

# Request for Federal Investigation

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**On April 26, 2011, a group of Cobb EMC customers sent a request to the Federal Energy Regulatory Commission urging an investigation of new evidence of wrongdoing based on violations of the Federal Power Act (FPA).**

- 1. The Federal Energy Regulatory Commission (FERC) – not the Georgia PSC – has regulatory authority over Cobb EMC**
  - Cobb EMC became subject to FERC regulation in 2001 upon filing for market-based rates
  - FERC oversees regulation of the sale and transportation of electricity and natural gas in interstate commerce
  
- 2. In a series of filings with FERC, Cobb EMC apparently failed to make required disclosures in violation of FERC FPA regulations. Cobb EMC:**
  - Never disclosed its relationship and business dealings with Cobb Energy that apparently resulted in millions of dollars in losses to Cobb EMC members
  - Never disclosed the details of its—and Cobb Energy’s—compensation to Dwight Brown
  - Never disclosed the derivative litigation against the EMC and Dwight Brown that might have invited further FERC review
  
- 3. Concerning FERC approval of “interlocking positions” with Cobb EMC and Cooperative Energy Incorporation (CEI), ex-CEO Dwight Brown and current CEO Chip Nelson failed to disclose apparent conflicts of interest that could have potentially resulted in FERC denial**
  - In May 27, 2008, in his filing to obtain FERC approval of serving as both an officer of Cobb EMC and officer and alternate director of CEI, current Cobb EMC CEO Chip Nelson apparently never disclosed the derivative litigation and its settlement
  - Dwight Brown apparently never sought FERC approval of his holding interlocking positions with Cobb EMC and CEI—thereby avoiding disclosure that he was a defendant in the litigation

4. **Cobb EMC apparently violated section 35.44 of FERC regs prohibiting cross-subsidization and purchasing non-utility services at non-market rates**
  - Cobb EMC transferred its assets to Cobb Energy and its money-losing affiliates while Cobb Energy dividends were paid to private preferred shareholders
  - Cobb EMC's contracts for purchase of services from Cobb Energy and its subsidiaries were at significant markups. Cobb Energy apparently capitalized over \$65 million for a one-client use financial and billing software system
  
5. **Concern regarding an expanding sphere of self-dealing & conflict of interest**
  - According to Cobb EMC's 2010 Financial Statements, as of April 30, 2009, Cobb EMC advanced funds totaling \$8,524,264 to CEI in its role as the sole member of Power4Georgians. December 31, 2009, CEI and Power4Georgians were restructured; individual cooperatives became members of Power4Georgians and all debts from CEI were transferred to Power4Georgians.
  - Between 2002 and 2007, Cobb Energy appears to have lost more than \$11 million on the operations of subsidiaries led by one-time Cobb Energy director and Vice President Dean Alford
  - Dean Alford, President & CEO of Allied Energy Services, LLC (subsidiary of Cobb Energy), is the developer of the coal plant proposed by Cobb EMC affiliate Power4Georgians.

## **The Federal Energy Regulatory Commission should:**

- Investigate whether the web of apparent conflicts of interest are precisely the type of concentrations of power used to exploit consumers that the Federal Power Act was designed to prevent.
- Impose appropriate penalties<sup>1</sup> on Cobb EMC
- Revoke market-based rate and interlocking positions authorization if there were misstatements of material facts in filings, or failure to supplement such filings to reflect subsequent material facts
- 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.
- Investigate the jurisdictional rates of Cobb EMC and CEI, and determine whether they have adequately reported market-based transactions.
- Investigate Plants Washington and Ben Hill to assure that there is no affiliate self-dealing and personal profiting before more dollars are expended for an estimated \$4.5 billion development cost.

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<sup>1</sup> See 16 U.S.C. § 825o and 825o-1.