

May 25, 2018

**VIA E-MAIL AND U.S. MAIL**

Seth G. Heald

Michael F. Murphy

John C. Levasseur

**Re: Rappahannock Electric Cooperative's Response to Letters Dated April 19, 2018 and May 9, 2018**

Dear Messrs. Heald, Murphy, and Levasseur,

I hope this finds you all well. As you may be aware, this firm and the undersigned represent Rappahannock Electric Cooperative ("REC" or "Cooperative"). We are in receipt of the above referenced letters, in which you request certain amendments to REC's Bylaws. REC has asked that I respond to your requests.

REC's Board of Directors ("Board") has carefully reviewed and considered your proposals, both from a legal and corporate governance perspective. The Board appreciates the time and careful thought that went into both of your proposals. I assure you that the Board is committed to furthering the best interests of REC's membership and we respectfully disagree with your assertions that REC's Board is "not fair, democratic and transparent" as you recently stated in an email to REC this past May 21, 2018. The reality is REC is the complete opposite and is one of the most transparent and democratic companies in its industry. In this regard, REC operates as a highly transparent regulated utility. Beyond the Cooperative's independent financial auditors, REC provides numerous ongoing disclosures to the Virginia State Corporation Commission, up to and including full cost of service audits. In addition, as a

voluntary federal borrower, the Cooperative complies with Rural Utilities Service (RUS") standards and provides numerous disclosures and subjects itself to ongoing RUS required audits. As a 501(c)12 organization, the Cooperative provides ongoing filings to the IRS, and lastly, as an electric utility operator, REC provides numerous filings and disclosures to agencies including FEMA, OSHA, DOL, EEOC, DOE, Virginia DEQ, Virginia Department of Taxation and many others.

REC's annual meeting and election processes are clearly representative of the Cooperative's commitment to democratic principles, including without limitation (i) encouraging the participation of all its members in the annual election process through extensive marketing and outreach efforts, (ii) establishing participation incentives like door prizes, (iii) providing larger venues in the heaviest populated areas of REC's territory and (iv) offering members balloting options including participating in person or by proxy voting. In addition, REC annual elections consistently exceed minimum member quorum requirements.

Thus, we strongly disagree with your assertions and believe, in our opinion, they are based on hearsay, misinterpretations, and lack of transparency as to your true underlying agenda and motives versus good faith pursuits of the best interest of the membership.

Please consider the following as the Board's formal response to both of your letters.

#### **I. Response to April 19, 2018 Letter**

In your letter dated, April 19, 2018, you set forth several proposed amendments to REC's Bylaws, each of which touches on the Board's policies and procedures. A summary of these proposed amendments is below:

- Amendment to Article V, Section 5 of the Bylaws to open Board meetings to the Cooperative's members, and requiring publication of advance notice of such meetings.
- Amendment to Article V, Section 6 of the Bylaws to "live stream" video of all Board meetings on the internet, with the exception of executive sessions.
- Amendment to Article V, Section 7 of the Bylaws to require that an audio-video recording of all Board meetings be posted on the Cooperative website within 30 days of any given meeting, and that such recording remain accessible for two (2) years.
- Amendment to Article IV, Section 2 of the Bylaws to impose certain requirements regarding the proxy form used in Board elections.
- Amendment to Article VI, Section 11 of the Bylaws to require notice to the Cooperative's membership regarding Board member compensation.

The foregoing proposed amendments to the Cooperative's Bylaws uniformly touch and concern the Board's policies and procedures. As it stands, the Bylaws vest the Board with sole authority regarding its meetings, elections, and compensation. In this regard, Article IV, Section 1 of the Bylaws clearly states that the Board "shall exercise all of the powers of the Cooperative, except such as are by law, the Articles of Incorporation, or [the] Bylaws conferred upon or reserved to the members." Further, REC's authority derives from and is subject to Title 56, Chapter 9.1 of the Code of Virginia, which governs Utility Consumer Services Cooperatives and Utility Aggregation Cooperatives. In addition, REC must comply with the Virginia Nonstock Corporation Act, Virginia Code § 13.1-801, *et seq.* Among these governing statutes is Virginia Code § 56-231.29, entitled "Powers of board of directors." In important part, this provision states as follows:

*"The board of directors of a cooperative shall have power to do all things necessary or incidental in conducting the business of the cooperative, including, but not limited to the power [t]o make its own rules and regulations as to its procedure."*

See Va. Code § 56.1-231.29(4).

The plain text of this provision is clear that the Board possesses the sole authority to develop and establish its rules and regulations affecting the Board's procedure. Importantly, there is no statute anywhere else in Title 56 or in the Virginia Nonstock Corporation Act that provides otherwise.

In carefully reviewing the proposed Bylaws amendments in your April 19, 2018 letter, the Board has concluded that each of the proposals attempt to usurp the Board's exclusive "procedure" authority, including procedures relating to Board meetings, elections, and compensation. In each case, the Bylaws already vest the Board with the authority to regulate each of these corporate governance duties, and it is not possible to draw any other conclusion given the nature of the proposed amendments. Though Article XII of the Bylaws contemplates the alteration or repeal of the Bylaws by REC's membership, it also states that any such alterations or repeals shall "be in accordance with applicable state code, the Cooperative Articles of Incorporation and [the] Bylaws." See Bylaws Article XII, Section 2(c). Further and as noted above, the applicable state code in this instance is Virginia Code § 56-231.29(4) and clearly no other statute or provision of the Bylaws or Articles of Incorporation supersedes this authority to regulate Board procedure.

In addition to your request being contrary to REC's bylaws and applicable state code, such amendments would have an adverse effect on REC's membership, including without limitation (i) substantially increasing the expense for all Board meetings, (ii) heightening security and public safety concerns, (iii) creating unnecessary exposure to potential legal liability, (iv) leading to the potential loss of highly regarded and professional personnel, and (v) causing inefficient corporate governance, oversight and management practices. Again, REC is a private company, subject to applicable state code, oversight of the State Corporation Commission and more importantly the will of its members. REC should be allowed to operate like any other private company, and the Board should be given every reasonable authority to protect the best interest of its members. Further and as noted above, Board elections are very democratic as every year each member of REC has the right to vote in person or by proxy at the annual meeting or for that matter run for the board of directors. To suggest this is not

transparent or a democratic process is without merit and simply inconsistent with Cooperative priorities and practices.

Thus and as provided above, the Board has concluded that your requests are inconsistent with the Cooperative's Bylaws and applicable state code. Accordingly, the Board respectfully declines to provide a form petition for purposes of facilitating these amendments.

## **II. Response to May 9, 2018 Letter**

In your letter dated May 9, 2018, you set forth a proposed amendment to Article XII, Section 2 of the Bylaws pertaining to the method by which the Cooperative's membership may amend the Bylaws. In particular, your proposed amendment would (1) lower the number of original signatures required to support the written petition for alteration or repeal from 500 to 75; and (2) eliminate the requirement that no more than one-eighth of the minimum of 500 signatories may be from any one board region.

The Board has carefully considered your proposal and has concluded that it is inconsistent with the letter and spirit of the Bylaws, and is ultimately not in the best interest of the Cooperative. Virginia Code § 56-231.29 vests the Board with authority to "do all things necessary or incidental in conducting the business of the cooperative." As you may know, the 500 member signature requirement, as well as the one-eighth (1/8) region cap appears elsewhere in the Bylaws. Specifically, this same requirement applies to a member request to call a special meeting of the Cooperative membership (Article III, Section 2), and the 500 member signature requirement applies to written petitions for removal of Board members (Article III, Section 5). Thus, the requirement regarding membership alterations of the Bylaws was not arbitrarily chosen.

Further, these benchmarks are important because they reflect the significance of Bylaws amendments and the need to have a wider-range of support for such proposals given the Cooperative's approximately 140,000 active members. By lowering the signature requirement from 500 to 75, your proposal would effectively dilute the significance of Bylaws amendments and would disrupt the administration of the Cooperative by forcing the entirety of the membership to consider each and every proposal that only 75 members sponsored. This would drastically increase the number of amendments to be considered, undercut the goal of considering only the most meritorious amendments, and unnecessarily increase costs for our members. We believe requiring only 500 signatures, which represents approximately three-tenths (3/10) of one percent (1%) of the members to execute such a petition, is reasonable, and we believe any further reduction in this number will adversely affect our members and be contrary to a democratic process.

Accordingly, the Board has decided to exercise the discretion given to it under REC Bylaws and Virginia Code § 56-231.29 and respectfully declines to provide a form petition for purposes of facilitating the amendments set forth in your May 9, 2018 letter as doing so would undermine the letter and spirit of the Bylaws and adversely impact the administration of the Cooperative.

We appreciate your time and attention to these responses. I am available to discuss the foregoing with you at your convenience.

Respectfully,

A handwritten signature in blue ink, appearing to read "C. Payne, Jr.", with a stylized flourish at the end.

Charles W. Payne, Jr.

cc: Rappahannock Electric Board of Directors  
Chairman Christopher Shipe  
Secretary Linda Gray  
Kent Farmer, President and CEO