

THE DAILY NEWSPAPER FOR MARBLE FALLS AND THE HIGHLAND LAKES

50¢

The River Cities

DAILY TRIBUNE

FRIDAY, MAY 18, 2007

Suit filed against PEC

BY TOM BOWER
Special to The Daily Tribune

AUSTIN — In a move aimed at opening up the financial ledgers of the nation's largest member-owned electric utility, directors of the Pedernales Electric Co-op are being accused of fiscal mis-

management in a lawsuit filed this week in a Travis County district court.

The action comes five days after Texas Attorney General Greg Abbott turned down a request by co-op members to

See PETITION / Page 3

Petition: PEC board breached 'fiduciary duties'

FROM PAGE 1

investigate the high salaries that Pedernales board members have been awarding themselves in recent years, and to look into the reasons why the PEC is one of the only co-ops in the state that does not award patronage rebates to its members.

"We're not at all upset with the attorney general's decision not to go forward with an investigation," said Austin attorney Jan Soifer, who wrote a letter to the Office of the Attorney General in March seeking the official inquiry on behalf of Lee Beck Lawrence, who is a co-op member.

"We understand that decision is within his (Abbott's) purview to make. That was Plan A. Now, we are going forward with Plan B," Soifer said Thursday, referring to the class-action lawsuit she filed Wednesday in Travis County's 200th District Court.

Lawrence is the lead plaintiff in the lawsuit, but the 40-page legal petition states the lawsuit is being brought as a class action on behalf of all the co-op's members, who number more than 213,000.

Lawrence, who is a mother of two and a long-time co-op member, said she is pursuing the litigation to ensure co-op directors remain accountable and accessible to the membership.

"Since 1938, PEC has brought electricity to the Texas Hill Country. I have great respect for the 830 honest and hard-working PEC employees who work to continue that tradition. But something is seriously wrong at the top of this member-owned cooperative," Lawrence said.

The lawsuit was filed against the Pedernales Electric

PEC UNDER FIRE

The lawsuit against the Pedernales Electric Cooperative is asking for:

- Distribution of the Patronage Capital Fund
- Repayment of funds
- Removal of current board members and election of new board members
- Court costs

Source: court documents

Cooperative Inc., General Manager Bennie Fuelberg, Assistant General Manager Will Dahmann and the co-op's seven voting directors and 10 non-voting advisory directors.

An investigative story in The Sunday Tribune May 13 revealed that PEC board President William Walter "Bud" Burnett earned \$198,693 in total compensation and benefits for 2005, which is the latest official data available from the Internal Revenue Service.

For the same year, the other six directors received compensation and benefits ranging from a low of \$9,268 for Charles F. Winters, who is now deceased and did not serve the entire year, up to a high of \$46,506 that went to E.B. Price of Burnet County.

According to a survey of tax returns filed by other co-ops in Texas and the rest of the nation, Pedernales directors are earning three and four times what their counterparts earn at the nation's largest member-owned electric utilities.

PEC spokesman Bill

Cunningham said Thursday the co-op was informed the lawsuit had been filed, but made no comment.

"We just don't comment on pending litigation," Cunningham said from his office in San Marcos.

"We'll just address this in the courtroom," he added.

In the lawsuit, Soifer pointed out that the co-op was organized in 1938 to bring electric power to 13 Hill Country counties, and today serves an 8,100 square-mile area that is larger than Massachusetts.

The petition states the co-op had \$1 billion in assets in 2006 and, in 2005, paid its directors and advisory directors \$753,358, plus \$164,947 in contributions to employee benefit plans, for a total of \$918,305 in board compensation.

The compensation and benefits paid to board members amounted to approximately \$700 per hour, according to returns filed with the IRS in 2004 and 2005, the lawsuit petition stated.

In addition, the lawsuit states that PEC operates a wholly owned for-profit subsidiary company, known as Envision Utility Software Corp., which lost \$1.3 million in income in 2005 — more than the total value of its assets — and has never produced a profit since PEC acquired full ownership of the subsidiary in 2002.

The legal petition goes on to state that the PEC reported a Patronage Capital Fund of \$164 million in 2005, along with a reserve fund of \$33 million and a contingency fund of \$9 million, and that the patronage fund grew by \$40.6 million between 2003 and 2005.

"The co-op holds \$164 million that, according to the bylaws,

belongs to the members," Soifer said Thursday, suggesting that some of that money should be returned to the members who own the nonprofit co-op.

"We're asking why that amount of money is in the Patronage Capital Fund. The other question is whether we agree with their accounting," Soifer added.

The Patronage Capital Fund is where the co-op puts any excess income it has accrued at the end of its fiscal year, after paying off all of its bills and bond debts. That excess income is sometimes referred to in co-op speak as "margin" or "capital credits."

Most other co-ops have specific policies for what to do with their annual margins. If the margins are below a certain amount, the co-ops use the money to pay off some of their bonded indebtedness. If the margins are above a certain amount, the money is repaid to co-op members in the form of dividends that usually are awarded in December, just prior to the Christmas holidays.

Lawrence said it is time for some answers.

"My grandfather, who served 37 years as a PEC director, would want me to find out what has gone wrong," Lawrence said.

Lawrence and her family reside in Blanco and in Austin. Lawrence's grandfather, Warren Smith, served on the PEC board from 1946 to 1983 and received only reimbursements for expenses related to attending board meetings, she said.

The co-op is scheduled to hold a general membership meeting June 16 in Johnson City.