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Board of Directors  
Pedernales Electric Cooperative, Inc.  
P. O. Box 1  
Johnson City, Texas 78636-0001

Dear Directors:

I have been quite unsatisfied with the performance of the Board of Directors and the Management of the Pedernales Electric Cooperative, Inc. (PEC) regarding the implementation of its Open Records Policy. In light of the oft-repeated claim of openness and transparency, it is apparent that the constraints placed on PEC member-owners to access open records do not reach in any meaningful way the definition of openness and transparency. Several years ago, I suggested to former CEO R. B. Sloan that a lot of information should be placed on the PEC website. Some of the information now available appeared to be in response to my suggestion. Rather than continue my failed efforts through complaints to see steps taken in the direction of true openness and transparency, I offer the following suggestions to achieve some true measure of openness and transparency.

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### **Proposal for a True Open Records Policy at the Pedernales Electric Cooperative, Inc.**

**Assurance of Fiduciary Duty** The member-owners of the Pedernales Electric Cooperative, Inc. (PEC) can neither judge nor ensure that the PEC Board of Directors and PEC Management are performing in a fiducially-responsible manner without easy access to the records of the PEC. The PEC Board of Directors and PEC Management can engage in practices with others who seek to hide the nature of their association with the PEC under a veil of secrecy. The PEC Board of Directors and PEC Management can organize the records of the PEC in ways to make it easy or make it difficult for PEC member-owners to gain easy access to those records. Efforts to conceal information lead to the inevitable suspicion that exposure of such information would reveal some form of corruption at a maximum or embarrassment at a minimum. Efforts to make it difficult to obtain information dubiously deemed secret or deemed open records lead to the same conclusions. Only a True Open Records Policy will establish that the PEC Board of Directors is truly interested in openness

and transparency.

**Philosophy** True openness and transparency requires: (1) that both the PEC Board of Directors and PEC Management adopt and embrace, willingly, the belief, philosophy, and policy that the records of the PEC belong to the member-owners of the PEC – not the PEC Board of Directors nor the PEC Management. Conceptually, the presumption should be that all records should be open to PEC member-owners except those records that invade the privacy of employees and those records the release of which would cause real, not speculative, economic harm to PEC member-owners – not the PEC Board of Directors nor the PEC Management. The PEC should never agree to hide information regarding the performance of the PEC from PEC member-owners at the request of others who wish the nature of their association with the PEC to be kept secret; and, (2) that the PEC should maintain proactively on its website routine financial, statistical, and other records in such fashion that PEC member-owners can easily access those records. The requirement to make a written request for an open record should be necessary only in exceptional circumstances.

Without both of these components, there can be no true openness and transparency at the PEC. Merriam-Webster's Collegiate Dictionary, Eleventh Edition defines the adjective "open" as "having no enclosing or confining barrier", and defines the adjective "transparent" as "characterized by visibility or accessibility of information especially concerning business practices". Making information difficult to obtain on the PEC website and requiring written requests for routine information are practices which do not fit the definitions of open or transparent.

**Records Available on the PEC Website** There is a wide variety of easily accessible information on the PEC website from the latest press releases to tariffs. Information about ongoing activities of the PEC Board of Directors and PEC Management is available; however, such information is not easily accessible. For example, to obtain such information on the PEC website one must drill down from the Home Page through: (1) *Your Cooperative*; (2) *Meetings and Voting*; (3) *Notices, Agendas and Supporting Materials*; (4) select a year to *Show Notices, Agendas and Supporting Materials*; and, (5) select a *PEC Board meeting*. These Supporting Materials are attachments to PEC Board of Director agendas at these meetings and are often voluminous and contain, scattered throughout, monthly and annual financial reports, statistical reports and other reports. One must peruse numerous pages of these Supporting Materials to locate these reports; however, some of these reports are maintained elsewhere on the PEC website, such as monthly and annual financial reports, and are easily accessible. Unfortunately, a lot of the information important to PEC

member-owners appears to have been placed on the PEC website under protest or as an afterthought with little regard to its accessibility or usability. Ease of access to meaningful and useful information is a necessary prerequisite to openness and transparency.

**Financial Records** The Pedernales Electric Cooperative, Inc. (PEC) maintains presently a number important financial documents on the PEC website including, Annual Reports, Internal Revenue Service (IRS) Forms 990, and Monthly and Annual Financial Reports. These reports can be found on the PEC website by drilling down from the Home Page through: (a) *Your Cooperative*; (b) *Inside PEC*; (c) *Co-op Docs*; and, (d) *Document Archive*. Ease of access to more meaningful and useful financial records can be improved substantially by adopting the following:

**Recommendations:**

(1) Maintain on the PEC website for minimum of ten (10) years and update on a timely basis a spreadsheet for PEC annual budgets for each fiscal year juxtaposed with actual expenditures and showing amounts and percentages that actual expenditures deviated from budgeted expenditures. Budget adjustments made throughout the year should be shown on this spreadsheet;

(2) Maintain on the PEC website for minimum of ten (10) years and update on a timely basis a spreadsheet for PEC internal financial reports for each fiscal year to include activity for each month in the fiscal year culminating in annual totals. This spreadsheet would provide more meaningful and useful information than the current snapshots of twelve (12) monthly reports and one (1) annual report. Monthly snapshots are not a substitute for an ongoing data series;

(3) Maintain on the PEC website for a minimum of ten (10) years PEC Annual Reports, and IRS Forms 990 for each fiscal year;

(4) Maintain on the PEC website for a minimum of ten (10) years for each fiscal year a searchable file in Portable Document Format (pdf) showing the annual Independent Auditor's Reports prepared by outside Certified Public Accountants along with accompanying Management Letters and PEC responses to such Management Letters;

(5) Maintain on the PEC website for a minimum of ten (10) years and update on a timely basis a spreadsheet for expenditures to the various PEC contractors for each fiscal year to include activity for each month in the fiscal year culminating in annual totals. Provision of the monthly snapshots of this information was inexplicably discontinued a few years ago. Monthly snapshots are not a substitute for an ongoing data series;

(6) Maintain on the PEC website for a minimum of ten (10) years and update on a timely basis a spreadsheet showing for the PEC for each fiscal year the National Rural Utilities Cooperative Finance Corporation (CFC) Key Ratio Trend Analysis (KRTA) for Independent Cooperatives including:

- (a) Ratio 79 – Distribution Operation and Maintenance Expense per Consumer;
- (b) Ratio 81 – Consumer Accounting Expense per Consumer;
- (c) Ratio 83 – Customer Sales and Service Expense per Consumer;
- (d) Ratio 85 – Administrative and General Expense Per Consumer;
- (e) Ratio 87 – Total Controllable Expense per Consumer (Excludes Transmission Operation and Maintenance Expense per Consumer);

A CFC 2014 Key Ratio Trends Analysis is presently on the PEC website found under Performance Reports, but does not include the actual data – only graphs;

(7) Maintain PEC expenditure data at a level of detail sufficient to allow easy access and to address those categories of expenditures shown historically to have been abused as wasteful and excessive. Given the sordid history of the PEC as revealed by the *Worrall lawsuit* and the 2008 Navigant Report, the PEC should recognize the sensitivity of expenditures made that were considered wasteful, excessive and not beneficial to PEC member-owners, particularly those expenditures involving travel, meals, lodging, seminars, and entertainment made on behalf of PEC Directors and Managers. If the PEC is interested in establishing trust as a fiducially-responsible manager of the monies of PEC member-owners, procedures must be implemented to capture information at a level of detail sufficient to address those suspect categories of expenditures. Whether by establishing additional sub-accounts in the PEC's Chart of Accounts or establishing reporting categories within the existing structure, it is imperative that expenditures made on behalf of PEC Directors and Managers be easily accessible by PEC member-owners; and,

(8) Establish an interface on the PEC website to allow PEC member-owners to search the PEC expenditure data base.

**Statistical Records** The PEC has no proactive procedures to maintain various statistical data series on the PEC website. The PEC currently makes available to member-owners on a routine basis some not so easily accessible statistical data in Supporting Materials attached to PEC meeting agendas. Such statistical data includes: (a) a data series showing the number of active accounts; (b) monthly and year-to-date information in a report entitled *Key Indicators and Ratios* which includes various useful statistics, such as members connected, and total and rate class kiloWatt-hour (kWh) usage and revenue; and (c) a report detailing monthly megaWatt (mW) peak system load information. These reports can be scattered about in the Supporting Materials. Ease of access to statistical records can be improved substantially by adopting the following:

**Recommendations:**

(1) Maintain on the PEC website for a minimum of ten (10) years and update on a timely basis a Statistical Report spreadsheet for each fiscal year to include activity for

each month in the fiscal year culminating in annual totals containing, at a minimum, the statistical data shown in the monthly snapshot report entitled *Key Indicators and Ratios*; the data series showing the number of active accounts; revenues, kWhs, and average cost per kWh by rate class; and, mW peak system load information;

(2) Include in PEC Annual Reports for each fiscal year the data accumulated in the Statistical Report; and,

(3) Maintain on the PEC website for a minimum of ten (10) years and update on a timely basis a spreadsheet for each fiscal year showing by rate class PEC average cost per kWh compared with each electric cooperative whose major power supplier is the Lower Colorado River Authority (LCRA) and compared with the averages for all Texas electric cooperatives.

**Corporate Records** The PEC maintains presently a number important easily accessible corporate documents on the PEC website including, the Articles of Incorporation; Bylaws; Business Rules and Tariffs; and, Policies. Records documenting ongoing activities of the PEC Board of Directors are found by drilling down from the Home Page through: (1) *Your Cooperative*; (2) *Meetings and Voting*; (3) *Notices, Agendas and Supporting Materials*; (4) select a year to *Show Notices, Agendas and Supporting Materials*; and, (5) select a *PEC Board meeting*. These Supporting Materials contain the documentation of the actions of the PEC Board of Directors in the form of Resolutions which are scattered throughout these often voluminous Supporting Materials making them not easily accessible. Ease of access to corporate records can be improved substantially by adopting the following:

**Recommendations:**

(1) Maintain on the PEC website in perpetuity and update on a timely basis searchable files in Portable Document Format (pdf) showing for the PEC: (a) the Articles of Incorporation; (b) Bylaws; (c) Business Rules and Tariffs; and, (d) Policies;

(2) Maintain on the PEC website for a minimum of ten (10) years and update on a timely basis for each year a Board of Director Elections searchable file in Portable Document Format (pdf) showing candidates, issues, and the results of each and every such election;

(3) Maintain on the PEC website for a minimum of ten (10) years and update on a timely basis a Meeting Agendas searchable file in Portable Document Format (pdf) showing PEC Board of Director meeting agendas for each type of meeting, as well as the agendas for any and all meetings held by or on behalf of the PEC. The PEC Board should consider renaming its meetings – Regular Meetings should be called Monthly Meetings which establishes that regular actually means monthly. Special Meetings of Committees should be called Monthly Work Sessions which establishes that it is not a special meeting but a regular meeting which is, for all intents and purposes, a work

session;

(4) Maintain on the PEC website for a minimum of ten (10) years and update on a timely basis a Board of Director Resolutions searchable file for each fiscal year in Portable Document Format (pdf) showing for all versions of PEC Board of Director Resolutions, e.g., introduced, amended, substituted, final, etc., with each such resolution to include: (a) the date introduced; (b) the name(s) of the sponsor(s); (c) the Resolution language; (d) the action taken by the PEC Board of Directors, e.g., tabled, amended, substituted, passed, etc.; and, (e) the name(s) of the PEC Director(s) voting "aye" and the name(s) of the PEC Director(s) voting "nay". PEC member-owners desiring background information can search Supporting Materials using information provided in this file. PEC member-owners have a basic right to know what actions are taken by their Board of Directors which are manifested in PEC Board of Director Resolutions. Easy access to those Resolutions on the PEC website would show true openness and transparency, as opposed to the current requirement of PEC member-owners to search through numerous pages of Supporting Materials. Surely the PEC already maintains a listing of PEC Board of Director resolutions; and,

(5) Maintain on the PEC website for a minimum of ten (10) years and update on a timely basis a searchable file in Portable Document Format (pdf) showing a history of PEC Directors and employees required to be included on IRS Forms 990 along with dates of service or employment at the PEC.

**Other Records** The PEC website presently has the 2009 Cost of Service and Rate Design Study, Energy Efficiency and Renewable Energy Member Comments, and on the second page of the Performance Reports category, the Navigant Report 2008. The 2008 Navigant Report should be in its own category or in a Investigative Reports category – not hidden in a Performance Report category. The Other Records category should include other documents that up to now have been concealed from the member-owners of the PEC. Ease of access to these records can be improved substantially by adopting the following:

**Recommendations:**

(1) Maintain on the PEC website for a minimum of ten (10) years and update on a timely basis a Cost of Service and Rate Design Studies category to include periodic occurrences. The Cost of Service Study documents on the website presently should be identified as 2009 documents;

(2) Maintain on the PEC website for an indefinite period the 2008 Navigant Report in an Investigative Report category;

(3) Maintain on the PEC website for a minimum of ten (10) years for each fiscal year and update on a timely basis a searchable file in Portable Document Format (pdf) showing copies of the fully-executed contracts of all contractors providing goods or services to the PEC. PEC member-owners have a right to judge for themselves whether

such contracts are entered into are truly at arms length and whether such contracts serve the economic interests of PEC member-owners in a cost-efficient manner;

(4) Maintain on the PEC website for a minimum of ten (10) years for each fiscal year and update on a timely basis a searchable file in Portable Document Format (pdf) listing all of the lawsuits in which the PEC is a named plaintiff or named defendant with such listing to include: (a) the plaintiff(s); (b) the defendant(s); (c) the cause number; (d) the court; (e) the status of the case – open or closed with date closed; and (f) a synopsis of the resolution of cases closed in the fiscal year. Such lawsuits are public records, and PEC member-owners have a basic right to know the litigation in which the PEC is involved. Information about such lawsuits must be easily accessible to PEC member-owners; and,

(5) Maintain on the PEC website for a minimum of ten (10) years for each fiscal year and update on a timely basis searchable files in Portable Document Format (pdf) showing copies of any and all reports, not listed above, produced for the PEC by contractors and noteworthy reports produced by PEC staff.

**Information Locations on the PEC Website** Open records retention on the PEC website is organized in such a way that fosters neither ease of access nor user friendliness. To locate open records one must figure out on the PEC website “Home Page” that open records are located in (1) *Your Cooperative*; under (2) *Inside PEC* before one can drill down to those locations. Openness and transparency demands ease of access and user friendliness.

**Recommendation:**

(1) Place on the PEC website at the top of the Home Page an Open Records item with a list of categories – Open Records Policy including Competitive Matters List; History of PEC; Service Area Map; Service Area Counties; Press Releases; Financial Records; Statistical Records; Corporate Records; Other Records, etc. A mouse click on one of these categories takes one directly to that particular category;

(2) Place on the PEC website at the top of the Home Page an Open Meetings item with a list of categories – Open Meetings Policy; Notices of Meetings; Meeting Agendas; and, Supporting Materials. A mouse click on one of these categories takes one directly to that particular category; and,

(3) Place on the PEC website at the top of the Home Page a Governance item with a list of categories as follows:

(a) Board of Directors with a list of subcategories – Director Names, Districts, Terms of Office, and e-mail addresses; Director Biographies; Map of seven (7) Districts; Map of each District; and, Election Results for current Directors; and,

(b) Management.

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This is by no means an exhaustive list of recommendations for information to be placed on the PEC website; be easily accessible; and be easily usable to PEC member-owners. However, adoption and implementation of these recommendations would go a long way, in my opinion, to match performance with the rhetoric about openness and transparency at the PEC.

Outside General Counsel Don R. Richards spent a lot of time informing the PEC Board of Directors about the exceptions to mandatory disclosure of information by governmental entities required by the Texas Public Information Act, Chapter 552, Texas Government Code. If the PEC is truly interested in openness and transparency, more attention needs to be paid to this provision of the Texas Public Information Act:

*"Sec. 552.007. VOLUNTARY DISCLOSURE OF CERTAIN INFORMATION WHEN DISCLOSURE NOT REQUIRED.*

*(a) This chapter does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law.*

*(b) Public information made available under Subsection (a) must be made available to any person."*

Thank you for your consideration.

Yours truly,



Mr. Merle L. Moden

c: John D. Hewa, CEO, Pedernales Electric Cooperative, Inc. via e-mail