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November 9, 2018

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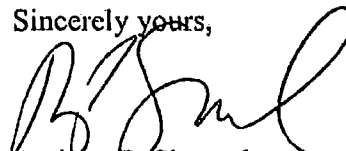
**Re: Case No. CLK-2018-00009
Seth G. Heald, et al. v. Rappahannock Electric Cooperative**

Dear Mr. Peck:

Enclosed for filing on behalf of Rappahannock Electric Cooperative in the above-captioned case are the following: (1) Direct Testimony of Christopher G. Shipe; and (2) Direct Testimony of Kent D. Farmer.

If you have any questions, please do not hesitate to contact me. Thank you for your assistance.

Sincerely yours,



Andrew P. Sherrod

APS/me
Enclosures

cc: Evan D. Johns, Esquire (w/enc.; *via email & U.S. Mail*)
Patricia C. McCullagh, Esquire (w/enc.; *via email & U.S. Mail*)
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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

SETH G. HEALD, et al.,

Petitioners,

v.

RAPPAHANNOCK ELECTRIC COOPERATIVE,

Respondent.

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)
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) Case No. CLK-2018-00009
)
)
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DIRECT TESTIMONY OF CHRISTOPHER G. SHIPE

November 9, 2018

SUMMARY OF DIRECT TESTIMONY

Christopher G. Shipe's testimony provides an overview of the central issues regarding the Petitioners' efforts to amend the Bylaws of Rappahannock Electric Cooperative ("REC" or the "Cooperative"). Mr. Shipe's testimony discusses the nature of Petitioners' challenges to REC's Bylaws and the amendment process. To put their claims in context, Mr. Shipe also addresses REC's relationship with each of the three Petitioners and describes their respective positions and involvement with the Cooperative. Mr. Shipe further testifies about the importance of Board autonomy regarding its own policies and procedures and describes what impact the Petitioners' proposals would have on the Board's ability to function as a governing body. Mr. Shipe also discusses the high standards of transparency maintained by the Cooperative.

**HEALD v. RAPPAHANNOCK ELECTRIC COOPERATIVE
CASE NO. CLK-2018-00009**

DIRECT TESTIMONY OF CHRISTOPHER G. SHIPE

ON BEHALF OF RAPPAHANNOCK ELECTRIC COOPERATIVE

NOVEMBER 9, 2018

1 **Q1. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION.**

2 A1. My name is Christopher G. Shipe, and I reside at 17 Whispering Knolls Lane, Berryville,
3 Virginia. I serve as chairman of Rappahannock Electric Cooperative's ("REC" or the
4 "Cooperative") Board of Directors ("REC Board" or "Board"). I represent Region II of
5 REC's service territory.

6 **Q2. HOW LONG HAVE YOU SERVED AS AN REC BOARD MEMBER?**

7 A2. I was appointed to REC's Board in beginning in November 2010 after the Cooperative
8 acquired a portion of the Alleghany Power service area earlier that year. I served as an
9 appointed director until August 2012, when I was elected to a three-year term by the REC
10 membership at that year's annual meeting. I was re-elected in 2015 and again at the
11 2018 Annual Meeting this past August. I have now served on the Board for eight years,
12 and recently began my second year as Board chair.

13 **Q3. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
14 **PROFESSIONAL EXPERIENCE.**

15 A3. I graduated from Bloomsburg University of Pennsylvania, Bloomsburg, Pennsylvania,
16 with a Bachelor of Science in Business Administration/Management and a minor in
17 Marketing. I have also completed several professional certifications and designations
18 relative to the insurance industry. For most of my professional career I have worked with

1 mutual insurance companies where I have been directly involved in the leadership and
2 governance of cooperatives. For eight years, I served on the Board of NAMICO, a
3 company specializing in directors and officers ("D&O") coverage, so I am very cognizant
4 of liability considerations related to member-owned companies. Career milestones
5 include becoming CEO of Loudoun Mutual Insurance Company and serving in various
6 capacities on insurance cooperative boards and industry committees, including time as
7 chairman of the National Association of Mutual Insurance Companies' Property Casualty
8 Conference. Since joining the REC Board, I have continued my education by completing
9 the course work to obtain the Credentialed Cooperative Director certification.

10 **Q4. DO YOU HAVE ANY COMMUNITY INTEREST OR INVOLVEMENT?**

11 A4. I am an active volunteer with the John H. Enders Fire and Rescue Company in Berryville,
12 Virginia, where I run calls and serve on the board of directors. I am also a lay servant
13 and Chairman of the Administrative Council of the Duncan Memorial United Methodist
14 Church.

15 **Q5. PLEASE DESCRIBE YOUR RESPONSIBILITIES AS AN REC BOARD**
16 **MEMBER.**

17 A5. As a member of the REC Board, I and my fellow board members have a fiduciary
18 responsibility to ensure the Cooperative operates according to applicable laws, rules, and
19 covenants. Beyond that critical responsibility, the Board sets the Cooperative's strategic
20 direction, adopts policies and procedures, and provides guidance to the Cooperative's
21 senior management team, with direct oversight of the President and Chief Executive
22 Officer. Personally, I view my most important responsibility as an REC director to be
23 representing the individual members of the Cooperative while striking a balance between

1 the needs and interest of the individuals and the needs and interest of the Cooperative
2 membership as a whole.

3 I. NATURE OF THE PETITION

4 **Q6. WHAT DO YOU UNDERSTAND TO BE THE CENTRAL ISSUE PETITIONERS**
5 **ARE SEEKING TO ADDRESS IN THIS PROCEEDING?**

6 A6. Their focus appears to be on changing processes or procedures that do not produce the
7 results they desire. Specifically, in response to their failed efforts to amend the
8 Cooperative's Bylaws, they now challenge the amendment process. Also, presumably in
9 response to failed attempts by two of the Petitioners to be elected to the Board, they seek
10 to change the way member-delegated proxy authority is exercised. While I am not
11 certain it is specifically stated in their pleading, there appears to be an underlying distrust
12 of the REC Board and senior management, as well as a misguided belief that senior
13 management manipulates the Board.

14 **Q7. DO YOU SHARE PETITIONERS' CONCERNS IN THIS REGARD?**

15 A7. While each is entitled to their own opinion, I can say from direct personal experience that
16 REC's Board operates independently of, and with full and complete authority over,
17 REC's senior management. That authority, granted by the members to the elected Board,
18 is exercised with great care.

19 **Q8. WITHOUT PROVIDING A LEGAL OPINION, DO YOU BELIEVE THAT**
20 **POLICIES, ACTIONS, AND ELECTIONS OF A COOPERATIVE MUST BE**
21 **UNANIMOUSLY ACCEPTABLE TO ALL OF ITS MEMBER OWNERS IN**
22 **ORDER TO BE VALID?**

1 A8. Absolutely not. In nearly all matters, there are multiple potential outcomes, and with an
2 election, only one candidate can be successful. Whether it be a national, state, local, or
3 even a cooperative board election, or a legislative, administrative, or judicial proceeding,
4 the fact that someone's preferred candidate is not elected or that the results of a
5 proceeding do not satisfy an individual or group does not negate the legitimacy of the
6 election or the process.

7 II. REC'S RELATIONSHIP WITH PETITIONERS

8 Q9. AS A MEMBER OF REC'S BOARD, DO YOU HAVE PRIOR EXPERIENCE
9 WITH THE PETITIONERS AND AN UNDERSTANDING OF THE NATURE OF
10 THEIR CONCERNS DESCRIBED IN THE PETITION?

11 A9. Yes, I do.

12 Q10. PLEASE DESCRIBE MR. HEALD'S RELATIONSHIP WITH THE
13 COOPERATIVE AND THE BOARD.

14 A10. My direct interaction with Mr. Heald has been relatively limited, but I am familiar with
15 him. Mr. Heald has been a frequent and vocal critic of the Cooperative. He has written
16 several opinion pieces regarding power supply, energy efficiency, democracy, and
17 governance, some of which predate my time on the REC Board. In 2012, Mr. Heald
18 began requesting things such as "open" Board meetings, disclosure of Board
19 compensation, changes to the proxy voting process, and amendments to the Bylaws. He
20 wrote numerous letters and submitted multiple data requests to REC regarding these
21 issues. Recently, in my role as Chairman of the REC Board, I have been in meetings
22 with Mr. Heald regarding these issues. I have also made a special effort to meet with the
23 group he has established to support his efforts.

1 **Q11. HAS MR. HEALD SOUGHT APPOINTMENT TO THE REC BOARD OR BEEN**
2 **A CANDIDATE FOR ELECTION TO THE BOARD OF DIRECTORS?**

3 A11. Not to my knowledge.

4 **Q12. PLEASE DESCRIBE DR. MURPHY'S RELATIONSHIP WITH THE**
5 **COOPERATIVE AND THE BOARD.**

6 A12. I have known Dr. Murphy since his time as Superintendent of Schools in Clarke County,
7 Virginia, the locality in which I reside. As an REC Board member, in 2014, I
8 recommended Dr. Murphy for appointment to the board of directors of the Cooperative's
9 affiliate, C.A.R.E. Charities, Inc., and I interacted with Dr. Murphy during his service on
10 that board. The C.A.R.E. board twice elected him chair of that board, and he served as
11 chair until his resignation from that board in August 2017. Dr. Murphy also twice served
12 on the Tellers Committee that oversees the election of candidates to the REC Board of
13 Directors, in 2015 and 2016. In 2017, Dr. Murphy was one of several candidates seeking
14 to fill a vacant seat on the REC Board.

15 **Q13. WHEN DR. MURPHY SERVED ON THE C.A.R.E. CHARITIES, INC. BOARD,**
16 **DID HE EXPRESS ANY CONCERNS TO YOU OR THE BOARD ABOUT REC**
17 **GOVERNANCE?**

18 A13. No.

19 **Q14. WHEN DR. MURPHY SERVED ON THE TELLERS COMMITTEE, DID HE**
20 **EXPRESS ANY CONCERNS TO YOU OR THE BOARD ABOUT THE**
21 **ELECTION PROCEDURE OR OUTCOME?**

22 A14. No. In fact, quite the opposite; he signed forms certifying the results of the 2015 and
23 2016 Board elections.

1 Q15. DO YOU RECALL HOW MANY CANDIDATES WERE SEEKING THE
2 POSITION FOR WHICH DR. MURPHY RAN IN 2017?

3 A15. I believe there were four.

4 Q16. PLEASE DESCRIBE GENERAL LEVASSEUR'S RELATIONSHIP WITH THE
5 COOPERATIVE AND THE BOARD.

6 A16. I first met General Levasseur in 2013 when he was one of several applicants seeking to
7 fill a vacancy on the REC Board. After evaluation of the applications and interviews
8 with the applicants, the Board appointed him to serve as the director from the region
9 consisting of Spotsylvania County beginning in January 2014 through August 2014, the
10 remainder of the term of that vacant director position. He was elected to the Board by the
11 REC membership for a full three-year term at the 2014 annual meeting. He
12 unsuccessfully sought re-election in 2017.

13 Q17. DURING HIS TIME ON THE REC BOARD, DID GENERAL LEVASSEUR
14 EXPRESS ANY CONCERNS TO YOU OR THE BOARD ABOUT THE BOARD'S
15 TRANSPARENCY, MANAGEMENT'S INFLUENCE ON THE BOARD'S
16 DECISIONS, EFFECTIVENESS OF MANAGEMENT, THE LEGALITY OF
17 THE COOPERATIVE'S BYLAWS, OR THE MANNER IN WHICH ELECTIONS
18 WERE CONDUCTED, INCLUDING THE USE OF PROXIES?

19 A17. While General Levasseur raised certain concerns regarding management effectiveness
20 during his tenure, particularly in regard to strategic planning, he never expressed any
21 concerns pertaining to Board transparency, management influence over Board decisions,
22 the legality of the Cooperative's Bylaws, or the manner in which elections were
23 conducted. In fact, during his tenure on the Board, General Levasseur served on the

1 Bylaw Committee and on the Annual Meeting Committee. On several occasions, he
2 voted affirmatively on bylaw amendments brought before the Board.

3 **Q18. DURING HIS TIME ON THE REC BOARD, DID GENERAL LEVASSEUR**
4 **PARTICIPATE IN ANY OF THE PROCESSES CHALLENGED BY THE**
5 **PETITIONERS?**

6 A18. Yes. As a director, General Levasseur took part in exercising the authority assigned to
7 the Board by Cooperative members who took the time to return unassigned, completed
8 proxy cards. He participated in that process beginning in 2014 through 2017.

9 **Q19. DID GENERAL LEVASSEUR EXPRESS ANY RESERVATIONS OR**
10 **CONCERNS TO YOU OR THE BOARD ABOUT HOW THE BOARD CASTS**
11 **PROXY VOTES ASSIGNED TO THE BOARD AS A WHOLE?**

12 A19. No. In fact, the Board annually takes action to affirm the vote for candidates as
13 designated by members, and, for all proxies assigned to the Board that are undesignated,
14 the Board will vote by majority for one candidate in each election. General Levasseur
15 participated in the process during his service on the Board.

16 III. REC'S PROCESS AND DUE DILIGENCE IN REVIEWING BYLAW

17 AMENDMENT REQUESTS

18 **Q20. MR. HEALD AND HIS CO-PETITIONERS HAVE PETITIONED THE STATE**
19 **CORPORATION COMMISSION ("COMMISSION") TO ENJOIN REC FROM**
20 **WITHHOLDING THE FORM PETITION. WHY HAS REC'S BOARD NOT**
21 **PROVIDED PETITIONERS THE FORM PETITION REQUIRED FOR BYLAW**
22 **PROPOSALS?**

1 A20. After being advised by the Cooperative's General Counsel that the proposed bylaw
2 changes are contrary to law, the Board believed it would be in the best interest of the
3 membership not to provide a form petition for bylaw amendments that, if adopted, could
4 result in the Cooperative operating in a manner inconsistent with law.

5 **Q21. WHY NOT JUST GIVE PETITIONRS THE PETITION FORM AND SEE WHAT**
6 **COMES OF IT AND IF THEY CAN GET THE REQUIRED SIGNATURES?**

7 A21. It would be inappropriate to put a set of invalid bylaws to a vote, and it would result in an
8 inefficient use of staff time and Cooperative resources to allow the form petition to be
9 circulated. Doing so would certainly be adverse to the Cooperative's best interests.

10 IV. IMPORTANCE OF BOARD AUTONOMY REGARDING ITS OWN POLICIES
11 AND PROCEDURES

12 **Q22. WHAT IMPACT WOULD PETITIONERS' PROPOSAL REGARDING PROXIES**
13 **HAVE ON THE BOARD'S ABILITY TO FUNCTION AS REC'S GOVERNING**
14 **BODY?**

15 A22. Petitioners' proposal regarding Board proxies interferes with matters of internal Board
16 procedure contrary to long-term Board practice, and would make REC's Board more
17 entrenched and insular and less democratic, contrary to Petitioners' claims. REC's proxy
18 process is clear, not difficult, and is no different than the process for virtually any other
19 company or other organization that requires annual membership or stockholder meetings
20 to elect directors.

21 The Board encourages member participation in the election process. In addition
22 to the invitation to attend the annual meeting of the membership, each member is mailed
23 a proxy providing them an opportunity to participate in the cooperative democracy. With

1 the proxy form, each member has four clear options to participate since all members are
2 able to vote for all candidates irrespective of their regional location: (1) the member may
3 select any specific candidate they wish to vote for or vote for all of the candidates up for
4 election; (2) the member may abstain from casting a vote for any or all of the candidates
5 up for election; (3) the member may designate their proxy to any other person to vote on
6 their behalf at the annual meeting; or (4) the member may return the proxy with the
7 casting of the vote delegated to the Board of Directors. This last option is not a “default”
8 designation—the proxy form is clear that if a member properly executes and dates the
9 proxy form but does not assign the proxy to any individual, then the member has
10 designated the Board to act on his or her behalf. This is an extremely democratic process
11 providing participating members with a full range of options.

12 **Q23. WHAT WOULD BE THE EFFECT ON THE BOARD’S ABILITY TO GOVERN**
13 **REC IF IT ADOPTED PETITIONERS’ PROPOSAL REQUIRING THE BOARD**
14 **TO VOTE THE PROXIES IN PUBLIC AND ON THE RECORD?**

15 **A23.** It would usurp the Board’s ability to govern REC. Petitioners propose that the Board cast
16 the proxy votes assigned to the Board in public and on the record. Whether to require
17 each Board member’s vote to be recorded and announced to membership is a matter of
18 internal Board procedure, and submitting to Petitioners’ proposal would interfere with
19 that procedure, again contrary our understanding of Virginia law and the best interests of
20 the Cooperative. Adopting such a rule would likely diminish independent thinking and
21 also confer a considerable advantage to incumbent directors seeking re-election and make
22 it harder for challengers to unseat a Board member because it would put undue pressure
23 on Board members to re-elect the incumbent. Mr. Heald talks about evaluating

1 individual Board members, but the Board functions as a body, not individually. The
2 Board's majority opinion determines how all of the proxy votes assigned to the Board are
3 cast.

4 **Q24. WHAT IMPACT WOULD PETITIONERS' PROPOSAL REGARDING OPEN**
5 **BOARD MEETINGS HAVE ON THE BOARD'S ABILITY TO FUNCTION AS**
6 **REC'S GOVERNING BODY?**

7 A24. The Board's transparency, communication with, and dissemination of information to its
8 members is already positive and extensive, including the ability to present to the Board
9 upon request. In fact, both Mr. Heald and Mr. Murphy have enjoyed this privilege on
10 various occasions. Petitioners' proposals for "open" board meetings not only contravenes
11 our understanding of Virginia law, but would also hamper the Board's ability to
12 adequately govern REC. Further, REC's practice of holding private board meetings is
13 common among many or most Virginia corporations.

14 Although REC is a public service corporation subject to the Commission's
15 regulation, it is not a public body subject to the open meeting requirements of the
16 Freedom of Information Act. Importantly, unlike public bodies which have the benefit of
17 sovereign immunity, as a private business entity REC does not have the benefit of
18 sovereign immunity. Thus, in addition to other considerations, conducting "open" Board
19 meetings would expose REC as well as its directors and officers to potential unnecessary
20 liability, all at the expense of our members.

21 Further, forcing the Board to conduct meetings in an open environment – whether
22 it be physically open or open to the world via live-streamed video – would profoundly
23 interfere with its ability to fulfill its statutory mission of being REC's governing body.

1 Open meetings could have a chilling effect on the open and frank discussion necessary to
2 the Board's fiduciary duty in operating REC—which is especially important given REC's
3 status as one of the largest electric utility cooperatives in Virginia. REC's Board
4 members have a good dynamic of trust, which empowers them to share their unvarnished
5 perspectives with each other. Based on this trust, Board members frequently take
6 difficult positions during discussions, often assuming contrary viewpoints for the purpose
7 of ensuring that staff and fellow Board members have done their due diligence. A
8 director's willingness to ask such challenging questions, and the openness of other
9 directors or staff in responding, could be greatly reduced if such dialogue were conducted
10 in a completely open forum.

11 By necessity, as a result of open meetings, most of the meeting matters and
12 agenda items would be addressed in executive sessions, which would cause REC to
13 become considerably less transparent and democratic, thereby defeating the purpose of
14 Petitioners' proposals.

15 **Q25. DO YOU HAVE ANY OTHER CONCERNS REGARDING OPEN MEETINGS IN**
16 **THE MANNER SUGGESTED BY PETITIONERS?**

17 A25. Yes, I do. Petitioners' open board meeting proposal would have unnecessary detrimental
18 effects on REC, and consequently, on its members. There would be logistical
19 considerations, as the Board currently meets in REC's boardroom, which cannot
20 accommodate the open meeting concept proposed by Petitioners due to limited space and
21 room layout. To accommodate the potential of visitors attending open board meetings,
22 REC would need to reconfigure not only its boardroom, but also the layout of its offices,
23 as the boardroom is within the secure area of REC's offices. Such security is necessary

1 not only for employee safety, but also for grid security and cyber security. Providing
2 additional security to prevent public access to secure areas, such as paying for private
3 security guards on board meeting days, would become an additional cost borne by REC's
4 members. Even live streaming meetings would have its own set of logistical, cyber
5 security, and cost challenges. Furthermore, live streaming Board meetings would
6 effectively open them up to anyone, including uninvited non-member parties.

7 **Q26. COMPARED TO PRIVATELY-OWNED COMPANIES, CAN YOU PROVIDE**
8 **ADDITIONAL EXAMPLES OF HOW REC IS MORE TRANSPARENT?**

9 A26. Due to the regulated environment in which the Cooperative operates, an entire litany of
10 financial information and compliance disclosures are routinely filed with state and federal
11 agencies. As a result of REC's regulatory oversight by the Commission, a considerable
12 amount of information is publically available, which includes anything from its annual
13 financial disclosures, to annual affiliates transaction reports, to all testimony and
14 schedules from various rate filings. In addition, as borrowers of federal funds, REC is
15 subject to numerous audits from various governmental agencies, and just recently the
16 Commission thoroughly examined the books and records of the Cooperative as part of its
17 2017 rate request.¹

18 **Q27. MR. SHIPE, DOES THIS CONCLUDE YOUR TESTIMONY?**

19 A27. Yes, it does.

¹ *Application of Rappahannock Electric Cooperative For General Rate Relief*. Case No. PUR-2017-00044. Final Order issued on January 9, 2018.

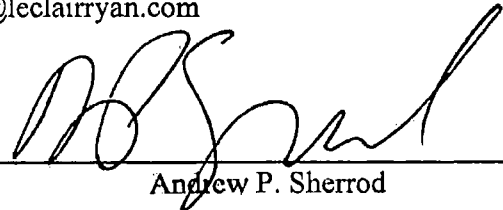
CERTIFICATE OF SERVICE

I hereby certify that, on this 9th day of November, 2018, a true copy of the foregoing was served, by e mail and first-class United States mail, postage prepaid, upon the following:

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Andrew P. Sherrod

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

SETH G. HEALD, et al.,)	
)	
Petitioners,)	
)	
v.)	Case No. CLK-2018-00009
)	
RAPPAHANNOCK ELECTRIC COOPERATIVE,)	
)	
Respondent.)	

DIRECT TESTIMONY OF KENT D. FARMER

November 9, 2018

SUMMARY OF DIRECT TESTIMONY

Kent D. Farmer's testimony responds to the direct testimony filed in this case by Seth G. Heald on October 19, 2018. Mr. Farmer describes the state and federal regulatory oversight to which Rappahannock Electric Cooperative ("REC" or the "Cooperative") is subject and discusses the Cooperative's governance policies related to bylaw changes. Mr. Farmer's testimony also provides an overview of the Cooperative's service territory, along with a description of how REC operates as a cooperative and how it differs from other electric utilities.

Mr. Farmer testifies that Mr. Heald inaccurately attempts to cast negativity on REC as a result of financial mismanagement associated with a handful of the more than 900 cooperatives operating in the United States. Mr. Farmer further describes the Cooperative's relationship with Mr. Heald over the past 10 years, including the disagreements Mr. Heald has had with the REC Board, as well as the efforts undertaken by the Cooperative to be responsive to Mr. Heald's numerous requests.

Mr. Farmer discusses in detail REC's process and due diligence in reviewing bylaw amendment requests, as well as the rationale behind the Cooperative's requirement of 500 signatures and 1/8 representation for member-initiated bylaw amendments. Mr. Farmer also testifies about the Board's due diligence and voting process for Board candidates. In addition, Mr. Farmer discusses REC's policy regarding Board compensation and the extensive information available to members about REC, its management, and audited financial statements, including the IRS Form 990. Mr. Farmer also discusses Petitioners proposal for open board meetings and describes some of the unintended consequences that could result. Mr. Farmer further explains the high level of transparency that REC maintains.

**HEALD V. RAPPAHANNOCK ELECTRIC COOPERATIVE,
CASE NO. CLK-2018-00009**

DIRECT TESTIMONY OF KENT D. FARMER

ON BEHALF OF RAPPAHANNOCK ELECTRIC COOPERATIVE

NOVEMBER 9, 2018

I. WITNESS' BACKGROUND

**Q1. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION AND
PROFESSIONAL ACCOMPLISHMENTS.**

A1. My name is Kent D. Farmer, and the Cooperative's business address is P.O. Box 7388, Fredericksburg, Virginia 22404. I am president and chief executive officer of REC and RECommunications. I also serve as vice chairman of the Old Dominion Electric Cooperative ("ODEC") Board of Directors and as vice chairman of Regional Headquarters, Inc. Since 2014, I have a board member of the National Rural Utilities Cooperative Finance Corporation ("CFC") and in 2017 was elected to serve as CFC's vice president.

I was named the 2016 Business Person of the Year by the Caroline County Chamber of Commerce, and in 2016, REC received the Chamber's Community Impact Award, given to a business or organization that expands opportunities to improve lives in the local community. I was also the recipient of the 2016 J.C. Brown CEO Communication Leadership Award ("J.C. Brown Award") from the National Rural Electric Cooperative Association ("NRECA"). The J.C. Brown Award recognizes a CEO who advances communication in the electric cooperative industry and is an innovator and collaborator committed to inspiring a culture of excellence. I have also been involved in incorporating the cooperative business model into college-level curriculum and in the development of

1 new industry-focused trainings in rural areas. I am a frequent speaker on the cooperative
 2 business model, and I serve on the Advisory Board for University of Mary Washington
 3 College of Business.

4 **Q2. HOW MANY YEARS HAVE YOU BEEN IN YOUR POSITION?**

5 **A2.** I have been president and CEO of REC for 14 years. I originally joined REC in 1979 and
 6 have held progressive management positions throughout my career, including senior vice
 7 president and chief operating officer.

8 **Q3. HAVE YOU TESTIFIED BEFORE THIS COMMISSION BEFORE?**

9
 10 **A3.** Yes, I have been a witness in numerous rate proceedings, including REC's application to
 11 acquire a portion of the Virginia service area of Potomac Edison d/b/a Allegheny Power,
 12 as well as a number of rule-making proceedings. I have also been designated as an expert
 13 in multiple cases and was an expert witness in the NOVEC COMCAST (Pole Attachment
 14 Hearing). I have testified on numerous occasions before this Commission, both in matters
 15 specific to REC and in matters with broader implications, such as rule making
 16 proceedings and studies conducted by the Commission, like PUE—2000-00346,¹ as well
 17 as matters specifically affecting all of Virginia's electric cooperatives, such as Case No.
 18 PUE-2013-00055.²

19 **Q4. PLEASE DESCRIBE YOUR PROFESSIONAL RESPONSIBILITIES AT REC.**

20 **A4.** I am directly responsible for meeting the Cooperative's mission to enhance the lives of
 21 the members and communities we serve by providing safe, reliable, and affordable
 22 electric service as good stewards of the environment. I do this by guiding the

¹ EX Parte: in the matter concerning a draft plan for retail electric metering and billing services.

² Northern Virginia Electric Cooperative – Application for Approval of Pole Attachment Rates and Terms and Conditions Under Section 56-466.1 of the Code of Virginia.

1 development of the Cooperative's strategic plans and long-range goals, presenting them
2 for approval by REC's member-elected Board of Directors, and by implementing and
3 executing the policies of the Cooperative as decided by the Board. I also represent REC
4 on several boards, including serving as vice president and District 1 Director (which
5 includes all cooperatives in 13 states from Virginia to Maine) representing utility
6 cooperatives from thirteen states; vice chairman of the Board of Directors of Old
7 Dominion Electric Cooperative; vice chair – membership for the Virginia Chamber of
8 Commerce; and past chair of the Fredericksburg Regional Alliance.

9 **Q5. PLEASE PROVIDE A BRIEF DESCRIPTION OF REC.**

10 **A5.** REC is one of the largest electric distribution cooperatives in the United States. Based on
11 the size of the service area and miles of line, REC is the Commonwealth's third largest
12 electric utility, serving 168,000 connections in all or portions of 22 Virginia counties and
13 eleven towns; this equates to approximately one-fifth of the localities within the
14 Commonwealth. The Cooperative maintains more than 17,200 miles of power lines
15 across its service area, which ranges from the Blue Ridge Mountains to the tidal waters of
16 the Chesapeake Bay. Due to the primarily rural nature of the service area, REC has an
17 average meter density of only 9.38 meters per mile of line. REC has an excellent record
18 as a quality provider of safe, efficient, and affordable electricity, and has an excellent
19 customer satisfaction rating by its members.

20 **Q6. PLEASE DESCRIBE REC'S BUSINESS STRUCTURE.**

21 **A6.** REC is private Virginia corporation organized under the Code of Virginia and is a not-
22 for-profit utility consumer services cooperative owned by and operated for the benefit of
23 its member-consumers. REC is governed by its nine-member Board, which is elected by

1 the Cooperative's entire membership, in accordance with its Articles, Bylaws, and
2 policies. The Cooperative's primary corporate objective is to provide reliable retail
3 electric service to its member-consumers at the lowest reasonable cost. As part of its not-
4 for-profit business operation, REC allocates to its member-consumers all of its operating
5 margins in the form of patronage capital.

6 **Q7. HOW IS A COOPERATIVE DIFFERENT FROM INVESTOR-OWNED**
7 **UTILITIES?**

8 A7. The member-consumers of an electric cooperative are also the owners of their
9 cooperative. Through a democratic one-member one-vote process, the members elect
10 from among their peers the Board of Directors. The Cooperative's directors are elected
11 by the membership at the annual membership meeting on a rotational basis, with each of
12 REC's nine regions represented by an elected director, each of whom serves a three-year
13 term. Members of the Board of Directors have a fiduciary responsibility to the
14 membership, and they provide managerial expertise and guidance and oversight to ensure
15 that decisions are made in the membership's best interest.

16 **Q8. HAS REC EVER HAD ANY SERIOUS GOVERNANCE ISSUES AND WHAT IS**
17 **REC'S FINANCIAL STANDING?**

18 A8. I am not aware of any governance or regulatory concerns during my forty years with the
19 Cooperative. The fact that the Commission entrusted REC to serve an additional 50,000
20 consumers who were previously served by an investor-owned utility is a strong indication
21 that the Commission has confidence in REC's abilities and commitment to efficient and
22 cost-effective service. Neither the Commission, the Rural Utilities Services ("RUS") (a
23 REC lender), nor any financial or regulatory entity has expressed concern about REC's

1 governance, financial capabilities, appropriateness of rates, or reliability and safety of the
2 delivery system. REC also has a private, A+ (Stable) rating from Fitch Ratings.

3 **Q9. PLEASE RESPOND TO MR. HEALD'S CLAIM "THAT MANY**
4 **COOPERATIVES ACROSS THE COUNTRY HAVE EXPERIENCED**
5 **FINANCIAL MISMANAGEMENT."**

6 A9. There are approximately 900 distribution electric cooperatives in the United States. Only
7 a handful have experienced governance and financial problems. Although Mr. Heald
8 argues that governance and financial issues are a common occurrence among electric
9 cooperatives, he only cites issues with one, Pedernales, in Texas. He has used a very
10 broad brush to cast an inaccurate and negative light on REC. It is my understanding that,
11 unlike cooperatives in Virginia, electric cooperatives in Texas are not subject to rate
12 regulation by the public service commission in the same manner as Virginia
13 cooperatives.

14 In contrast, REC and other electric cooperatives in Virginia are subject to extensive
15 regulatory oversight by the Commission. Those who are federal borrowers like REC, are
16 also subject to RUS's financial reporting and auditing. As a result, to our knowledge, no
17 electric cooperative in Virginia has had problems like Pedernales, and certainly REC has
18 not. Perhaps the best proof of this fact is that, notwithstanding REC's extensive
19 disclosures of financials and other documents to Mr. Heald pursuant to his various
20 requests, he does not note even a hint of financial impropriety at REC in his pre-filed
21 direct testimony.

1 **Q10. IS MR. HEALD'S APPARENT DISSATISFACTION WITH REC**
2 **REPRESENTATIVE OF THE COOPERATIVE'S MEMBERSHIPS AS A**
3 **WHOLE?**

4 A10. No. In fact, REC consistently ranks among the top utilities—including large, investor-
5 owned utilities—for exceptional member satisfaction. REC customers have provided
6 excellent satisfaction ratings in both the American Customer Satisfaction Index ("ACSI")
7 and JD Power studies. ACSI is the only national cross-industry measure of customer
8 satisfaction in the United States, allowing REC to compare its member satisfaction to
9 peers in the electric industry as well as other service providers outside of the utility space.
10 In 2017, REC achieved an ACSI score of 83 out of 100, which significantly outperformed
11 the Touchstone Energy Cooperatives (representing more than 750 cooperatives in 46
12 states) benchmark of 78 and the investor owned energy utilities average score of 75. JD
13 Power is also a well-known and recognized industry benchmark for consumer
14 satisfaction, insights, research, and analytics. The survey measures over 130 nationwide
15 electric utility brands that each serve in excess of over 100,000 customers nation-wide
16 from over 130 electric utility brands for the Electric Utility Residential Customers.
17 In addition and to the best of my knowledge, no request for bylaw amendments or
18 governance concerns have been expressed by any other REC member.

19 II. BACKGROUND OF REC'S RELATIONSHIP AND INTERACTION WITH
20 MR. HEALD

21 **Q11. ARE YOU FAMILIAR WITH THE PETITIONERS?**

22 A11. Yes.

1 **Q12. CAN YOU BRIEFLY DESCRIBE YOUR KNOWLEDGE OF EACH AND YOUR**
2 **INTERACTION WITH THEM?**

3 **A12.** Yes. Gen. Levasseur was appointed to and eventually elected to REC's Board of
4 Directors. I refer you to the pre-filed testimony of Chris Shipe, chair of REC's Board of
5 Directors, for a more in-depth description of Gen. Levasseur's association with REC's
6 Board.

7 Dr. Murphy was a member advocated for REC. He volunteered as an election teller and
8 he served on the board of C.A.R.E. Charities, Inc., an affiliate of REC and was chair of
9 that board. Dr. Murphy was also a candidate for the REC Board of Directors in 2017.

10 Under instruction of REC's Board, I had responsibility to ensure that the processes
11 relating to that election were conducted in a fair, unbiased, and accurate manner. Again, I
12 refer you to the pre-filed testimony of Chris Shipe for a more in-depth description of Dr.
13 Murphy's association with REC's board.

14 I have interacted with Mr. Heald for approximately 10 years. He has long been an
15 advocate of renewable energy and a critic of the Cooperative for its preference for a
16 diverse portfolio of generation sources. At the time he first engaged with REC, he was
17 representing the Piedmont Environmental Council. In 2012, Mr. Heald began advocating
18 for changes to REC's bylaws, including "open" Board meetings and disclosure of Board
19 compensation. During the course of Mr. Heald's advocacy for change, he submitted
20 many data requests to the Cooperative. REC complied with every single request, until
21 recently, when his requests went well beyond the bounds of Virginia law and sought
22 confidential information without any agreed-upon protections governing its use and
23 disclosure. In my opinion, REC has been more responsive to him than to any other

1 member. As a result, Mr. Heald has been provided with access to REC's financial
2 records, Board minutes, and many governance documents.

3 **Q13. WHAT WOULD BE THE IMPACT TO REC IF THE COMMISSION WERE TO**
4 **ORDER THE RELEASE OF THE FORM PETITION TO MR. HEALD, AND**
5 **CHOSE NOT TO OPINE ON THE QUESTION OF THE BOARD'S**
6 **AUTONOMY?**

7 **A13.** If REC were required to release the form petition to Mr. Heald, it would have significant
8 negative impact on REC. First, it would add to the complexity and length of the proxy
9 form, which could add to the cost of printing, distributing, and obtaining completed proxy
10 forms. Additionally, any proposed amendment would need to be explained to the
11 membership, and potentially advocated for or against. At a minimum, such explanation
12 and advocacy would have opportunity costs compared to other information the
13 Cooperative could be communicating.

14 **Q14. MR. HEALD ARGUES THAT HE FIRST INTRODUCED HIS BYLAW**
15 **PROPOSALS TO REC IN 2012 AND THAT IN RESPONSE, REC TIGHTENED**
16 **UP THE BYLAW PROPOSAL PROCESS BY IMPOSING THE 500-SIGNATURE**
17 **REQUIREMENT. WHAT IS REC'S RESPONSE TO THIS ARGUMENT?**

18 **A14.** Mr. Heald gives himself too much credit: REC has not made any change solely in
19 response to, nor in reaction to, his numerous requests. It is important to note that in early
20 2009, REC was in a state of transition as it prepared to grow by 50% literally overnight.
21 Changes were necessary to prepare for and respond to matters relating primarily to
22 REC's acquisition of a portion of Allegheny Power's Virginia service area, but also to
23 fast growth in the number of residential and commercial connections occurring in the

1 mid-to late-2000s. In March of 2009, the Board adopted new Terms and Conditions for
2 Electric Service that became effective in October of that year. At the annual meeting in
3 August of 2009, REC's members adopted amended and restated Articles of
4 Incorporation. When foundational documents that dictate the form of business and the
5 provision of regulated service change, it should not come as a surprise that the Bylaws
6 would also be changed.

7 **Q15. DID THE NUMBER OF BOARD REGIONS CHANGE AFTER THE**
8 **ACQUISITION?**

9 A15. Yes, a condition imposed by the Commission in approving the acquisition required REC
10 to increase the number of directors and to create board regions that would ensure Board
11 representation from the geographically diverse areas formerly served by Alleghany
12 Power. The requirement to increase the number of directors came just after the Board had
13 taken intentional steps to reduce the number of directors in 2009. After temporarily
14 increasing to eleven regions, and after further consideration, the Board in 2017 once
15 again consisted of nine regions.

16 **Q16. WHY DID THE BYLAWS CONTINUE TO BE AMENDED WELL AFTER THE**
17 **2010 ACQUISITION?**

18 A16. It is important that changes to the bylaws not be made too hastily, so considerable time,
19 effort, and care is taken to craft and implement amendments. External factors also
20 determine the timing of change. For instance, there is a narrow window for amending
21 board regions, as you generally want to avoid changes during the election cycle that is
22 announced in February and ends in August. That window becomes even more narrow
23 when printing and publication deadlines are considered.

1 **Q17. THE BYLAW AMENDMENTS MR. HEALD POINTS TO ARE NOT RELATED**
2 **TO BOARD REGIONS, SO IF NOT A REACTION TO MR. HEALD, WHAT**
3 **WAS THE DRIVING FORCE BEHIND THOSE CHANGES?**

4 A17. REC's Board does not change the Bylaws on a whim, and in fact, is often reluctant to
5 make changes. It is sometime necessary to amend one area as a result of a change in
6 another area. For example, the number of Board regions is referenced and is a
7 determining factor in numerous places within the Bylaws, such as the sections providing
8 for members to call for a special meeting of the members or to seek member approval of
9 a Bylaw amendment. In the process of capturing such dependencies, the Board realized
10 the requirements for these similar processes were inconsistent. Thus, changes were made
11 to make those requirements as similar as possible. Similarly, the Board wanted to avoid
12 having to make multiple changes each time the number of board regions was adjusted.

13 **Q18. WHAT OTHER INTERACTION HAS THE COOPERATIVE HAD WITH MR.**
14 **HEALD BEYOND HIS CONCERNS RELATING TO GOVERNANCE AND**
15 **OVERSIGHT?**

16 A18. Mr. Heald recently expressed his disagreement to a rate structure REC proposed in 2017.
17 He referred to REC's proposal to raise the fixed monthly charge as being "anti-solar."
18 More recently, he released a statement critical of REC's wholesale power cost. Under the
19 current regulations net energy metering, users of onsite solar generation use the
20 Cooperative's infrastructure and impose costs in excess of the revenue they provide. This
21 results in members without onsite solar paying more to recover the costs created by, but
22 not covered from members using net energy metering. That means uses of onsite solar
23 generation power are being subsidized by the rest of the membership. I made the

1 statement at our initial meeting that REC was adjusting rates to minimize or eliminate the
2 subsidy of net energy metering customers. Mr. Heald took this as an affront to solar
3 power, which couldn't have been further from the truth—we just did not want customers
4 who could not afford it paying to subsidize those who can.

5 **Q19. WHAT IS REC'S STANCE ON RENEWABLE AND SUSTAINABLE ENERGY?**

6 **A19.** REC supports renewable energy. REC is an active member of multiple organizations that
7 advocate for renewable and sustainable energy, with active involvement by our senior
8 management in leadership positions of those organizations. Our Vice President of
9 Corporate Services, John Hewa, serves on the board of SEPA, a Washington, D.C.-based
10 organization focusing on the power industry's transition to a clean energy economy, with
11 REC's approval. Another REC executive, Vice President of Member Services and
12 External Affairs, David Koogler, chairs the board of the Virginia Energy Efficiency
13 Council. REC owns and uses a solar array at its headquarters. And REC directly supports
14 clean energy—it has more than 600 net energy metering customers who use solar power.
15 REC helped these members install and manage their solar energy, including two of the
16 petitioners, Messrs. Murphy and Heald. REC even did even did testing at the homes of
17 Messrs. Murphy, Levasseur, and Heald to identify opportunities to increase efficiency
18 and reduce energy use. Approximately 6% of the total energy supply portfolio comes
19 from renewable sources, and members who want a greater share of renewable energy can
20 purchase it through our recently approved Community Solar tariff. Even prior to that,
21 REC members had access to a voluntary renewable energy certificate subscription service
22 as early as 2006.

1 III. REC'S PROCESS AND DUE DILIGENCE IN REVIEWING BYLAW

2 AMENDMENT REQUESTS

3 **Q20. WHAT IS REC'S GENERAL PROCEDURES REGARDING MEMBER BYLAW**
4 **PROPOSALS?**

5 **A20.** REC's procedures regarding member bylaw proposals are as follows: (1) a member
6 submits a bylaws request; (2) legal counsel is asked to determine if the request is in
7 accordance with Virginia law, and REC's articles and bylaws; (3) if the request is
8 determined to be in accordance with applicable law, a petition will be provided to the
9 member to obtain the required signatures; and (4) if a valid and complete petition is
10 submitted at least 180 days prior to the annual meeting date, the proposed bylaw
11 amendment will be put before the members at the annual meeting for vote.

12 **Q21. Why does REC require 500 signatures and 1/8 representation for member-initiated**
13 **bylaw amendments?**

14 **A21.** REC's bylaws were adopted as original matter by the Board. As provided by the Utility
15 Consumer Services Cooperatives Act (the "Act"), the bylaws are subject to alteration or
16 repeal by member vote. The Act does not articulate the procedure by which the members
17 may alter or repeal the bylaws; therefore, REC consulted other cooperative bylaws and
18 industry standards to develop its own procedure. Through this research, REC discovered
19 it was common for cooperatives to adopt a threshold requirement for placing bylaw
20 proposals on the ballot. Very frequently that threshold requires 1% of a cooperative
21 membership's signatures before a proposal is placed on a ballot. At the time of adoption,
22 one percent of REC's members would have been approximately 1,300. Instead of
23 adopting this stringent requirement, REC chose a considerably lower threshold of only

1 500 signatures, or about 1/3 of 1%. Of those 500 signatures, no more than the whole
2 number equivalent of 1/8 of the minimum may be from any one board region.

3 Once a member obtains 500 signatures, the bylaw proposal is then placed on the ballot.

4 REC's bylaws may be approved by the affirmative vote of 2/3 of the members present
5 either in-person or by proxy, which is another common standard adopted by cooperatives.

6 Both the 500-signature requirement and the 2/3 member vote for bylaw proposals were
7 adopted from REC's existing standards governing the removal of directors except

8 signatures on a removal petition may come from a single region. The 1/8 requirement is

9 not imposed for removal because members within a region may be aware of a recall

10 reason that not generally apparent to members outside the region.

11 **Q22. AND DID REC INCREASE ITS SIGNATURE REQUIREMENT TO ACCOUNT**
12 **FOR THE LARGER TERRITORIAL AREA AS A RESULT OF THE 2010**
13 **ACQUISITION?**

14 **A22.** No. Even prior to acquisition, the 500-signature requirement existed for certain member-
15 initiated activities. As previously explained, the 500-signature requirement was applied
16 to other member-initiated activities in an effort to create more consistency within the
17 Bylaws. If anything, the 500-signature requirement is likely too low given our current
18 membership size. Compared to other cooperatives, we likely require a fairly low number
19 of signatures as many cooperatives require at least 1% and some greater than that
20 percentage. We may want to review whether a 1% rule makes more sense and is more
21 reflective of our membership's overall interest.

22 **Q23. MR. HEALD ASSERTS THAT HE NEEDS REC'S MEMBER LIST, INCLUDING**
23 **MEMBERS' EMAIL ADDRESSES, IN ORDER TO GATHER THE 500**

**SIGNATURES FOR HIS BYLAW PROPOSALS. WHAT IS REC'S RESPONSE
TO THIS REQUEST?**

A23. When such a list of members is requested, I believe Virginia Code only requires the provision of a list of names and addresses. Mailing addresses are generally accessible, as compared to email addresses, that are not easily obtained. In fact, REC has email addresses for less than 2/3 of the members. Further, members only provide their email addresses for convenience, e.g., for electronic billing, and are not used by REC for any other purpose. And some of the email addresses provided are actually members' user IDs for their REC accounts, so by providing that information to Mr. Heald, we are only one step away from granting him, or other third parties, access to members' account information. To date, Mr. Heald has refused REC's reasonable request that a non-disclosure agreement be signed prior to REC providing a member list in order to protect the privacy of REC's members and the security of their data and to make sure that the list is used for a proper purpose. Discussion with Mr. Heald regarding this topic are on-going.

In sum, providing members' email addresses exposes our members' private information and creates a potential liability for the cooperative. We are also concerned about providing name and mailing addresses for our members as this could be misused by the requesting party and third parties. I believe most of our members would not approve of us disseminating their membership information.

**Q24. BY NOT GIVING MR. HEALD THE FORM PETITION AND MEMBER LISTS
NOW, WILL HE MISS HIS OPPORTUNITY TO GET HIS PROPOSALS ON
THE 2019 ANNUAL MEETING AGENDA?**

1 **A24.** No. Bylaw amendments do not have to be considered at a specific annual meeting, but
2 can be considered at any annual or special meeting. And special meetings may be
3 initiated by members, subject to the same requirements as for member-initiated bylaw
4 proposals. Should the Commission determine that Mr. Heald's proposals comport with
5 state law, Mr. Heald can initiate a special meeting at which his proposals may be
6 considered.

7 IV. THE BOARD'S DUE DILIGENCE AND VOTING PROCESS FOR BOARD
8 CANDIDATES, INCLUDING INCUMBENTS AND PROXY FORMS

9 **Q25. WHAT ARE REC'S BYLAWS GENERALLY REGARDING CORPORATE**
10 **GOVERNANCE?**

11 **A25.** REC is governed by a board of directors elected by the Cooperative's members at REC's
12 annual meeting, as provided by Virginia law. The Board consists of members from nine
13 geographical territories to ensure representation is spread across REC's geographically
14 diverse service area. All directors' terms of election are three years and the terms are
15 staggered so that each year at least three directors are elected. Prior to the annual
16 meeting, all members are sent a meeting announcement along with a proxy. Notice of the
17 annual meeting is also published in REC's *Cooperative Living* periodical, as well as
18 disseminated by email, posts on REC's website, and through social media.

19 In accordance with the bylaws, any member may run for a Board seat upon securing 25
20 signatures from members in good standing. REC's bylaws specifically require that, rather
21 than providing only a Board-approved slate of candidates for elections—even though
22 permitted by law to do so—any member obtaining 25 valid signatures and meeting the

1 director qualifications becomes a candidate and is included on the ballot. We believe this
2 is a very democratic process and invites greater membership participation on the Board.

3 **Q26. WHY DOES REC PLACE ALL BOARD CANDIDATES ON THE BALLOT**
4 **RATHER THAN THE BOARD SIMPLY DISTRIBUTING A LIST OF ITS**
5 **PREFERRED SLATE OF CANDIDATES, AS IS TYPICAL OF**
6 **CORPORATIONS?**

7 **A26.** The Board's explanation to me is that they want to make it as easy as possible for
8 members to run for the Board and to actually be elected. Cooperatives are finding it
9 difficult to get candidates, so we wanted to make it as easy as possible.

10 **Q27. HOW LONG HAS THIS BEEN REC'S PRACTICE?**

11 **A27.** It's been the practice during my recent memory; at least since I've been the CEO.

12 **Q28. AND THE BOARD INTERVIEWS THE BOARD CANDIDATES?**

13 **A28.** Yes, it does. Prior to the annual meeting, and as part of its due diligence in casting proxy
14 votes assigned to the Board by members, the Board interviews all non-Board members
15 seeking election. So, the Board does not nominate candidates, but it does vet them.

16 **Q29. WHAT OPPORTUNITIES DOES THE COOPERATIVE PROVIDE TO**
17 **CANDIDATES TO COMMUNICATE WITH MEMBERS?**

18 **A29.** Prior to every election, each candidate is given the opportunity to reach out to the entire
19 membership and to address the members at the annual meeting. Not only do they speak at
20 the annual meeting, but a brief biography for each candidate is printed in REC's
21 *Cooperative Living*, and information about them appears on our website. Due to space
22 constraints, candidates' *Cooperative Living* biographies are limited to about 250 words,

1 but they are free to direct members to their own websites for more information. Members
2 may also contact the candidates directly and candidates may campaign.

3 **Q30. WHAT IS THE IDEA BEHIND THE PRIZE DRAWINGS FOR MEMBERS**
4 **RETURNING PROXIES?**

5 **A30.** The idea is to get enough proxies for a quorum by trying to incentivize participation,
6 demonstrating REC's commitment to democracy and lack of insularity. It is very
7 common for cooperatives to incentivize members to participate in annual meetings,
8 including offering prize drawings for participants.

9 **V. REC'S TRANSPARENCY AND OUTREACH INITIATIVES TO MEMBERS**

10 **Q31. WHAT ARE REC'S FINANCIAL DISCLOSURE REQUIREMENTS?**

11 **A31.** Within the past 12 months, REC, because it is subject to the Commission's regulatory
12 jurisdiction, has submitted extensive financial disclosures as part of its most recent rate
13 proceeding, which concluded in January 2018. All of those disclosures have become
14 public record documents available to REC's members.

15 REC also fulfills numerous financial reporting requirements as a result of state and
16 federal requirements.

17 **Q32. WHAT IS REC'S POLICY ON DISCLOSING BOARD COMPENSATION TO ITS**
18 **MEMBERS?**

19 **A32.** As a non-profit, REC is required annually to file IRS Form 990 listing officer and
20 director compensation. A copy of the 990 is available for review by any member at the
21 front desk of every REC office. If members want a copy of the 990, they are asked to sign
22 a membership request form. Members can also access REC's 990s on multiple websites,
23 such as Guidestar or the Foundation Center, which does not require creating an account.

1 Additionally, REC members can obtain extensive information about REC and its
2 management on its member website, including audited financial statements and the
3 formula for director compensation.

4 **Q33. WHAT IS REC'S RESPONSE TO MR. HEALD'S PROPOSAL REGARDING**
5 **BOARD COMPENSATION?**

6 **A33.** Mr. Heald's proposal would require REC to annually publish in *Cooperative Living* the
7 total compensation provided each Board member, and to require that the Board notify the
8 members in advance of any vote to increase the compensation of any Board member.

9 This proposal is simply unnecessary. For several years, REC has been posting Board
10 members' current stipends on its website. And, as stated earlier, members also have
11 access to Board compensation from REC's Form 990's, which are easily available to all
12 members. Further, REC objects to this proposal because by statute, Board compensation
13 is to be set by the Board. More importantly, Mr. Heald's proposal would constrain the
14 Board from even considering changes to Board compensation without advance notice to
15 the membership. This is directly contrary to the Virginia Code which confers the power
16 to set management and Board compensation on the Board. Mr. Heald's requirement that
17 the Board can only change Board compensation with advance notice to members would
18 constrain its right, duty, and power to fulfill its statutory duty to set Board compensation.

19 **Q34. WHAT OTHER BENEFITS DO BOARD MEMBERS AND THEIR FAMILIES**
20 **RECEIVE?**

21 **A34.** REC undercompensates its Board members compared to many other cooperatives. For
22 example, many cooperatives provide health care coverage to their board members, a
23 practice REC discontinued more than 10 years ago in line with good governance

practices. We scrupulously follow our Board travel policies, including the practice of not reimbursing Board spouse travel expenses. We vote on every per diem expense incurred by Board members. For example, if a Board member wants to take a class that they have previously taken, they might have to pay for it. No Board member receives a blank check.

VI. IMPORTANCE OF BOARD AUTONOMY REGARDING ITS OWN POLICIES
AND PROCEDURES

Q35. WHAT IS REC'S RESPONSE TO MR. HEALD'S PROPOSAL THAT BOARD MEETINGS BE OPEN TO ALL MEMBERS?

A35. In my opinion, the open meeting concept would create a dysfunctional environment hindering the Board's ability to properly govern REC according to sound governing principles. It would constrain the type of discussion needed to produce decisions that are in the best interest of the membership. For example, we are required to keep personnel issues out of the public domain. Further, Board members would be reluctant to ask questions about whether staff had performed due diligence on various matters on which the Board relies to make sound decisions. Having a bylaw that allows members to sit in on Board meetings will of necessity constrain the Board's ability to have fulsome discussion of confidential matters such as personnel issues and legal advice. Mr. Heald's proposal purports to allow for the Board to discuss such matters in executive session, but most things the Board discusses are confidential or proprietary in some respect. Thus, as a practical matter, Mr. Heald's proposal will result in constant motions to go into executive session, thus further disrupting the Board's ability to function.

Q36. WHAT WOULD BE THE EFFECT OF OPEN MEETINGS, WITH NO EXECUTIVE SESSIONS AT ALL?

1 **A36.** I don't see how we could conduct the business of the cooperative if we were forced to
2 conduct open meetings without executive sessions.

3 Further, unlike a public body, REC is a private business entity and therefore does not
4 enjoy the benefit of sovereign immunity. Thus, discussions at Board meetings could be
5 used against REC in potential litigation.

6 **Q37. WHAT IS REC'S CURRENT PRACTICE REGARDING EXECUTIVE**
7 **SESSIONS?**

8 **A37.** Our practice of using executive sessions to discuss confidential matters demonstrates our
9 transparency; it mirrors what many corporate boards and government entities do and what
10 is just good corporate governance. We hold executive sessions whenever we discuss legal
11 issues, personnel and employment issues, land contracts, or discussions that would be
12 harmful if held in an open meeting.

13 **Q38. PRAGMATICALLY, WHAT DOES GOING INTO AN EXECUTIVE SESSION**
14 **LOOK LIKE?**

15 **A38.** We excuse different management teams at various points to have executive sessions, so
16 we can have honest and open discussions. When we go into executive sessions, we follow
17 Robert's Rules of Order. Although we come to conclusions during executive sessions, no
18 decisions are made, nor are any votes taken during these sessions, even though we are not
19 a government entity and do not have to follow the government's process.

20 **Q39. WOULD THESE ISSUES, SUCH AS THE OPEN MEETING CONCEPT, HAVE**
21 **BEEN DISCUSSED WHEN GEN. LEVASSEUR WAS ON THE BOARD?**

22 **A39.** Yes. And Gen. Levasseur was strongly opposed to the open meeting concept. At no time
23 during Board discussions did he ever express the view that open meetings were a good

1 idea. And he also approved the restated bylaws which allow the board to establish its own
2 policies and procedures.

3 **Q40. ARE YOU AWARE OF ANY ELECTRIC COOPERATIVES WITH OPEN**
4 **MEETINGS IN VIRGINIA, MARYLAND, OR DELAWARE?**

5 **A40.** No. All electric cooperatives have open annual meetings, but not open meetings for
6 monthly board meetings.

7 **Q41. WHAT IS REC'S RESPONSE TO MR. HEALD'S PROPOSAL THAT THE**
8 **BOARD LIVE STREAM ITS MEETINGS?**

9 **A41.** REC opposes this proposal. The issue with live streaming Board meetings is that REC's
10 board meetings become accessible not only to REC members, but the entire world.
11 Additionally, a significant number of our members do not have internet access, which
12 makes the process undemocratic, as some members would have access to meetings while
13 others would not. Also, if the meetings were live streamed, REC may face additional
14 regulatory burdens associated with broadcasting.

15 **Q42. DOES REC PROVIDE ANY OPPORTUNITY FOR MEMBERS TO ATTEND**
16 **BOARD MEETINGS, DESPITE ITS REGULAR PRACTICE OF HOLDING**
17 **CLOSED MEETINGS?**

18 **A42.** Yes. The Board is completely accessible and we have a policy of allowing members to
19 attend Board meetings. They just need to contact us ahead of time and arrange a time to
20 attend. The member is then allowed to speak and address the Board at that meeting.

21 **Q43. HAS MR. HEALD EVER ATTENDED BOARD MEETINGS?**

22 **A43.** Yes. In addition to various individual meetings with Board members, Mr. Heald has
23 recently attended a Board meeting. Messrs. Heald and Murphy did attend the June 20,

1 2018 Board meeting. At the meeting, they addressed the Board and stated that the Board
2 needs to be more transparent and democratic. This was right before they filed their
3 petition. The fact that Mr. Heald has met with Board members on numerous occasions
4 demonstrates that the Board is accessible, contrary to his assertions.

5 **Q44. IT IS COMMON AT ANNUAL MEMBERSHIP MEETINGS TO ALLOW A**
6 **COMMENT PERIOD FOR MEMBERS TO SPEAK. WERE MESSRS. HEALD**
7 **AND MURPHY PROVIDED THIS OPPORTUNITY?**

8 **A44.** Yes. There is a segment during the annual meeting where we invite member comments
9 and questions. Messrs. Heald and Murphy have spoken during such sessions.

10 **Q45. HAS THE BOARD OTHERWISE BEEN ACCESSIBLE TO MR. HEALD AND**
11 **THE OTHER PETITIONERS?**

12 **A45.** Yes. Messrs. Heald and Murphy have met multiple times with Board members, both in
13 formal Board meetings and in other settings. The fact that he has met often with the
14 Board exemplifies the access Mr. Heald now claims REC is lacking. He could not have
15 done all he has if REC was not an accessible cooperative.

16 **Q46. WHAT OTHER MEASURES DOES REC TAKE TO ENSURE ITS**
17 **TRANSPARENCY AND ACCESSIBILITY TO ITS MEMBERS?**

18 **A46.** Although REC does not hold open Board meetings, the Board is already transparent with
19 its members: in addition to the annual membership meeting, REC regularly
20 communicates with members via its website, its *Cooperative Living* publication, its
21 community outreach initiatives, town hall meetings, and various community service
22 programs. Members also have access to Board minutes by making a written request and
23 completing a membership request form.

VII. CONCLUSION

**Q47. ARE ALL THE FACTUAL ASSERTIONS IN REC'S RESPONSIVE
PLEADINGS TRUE AND CORRECT TO THE BEST OF YOUR
KNOWLEDGE AND BELIEF?**

A47. Yes. I participated extensively in the preparation of our initial responsive pleadings and can verify that all factual assertions therein are true and correct to the best of my knowledge and belief. I can also verify that Exhibits A, B, and C attached to REC's Response to Petitioners' Motion for Preliminary Relief and/or for Partial Expedited Consideration are authentic copies of REC's Bylaws, Proxy Form, and excerpt from REC's website, respectively.

Q48. DOES THIS CONCLUDE YOUR TESTIMONY?

A48. Yes.

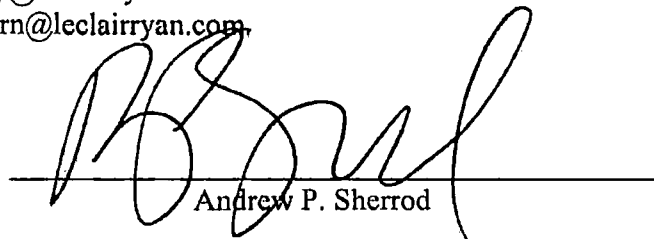
CERTIFICATE OF SERVICE

I hereby certify that, on this 9th day of November, 2018, a true copy of the foregoing was served, by e mail and first-class United States mail, postage prepaid, upon the following:

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