

SUPERIOR COURT OF THE STATE OF GEORGIA
COUNTY OF COBB

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

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

Plaintiffs,)

vs.)

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

Defendants,)

-and-)

COBB ELECTRIC MEMBERSHIP)
CORPORATION, a Georgia Corporation,)

Nominal Defendant.)

ORDER ON EMERGENCY MOTION TO POSTPONE ANNUAL

MEETING

The above-styled civil action is before this Court for consideration of Plaintiff's Emergency Motion to Postpone Cobb EMC 2008 Annual Meeting, filed July 22, 2008. After a hearing on August 25, 2008, and after consideration of the evidence, the parties' briefs, citations of authority, and the entire record, the Court hereby finds and enters this Order as follows:

Plaintiffs, as shareholders of Cobb EMC, have standing to seek relief in a derivative action on behalf of Cobb EMC. O.C.G.A. §46-3-272 (2007). By statute, the Trial Court has substantial authority to oversee a derivative action against an EMC. O.C.G.A. § 46-3-272(c) (2007).

It is in the best interest of the members to postpone the election of the board of directors 45 to 60 days from the original meeting date of September 4, 2008. If the parties are able to agree upon an appropriate and inclusive voting method, the election may take place sooner. The current board of directors will remain in office until the election has taken place. The Court has received correspondence from Cobb EMC's counsel indicating the audited financial statements for fiscal year ending April 30, 2008 will be publicly available September 8, 2008 rather than this week, as initially announced in open court. The Court notes this is after the originally scheduled September 4, 2008 meeting date.

Corporate governance issues are squarely in the forefront of this litigation. It should not be a burden on Cobb EMC members to participate in elections and voice their opinions on issues concerning their cooperative's governance. While in-person voting may have been a satisfactory practice when Cobb EMC was a much smaller operation, it has become a cumbersome, if not impossible, task. With average attendance at less than one-half of one percent of 190,000+ members, the current in-person system has disenfranchised the EMC membership. Such abysmal levels of voter turnout make the current voting methodology akin to having no annual meeting at all. In postponing the vote on the board of directors at the annual meeting, the Court is exercising its authority under the EMC Code to allow the members a voice. To the extent the voting

methodology contained in Cobb EMC's current by-laws is more restrictive than the provisions in O.C.G.A. 46-3-268, the code section supersedes the by-laws.

The parties will work out a methodology, as allowed by O.C.G.A. §46-3-268, for members to have an option to vote by electronic and/or written proxy, in addition to in person. The Court suggests the proxies to be included with the members' electric bills. To prevent members voting more than once, the parties should consider coding the proxies in a similar manner as the electric bills.

Acting under Section H of this Court's Order Appointing Special Master, filed February 1, 2008, the Court hereby appoints Judge Michael Stoddard as a facilitator to assist the parties in reaching a consensus concerning the registration process, election process and procedures to be followed for the director's vote. If the parties are unable to reach an agreement, Judge Stoddard shall enter a ruling on the election process. Any appeal, to this court, of Judge Stoddard's order shall be done on an expedited basis.

The suggested methodology will give the members access and opportunity to exercise their voting rights, consistent with modern governance rules. Access and opportunity are necessary in any democratic process.

Although the election has been postponed, the social aspects of the annual meeting may proceed as otherwise scheduled.

The Special Litigation Committee found that the adder, the management fee charged by Cobb Energy to Cobb EMC, was not properly increased by the board of directors from 6 to 11 percent. The Court recommended, in open court, the difference in the adder be placed in escrow until there was a vote by the board of directors on the issue.

The Court received notice on August 26, 2008, through counsel for Cobb EMC, David Flint, Esq., that the board by resolution has voted to increase the adder from 6% to 11%, effective July 7, 2008. The board has not only backdated the resolution to July 7, 2008, but also reserved the right to “at a later date, make the 11% increase retroactive to November 18, 2005.”¹ The resolution was passed by the board subsequent to the August 25th hearing. In the interest of corporate transparency, the board is hereby ordered to post on the Cobb EMC website a copy of the resolution, with the individual votes of each board member, within 48 hours of this order.

SO ORDERED, this _____ day of _____, 2008.

Judge J. Stephen Schuster
Superior Court of Cobb County
Cobb Judicial Circuit

¹ Cobb EMC Board Resolution. August 26, 2008.

CERTIFICATE OF SERVICE

I hereby certify that I have this day mailed a copy of the foregoing Order to the following parties:

W. Pitts Carr David M. Cohen Carr & Palmer, LLP 10 North Parkway Square 4200 Northside Parkway Atlanta, Georgia 30327	Hylton B. Dupree Jr. Dupree & Kimbrough, LLP 49 Green Street P.O. Box 525 Marietta, Georgia 30061
David H. Flint Schreeder, Wheeler & Flint, LLP 110 Peachtree Street, Suite 800 Atlanta, Georgia 30309	F. Barry McCabe Sutherland Asbill & Brennan LLP 999 Peachtree Street, NE Atlanta, Georgia 30309-3996
H. Scott Gregory, Jr. Brock, Clay, Calhoun & Rogers, P.C. 49 Atlanta Street Marietta, Georgia 30060	Michael Weinstock, Esq. Richard J. Capriola, Esq. Weinstock & Scavo, P.C. 3405 Piedmont Road, Suite 300 Atlanta, GA 30305
Robert B. Silliman Awtrey & Parker, PC 250 Lawrence Street Marietta, Georgia 30060	

This _____ day of _____ 2008.

Brittany N. Jones
Staff Attorney to Judge J. Stephen Schuster
Superior Court of Cobb County