEI, another public utility.

C. To Enforce The Bar On Interlocking Positions That Harm The Public Interest, The Commission Should Investigate Whether The Authorization Given To Mr. Nelson Should Be Revoked, And Investigate Whether Mr. Brown Should Have, But Did Not, File For Authorization To Hold Interlocking Positions

CCR submit that the Commission should investigate whether it should revoke Mr. Nelson's authorization to hold interlocking positions in Cobb EMC and CEI or, at a minimum, "require further proof that such interlocking positions will not adversely affect public nor private interests."⁶⁷ Moreover, the Commission should investigate whether Mr. Brown unlawfully held interlocking positions without having obtained FERC authorization.

FPA Section 305(b) provides:

it shall be unlawful for any person to hold the position of officer or director of more than one public utility ... unless the holding of such positions shall have been authorized by order of the Commission, upon due showing ... that neither public nor private interests will be adversely affected thereby.⁶⁸

Congressional intent was clear:

Congress exhibited a relentless interest in, bordering on an obsession with, the evils of concentration of economic power in the hands of a few individuals. It recognized that the conflicts of interest stemming from the presence of the same few persons on boards of companies with intersecting interests generated subtle and difficult-to-prove failures in the arm's length bargaining process.⁶⁹

W. T. Nelson III requested authorization on May 27, 2008 to hold interlocking positions as Chief Operating Officer ("COO") of Cobb EMC, and an officer and alternate director of CEI.⁷⁰ The Commission granted authorization on June 12, 2008, but stated that it "reserves the right to require a further showing that neither public nor private interests will be adversely affected by the continued holding of the interlocking positions."⁷¹

⁶⁶ 2010 Annual Report at 30.

⁶⁷ Order No. 664, *Commission Authorization to Hold Interlocking Positions*, 112 FERC 61,298 at P 38 (2005).

⁶⁸ 16 U.S.C. § 825d (2010).

⁶⁹ *Hatch*, 654 F.2d at 831.

⁷⁰ Application of Mr. W.T. Nelson III for Authority to Hold Interlocking Positions Pursuant to Section 305(b) of the Federal Power Act, May 27, 2008 ("Nelson Application").

⁷¹ *W.T. Nelson, III*, 123 FERC 62,216 (June 12, 2008).

The Commission should investigate whether it should at least require that showing here, and revoke the authorization if Mr. Nelson does not meet his burden of proof of showing that his interlocks do not adversely affect public interests, particularly in view of the apparent affiliate abuses described herein.

Notably, the Nelson Application did not disclose the multiple abuses between Cobb EMC and its affiliates, which appear to be contrary to the “public policy of preventing abuses due to conflicts of interest” reflected in Section 305(b).⁷² It appears that such abuses occurred before, during and after the filing of the Nelson Application, and that, as COO of Cobb EMC, Mr. Nelson should have known of the arrangements with Cobb Energy, such as the usurpation of benefits and transfer of millions of dollars in SCANA payments to Cobb Energy for Cobb EMC assets, to the detriment of Cobb EMC and its member/consumers.

The Nelson Application also appears to be simply wrong in representing (p. 5) that the holding of interlocking positions “does not pose any threat to public or private interests.” Further, because Cobb EMC lost its tax-exempt status for the 12 months ending April 30, 2008, the Nelson Application’s claim that Cobb EMC is a non-profit coop⁷³ was factually incorrect. The Commission may have reached a different conclusion had it known that one of the interlocking companies was a for-profit, and therefore had an incentive to shift costs to the non-profit interlocking company.

Moreover, Mr. Nelson sought a waiver of the requirement that he provide information on his compensation package, alleging such information is unnecessary “since these companies are non-profit, member-owned and member-directed cooperatives.”⁷⁴ He did not disclose, however, that, at the time of his filing, Cobb EMC had only a minority interest in the for-profit Cobb Energy, which billed Cobb EMC millions of dollars per year, to the benefit of Cobb Energy’s majority owners. The order approving his interlock appears to be silent on this request. In any event, the Commission should investigate whether it should now require Mr. Nelson to disclose his current and past compensation arrangements with Cobb EMC and its affiliates.

Mr. Nelson also appears to have failed to comply with the requirements of the Commission’s June 2008 order, that, if any “material and substantial change occurs or has occurred with regard” to his application, Mr. Nelson must “give notice to the Commission of such change.”⁷⁵ Thus, he failed to inform FERC that a civil suit was settled in October of 2008, only months after the Nelson Application was filed and granted, against Mr. Brown, Cobb EMC and others, alleging breach of fiduciary duty, affiliate abuse and other charges. This was clearly a “material and substantial change” that should have been reported to FERC.

Mr. Nelson did disclose that the other members of the CEI Board at the time included Dwight Brown, but never mentioned that a civil suit had been filed against Mr. Brown and Cobb EMC in 2007. He also indicated that Mr. Brown – who was identified as the Secretary/Treasurer and a Director of CEI – was also the President and CEO of Cobb EMC.⁷⁶

⁷² Order No. 664 at P 11.

⁷³ Nelson Application at 5.

⁷⁴ *Id.* at 13.

⁷⁵ 123 FERC at 64,495. FERC’s regulations impose the same requirement. 18 C.F.R. § 45.5 (b).

⁷⁶ *Id.* at 8, 11.

Mr. Brown, however, never requested authorization to hold these interlocking positions with two public utilities. In fact, on July 2, 2008, after CEI had passed the volumetric threshold on June 22, CEI informed FERC that “Dwight Brown has resigned from his positions as Director and Secretary / Treasurer of CEI.”⁷⁷ The Commission should investigate whether there was an overlap of time when Mr. Brown held interlocking positions with both Cobb Energy and CEI. Even if they were held for only a short time (such as between June 22 to July 2, 2008), if he did hold such positions, Mr. Brown should be held responsible for violating the requirements of FPA Section 305 (b) and FERC’s regulations, both of which FERC strictly applies so as to protect the public interest. Indeed, “late-filed applications will be denied.”⁷⁸

Had Mr. Brown sought FERC authorization at the same time that Mr. Nelson had, he would have been required to disclose “[w]hether during the past 5 years the public utility or any affiliate thereof or any security holders of either have commenced any suit against the officers or directors thereof for alleged waste, mismanagement or violation of duty to which suit applicant was a party defendant.”⁷⁹ Mr. Brown would have been required to disclose the details of the civil case filed against him in 2007 by Cobb EMC members and on behalf of Cobb EMC, which members are properly viewed as “security owners” of Cobb EMC within the meaning of 18 C.F.R. § 45.8 (c) (9).

Mr. Brown thus would have had to meet the burden of demonstrating that the holding of interlocking positions would not adversely affect the public interest. The pending civil litigation would have made it difficult for him to sustain that burden and would have subjected his actions to the full scrutiny of Commission Staff.

Moreover, given the ongoing relationship between CEI, Cobb EMC, Cobb Energy and P4G, it begs the question as to what – if any – effect that Mr. Brown’s resignation from the CEI board really has had in his role in CEI. The Commission has noted that among the evils sought to be eliminated by Section 305(b) was “the employment of dummy directors designated solely for the purpose of executing the orders of those in control, and nominal directors who give little time and attention to the affairs of the companies.”⁸⁰ Section 45.3(a) anticipates this situation, as it defines the “holding” of interlocking positions means “acting as, serving as, voting as, or otherwise performing or assuming the duties and responsibilities or officer or director.”⁸¹ In this regard, the Cobb EMC Board of Directors is using Mr. Brown as a consultant and attempting to have him reinstated to the positions of President and CEO.⁸²

V. POSSIBLE REMEDIES

If the Commission finds that the pattern described above involves improper self-dealing, and abuse and violations of FERC’s policies and regulations, strong remedies are appropriate to provide a deterrent to others. If the investigation finds violations of law, the Commission should impose appropriate penalties.⁸³

⁷⁷ *Cooperative Energy Inc.*, Docket Nos. ER08-371-000, ER08-371-002, Notice of Sales in Excess of 4,000,000 Megawatt Hours of Electricity, filed July 2, 2008.

⁷⁸ 18 C.F.R. § 45.3 (b).

⁷⁹ 18 C.F.R. §45.8(c)(9).

⁸⁰ *James S. Pignatelli*, Docket No. ID-3938-001 (June 28, 2005) (citing series of decisions dating to 1940).

⁸¹ 18 C.F.R. § 45.3(a).

⁸² *Marietta Daily Journal*, March 1, 2011: “[EMC board files to rehire Brown on retirement day](#)” by Brandon Wilson.

⁸³ See 16 U.S.C. § 825o and 825o-1.

If there were misstatements of material facts in filings, or failure to supplement such filings to reflect subsequent material facts, FERC should revoke market-based rate and interlocking positions authorization. Additionally, the Commission should use its investigative authority to “follow the money” respecting affiliate markups, and the usurpation of Cobb EMC’s business opportunity respecting SCANA, to determine who has benefitted from these practices, and provide for disgorgement of ill-gotten gains.

Additionally, FERC should investigate the jurisdictional rates of Cobb EMC and CEI, and determine whether they have adequately reported market-based transactions. The Commission should also investigate Plants Washington and Ben Hill, in order to assure that there is no affiliate self-dealing and personal profiting before more dollars are expended relative to these \$2 billion projects.

VI. CONCLUSION

The Commission should investigate whether the web of apparent conflicts of interests described above are precisely the type of concentrations of power for the purpose of exploiting consumers that the Federal Power Act was designed to prevent. The Commission should take such action as it deems appropriate after such investigation.

Respectfully submitted,

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Cobb Customer Requester: *Mark A. Hackett*

Dated this 26th day of April, 2011

LIST OF APPENDICES

Appendix A – Indictment of Dwight Brown

Appendix B - Cobb EMC 2010 Annual Report

Appendix C – Affidavit of Mr. Wayne Middlebrooks (Redacted)

Appendix D - Tables detailing affiliate transactions within Cobb Energy

APPENDIX A

A PDF copy of the **Dwight Brown Indictment** is publicly available at the following locations:

http://www.gaemclitigation.com/documents/01-06-11%20Dwight_Brown_Indictment.pdf

<http://www.cobbemctruth.com/uploads/dwightbrownindictment.pdf>

APPENDIX B

A PDF copy of the **Cobb EMC 2010 Annual Report** is publicly available on the Cobb EMC website:

<https://www.cobbemc.com/~media/2F60CF5B4A8A4ED0A0D8A9A159BEAB71.pdf>

APPENDIX C

A PDF copy of the **Affidavit of Wayne Middlebrooks (Redacted)** is publicly available from the following location:

http://www.cobbemctruth.com/uploads/Aff_Middlebrooks_-_Redacted_8-08.pdf

APPENDIX D

**Table 1
Allied Utility Network**

	2002	2003	2004	2005	2006	2007	TOTAL
Related Party Revenue	\$ 358,000.00	\$ 4,190,000.00	\$ 4,643,000.00	\$ 4,935,000.00	\$ 3,833,000.00	\$ 2,798,000.00	\$ 20,757,000.00
Total Revenue	\$ 358,000.00	\$ 4,190,000.00	\$ 4,643,000.00	\$ 4,935,000.00	\$ 3,833,000.00	\$ 2,798,000.00	\$ 20,757,000.00
Operating Expenses	\$ 961,000.00	\$ 5,365,000.00	\$ 5,797,000.00	\$ 5,130,000.00	\$ 5,891,000.00	\$ 3,383,000.00	\$ 26,527,000.00

**Table 2
Allied Energy Services**

	2004	2005	2006	2007	TOTAL
Related Party Revenue	\$ 14,000.00	-	-	\$ 581,000.00	\$ 595,000.00
Total Revenue	\$ 14,000.00	\$ 70,000.00	\$ 39,000.00	\$ 581,000.00	\$ 704,000.00
Operating Expenses	\$ 1,327,000.00	\$ 1,402,000.00	\$ 567,000.00	\$ 1,738,000.00	\$ 5,034,000.00

**Table 3
Cobb Energy Mortgage**

	2005	2006	2007	TOTAL
Related Party Revenue	\$0	\$0	\$0	\$0
Total Revenue	\$54,000.00	\$279,000	\$221,000	\$554,000
Operating Expenses	\$409,000.00	\$503,000	\$512,000	\$1,424,000