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**HEARING ON GOVERNANCE AND FINANCIAL  
ACCOUNTABILITY OF RURAL ELECTRIC  
COOPERATIVES: THE PEDERNALES EXPERIENCE**

**Thursday, June 26, 2008**

**House of Representatives,**

**Committee on Oversight and**

**Government Reform,**

**Washington, D.C.**

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**Committee Hearings**

**of the**

**U.S. HOUSE OF REPRESENTATIVES**



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3 | HEARING ON GOVERNANCE AND FINANCIAL  
4 | ACCOUNTABILITY OF RURAL ELECTRIC  
5 | COOPERATIVES: THE PEDERNALES EXPERIENCE

6 | Thursday, June 26, 2008

7 | House of Representatives,  
8 | Committee on Oversight and

9 | Government Reform,

10 | Washington, D.C.

11 |       The committee met, pursuant to call, at 10:12 a.m. in  
12 | room 2154, Rayburn House Office Building, the Honorable Henry  
13 | A. Waxman [chairman of the committee] presiding.

14 |       Present: Representatives Waxman, Towns, Cummings,  
15 | Kucinich, Clay, Watson, Braley, Cooper, Sarbanes, Welch,  
16 | Davis of Virginia, Burton, Souder, Duncan, Issa, Marchant,  
17 | Westmoreland, Foxx, Sali, and Jordan.

18 |       Staff Present: Phil Schiliro, Chief of Staff; Phil  
19 | Barnett, Staff Director and Chief Counsel; Karen Lightfoot,  
20 | Communications Director and Senior Policy Advisor; Greg

21 | Dotson, Chief Environmental Counsel; David Rapallo, Chief  
22 | Investigative Counsel; John Williams, Deputy Chief  
23 | Investigative Counsel; Brian Cohen, Senior Investigator and  
24 | Policy Advisor; Jeff Baran, Counsel; Gilad Wilkenfeld,  
25 | Investigator; Caren Auchman, Press Assistant; Ella Hoffman,  
26 | Press Assistant; Leneal Scott, Information Systems Manager;  
27 | Rob Cobbs, Staff Assistant; Miriam Edelman, Staff Assistant;  
28 | Lawrence Halloran, Minority Staff Director; Jennifer  
29 | Safavian, Minority Chief Counsel for Oversight and  
30 | Investigations; Keith Ausbrook, Minority General Counsel; Ali  
31 | Ahmad, Minority Deputy Press Secretary; Larry Brady,  
32 | Minority Senior Investigator and Policy Advisor; Alex Cooper,  
33 | Minority Professional Staff Member; Adam Fromm, Minority  
34 | Professional Staff Member; Mary Pauline Jones, Minority Staff  
35 | Assistant; Patrick Lyden, Minority Parliamentarian and Member  
36 | Services Coordinator; and Brian McNicoll, Minority  
37 | Communications Director.

38 Chairman WAXMAN. The Committee will come to order.

39 Today's hearing focuses on an important issue that has  
40 received little attention: electric cooperatives and the  
41 billions of dollars they control.

42 Electric cooperatives are unique structures that provide  
43 electricity to millions of customers in rural and suburban  
44 areas. They are nonprofit utilities that are owned by their  
45 customers, and at least in theory are supposed to be  
46 democratically controlled. Nationwide there are 930 co-ops  
47 serving over 17 million customers.

48 What isn't widely known is that these co-ops control  
49 over \$30 billion in customers' equity. In many cases, even  
50 the consumers don't realize it is their equity and don't know  
51 how the co-ops are spending their money.

52 I want to thank my colleague and friend, Jim Cooper, for  
53 bringing this issue to the Committee's attention. It is  
54 exactly the kind of issue the Oversight Committee should be  
55 looking at, and from what we have already found this is an  
56 area in strong need of accountability. In fact, two of the  
57 witnesses we wanted for this hearing have refused to attend.  
58 They declined to appear voluntarily, and they have evaded  
59 Federal marshals who tried to serve them with subpoenas. The  
60 Federal marshals believe one of the witnesses is now hiding  
61 in a remote New Mexico ranch.

62 Two witnesses essentially ran the Pedernales Electric

63 Cooperative in the Texas Hill country. This co-op has a  
64 proud history, having been created in 1935 by a young  
65 Congressman by the name of Lyndon Johnson. It is now the  
66 largest co-op in the United States.

67 But Benny Fuelberg, the former Pedernales General  
68 Manager, and Bud Burnett, the former Pedernales President,  
69 aren't reflecting the co-op's proud history by refusing to  
70 explain their apparent self-dealings.

71 There is compelling evidence that the Pedernales Co-op  
72 used its customers' private equity as a private piggy bank.  
73 Mr. Fuelberg, Mr. Burnett, and the Pedernales board paid  
74 themselves well. In 2007 Mr. Fuelberg received over \$1  
75 million in salary, benefits, and bonuses. In just five years  
76 Mr. Fuelberg and the board spent \$700,000 to stay in  
77 five-star hotels like the Ritz Carlton and Four Seasons, dine  
78 at expensive restaurants, and buy themselves fancy chocolates  
79 and Celine Dion concert tickets. They also spent millions of  
80 dollars in an unsuccessful legal battle against their own  
81 customers.

82 We will learn more about all of this from our witnesses,  
83 which include Pedernales Co-op members, two members of the  
84 Texas Legislature, and the newly hired General Manager of  
85 Pedernales. But the questions about the potential abuses of  
86 co-ops aren't limited to the Pedernales Co-op, and that  
87 brings us back to the \$30 billion in customer equity I

88 mentioned a few moments ago.

89       The Pedernales experience tells us we need to examine  
90 whether co-ops are being run in a truly democratic fashion,  
91 and we need to take a close look at whether there are  
92 adequate financial protections for the investments customers  
93 have in these entities.

94       The \$17 million co-op customers' equity investments are  
95 worth an average of \$2,000 apiece, but there appears to be  
96 little transparency and accountability for how co-ops use  
97 these funds.

98       I know co-ops have done a tremendous amount of good for  
99 millions of Americans, and I know it is unfair to suggest the  
100 potential wrongdoing at the Pedernales Co-op is typical for  
101 all co-ops. Congressman Cooper has done a real service by  
102 setting the right balance for these issues in a recent  
103 article in the Harvard Journal on Legislation, and I ask  
104 unanimous consent to include it in the hearing record.  
105 Without objection, that will be the order.

106       [The referenced information follows:]

107 \*\*\*\*\* INSERT \*\*\*\*\*

108 Chairman WAXMAN. I am looking forward to the testimony  
109 of our witnesses and learning more about this important  
110 issue.

111 [Prepared statement of Chairman Waxman follows:]

112 \*\*\*\*\* INSERT \*\*\*\*\*

113 Chairman WAXMAN. I now want to recognize for his opening  
114 statement any Member who wishes to make an opening statement.

115 Mr. Sali?

116 Mr. SALI. Thank you, Mr. Chairman. I want to thank you  
117 for calling this important hearing about the governance and  
118 financial accountability of rural electric cooperatives. We  
119 will hear here today that the Pedernales incident in Texas is  
120 indicative of the conduct of rural electric cooperatives  
121 across the Country. I anticipate we will hear remarks that  
122 most rural electric cooperatives are poorly managed and may  
123 need further regulation.

124 Certainly in Idaho--I would presume in many areas of the  
125 Country--rural electric cooperatives serve a critical and  
126 positive role in our communities, providing service to rural  
127 areas at an affordable rate.

128 In the northern part of my District in Idaho, if you  
129 will look at the map there, there are several electric  
130 cooperatives providing electricity to just over 100,000  
131 residential and business consumers. These electric  
132 cooperatives serve some of the most isolated, rural consumers  
133 in our Nation. On average, the electric cooperatives in  
134 Idaho serve six customers per mile of wire, in contrast to  
135 the twenty customers per mile of wire for the investor-owned  
136 utilities.

137 I have serious concerns if, by holding this hearing



138 | today, this Committee is suggesting that we must impose more  
139 | stringent regulations on the rural electric cooperative  
140 | industry due to the mismanagement of one cooperative.  
141 | Regulations already exist at the cooperative board level and  
142 | at the State level, and the cooperatives in northern Idaho  
143 | already have transparency policies in place where consumers  
144 | can review all financial data on a website.

145 |         Most cooperative consumers in Idaho receive a capital  
146 | credit refund. In the case of Clearwater Power--that is the  
147 | green area on the map--General Manager Dave Hagen stated,  
148 | ``Our consumers have received capital credit refunds since  
149 | 1988 amounting to the total of \$5 million.``

150 |         Additional regulations imposed at the Federal level will  
151 | only increase the cost of electricity to our rural  
152 | communities and small businesses, which are already  
153 | struggling to get by as they struggle with high food prices  
154 | and high gas prices.

155 |         My constituents cannot afford higher electric bills with  
156 | the cost of gasoline and food on the rise, as well. New  
157 | regulations and higher utility bills are an unnecessary  
158 | burden, especially for my constituents in north Idaho who  
159 | receive electricity from a cooperative because their per  
160 | capita income is just \$18,555, and they have an average  
161 | household income of \$6,000 less than the other utility  
162 | consumers in my State. This would be a tremendous burden for

163 | them.

164 |       For these reasons, Mr. Chairman, I respectfully will  
165 | oppose any new regulatory burden that would increase the cost  
166 | of doing business for the rural electric cooperative  
167 | industry. I would ask my colleagues to do the same.

168 |       Thank you, Mr. Chairman.

169 |       [Prepared statement of Mr. Sali follows:]

170 | \*\*\*\*\* INSERT \*\*\*\*\*

171 Chairman WAXMAN. Thank you, Mr. Sali.

172 Mr. Cooper?

173 Mr. COOPER. Thank you, Mr. Chairman.

174 I really regret that we must have this hearing today. I  
175 love electric co-ops and I don't want to see any of them  
176 harmed. But I also love co-op customers. So far, I have not  
177 introduced any legislation because my only goal is to return  
178 co-ops to their roots. I don't even want to draw attention  
179 to co-ops because I know how publicity shy they are.

180 My father helped start a rural electric cooperative and  
181 I have represented roughly 20 electric co-ops, or at least  
182 their customers, and that is perhaps more than any other  
183 Member.

184 I started learning about electric co-ops almost two  
185 decades ago when I first attended a co-op annual meeting.  
186 For almost ten years I have been talking privately with  
187 various co-op leaders, speaking at co-op conventions, both  
188 State and national, to warn them about problems that even I  
189 could see as a co-op observer.

190 I worked hard for many years to solve co-op problems  
191 within the co-op family, but I was rebuffed at almost every  
192 turn, so here we are today with one, the largest co-op in  
193 America, in serious scandal; two, its former leaders hiding  
194 from Federal marshals; and, three, loads of other co-op  
195 problems bubbling publicly to the surface.

196           For much of the last ten years I didn't really know for  
197 sure whether my co-op worries were justified, but then I saw  
198 the outstanding reporting of Margaret Newkirk of the Atlanta  
199 Journal Constitution and of Claudia Grisales of the Austin  
200 American Statesman chronicling the abuses of Georgia and  
201 Texas co-ops. I also found that TVA, the Tennessee Valley  
202 Authority, Inspectors General had been complaining about  
203 Tennessee co-op misbehavior for a long time, but, due to  
204 co-op pressure, hiding the report from Congress and, as the  
205 IG put it in writing, from shrill media attention.

206           I also stumbled upon the National Co-op Trade  
207 Association's own secret, password-protected website and  
208 discovered that some of my worst fears about co-ops were  
209 substantiated by the Trade Association, itself, and our ECA,  
210 the same organization that had been stonewalling me.

211           That is when I decided to write a law review article  
212 that the Chairman mentioned. If you have got to wash your  
213 dirty laundry in public, you might as well get it cleaned.

214           I want to make seven quick points:

215           Number one, if you think Pedernales is the only electric  
216 co-op scandal in America, then you believe that there can  
217 only be one cockroach. If such abuses can happen in the  
218 largest co-op in the Country founded by a former U.S.  
219 President within sight of the regulators in the State capital  
220 in Austin, Texas, then I think it can happen anywhere.

221 Co-ops serve portions of 47 States. They serve 75  
222 percent of the land area of America, and I am thankful for  
223 that. Overall, they have done a superb job. But we already  
224 know of separate, unrelated, major co-op scandals outside of  
225 Atlanta and Birmingham and Fort Worth. Is your State next?  
226 How could you even know unless you have seen the audited  
227 co-op financials? Or are you willing just to take the co-op  
228 lobbyist's word for it? Our friends in the Texas Legislature  
229 did that for too many years.

230 Point number two: co-ops don't have to be mired in  
231 scandal to still have serious problems. It doesn't take a  
232 spike in temperature to have a sick patient. A chronic,  
233 low-grade fever can be just as damaging. The NRECA has been  
234 issuing reports for over 30 years warning all co-ops in the  
235 Country that they need to be refunding more money to  
236 customers, because if they don't they risk losing their  
237 tax-exempt status. For decades too many co-ops have turned a  
238 deaf ear to their own trade association on this and other  
239 important issues involving their precious tax-exempt status.

240 Why would NRECA go to so much trouble and pay for such  
241 expensive secret reports as this one that can only be found  
242 on their password-protected website unless they were really  
243 worried about an IRS crackdown under current law?  
244 Ironically, much of this hearing will be spent just  
245 reinforcing NRECA's own message to its own members.

246 Point number three: are co-op customers being treated  
247 fairly today? Remember here that co-ops were founded under  
248 Franklin Roosevelt's New Deal to be probably the most  
249 pro-consumer organizations in America. Co-ops always brag  
250 about the "co-op difference." Yet, NRECA, itself, has  
251 written that countless co-op customers, particularly in the  
252 most rural areas, pay an extra \$220 a year. Why? Just so  
253 that their own co-op can remain inefficient.

254 This is the NRECA book. According to the NRECA, itself,  
255 if small co-ops simply merged with other co-ops they could  
256 save their customers' two months of electricity bills a year.  
257 Wouldn't it be nice to give customers a two-month holiday  
258 from their light bills?

259 Point number four: private property rights. Co-op  
260 customers really do own their co-op. This isn't any  
261 theoretical interest like taxpayers who may have an undivided  
262 interest, say, in the Smithsonian Museum. Co-op customers  
263 literally have or will have legal title in their own name to  
264 a piece of the thirty-plus billion dollars in co-op equity.  
265 That is about as much stock as Amazon.com has. It averages  
266 out to \$1,824 per customer, an amount comparable to the  
267 economic stimulus checks that Congress voted for just a  
268 couple of months ago. Here's the picture. Yet, how many  
269 co-op customers have ever been told exactly what is in their  
270 co-op account? Have any? I have not found one yet except

271 | for one top power company executive who got all of his money  
272 | out every time he moved from one co-op to another.

273 |         Why can't regular co-op customers get this benefit? Or  
274 | is it reserved for VIPs? After all, internal co-op software  
275 | calculates individual ownership to the penny, yet co-ops  
276 | somehow run out of ink on the monthly bills before they  
277 | disclose your ownership stake.

278 |         All this leads me to conclude that this \$30 billion plus  
279 | may be the largest lost pool of capital in America. I  
280 | estimate that co-ops could safely return between \$3 billion  
281 | and \$9 billion of customers' own money to them. This money  
282 | could help millions of rural ratepayers today who are having  
283 | a hard time in a soft economy. And it is not a Government  
284 | handout; this is just a return of the customers' own money.

285 |         Chairman WAXMAN. Mr. Cooper, thank you very much for  
286 | your opening statement. We will allow you to submit  
287 | additional information and material in the opening statement.  
288 | It is not fair, because you know more about co-ops than  
289 | anybody else on this Committee, so I am reluctant to invoke a  
290 | time limit on you, but I see other Members are seeking  
291 | recognition, as well.

292 |         Mr. COOPER. Thank you.

293 |         [Prepared statement of Mr. Cooper follows:]

294 | \*\*\*\*\* INSERT \*\*\*\*\*

295 Chairman WAXMAN. Mr. Davis?

296 Mr. DAVIS OF VIRGINIA. Thank you.

297 Let me just thank Mr. Cooper for bringing this up to the  
298 Committee's attention.

299 We are here because questions have been raised about the  
300 vulnerability and even the relevance of a venerable business  
301 model that helped modernize post-Depression rural America and  
302 today serves over 41 million consumers in 47 States. Rural  
303 electric cooperatives, member-owned power generation and  
304 distribution companies, bring the power of economic  
305 development and growth to diverse communities who might  
306 otherwise languish off the national grid.

307 But the apparent plundering of one large co-op, the  
308 Pedernales in Texas, by entrenched directors and officers has  
309 caused some to ask more broadly whether these tax-exempt,  
310 Federally-subsidized organizations are governed  
311 democratically, managed efficiently, regulated effectively,  
312 or operated transparently enough to prevent self-dealing and  
313 abuse.

314 In the Pedernales case, millions of dollars of capital  
315 owned by co-op members was misspent on excessive compensation  
316 packages, phantom employees, first-class travel, and luxury  
317 hotel expenses. High-living insiders even paid \$2,000 for  
318 Celine Dion tickets.

319 So it is fair to ask, as our Committee colleague,



320 Representative Cooper, does, if this useful New Deal tool has  
321 become a potentially bad deal for taxpayers and customers.  
322 In this post-Enron Sarbanes-Oxley era of strengthened  
323 corporate governance accountability and transparency, it is  
324 worth asking what rural electric co-ops are doing to keep  
325 pace with regulatory standards and governance reforms in the  
326 increasingly complex and changing electric industry.

327 At the same time, there is little to suggest the abuses  
328 uncovered at Pedernales are symptomatic of widespread fiscal  
329 profligacy throughout the national network of 931 electric  
330 co-ops. That critical infrastructure transmits power over 75  
331 percent of the Nation's vast geography. At every juncture,  
332 co-op member owners have the legal rights and powers under  
333 State and corporation and utility regulation laws to police  
334 or replace irresponsible directors and managers.

335 Eventually, Pedernales customers regained control of  
336 their company and co-op democracy remains the most potent  
337 safeguard against mismanagement and waste. But in the face  
338 of global energy pressures and modern mandates to diversify  
339 co-op activities for economic and social reasons, the quaint  
340 old ways of doing business that worked in the 1950s and 1960s  
341 can begin to look a bit threadbare. Even newly expanded IRS  
342 disclosure requirements for non-profits may not give co-op  
343 members, regulators, or taxpayers enough timely information  
344 to prevent the next Pedernales from blooming in the crevices

345 | of a patchwork regulatory and oversight system.

346 |       So we need to know how safeguards can be strengthened  
347 | and how rural electric co-ops can continue to fulfill their  
348 | potential as stable, responsible drivers of economic  
349 | development and community growth.

350 |       We appreciate the testimony of our witnesses this  
351 | morning as we explore these important issue.

352 |       Thank you.

353 |       [Prepared statement of Mr. Davis of Virginia follows:]

354 | \*\*\*\*\* INSERT \*\*\*\*\*

355 Chairman WAXMAN. Thank you, Mr. Davis.

356 Let me ask unanimous consent that all Members' opening  
357 statements be inserted in the record. I will recognize  
358 members who feel that they still want to say a few words of  
359 their opening statement before we actually begin.

360 I will go to this side. I think Mr. Clay came in first.

361 Mr. CLAY. Thank you, Mr. Chair. I have a very brief  
362 opening statement and I appreciate your holding this hearing.

363 While I represent an urban area, I am aware that there  
364 are 47 rural electric co-ops in Missouri that serve nearly  
365 1.5 million customers. The Quiver River Electric Cooperative  
366 serves approximately 65,000 Missouri customers living close  
367 to my District. Since 1976 Quiver has distributed \$51.5  
368 million in capital credits to its members. In 2008 Quiver's  
369 board of directors authorized a distribution of \$3.8 million  
370 in refunds.

371 Quiver also conducts elections where the co-op's members  
372 select the board of directors. In 2007 the elections were  
373 held in August and involved four of the twelve board members.

374 Finally, Quiver prepares an annual report that is  
375 available to its members. This report explains the financial  
376 conditions of the co-op, as well as the assets that the co-op  
377 owns. Based on this report and other information, the  
378 members are notified about the co-op's activity.

379 The problems involving capital credits and board of

380 | directors and general manager abuses that existed at the  
381 | Texas electric co-op have not occurred at Quiver. While  
382 | there are individual bad actors in every industry, I hope  
383 | that this is an isolated situation.

384 |       Mr. Chairman, I yield back my time.

385 |       [Prepared statement of Mr. Clay follows:]

386 | \*\*\*\*\* INSERT \*\*\*\*\*

387 Chairman WAXMAN. Thank you, Mr. Clay.

388 Mr. Marchant?

389 Mr. MARCHANT. Thank you, Mr. Chairman. I will be brief.

390 I would just like to bring greetings to Senator Fraser  
391 and Representative Rose. It was my privilege when I was a  
392 member of the Texas House to serve with both of them, and I  
393 have the utmost confidence in their ability. Senator Fraser  
394 has been involved in the co-op part of legislation for many  
395 years, and I, myself, am a co-op customer. I do business  
396 with three different co-ops. It is still my belief that the  
397 governance of co-ops should stay at the local level and at  
398 the State level. I believe the actions that the State took  
399 to correct the Pedernales problem were appropriate, and I  
400 believe that they have a handle on it.

401 I deeply appreciate you guys coming up today and  
402 participating in the hearing, because I think in the long run  
403 this will be a good day for the co-ops and a day where the  
404 co-ops will be able to explain to the public and answer some  
405 of these allegations.

406 Thank you.

407 [Prepared statement of Mr. Marchant follows:]

408 \*\*\*\*\* INSERT \*\*\*\*\*

409 Chairman WAXMAN. Thank you, Mr. Marchant.

410 Mr. Kucinich?

411 Mr. KUCINICH. Thank you, Mr. Chairman, for holding this  
412 hearing, and thanks, Mr. Cooper, for bringing it to the  
413 attention of the Committee.

414 We put this in the context of rural America, where you  
415 see the physical infrastructure of rural America fraying, the  
416 telecommunication infrastructure where people are paying more  
417 for less, water rights are under attack in rural areas. Now  
418 we see co-ops, in this case one that is under inspection,  
419 exploiting the resource of the members.

420 You have to remember, let's go back historically, why we  
421 saw rural electrification and why these co-ops were created:  
422 to make sure the people in rural areas had reliable access to  
423 electricity at a low cost, because the big energy companies  
424 didn't want to spend the money and invest in infrastructure,  
425 didn't want to do that. So our mission as a Committee, I  
426 hope, is going to be to find a way to not just call these  
427 particular individuals to an accounting, as we should and  
428 must, but to find a way to make sure that we protect the  
429 philosophical underpinnings of rural electrification and of  
430 rural co-ops so that people can have access to electricity at  
431 a low cost, so that rural areas can find a way to survive in  
432 these very troubled economic times.

433 Thank you.

434 [Prepared statement of Mr. Kucinich follows:]

435 \*\*\*\*\* INSERT \*\*\*\*\*

436 Chairman WAXMAN. Thank you.

437 Mr. Duncan?

438 Mr. DUNCAN. Thank you, Mr. Chairman. Thank you for  
439 calling this hearing. It is very appropriate, considering  
440 the scandal that has gone in in Texas with this largest co-op  
441 in the U.S.

442 First of all I want to say that I have the greatest  
443 respect for my colleague, Congressman Cooper, who is a good  
444 friend of mine, and I salute him for raising these concerns  
445 and asking these questions. He used to represent a very  
446 rural District in Tennessee, and he has studied this issue  
447 and these co-ops for many years and I have not, so he knows  
448 far more about this than I do. He and I now represent the  
449 two fastest-growing areas in Tennessee. He represents the  
450 Nashville area and I represent primarily an urban/suburban  
451 District in and around Knoxville. Only about 12 percent of  
452 my constituents are served by co-ops, but overall I  
453 understand that about one-third of the people in Tennessee  
454 are served by co-ops, so this is very important to Tennessee.

455 I am told that the average profit per member in  
456 Tennessee, the annual profit is around \$82 per member for a  
457 year. I also have learned that, under agreements with TVA,  
458 since the Tennessee co-ops are supplying TVA power, that TVA  
459 requires that, rather than rebate money, that these co-ops do  
460 one of three things, are limited to three things: keeping



461 | rates low, paying down debt, or investing in the  
462 | infrastructure. They couldn't, I suppose, do all three in  
463 | any one year.

464 |       Those seem like good things to me. I haven't read any  
465 | articles about any co-ops in Tennessee doing anything even  
466 | remotely close to what has happened in Texas, but there is  
467 | certainly nothing wrong about looking into this and making  
468 | sure that the customers or members are treated fairly and  
469 | honestly, and that co-ops any place are not making  
470 | investments in things that they should not be investing in.  
471 | So I thank you for calling this hearing and for allowing me  
472 | to participate.

473 |       [Prepared statement of Mr. Duncan follows:]

474 | \*\*\*\*\* INSERT \*\*\*\*\*

475 Chairman WAXMAN. Thank you, Mr. Duncan.

476 Other Members who wish to make opening statements? Ms.  
477 Watson?

478 Ms. WATSON. Thank you, Mr. Chairman. And thank you for  
479 holding today's hearing where we will be examining the  
480 managerial practices of Pedernales Electric Cooperative.

481 Co-ops were created during the era of President  
482 Roosevelt's New Deal, and their purpose was to supply  
483 millions of Americans who lived in under-developed, rural  
484 communities with electricity.

485 Presently, the conditions of modern and rural areas are  
486 not in the dire situation they experienced during the Great  
487 Depression, but 70 years later 930 co-ops are still  
488 responsible for providing electricity for the 17 million  
489 Americans across the Country.

490 Pedernales has been providing reliable electrical  
491 service to rural Texans for over 70 years; however, recently  
492 there have been numerous allegations ranging from excessive  
493 personal spending of co-op funds by board members, unearned  
494 compensation for former board members, improper election  
495 methods, non-beneficial investment practices, and numerous  
496 IRS reporting infractions.

497 Even though this hearing is focusing mainly on the  
498 questionable practices of Pedernales, it is important to find  
499 out if the problems are widespread throughout the cooperative

500 | industry.

501 |       Mr. Chairman, I hope that we will consider holding a  
502 | future hearing that will examine the nature of financial  
503 | practices of other cooperatives. In the end, what this  
504 | Committee desires to uncover is why Pedernales and board  
505 | members allegedly took advantage of other member customers,  
506 | how these practices were carried out with the use of company  
507 | funds, and if the practices of the board members could  
508 | plausibly be repeated in other electric cooperatives around  
509 | the Country.

510 |       So I look forward to hearing from the panel, and  
511 | especially the testimony of Mr. Glenn English, the CEO of the  
512 | National Rural Electric Cooperative Association. I hope that  
513 | he can provide more insight on the co-op industry and give us  
514 | a general overview on the use of co-op funds in the industry  
515 | as a whole.

516 |       Mr. Chairman, I thank you. I yield back.

517 |       [Prepared statement of Ms. Watson follows:]

518 | \*\*\*\*\* INSERT \*\*\*\*\*

519 Chairman WAXMAN. Thank you very much, Ms. Watson.

520 Any other Members seek to make an opening statement?

521 Mr. Sarbanes?

522 Mr. SARBANES. Very quickly, Mr. Chairman, thank you.

523 You know, we talk about expertise on the part of fellow  
524 Members of Congress, but Congressman Cooper's expertise in  
525 this area is so deep that he would easily be qualified by a  
526 judge in any court case as an expert witness, based on all of  
527 the research that he has done in his own personal and  
528 professional experience with co-ops.

529 A hearing like this predictably will produce a response  
530 among sort of three categories of actors. There will be  
531 those who have engaged in outrageous practices who had better  
532 start quickly figuring out how to fix the situation. There  
533 will be those who maybe could do better than they have done  
534 and ought to look at that. And then there will also be those  
535 who have acted in a responsible manner.

536 I don't have any electric cooperatives in my district.  
537 In Maryland we have one in southern Maryland called the  
538 Southern Maryland Electric Cooperative, from my  
539 understanding, one of the more responsible actors in this  
540 drama, but I would assume that the responsible folks would  
541 step up within whatever the association is to make the case  
542 that others need to clean up their act and improve their own  
543 sort of self-regulation. But I think Mr. Cooper bringing

544 | this issue to light as he has points us to examining whether  
545 | there ought to be more oversight and regulation from third  
546 | parties, including Government oversight. That will be part  
547 | of the discussion today, so I want to thank him for making  
548 | all of us look carefully at this issue.

549 | I yield back my time.

550 | [Prepared statement of Mr. Sarbanes follows:]

551 | \*\*\*\*\* INSERT \*\*\*\*\*

552 Chairman WAXMAN. Mr. Welch?

553 Mr. WELCH. We have two excellent co-ops in Vermont of  
554 that category that my colleague, Mr. Sarbanes, was just  
555 talking about. They take the democratic duties seriously.  
556 Service on the board is much a sacrifice; it is not a  
557 bonanza. And they are doing tremendous work on alternative  
558 energy, providing real leadership in the State. That is the  
559 Vermont Electric Co-op and the Washington Electric Co-op.

560 Mr. Chairman, if there is no objection, I would like to  
561 introduce their newsletters into the record.

562 Chairman WAXMAN. Without objection, they will be made a  
563 part of the record.

564 Mr. WELCH. But those of us who support co-ops have the  
565 major responsibility to root out when it is being abused,  
566 because if we are going to allow there to be continued  
567 support to do the good work, we have to make certain there is  
568 no latitude to make this into a rip-off, and I really applaud  
569 Congressman Cooper and would like to yield him at least part  
570 of the balance of my time, Mr. Chairman. I know we are  
571 short, but to finish a couple of points that he has, if that  
572 is possible.

573 [Prepared statement of Mr. Welch and the newsletters  
574 follow:]

575 \*\*\*\*\* INSERT \*\*\*\*\*

576 Mr. COOPER. I thank my friend for yielding.

577 Two points that haven't been made so far: this year  
578 some giant energy companies in America are trying to take  
579 advantage of co-ops' strong balance sheets and tax-exempt  
580 barring authority to get co-ops to issue billions of dollars  
581 worth of bonds for new power generation, particularly  
582 coal-fired units. They want co-ops to generate more power, to  
583 increase pollution, and to issue these bonds. The last time  
584 co-ops fell for such a sales pitch was in the 1970s and  
585 1980s, and many co-ops went bankrupt as a result. I think  
586 co-ops should make energy conservation their first priority,  
587 and then, once they have helped reduce customer bills, focus  
588 on other ventures.

589 Also, you all know that sunshine is the best  
590 disinfectant. Without full disclosure, co-op democracy is a  
591 sham. Did you know that in the official biography of the  
592 official lending arm to co-ops, the CFC, they state  
593 explicitly that it was formed to tell Wall Street how rich  
594 co-ops are so that NRECA can at the same time tell us how  
595 poor they are.

596 Did you know that the PAC associated with NRECA gives  
597 almost as much money to Congress as Boeing Corporation? Why  
598 are they spending all this money to defend motherhood and  
599 apple pie organizations? Is it just a narcotic to make sure  
600 that we, the watchdogs, stay asleep.

601           So thank you, Mr. Chairman.

602           You have the best staff on the Hill. Co-op customers  
603 get electricity today, but they don't have power and they are  
604 being kept in the dark.

605           Chairman WAXMAN. Thank you very much, Mr. Cooper and Mr.  
606 Welch.

607           Unless our witnesses want to yield the rest of their  
608 time to Mr. Cooper, we are going to hear from you.

609           [Laughter.]

610           Chairman WAXMAN. I am pleased to welcome them to our  
611 hearing today.

612           The first panel is going to focus on the Pedernales  
613 Electric Cooperative.

614           The Honorable Troy Fraser is a member of the Texas  
615 Senate and a member of the Pedernales Co-op. He chairs the  
616 Texas Senate's Business and Commerce Committee and has  
617 chaired a hearing on the co-op's business practices.

618           The Honorable Patrick Rose is a member of the Texas  
619 House of Representatives. He also is a member of the Co-op  
620 and has been investigating business practices at the  
621 Pedernales.

622           Mr. John Watson is a member of the Pedernales Co-op.

623           Mr. Carlos Higgins is a member of the Pedernales Co-op  
624 and recently ran for a position on its board of directors.

625           Mr. Juan Garza is the new General Manager of Pedernales.



626 | Before he started at Pedernales in February of 2008 he was  
627 | the General Manager of a publicly-owned Austin Energy.

628 | I want to thank all of you for traveling to be with us  
629 | today.

630 | I would like to note again the absence of two invited  
631 | witnesses, Mr. Bennie Fuelberg was a long-time General  
632 | Manager of Pedernales. He is not present today because he is  
633 | evading service of the Committee's subpoena. His attorney  
634 | advised Committee staff that he would assert his Fifth  
635 | Amendment right against self-incrimination if he did appear.

636 | Mr. Bud Burnett was a long-time President of Pedernales.  
637 | He is also evading service of the Committee's subpoena. His  
638 | attorney advised Committee staff that he would assert his  
639 | Fifth Amendment right against self-incrimination if he did  
640 | appear.

641 | They don't have to assert it. They are not here.

642 | We are pleased to have you with us. It is the practice  
643 | of this Committee that all witnesses who testify do so under  
644 | oath. I would like to ask, if you would, to please stand and  
645 | raise your right hand.

646 | [Witnesses sworn.]

647 | Chairman WAXMAN. The record will indicate that each of  
648 | the witnesses answered in the affirmative.

649 | Your prepared statements will be in the record in its  
650 | entirety. What I would like to ask each of you to do is to

651 | limit your oral presentation to around five minutes. We will  
652 | have a clock that will indicate green, and then the last  
653 | minute will turn yellow, and then when the time is up it will  
654 | turn red. If you see red on the clock, we would welcome you  
655 | to summarize your testimony.

656 |       Mr. Fraser, why don't we start with you?

657 | STATEMENTS OF THE HONORABLE TROY FRASER, CHAIR, BUSINESS AND  
658 | COMMERCE COMMITTEE, TEXAS SENATE; THE HONORABLE PATRICK ROSE,  
659 | TEXAS HOUSE OF REPRESENTATIVES; JOHN WATSON, MEMBER OF  
660 | PEDERNALES ELECTRIC COOPERATIVE; CARLOS HIGGINS, MEMBER OF  
661 | PEDERNALES ELECTRIC COOPERATIVE; AND JUAN GARZA, CURRENT  
662 | GENERAL MANAGER OF PEDERNALES ELECTRIC COOPERATIVE

663 | STATEMENT OF TROY FRASER

664 |         Mr. FRASER. Mr. Chairman, I am extremely honored to be  
665 | here in your Committee today. Also other Members, thank you  
666 | for being here, especially Representative Marchant. He  
667 | served with distinction in Texas, and we are very proud of  
668 | Mr. Marchant and the service he has given to the great State  
669 | of Texas. Thank you for being here.

670 |         Members, I currently serve as chairman of the Texas  
671 | Committee on Business and Commerce. That gives me oversight  
672 | over the electric industry. I also, along with  
673 | Representative Rose, am a member of the Pedernales Electric  
674 | Cooperative.

675 |         I would like to emphasize, first of all, that I have  
676 | been and continue to be a strong supporter of the rural  
677 | electric cooperatives. These cooperatives brought

678 | electricity to many parts of Texas and the Nation that no one  
679 | else wanted to serve.

680 | I also believe that the beauty of the electric co-op  
681 | system is that co-ops are designed so that member owners can  
682 | determine how best to run the system through the election of  
683 | board of directors. If members don't like the policies that  
684 | are being set by the board of directors, they can and they  
685 | should vote them out of office.

686 | In 1995 the Texas Legislature allowed cooperative to opt  
687 | out of retail rate regulation by majority vote of the  
688 | members, and a vast majority of the 66 distribution co-ops  
689 | did that, but the wires and the transmission lines continue  
690 | to be regulated by the State of Texas and the Public  
691 | Utilities Commission.

692 | I want to be clear that I believe that the best way to  
693 | control a cooperative is through the democratic participation  
694 | of members; however, the members of Pedernales Electric  
695 | Cooperative over the last year have raised many concerns that  
696 | they did not have a voice in their cooperative. Many of  
697 | these customers are also mine and Representative Rose's  
698 | constituents.

699 | Late last spring the constituents began contacting the  
700 | office to complain about the closed nature of the board of  
701 | directors. Specifically, concerns were raised over the  
702 | nomination and election process, the lack of transparency by

703 | the board of directors and senior management by prohibiting  
704 | members from even attending board meetings or accessing  
705 | cooperative information, the failure of the cooperative to  
706 | return excess profits by paying capital credits, and the  
707 | extreme levels of compensation and benefits received by board  
708 | members and senior management.

709 |         In May 2006 a group of Pedernales members filed a civil  
710 | lawsuit against the cooperative and the board of directors,  
711 | making the same claims I just mentioned. Basically, these  
712 | members were suing themselves over perceived wrongdoings of  
713 | the cooperative and the board. A settlement to the lawsuit  
714 | has been reached, but it is currently under appeal.

715 |         This lawsuit, the watchful eye of the media, and the  
716 | legislative scrutiny by Representative Rose and myself have  
717 | led also to an ongoing criminal investigation that is being  
718 | led by the District Attorney but with the assistance of the  
719 | Texas Attorney General's office.

720 |         It became apparent that the inability to elect anyone  
721 | except the board's hand-picked candidates allowed Pedernales  
722 | Electric to become a self-governed entity with no way to be  
723 | controlled. With no one to look over their shoulders, abuses  
724 | occurred.

725 |         First of all, as was mentioned, Mr. Chairman, the  
726 | President of the board not only received the perks of being a  
727 | board member; he also paid himself \$190,000 a year annually

728 as an employee, making him eligible for retirement benefits,  
729 but he also had no real duties or also a severe lack of  
730 knowledge of what was going on in the co-op. He currently  
731 today, after leaving, is receiving \$10,000 per month in  
732 retirement benefits, and we just discovered in IRS filings  
733 that, as he was leaving, he was paid an additional \$600,000  
734 retirement package that they had voted in in 2001, again  
735 without our knowledge.

736 The General Manager, Bennie Fuelberg, was being paid  
737 \$390,000 annual salary. In addition, the board secretly  
738 voted to give him an additional \$2 million in deferred  
739 compensation over a five-year period, and then they gave him  
740 another \$375,000 what they called a signing bonus, in order  
741 to sign the \$2 million bonus contract.

742 Last year Bennie Fuelberg, his last year at the company,  
743 made \$1.4 million. None of this additional pay was disclosed  
744 to the members. It is also alleged that the board and  
745 management falsified the 990 report to the IRS and all  
746 reports prior to 2006 by not reporting the General Manager's  
747 total compensation and bonuses.

748 We know the PEC board had paid themselves excessive  
749 salaries totaling over \$1 million per year. All board  
750 members, including non-voting members, were given free  
751 lifetime health insurance for themselves and dependents.  
752 They received free \$3,000 physicals for the members and

753 spouses at the Cooper Health Clinic Spa in Dallas. The board  
754 also created policies that, when you left the board, you  
755 would become eligible for \$1,500 per month retirement as an  
756 emeritus status and free lifetime insurance for not only the  
757 members but all dependents.

758 The board, senior management, and their spouses and  
759 girlfriends traveled first-class to destinations all over the  
760 world. They stayed at luxury hotels, as you said, Ritz  
761 Carlton, the Four Seasons, and the like, when traveling on  
762 Cooperative business, with no approval process.

763 Mr. Chairman, as you said, we have identified \$700,000  
764 in credit card bills that were paid without any approval  
765 process of whether those expenses were legitimate cooperative  
766 business.

767 Additionally, almost all cooperative expenditures were  
768 not competitively bid, and the value of those expenditures is  
769 not known and is currently under audit.

770 Compounding these abuses, board meetings were not  
771 publicized or open to members. Members could not know or  
772 attend meetings. I personally attempted to attend a board  
773 meeting on January 3rd, 2008, and I was denied entrance into  
774 the board meeting.

775 I could go on, but the fact that Pedernales Electric, if  
776 they had had an open election process, probably these abuses  
777 would not have occurred. Texas removed regulatory oversight

778 over cooperatives in 1999 because we thought it was  
779 redundant. We thought the members could determine how to run  
780 the cooperative through the election process. If the members  
781 were unhappy, they should be able to vote them out of office.

782 The failures to have true and honest elections at  
783 Pedernales is the reason the Senate Committee on Business and  
784 Commerce is currently looking at all electric cooperatives to  
785 make sure that what happened at Pedernales is not happening  
786 in other parts of the State with those 66 co-ops.

787 There have been reforms this year at Pedernales. Juan  
788 Garza is going to outline the things that have happened this  
789 year. We just had an election where five new members were  
790 elected.

791 I will conclude with that and I will open up for  
792 questions after the rest of the testimony.

793 Thank you.

794 [Prepared statement of Mr. Fraser follows:]

795 \*\*\*\*\* INSERT \*\*\*\*\*



796 | Chairman WAXMAN. Thank you very much, Mr. Fraser.

797 | Mr. Rose?

798 STATEMENT OF PATRICK ROSE

799 Mr. ROSE. Mr. Chairman, Mr. Marchant, it is a pleasure  
800 to be with you. I am sorry that we have to be with you  
801 today.

802 Since 2003 I have represented Johnson City and the  
803 Pedernales Electric Cooperative headquarters in the Texas  
804 House of Representatives. It is impossible to represent this  
805 District and not recognize PEC's rich history and  
806 foundational role in central Texas. As an elected official  
807 representing thousands of members and employees of this  
808 organization, it is my duty to ensure its long-term success,  
809 and that is why I am here before you today.

810 As the co-op navigates these turbulent times, I am  
811 committed to reforms that strike the balance between  
812 statutory oversight and local control. PEC members need and  
813 deserve a co-op that is open and transparent. We can do that  
814 with the right reforms at the State level, and Senator Fraser  
815 and I, working closely together over this last year and as we  
816 approach next session, are committed to do just that.

817 With the cost of energy continuing to rise at an  
818 alarming rate, our constituents rely on us to guarantee that  
819 the price we pay for gas at the pump and for the electricity  
820 we use to heat and cool our homes is reasonable and fair. We

821 must provide those we represent the security of knowing that  
822 they are not paying unwarranted prices for basic necessities,  
823 and when we find that those we have entrusted to deliver  
824 these essential services have wasted PEC members' resources  
825 for their own gain, it is the role of government to step in  
826 and fix this problem.

827       Bloated overhead, lavish expense accounts, full-time  
828 employees who never showed up to work all were common  
829 practice at the old PEC. The PEC board and senior management  
830 have clearly taken advantage of its employees and members.  
831 PEC employees are doing their job, and customers have  
832 excellent service at a cost that is considerably lower than  
833 investor-owned utilities in the State of Texas. We must end  
834 the PEC board's and senior management's high salaries and  
835 lavish spending in order to protect ratepayers in our co-op.  
836 We need to implement laws that regulate co-op boards and at  
837 the same time protect customers from high electricity costs.

838       I believe that statutory changes are the only way to  
839 ensure that PEC keeps its electric rates low and shares its  
840 profits with its members today and in the future. This  
841 starts by overseeing the Navigant audited PEC that was  
842 mandated as part of the settlement proceedings of the lawsuit  
843 of which the Senator spoke. We must learn what went wrong in  
844 order to craft legislation that prevents mismanagement in the  
845 future.

846           The results of the Navigant audit are expected in  
847 August, and nothing short of a complete retrospective look at  
848 past practices and transactions, as well as an analysis of  
849 appropriate benchmarks and standards to apply to PEC's  
850 operations prospectively, nothing short of both will be  
851 acceptable.

852           Should Navigant fall short, I will statutorily require  
853 an audit to be conducted by the State Auditors Office when  
854 the Legislature reconvenes in January 2009.

855           Mr. Chairman, public power only works when it is  
856 transparent, and without transparency there is no meaningful  
857 local control. During the next legislative session I am  
858 prepared to file legislation that will require all electric  
859 cooperatives in Texas to comply with the open meetings and  
860 open records laws, to submit annual audits to the PUC for  
861 their review, the Public Utilities Commission for their  
862 review, and ensure fair and open elections at all co-ops in  
863 Texas.

864           The intent of this legislation is to promote  
865 transparency and informed member participation in all co-ops  
866 in Texas. I believe this is the only way to fully prevent  
867 mismanagement and fraud, guarantee low rates for our members,  
868 and ensure the long-term success of one of central Texas'  
869 greatest assets.

870           Thank you for allowing us to be here today.

871 [Prepared statement of Mr. Rose follows:]

872 \*\*\*\*\* INSERT \*\*\*\*\*

873

Chairman WAXMAN. Thank you very much, Mr. Rose.

874

Mr. Watson?

875 STATEMENT OF JOHN WATSON

876 Mr. WATSON. Chairman Waxman and Ranking Member Davis, I  
877 appreciate the opportunity to offer a member's perspective on  
878 the questionable and abusive practices at the Pedernales  
879 Electric Cooperative. I will describe how those abuses led  
880 to a member uprising and reforms. In spite of the problems,  
881 I want to leave no doubt as to my strong support for electric  
882 distribution co-ops and public power.

883 As a PEC member, I had attended annual meetings and  
884 asked for increased efforts toward greater energy  
885 conservation and increased reliance on renewable energy. I  
886 had urged greater transparency and openness. Those pleas  
887 produced no meaningful results.

888 In January 2007 the San Antonio Express News ran an  
889 article detailing PEC Director compensation as disclosed on  
890 the form 990 from the year 2000. This report triggered a  
891 series of events that I believe can rightly be called a  
892 member uprising. We began to organize. Other newspapers  
893 began to investigate and report on the PEC. A class action  
894 lawsuit was filed alleging abusive practices. Elected  
895 officials were besieged by constituents and began demanding  
896 more information and reforms.

897 Among the abusive practices uncovered at PEC were

898 excessive compensation and benefits for Directors and senior  
899 management; a closed nominating and election process leading  
900 to a self-perpetuating board with an average tenure of 22  
901 years; closed board meetings; absolute refusal to return  
902 capital credits to members; refusal to provide information on  
903 the wholly-owned subsidiary, Envision, and an utter lack of  
904 transparency and openness.

905 Through the lawsuit discovery, we later learned of still  
906 more serious lapses in fiduciary responsibility and ethical  
907 conduct.

908 In January 2007 a small group of members decided to take  
909 coordinated and decisive action to establish co-op member  
910 control, the core co-op principle. We continued to attempt  
911 to work within the existing framework. I called former  
912 General Manager Bennie Fuelberg and asked to appear before  
913 the board's nominating committee. Seven members attended and  
914 presented three candidates. All were highly qualified, but  
915 the committee renominated the directors whose terms were  
916 expiring so they were unopposed on the proxy ballots mailed  
917 to members.

918 Next, a group of members attended the March 2007 board  
919 meeting and presented a by-law amendment to change the  
920 nominating and election process. Again, we were ignored.

921 In May 2007 the class action lawsuit was filed.  
922 Throughout the summer and fall we continued to voice our



923 demands. By now, those demands included the resignation of  
924 all directors.

925 In November 2007, after plaintiff's deposition of senior  
926 co-op management and directors, several rapid developments  
927 occurred. The General Manager, Mr. Fuelberg, and the  
928 President of the board, Mr. Burnett, announced their  
929 retirements. New nominating and voting procedures were  
930 adopted. The return to members of \$7.3 million of capital  
931 credits was announced.

932 In January 2008 Mr. Juan Garza was hired as the new  
933 General Manager. The local District Attorney launched a  
934 criminal investigation. The board meetings were open to  
935 members for the first time.

936 In March 2008 settlement of the class action lawsuit was  
937 announced. In May, despite almost 300 objections protesting  
938 the terms of that settlement, the judgment was entered. That  
939 judgment is now on appeal.

940 Most members I think believe strongly in electric co-ops  
941 and public power. We are convinced that the efforts of  
942 activated members such as myself and Mr. Higgins; the press,  
943 especially Claudia Grisales of the Austin American Statesman  
944 and Jodi Lehman of the Horseshoe Bay Beacon; elected  
945 officials such as Senator Fraser and Representative Rose; and  
946 the lawsuit have combined to begin the process of  
947 establishing control of our co-op by its members. Quite

948 | frankly, we were asleep at the switch for far too long.

949 |         Mr. Garza has committed to work for many of the reforms  
950 | we have long sought, including bringing PEC into the  
951 | provisions of the Texas Open Meetings and Open Records Act;  
952 | however, I endorse it being embedded in the legislation.

953 |         Transparency and openness, combined with fair elections  
954 | leading to reduced director tenure, could have prevented many  
955 | of the abuses we suffered at Pedernales. Much remains to be  
956 | done, and we intend to remain active and vigilant. Working  
957 | with Mr. Garza and the five newly elected directors, we will  
958 | push until we have a co-op that is truly responsive to its  
959 | members and complies fully with the co-op principles.

960 |         Thank you for this opportunity to tell part of our  
961 | story. I will be pleased to answer any questions that the  
962 | Members might have.

963 |         [Prepared statement of Mr. Watson follows:]

964 | \*\*\*\*\* INSERT \*\*\*\*\*

965 | Chairman WAXMAN. Thank you very much, Mr. Watson.  
966 | Mr. Higgins?

967 STATEMENT OF CARLOS HIGGINS

968 Mr. HIGGINS. Mr. Chairman and Members, I am Carlos  
969 Higgins from Austin Texas. When you look at the name of our  
970 co-op, you would naturally try to pronounce it Pedernales.  
971 Those of you who knew President Johnson probably see him  
972 saying Perdinalis. That is the way it is pronounced down  
973 there. It is along the Perdinalis River.

974 This is my message, though: we know it was a big  
975 mistake now to trust that general manager and our board. We  
976 don't know yet what all they have done to us or how much it  
977 is going to cost us. It took that expensive class action  
978 lawsuit to get where we are now to find out that we had  
979 serious problems, and the pending settlement of that lawsuit  
980 is awful.

981 What can you do for our co-op and other co-ops? I do  
982 have a suggestion. First, what went wrong here with our  
983 co-op, we had a general manager who became so powerful he was  
984 able to hand pick the board, get-along board members who just  
985 merely did as they were told, apparently. The board members  
986 ignored their fiduciary obligations to the co-op owners and  
987 they apparently did not know they were not the general  
988 manager's employees or his amen chorus. They were quick to  
989 help themselves, though, to lucrative compensation and perks,

990 | but gave us little to not oversight of our co-op.

991 |       My wife and I have been members of the Pedernales  
992 | Electric Co-op for 34 years now. Our co-op has grown  
993 | immensely in those years, but we have been completely  
994 | satisfied with the service and the rates all that time. We  
995 | do get reliable service.

996 |       We are like the majority of the owners: we lead fairly  
997 | busy lives, and we thought we had no reason to worry about  
998 | our co-op's operations. Board members seemed to be among the  
999 | pillars of their communities, so trusting them seemed to be a  
1000 | reasonable thing to do. We were wrong.

1001 |       A small group of owners had their suspicions about what  
1002 | was going on, especially when they got totally brushed off by  
1003 | the general manager and the board. They persisted and  
1004 | finally filed this lawsuit, and that shed some light on what  
1005 | was going on at our co-op.

1006 |       This is clear: the board members are guilty of  
1007 | self-dealing and pretty much being asleep at the wheel when  
1008 | it comes to their oversight responsibilities. The is what  
1009 | the lawsuit did for us: all of the attention and publicity  
1010 | about the misdeeds at the PEC gave us some reforms, mainly  
1011 | letting the membership actually vote for its own board  
1012 | members.

1013 |       So is everything okay now? Not at all. The lawsuit is  
1014 | far too expensive. It is costing about \$4 million. As to

1015 | the settlement of that lawsuit, it was forced on the  
1016 | membership. I challenge any of you to read through this  
1017 | settlement agreement and then stand up and say, well, not so  
1018 | bad. It is really bad.

1019 |         More than 200 members took time to strenuously object to  
1020 | provisions in this settlement. The court ruled that three of  
1021 | our members, the plaintiffs in the lawsuit, were competent  
1022 | and able to speak for all 223,000 members. It is fiction to  
1023 | claim that they even came close to representing the views of  
1024 | the rest of us.

1025 |         In this settlement we, the members, forgive anyone and  
1026 | everyone and their attorneys for anything they may have done  
1027 | at the PEC, whether their deeds are known or unknown. We  
1028 | specifically forgive even any oral agreements that may have  
1029 | been made and any trusts that may have been set up. That  
1030 | arouses my suspicions right away.

1031 |         What might all this forgiveness cost us? We don't have  
1032 | a clue. We don't know. Some people tried to defend the  
1033 | settlement on the basis that it gave us good reforms at the  
1034 | PEC. That is not exactly so. What gave us those reforms is  
1035 | the discovery in the lawsuit and the subsequent publicity,  
1036 | the spotlight of the press revealing misdeeds and who the  
1037 | culprits are.

1038 |         I doubt that this is a widespread problem among other  
1039 | co-ops. It is probably just ours, and we don't really want

1040 | all the other co-ops and their members to be burdened because  
1041 | our manager and board messed up. Co-op owners are also, of  
1042 | course, co-op customers, and so that is an idea that ought to  
1043 | be protected and preserved. I really believe that. We have  
1044 | been punished enough at our PEC, so we don't want a bunch of  
1045 | other regulations to come down that burden us further and  
1046 | punish us any more.

1047 |         So what is the solution? We had a general manager grow  
1048 | so powerful he could run our co-op like it was his personal  
1049 | fiefdom. It took that expensive and awkward lawsuit to  
1050 | penetrate his barriers. We need a better tool.

1051 |         I think if we had had any authority at all under our own  
1052 | by-laws, a way to get through there and make some changes, we  
1053 | could have reigned these people in a whole lot sooner with a  
1054 | whole lot less fuss and cost. In our by-laws, all the power  
1055 | resides in our board. All of it. If the board chose to do  
1056 | so right now, legally and quickly they could do away with all  
1057 | of the reforms that have gone on before. So we really need  
1058 | some tools. That is what I recommend: that as a minimum,  
1059 | that the by-laws of co-ops be required to give members some  
1060 | ultimate control.

1061 |         You have to be careful about how you structure the  
1062 | by-laws, but members have to have some tools. They can be as  
1063 | vigilant as all get-out, but they have to have the tools that  
1064 | allow them to do something about it, so that is my

1065 recommendation.

1066           One more thought, Mr. Chairman. Thank you very much for  
1067 allowing me to speak. We like our new general manager, Juan  
1068 Garza. He is getting our co-op back on course, but it is not  
1069 that easy. The problem is for at least one more year he is  
1070 working for this board, the majority of them who got us into  
1071 this mess, so he is not really the guy that you need to ask  
1072 the tough questions to. Those two and others are out there  
1073 hiding some place. You really need to bring them in and make  
1074 them answer some of these questions.

1075           Thank you very much.

1076           [Prepared statement of Mr. Higgins follows:]

1077 \*\*\*\*\* INSERT \*\*\*\*\*



1078 | Chairman WAXMAN. Thank you, Mr. Higgins.

1079 | Mr. Garza?

1080 STATEMENT OF JUAN GARZA

1081 Mr. GARZA. Mr. Chairman, as the son of a migrant farm  
1082 worker, Alejandro and his wife Maria, I am deeply, deeply  
1083 honored to be here. Thank you so much for inviting us.

1084 President Johnson taught school in Cotulla, my home  
1085 town, and even though he did teach there, we never were able  
1086 to teach him that the proper way to pronounce Pedernales is  
1087 Pedernales.

1088 [Laughter.]

1089 Mr. GARZA. As general manager of Pedernales, I have been  
1090 selected to lead the Nation's largest electric cooperative,  
1091 serving over 225,000 members, which was 219,000 when I  
1092 started just in February.

1093 PEC has a rich and proud heritage of providing reliable  
1094 election service to its members. Historically, PEC has  
1095 focused on providing outstanding customer service, strong  
1096 system reliability, financial stability, and fair rates.  
1097 This focus has resulted in PEC being rated number one in the  
1098 Country in customer service and number five of all utilities  
1099 in the Country in overall customer satisfaction by J.D.  
1100 Power.

1101 Throughout the service territory, as I have toured it  
1102 since I have been appointed, I hear about the quality of the

1103 employees at PEC. They are the backbone of this company, and  
1104 they carry out the mission of the corporation in a manner  
1105 that makes me proud, indeed, to be their general manager.

1106 The people on this panel, especially Senator Fraser and  
1107 Representative Rose, have been directly involved in helping  
1108 to bring about dramatic and long-lasting changes to PEC. I  
1109 know they are here today because they are interested in the  
1110 future well-being of the cooperative.

1111 For the past 18 months Pedernales Electric has been  
1112 faced with the challenge of responding to the concerns of its  
1113 members regarding openness, transparency, and governance  
1114 issues; however, I am here today to testify that these  
1115 challenges have resulted in significant changes at PEC.

1116 In short, the cooperative system of local member control  
1117 I believe has worked. Under the leadership of Mr. E.B.  
1118 Price, the PEC's board has made these major changes:

1119 Our election system was revised to be more democratic  
1120 and open. This past Saturday we had 58 candidates vying for  
1121 five board positions. Over 30,000 members voted in that  
1122 election.

1123 The position of coordinator, which is a paid chairman's  
1124 position, the director emeritus, and the honorary director  
1125 positions have all been eliminated and abolished.

1126 Our website now includes an array of business and  
1127 governance information, including board meeting agendas, our

1128 | IRS 990 filings, and other critical information.

1129 |         We have implemented a credible policy that includes  
1130 | expenses of the board being reviewed by a newly created  
1131 | expense and audit committee and made public. I want to add  
1132 | that even though I was at the game last night, I paid for  
1133 | that out of my pocket and I also used the Metro system.

1134 |         The monthly board meetings are now open to the public,  
1135 | videotaped, and posted online to allow for greater member  
1136 | participation. A board compensation committee has been  
1137 | appointed to make recommendations for adjusting compensation,  
1138 | which will be retroactive to March 10th when the settlement  
1139 | was first announced of the lawsuit.

1140 |         On March 10th a settlement agreement of the lawsuit  
1141 | brought by our members was reached. Judge Dietz, who  
1142 | presided, approved the agreement in April. PEC will comply  
1143 | with the terms of the settlement agreement, even though it is  
1144 | currently under appeal by a couple of our members.

1145 |         As part of the settlement agreement and as a condition  
1146 | of my employment, Navigant Consulting and Cox, Smith,  
1147 | Matthews, in cooperation with the Public Utility Commission  
1148 | of Texas, are conducting an investigation into the  
1149 | cooperative's operations over the last ten years. The  
1150 | results will be reported to our members.

1151 |         On the issue of capital credits, it is important to note  
1152 | that capital credits are not held in a fund; rather, they

1153 | have been invested in electric infrastructure of a growing  
1154 | cooperative. This investment of capital credits reduces the  
1155 | need for borrowing, thereby lowering our rates. While the  
1156 | cooperative industry averages a percentage of assets at just  
1157 | over 40 percent, PEC's corresponding ratio is about 35  
1158 | percent, and for all but the last two years it has hovered at  
1159 | or below 30 percent. This fact should dispel the myth that  
1160 | PEC has been hoarding dollars and not paying capital credits.

1161 |         The disbursement or reinvestment of capital credits is a  
1162 | local business decision that should be made annually, given  
1163 | the financial and operational status of the cooperative, with  
1164 | input--emphasize input--from the members and full disclosure  
1165 | of the decision annually.

1166 |         The PEC has made dramatic and long-lasting changes. As  
1167 | we strive to adhere to these new policies of openness and  
1168 | transparency, we will also strive to be a national model for  
1169 | the principles upon which the cooperative was originally  
1170 | formed. We will continue to strengthen our relationships  
1171 | with our members, elected officials, and other interested  
1172 | parties. We hold ourselves accountable to the new standards  
1173 | our members have set because they are the reason PEC exists.  
1174 | As member owners they have the right to a voice in the  
1175 | process, and we have a sacred obligation to ensure that their  
1176 | voice is being heard and acted upon.

1177 |         This has been a very difficult year for the PEC, but

1178 | when you step back and look at the relatively rapid change in  
1179 | policies and the result of our historic election, I want this  
1180 | Committee to know that the co-op system of member control  
1181 | works, at least I believe that has been our experience at  
1182 | PEC.

1183 |         Thank you, Mr. Chairman.

1184 |         [Prepared statement of Mr. Garza follows:]

1185 | \*\*\*\*\* INSERT \*\*\*\*\*

1186 Chairman WAXMAN. Thank you, Mr. Garza.

1187 We are now going to go to the Members' questions at five  
1188 minutes each, and I will start off with myself.

1189 What you have described is really astounding. Here is a  
1190 co-op--co-op, the name sounds like everybody is part of it  
1191 and it is going to serve everybody's interests, and they are  
1192 delivering the power. It doesn't seem to be any question  
1193 about that. They are doing their job of getting electricity  
1194 to their customers. But it is a closed system, very much  
1195 like any undemocratic institution around the world. I think  
1196 Mr. Mugabe could probably learn some things from Mr.  
1197 Fuelberg. It is a closed system.

1198 Now, I could go through all these things that you have  
1199 outlined: the expenses for travel, the self-dealings and  
1200 pensions, the chocolates, the girlfriends traveling around,  
1201 their wives getting physicals. It is just plain  
1202 self-dealing, and I am sure in their minds they rationalized  
1203 it. They had been working there for so long and they are  
1204 delivering the electricity, and why not a few little perks,  
1205 and who is going to ever know because they are never going to  
1206 let it out publicly.

1207 It took a lawsuit, it took courageous and crusading  
1208 journalists, it took members of the legislature to try to get  
1209 information about--forgive my pronunciation--the Pedernales  
1210 Co-op. And even then, as Mr. Higgins points out, we don't

1211 know that it might not revert back until some of the board  
1212 members who perpetuated all of this are replaced, or at least  
1213 they are on notice that what they do is going to be made  
1214 public.

1215       It is what we have heard on this Committee over and over  
1216 again. We have heard from investors who tell us that the  
1217 board of directors set the salary and compensation of their  
1218 executives, and they walk away with huge bonuses, even when  
1219 the corporations go in the tank and people are losing their  
1220 money who owned the corporation and people are losing their  
1221 jobs that worked for the corporation and the CEOs walk away  
1222 with a huge amount of money.

1223       It seems to me that President Bush should be going back  
1224 to Texas to try to democratize the co-ops. It would be a  
1225 chance for more success there, I think, than some of the  
1226 places where we are making a huge military commitment.

1227       Mr. Garza, how do you respond to what Mr. Higgins said  
1228 about the settlement? Do you think it was the best  
1229 settlement just to avoid throwing more money into the lawsuit  
1230 and didn't really resolve all the issues?

1231       Mr. GARZA. Your Honor, it was my considered opinion that  
1232 it was. The lawsuit was draining the energy of the co-op and  
1233 the focus away from doing our job, and I felt that we needed  
1234 to bring this to as quick a halt as we could. The minimum  
1235 price for those lawyers was something like \$500 an hour, and



1236 every hour just keeps mounting the cost.

1237 Chairman WAXMAN. Who paid for the lawyers?

1238 Mr. GARZA. The insurance company is paying for a  
1239 portion, \$2.4 million, and the co-op membership is paying the  
1240 remainder of it, \$1.6 million, for a total of \$4 million.

1241 Chairman WAXMAN. Were co-op members paying for both  
1242 sides in the lawsuit, the plaintiff and the defendants?

1243 Mr. GARZA. In effect, that is basically what it amounts  
1244 to, Your Honor.

1245 Chairman WAXMAN. I am just a chairman, not an Honor, but  
1246 thank you.

1247 [Laughter.]

1248 Chairman WAXMAN. Well, that sounds like public financing  
1249 of lawsuits. A lot of people say we shouldn't allow these  
1250 lawsuits because so much money goes into attorneys' fees.  
1251 Well, that is absolutely right. They shouldn't be necessary.

1252 But if you didn't have that lawsuit, Mr. Higgins, I suppose  
1253 a lot of these facts never would have gotten out. Is that  
1254 your assessment?

1255 Mr. HIGGINS. Absolutely. That is the only way that we  
1256 were going to learn what was going on there was this lawsuit.

1257 Chairman WAXMAN. You had to force the information out.  
1258 Do you think if we had a requirement in all of these co-ops  
1259 around the Country--we don't know if any other co-op is  
1260 acting the way Pedernales has, but if we had at least a

1261 requirement of more openness with the by-laws allowing  
1262 members to get information, try and eliminate the iron  
1263 curtain that blocks out what the investors and the owners of  
1264 the co-op should know, do you think that would be helpful?

1265 Mr. HIGGINS. Absolutely, but you need two things. You  
1266 need at least some of the members that are vigilant, paying  
1267 attention, and trying to find out what is going on, but they  
1268 need the tools to work with in order to do anything about it,  
1269 and we did not have the tools here, and that is what I am a  
1270 strong advocate for. Give us the tools to work with. We  
1271 don't have them yet really. We have some reforms, but they  
1272 can be reversed.

1273 Chairman WAXMAN. I would like to get from you in more  
1274 detail some of your recommendations for what you think the  
1275 Federal Government might do by way of legislation.

1276 Mr. HIGGINS. Yes, sir. I would be happy to.

1277 [The information follows:]

1278 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

1279 Chairman WAXMAN. I say that, I want to make it very  
1280 clear. We don't want to regulate these. We don't want to  
1281 put extra burdens on them financially. We are not talking  
1282 about that. I would just like to make sure that there is an  
1283 openness in co-ops so that when the pillars of the community  
1284 tell our members that they are certainly running honest  
1285 co-ops, not like those Pedernales people, we don't know if  
1286 that is true or not.

1287 Mr. HIGGINS. And one other thing there. When you look  
1288 at how much they have siphoned off, whatever amount that is,  
1289 we don't know, but whatever it is, when you spread it among  
1290 223,000 or more people or households, then it is not going to  
1291 make or break any individual, and it may not be enough to get  
1292 our attention to know that there is something going wrong  
1293 there, but whatever amount it is spread among it ought to be  
1294 stopped. It is the principle of the thing.

1295 It is repugnant to have people like this get in and  
1296 abuse our trust in these positions, siphon off an awful lot  
1297 of money to feather their own nest at our expense.

1298 Thank you very much.

1299 I think Mr. Marchant is the one I would call next to  
1300 pursue questions.

1301 Mr. MARCHANT. Thank you, Mr. Chairman.

1302 Mr. Rose, you have outlined a prospective legislative  
1303 package if the Navigant audit does not come back the way you

1304 think it ought to. Do you have the same kind of agreement  
1305 with the Senate as far as their willingness? Senator Fraser,  
1306 are you willing to enter into the same kind of legislative  
1307 package?

1308 Mr. ROSE. I will begin by saying the three legislative  
1309 proposals that I outlined in the opening remarks I want to  
1310 have occur however that Navigant audit turns out. We need  
1311 open meetings and open records to apply to all co-ops across  
1312 the State. We need all of our co-ops to submit third-party,  
1313 independent audits to the Public Utility Commission annually,  
1314 in my opinion. We also need minimum standards of governance  
1315 so that good people can run for the board and have a fair  
1316 shot at being elected.

1317 Unless those three things occur, I don't think we have  
1318 real local control. If we have real local control, we have  
1319 over 200,000 highly qualified, very intelligent, very able  
1320 members of the co-op who are going to be able to make sure  
1321 that goes well.

1322 So the Navigant audit, Congressman, it is important for  
1323 us to monitor, it is important for us to see just what  
1324 happened so that we can figure out what is needed in the way  
1325 of reform. If that Navigant audit stops short of disclosing  
1326 everything it needs to do from past practices and policies  
1327 and abuses, then I believe the State ought to step in, and I  
1328 believe we ought to mandate the same State audit that the

1329 Senator and I spoke about earlier this year requiring of the  
1330 co-op.

1331 Mr. MARCHANT. Senator, what course would you plan on  
1332 taking in your committee?

1333 Mr. FRASER. I think Representative Rose has outlined it  
1334 exactly right, the things that we have got to do is to put a  
1335 little sunshine on this, that open records, open meetings are  
1336 a must, and I think it will have broad support, bipartisan  
1337 support in both the Senate and the House. But we have also  
1338 got to ensure fair elections and also have the ability to  
1339 audit.

1340 One of the things that we are going to be looking at is  
1341 a sunset review. They are the equivalent of a quasi-State  
1342 agency, and the State has got to know what they are doing, of  
1343 which obviously in the past we haven't had the ability to do  
1344 that. So it is going to depend a lot on what happens between  
1345 now and November, but we have, as you know, the authority in  
1346 Texas the any regulatory authority that we need, even to the  
1347 point of dismissing the current board if needed.

1348 Mr. MARCHANT. Thank you. It is a little bit like being  
1349 in high school again, being in Congress. They ring the  
1350 bells. We have votes.

1351 Thank you, Mr. Chairman.

1352 Mr. ISSA. Would the gentleman yield?

1353 Mr. MARCHANT. Yes. Absolutely.

1354 Mr. ISSA. Thank you. If the gentleman would yield, I  
1355 just want to follow up on the gentleman's statement. He  
1356 knows more about Texas than I do, but I just want to  
1357 understand. You have the ability essentially to regulate this  
1358 and any corporation, and if you choose to you can create all  
1359 the transparency that you want to within State law; is that  
1360 correct?

1361 Mr. FRASER. I am going to clarify. You used the word  
1362 corporation, and regulating the corporation is not--

1363 Mr. ISSA. Let me rephrase. I will take the corporation  
1364 out. What Federal assistance, if any, would you need because  
1365 you lack the authority within the State of Texas to create  
1366 the transparency you need?

1367 Mr. FRASER. We appreciate the input of this Committee  
1368 looking at it, but Texas has all the authority we need and  
1369 actually are moving forward in making sure that we exercise  
1370 that authority, so there is nothing in the regulatory  
1371 spectrum that Texas does not have.

1372 This is a quasi-State agency. It was created by the  
1373 State, and we believe we have sufficient authority to do  
1374 anything we need, even to the point of full regulation.

1375 Mr. ISSA. So today the things we should realize are:  
1376 don't mess with Texas, and let's get on to providing low-cost  
1377 electricity in a time of incredible spiraling energy costs,  
1378 natural gas, coal, and all other forms.

1379 Mr. FRASER. And we believe this is the State's issue and  
1380 we have sufficient authority. We are not asleep at the  
1381 wheel. We are aggressively going after this and we will  
1382 address this. I am making sure. This happened once; I want  
1383 to make sure it is not happening other places. In Texas we  
1384 have 66 co-ops. We are looking at all of them.

1385 Mr. ISSA. Excellent. Thank you.

1386 Mr. Chairman, I would also ask unanimous consent that my  
1387 opening statement be made a part of the record.

1388 Chairman WAXMAN. That is already agreed to.

1389 Have you already adopted your legislation, or are these  
1390 just proposals?

1391 Mr. FRASER. We have not been in session since this is  
1392 going on. We go into session January the 8th of next year,  
1393 and Patrick is going to carry the legislation on the House  
1394 side, I will be carrying it on the Senate side. And so the  
1395 answer is no, it has not been adopted, but I have an interim  
1396 study going that we are in the process of meeting on right  
1397 now, so it is being formulated.

1398 Chairman WAXMAN. Well, I wish you all the best.

1399 Mr. Cooper?

1400 Mr. COOPER. Thank you, Mr. Chairman.

1401 I think Mr. Clay wanted to go ahead. I yield to him.

1402 Chairman WAXMAN. Mr. Clay, I will recognize you.

1403 Mr. CLAY. Thank you, Mr. Cooper, and thank you, Mr.

1404 Chairman.

1405       The leadership of Pedernales didn't just spend co-op  
1406 money on hotels and flights for themselves and their spouses;  
1407 they also charged Pedernales for thousands of dollars worth  
1408 of meals and drinks. One group dinner at a San Antonio steak  
1409 house cost \$3,500. Another steak house meal cost \$2,900. We  
1410 have the co-op credit card statements and receipts for a  
1411 lobster dinner for two and a trip to an oyster bar in New  
1412 Orleans.

1413       Here is a bill from Morton's Steak House, seven  
1414 rib-eyes, twenty mini crab cakes, twenty salmon pinwheels,  
1415 even three callosal shrimp Alexanders. Those were \$59 each.

1416       We also know the co-op was paying for bar tabs when  
1417 Bennie Fuelberg and the board of directors drank while  
1418 traveling for conferences and meetings. The members were  
1419 paying for alcohol at a jazzy hotel lounge in New Orleans and  
1420 hotel bars at the Four Seasons and the Ritz Carlton in St.  
1421 Louis, Big Sky Resort in Montana, and I could go on.

1422       Mr. Garza, was this kind of spending or fancy meals and  
1423 drinks excessive to you?

1424       Mr. GARZA. Yes, it was.

1425       Mr. CLAY. Will the new expense policy allow the  
1426 directors to charge the co-op for their fine dining?

1427       Mr. GARZA. No, it will not.

1428       Mr. CLAY. You have changed that policy in a way that



1429 | what will happen? Will they pay their own meals?

1430 | Mr. GARZA. Theoretically it could happen. Yes.

1431 | Mr. CLAY. And they will pay for their own bar tabs?

1432 | Mr. GARZA. Yes. The policy does not allow paying for  
1433 | alcohol.

1434 | Mr. CLAY. Let me ask Mr. Watson, Mr. Watson, were you  
1435 | surprised when you learned that you and the other co-op  
1436 | members were footing the bill for these steakhouse dinners?

1437 | Mr. WATSON. Yes, sir, I was.

1438 | Mr. CLAY. And the former general manager also charged  
1439 | thousands of dollars to his co-op credit card for Godiva  
1440 | chocolates. Apparently he had Godiva chocolates in his  
1441 | office for select staff and visitors. Is that accurate, Mr.  
1442 | Garza?

1443 | Mr. GARZA. That is correct.

1444 | Mr. CLAY. And I assume the co-op is no longer spending  
1445 | thousands of dollars on chocolates?

1446 | Mr. GARZA. That is correct.

1447 | Mr. CLAY. All right. I am glad to hear that these  
1448 | abusive practices have been stopped. What concerns me is  
1449 | that the excessive spending on meals, alcohol, and chocolates  
1450 | went on for years and years without being detected, and they  
1451 | could be going on at other co-ops. It is the absence of  
1452 | oversight and true member control that allows this kind of  
1453 | behavior to go undetected for decades.

1454 I will yield to the gentleman from Indiana.

1455 Mr. BURTON. I just have one question. Well, two really.  
1456 Who won the ball game last night?

1457 Mr. GARZA. The Nationals.

1458 Mr. BURTON. I was just kidding.

1459 Mr. GARZA. The Nationals, bottom of the ninth.

1460 Mr. BURTON. Okay. All right. Do you have a Public  
1461 Service Commission in Texas? I presume you do.

1462 Mr. GARZA. Yes, we do.

1463 Mr. CLAY. I am going to reclaim my time and yield back.  
1464 Thank you so much, Mr. Chairman.

1465 Mr. BURTON. I just have one or two questions real quick.

1466 Mr. CLAY. The gentleman has time. Why doesn't he yield?

1467 Mr. BURTON. We have got votes on and I am not going to  
1468 take all the time.

1469 You have a Public Service Commission. I am just  
1470 curious. The co-ops are regulated or overseen by the Public  
1471 Service Commission, aren't they, in Texas?

1472 Mr. FRASER. No, they are not.

1473 Mr. BURTON. They are not?

1474 Mr. FRASER. The wires and transmission is regulated by  
1475 rate. We have a postage stamp rate.

1476 Mr. BURTON. Okay.

1477 Mr. FRASER. But the rate authority is not overseen. They  
1478 are unregulated.

1479 Mr. BURTON. So I presume your legislation is going to  
1480 give the Public Service Commission some oversight authority  
1481 there?

1482 Mr. FRASER. We are going to determine what is needed. We  
1483 believe that if you put sunshine on the process where we  
1484 allow open meetings, open records where the members can see  
1485 what is going on and you have fair elections, we solve a lot  
1486 of that.

1487 Mr. BURTON. Well, Senator, the only reason I ask that is  
1488 in any State it seems to me that if there is a question of  
1489 abuse there ought to be a regulatory agency they can go to  
1490 immediately and start raising the issue so that there can be  
1491 an investigation. I don't know if it is that way in Indiana.  
1492 I am going to check after having heard your testimony.

1493 Mr. FRASER. The place of appeal on this, we didn't have  
1494 a place for them to go for appeal. I agree with you.

1495 Mr. BURTON. Thank you.

1496 Thank you, Mr. Chairman.

1497 Chairman WAXMAN. We do have some votes on the House  
1498 floor. We will recess. I think we can get back here in 15  
1499 or 20 minutes, so let's recess until 11:50.

1500 [Recess.]

1501 Chairman WAXMAN. The hour of 11:50 having come and gone,  
1502 I would like to reconvene the meeting. I am sorry it took a  
1503 little longer than I had hoped it would.

1504 To pursue further questions, I want to recognize Mr.  
1505 Cooper.

1506 Mr. COOPER. Thank you, Mr. Chairman.

1507 Mr. Garza, does Pedernales belong to the National Rural  
1508 Electric Co-op Association?

1509 Mr. GARZA. Yes, it does.

1510 Mr. COOPER. Are you aware that Mr. English, the head of  
1511 the Association, who will be testifying on the next panel,  
1512 has at least stoutly claimed to me--and I think this is an  
1513 official position of the Association--that co-ops are not  
1514 public power?

1515 Mr. GARZA. I have heard the argument. If you look at  
1516 Pedernales, we buy 99 percent of our power from the LCRA. We  
1517 are accountable to our members, which essentially is the  
1518 public. To me that pretty much defines public power. But I  
1519 understand there is another argument here.

1520 Mr. COOPER. But Representative Rose, Mr. Watson, and  
1521 perhaps some others stoutly stress in their testimony that  
1522 they believe in their co-op, they believe in public power,  
1523 and yet you belong to a trade association that says you are  
1524 not public power?

1525 Mr. GARZA. That is correct.

1526 Mr. COOPER. Why do you pay dues for an organization that  
1527 doesn't uphold your beliefs?

1528 Mr. GARZA. Because we come from the same roots as the

1529 rest of the co-ops in the Country.

1530 Mr. COOPER. This is the opposite. You say you are  
1531 public power; they say you are not. Who is right?

1532 Mr. GARZA. I believe that I am right.

1533 Mr. COOPER. But you are paying your ratepayers' money to  
1534 an organization that says you are wrong.

1535 Mr. GARZA. If you go beyond that fundamental difference  
1536 of opinion--and I understand that it is a difference--and you  
1537 look at the technical problems that we face as distribution  
1538 co-ops, how to deal with the--

1539 Mr. COOPER. I agree on engineering and things like that.

1540 Mr. GARZA. We can share good information.

1541 Mr. COOPER. But on the fundamental, philosophical point  
1542 of what your organization is, as you say, there is a  
1543 fundamental disagreement, so why do you belong to it?

1544 Mr. GARZA. For the purpose of sharing information on how  
1545 to best serve our members, and especially sharing technical  
1546 information on how to best design and implement the most  
1547 modern innovations that we can use to serve our members.

1548 Mr. COOPER. Would you belong to a communist organization  
1549 that had good engineering capabilities?

1550 Mr. GARZA. Absolutely not.

1551 Mr. COOPER. But one that denies the existence of public  
1552 power for co-ops is okay?

1553 Mr. GARZA. Even though it is a fundamental difference, I

1554 | consider it something that is outweighed by the value that  
1555 | they bring in terms of the exchange of technological  
1556 | knowledge.

1557 |         Mr. COOPER. Senator Fraser?

1558 |         Mr. FRASER. Yes. I think the clarification you are  
1559 | trying to make, I actually agree with the concept that they  
1560 | are not public power because they are a distribution. Really  
1561 | they are a resale and a billing operation as a co-op. If  
1562 | they were generation, as we have nine generation co-ops, they  
1563 | are part of the power generators. And so I would say that  
1564 | Pedernales, I don't think they are public power. I think  
1565 | they are a distribution and a billing entity as a co-op.

1566 |         Mr. COOPER. So you are contradicting your colleague,  
1567 | Representative Rose, and Mr. Watson--

1568 |         Mr. FRASER. Well, I won't speak for Representative Rose.

1569 |         Mr. COOPER.--in their sworn testimony before this  
1570 | Committee?

1571 |         Mr. FRASER. I am giving my opinion that I believe that  
1572 | it is a distribution company.

1573 |         Mr. COOPER. So this is a fundamental difference of  
1574 | opinion. Another fundamental issue--and I don't want to  
1575 | unsettle your settlement down there, but I am a little  
1576 | worried that you all may have been hoodwinked and perhaps  
1577 | sucker punched by this, because everyone wants full  
1578 | disclosure, right?

1579 Mr. FRASER. And, Representative Cooper, I appreciate  
1580 that. I have oversight over the industry, and the  
1581 industry--this is a co-op distribution company, and I  
1582 personally see that--

1583 Mr. COOPER. But, Senator, in response to Congressman  
1584 Burton's question it was revealed that there was no one to  
1585 complain to in Texas State government about co-op problems  
1586 because you all had abjured your jurisdiction, apparently.

1587 But this other fundamental disagreement we need to get  
1588 into is this: everyone is for disclosure. Why hasn't anyone  
1589 told you it has been a Federal tax law since 1972, a long  
1590 time, that every electric co-op shall keep open books and  
1591 records accessible to members at any time? That was a ruling  
1592 from 1972. All we need to do is enforce existing Federal  
1593 law.

1594 Mr. WATSON. May I comment on that?

1595 Mr. COOPER. Yes, sir.

1596 Mr. WATSON. I am aware of that law. I will say about  
1597 the NRECA, last year when I began looking into capital  
1598 credits I became aware that there was something called the  
1599 Task Force Report on Capital Credits that had been prepared  
1600 under the auspices of the NRECA. I called the NRECA and  
1601 talked to, I would say, about six or seven people attempting  
1602 to get a copy of that report, and they would not give it to  
1603 me. They asked me, Are you a board member? I said, no, I am

1604 | merely the person that pays your salary. I am a member of a  
1605 | co-op that is a member of the NRECA. Yet they stonewalled me  
1606 | on attempting to get that.

1607 | Now, on public power I finally did get it through the  
1608 | Blue Bonnet Electric Co-op in Texas, of which I am also a  
1609 | member. But I disagree with Senator Fraser. I believe it is  
1610 | public power, although we are in a shady area here.

1611 | I think when Texas deregulated utilities they let the  
1612 | co-ops slide into a netherland; yet, on the other hand, with  
1613 | all due respect to our elected representatives here, I have  
1614 | observed Texas government for many, many years. I am 71  
1615 | years old. I worked in the government when I was in law  
1616 | school. Regulatory agencies in Texas are all too often the  
1617 | captive of the regulated industries. It would not lend  
1618 | comfort to me to think that the PUC was all we could rely on.

1619 | Please do not accept assurances that the State of Texas can  
1620 | take care of its own problems. We have often demonstrated  
1621 | that, in fact, we cannot do that in Texas.

1622 | Mr. COOPER. Representative Rose?

1623 | Mr. ROSE. Congressman, I appreciate all the work that  
1624 | you have done on this issue. I read your article on the plan  
1625 | write-up here last night. I will say this: the Senator and  
1626 | I both agree that it is important for us to have meaningful  
1627 | local control at the co-op level, and ultimately that is the  
1628 | best check and balance on decisions at the board and senior



1629 | management level in co-ops.

1630 | I do believe in statute we can require open meetings and  
1631 | open records. I do believe we can require an annual report  
1632 | to the PUC. And I do believe we can set minimum standards  
1633 | for governance. If we do that, I believe we have taken a  
1634 | long step forward toward correcting these problems moving  
1635 | forward. And on those three points we absolutely agree.

1636 | Mr. COOPER. I heard that you favor a State audit. It is  
1637 | my impression that Pedernales rejected a State audit because  
1638 | that would have been--

1639 | Mr. ROSE. Yes, sir. The Senator and I formally  
1640 | requested that earlier this calendar year. I believe the  
1641 | more light we can shine on these past practices the better  
1642 | for our co-op and our membership so that we can figure out  
1643 | exactly what is needed in the way of reform and statute as we  
1644 | move forward. This Navigant audit, we are working very  
1645 | closely, the Senator and I both are, with Navigant and with  
1646 | the PUC as they oversee and review. I said it in my opening  
1647 | remarks and I will say it again: if that Navigant audit  
1648 | stops in any manner, shape, or form short of where they need  
1649 | to get totally to get the answers to the co-op membership,  
1650 | the questions that we have, I will move forward next session  
1651 | and require a State audit.

1652 | Mr. COOPER. Last question, because I see my time has  
1653 | expired. Is Pedernales today telling every customer what is

1654 | in his or her capital accounts?

1655 |       Mr. WATSON. No.

1656 |       Mr. COOPER. Why not?

1657 |       Mr. WATSON. I don't know. It is required by law, and  
1658 | yet they are not.

1659 |       Mr. COOPER. So this is private property that citizens  
1660 | are not allowed to know about?

1661 |       Mr. WATSON. Well, at least it is not being reported to  
1662 | us on an annual basis, which is my understanding of what the  
1663 | Internal Revenue Code requires.

1664 |       Mr. COOPER. After all the turmoil and upset you all have  
1665 | gone through, all the \$4 million in legal fees, members still  
1666 | don't know exactly what they own?

1667 |       Mr. WATSON. That is correct. And I will also say that  
1668 | two weeks ago I requested the opportunity to come to the  
1669 | headquarters of the PUC in Johnson City and read the minutes  
1670 | from January 2007 through the current date. Those minutes  
1671 | were not made available to me, couldn't be made available to  
1672 | me because they are being redacted. There was even a  
1673 | scrivener's error or correction in connection with this  
1674 | lawsuit, if you can believe that old term. Mr. Garza is  
1675 | working hard to open up. Mr. Garza I hope has become a  
1676 | friend of mine, but he understands that I am still extremely  
1677 | critical.

1678 |       We have four hold-over board members from the old regime

1679 | who have the nerve to think that they can constitute a  
1680 | Compensation Committee to correct the mistakes they made  
1681 | themselves, who are undermining, in my view, Mr. Garza's  
1682 | efforts to open up this. I am doubtful now whether there is  
1683 | a majority on the board as it currently exists to voluntarily  
1684 | come under the Open Records Act, which is what we had all  
1685 | been hoping for pending legislation, perhaps in the session  
1686 | which will begin in January. We want it to begin now.

1687 |         Mr. COOPER. When did Texas stop believing in private  
1688 | property?

1689 |         I thank you, Mr. Chairman.

1690 |         Chairman WAXMAN. Thank you, Mr. Cooper.

1691 |         I want to pursue some further questions.

1692 |         Mr. Watson, you have expressed your view that you don't  
1693 | think the State law in Texas, as good as it may be, that is  
1694 | being offered by Mr. Fraser and Mr. Rose is going to be  
1695 | enough. Is that a correct statement?

1696 |         Mr. WATSON. Well, I am not certain it is going to be  
1697 | enough. It is easier to kill a legislative proposal in the  
1698 | State of Texas than it is to pass one.

1699 |         Chairman WAXMAN. That is true here, too.

1700 |         Mr. WATSON. And it is possible that these are highly  
1701 | skilled legislators and influential legislators, and so it is  
1702 | quite possible that the good legislation that I am sure they  
1703 | will draft and introduce will, in fact, wend its way through

1704 | committees and stalling and go to other committees, the  
1705 | calendars committee and so forth and so on. It is a very  
1706 | convoluted process. I am trying not to be too pessimistic  
1707 | about it; however, I am not sure that that will fully take  
1708 | care of it.

1709 |         It worries me. The practices of the PEC--and I have  
1710 | said this for almost three years now--I believe jeopardized  
1711 | the tax-exempt status of the PEC, hoarding and building up  
1712 | permanent equity, which is not permitted; not complying with  
1713 | the disclosure about property ownership, as Congressman  
1714 | Cooper pointed out. So some of these may be more national  
1715 | issues or issues related to matters that are more under the  
1716 | purview of the Committee.

1717 |         Chairman WAXMAN. Mr. Higgins, what are your thoughts on  
1718 | that?

1719 |         Mr. HIGGINS. Well, I tend to agree with Mr. Watson here,  
1720 | but I would just add to that that there is one PEC here in  
1721 | one area of the State, and the members of the legislature in  
1722 | that area are very concerned and determined to do something.  
1723 | At the same time, legislators in other areas of States with  
1724 | their own co-ops will probably have a different view about  
1725 | added regulation. So it is a huge barrier to overcome to get  
1726 | to the point that legislation is, in fact, enacted to become  
1727 | law to regulate all of the co-ops.

1728 |         Chairman WAXMAN. Does anybody on the panel know how many

1729 States that have co-ops also have laws like that being  
1730 proposed? Mr. Fraser? Mr. Rose?

1731 [No response.]

1732 Chairman WAXMAN. We don't know that.

1733 Well, I must share my concern also that even when you  
1734 have regulatory agencies that are supposed to be watching  
1735 over the industries to be regulated, they often become  
1736 captive of the industries, themselves, although at least you  
1737 have some place to go when you have a complaint with the  
1738 regulatory agency.

1739 A root cause of the problems at Pedernales appear to be  
1740 the undemocratic process it has for selecting its board  
1741 members. In theory, the board of directors is directed by  
1742 the members and members are able to hold the board  
1743 accountable through the electoral process, but that is not  
1744 what is happening at Pedernales. Until recently, incumbent  
1745 directors selected a nominating committee, which in turn  
1746 endorsed the preferred slate of incumbent directors, in some  
1747 cases family members of the incumbent directors were placed  
1748 on the nominating committee, so the son or brother of a  
1749 director would be on the nominating committee and, surprise,  
1750 that director would be nominated for another term. Only the  
1751 slate of candidates approved by the nominating committee  
1752 appeared on the ballot, so there was a ballot with just one  
1753 name for each open position. It was all but impossible for

1754 | anyone but hand-picked members to be elected to the board.

1755 |         Mr. Watson, when you and other members tried to get some  
1756 | new candidates on the ballot what happened?

1757 |         Mr. WATSON. When we appeared before the Nominating  
1758 | Committee in March of 2007 we presented three candidates that  
1759 | we asked be placed on the ballot. We didn't say, don't place  
1760 | your own other people on the ballot. By the way, it is my  
1761 | understanding that those seven appointees, one from each of  
1762 | the seven voting directors, that constituted that committee  
1763 | were paid a stipend for serving on that committee.

1764 |         I looked at all 17 directors, 7 voting directors and 10  
1765 | advisory directors. Every single one of those 17 people were  
1766 | originally appointed to the board by the board. In other  
1767 | words, a vacancy occurred during a term--I think that is the  
1768 | way they arranged it--and a new member was appointed by the  
1769 | board, who then became the incumbent when the election rolled  
1770 | around. Not that it would have mattered, because there was  
1771 | never any competition.

1772 |         But they absolutely refused. In fact, when we were  
1773 | leaving the committee hearing that day at the headquarters at  
1774 | the PEC, Mr. Fuelberg walked us down to the lobby, and we  
1775 | asked him specifically, is there anything in your view in the  
1776 | by-laws that would prevent the nominating committee from  
1777 | nominating more than one person for a position? In other  
1778 | words, setting up, oh my goodness, an election that actually

1779 | had two people or three. He said no, but it had never been  
1780 | done in his memory, and his memory went back about 40 years.  
1781 | And we said, well, do it this time, please. Of course, they  
1782 | didn't do it.

1783 | Chairman WAXMAN. Well, as I understand it, you say 40  
1784 | years. My information was no one successfully challenged the  
1785 | slate picked by the board's nominating committee for 30  
1786 | straight years, maybe longer, and when write-in candidates  
1787 | challenged the official slate the sitting directors exercised  
1788 | thousands of proxy votes to defeat them. There were even  
1789 | prize give-aways for members who signed their votes over to  
1790 | the board's proxy committee. The prizes, which were donated  
1791 | by vendors, ranged from TVs to gift certificates.

1792 | Is that correct?

1793 | Mr. WATSON. That is correct.

1794 | Chairman WAXMAN. And, Mr. Garza, you wouldn't say this  
1795 | was a fair or democratic system for electing directors, would  
1796 | you?

1797 | Mr. GARZA. No, I would not.

1798 | Chairman WAXMAN. Under your State law would that be  
1799 | prohibited or change, Mr. Rose?

1800 | Mr. ROSE. Congressman, when this began to come to light  
1801 | a year ago, the Senator and I both became engaged because we  
1802 | had members and our constituents and ourselves were all  
1803 | alarmed by what was going on. This is a statement of the

1804 | obvious, but, just to be clear, unless your name is on the  
1805 | proxy ballot that is mailed to the membership, you don't have  
1806 | a chance to win that vote. There aren't enough people who  
1807 | show up at the meeting, itself, to vote. You are overwhelmed  
1808 | by the votes that come in by mail.

1809 |         The old PEC process was such that, as Mr. Watson says,  
1810 | nobody other than the hand-picked Nominating Committee  
1811 | designated candidates were in the proxy ballot in the  
1812 | mailbox. So on September 4th of last year I wrote to the PEC  
1813 | and requested five changes or reforms. One of them was to  
1814 | reform the election process so that folks could access that  
1815 | proxy ballot, members could access the proxy ballot by  
1816 | petition. Some co-ops do that today in Texas.

1817 |         I want to praise the co-op board for having made that  
1818 | change and what resulted in 58 candidates running this time.  
1819 | When I received the ballot in the mail as a member, I had  
1820 | those names on my ballot and I could cast, as a mail-in  
1821 | ballot--I attended the meeting, but as a mail-in voter I  
1822 | could choose any of them.

1823 |         I think as we look toward governance changes next  
1824 | session--the Senator and I have been talking about it--we are  
1825 | going to work on it as we approach the January session. We  
1826 | have to have a signature-based or petition-based avenue to  
1827 | the proxy ballot guarantee. Short of that, you don't have  
1828 | real democratic governance for the co-op.



1829 Chairman WAXMAN. Thank you.

1830 Mr. Cooper, I want to recognize you.

1831 Mr. COOPER. Thank you, Mr. Chairman.

1832 We have focused just on Pedernales, but let's talk about  
1833 another Texas co-op. It is outside of Fort Worth, got tired  
1834 of being in the co-op business, so it decided to go in the  
1835 hotel and golf course business, borrowed a billion  
1836 dollars--billion with a B--and went bankrupt. This is in the  
1837 jurisdiction of the great State of Texas. Any opinion on  
1838 that? Is that proper co-op behavior? You want to sanction  
1839 Pedernales going into the hotel/golf course business like the  
1840 Fort Worth co-op did?

1841 Mr. FRASER. If you will allow me to answer that, Mr.  
1842 Cooper, Federal law very clearly says that 85 percent of the  
1843 business has to be in the resale of power. We did have a  
1844 renegade that took off.

1845 I actually would take it one step further and say I  
1846 don't believe a distribution company should even be in the  
1847 generation business. I don't believe they should be getting  
1848 in outside businesses. I think they should concentrate only  
1849 in the sale of the resale of electricity. So no, that is not  
1850 acceptable behavior.

1851 Mr. COOPER. My memory is not perfect, but I think the  
1852 Committee memo for this hearing said that under investigation  
1853 50 percent of the co-ops that have gone into other businesses

1854 | have exceeded the 15 percent threshold. That is a 50 percent  
1855 | error rate. That is a very high percentage. For anyone to  
1856 | borrow a billion and put at risk the good faith of their  
1857 | customers who signed up for electricity business, not a hotel  
1858 | business/golf course business, that is amazing.

1859 |         Let's look at some others outside of your State. There  
1860 | is a co-op outside of Atlanta, Cobb, that subcontracted out  
1861 | its entire operation--every truck, every light pole--to a  
1862 | for-profit subsidiary secretly owned by co-op managers. So  
1863 | if you think you have a scandal at Pedernales, Godiva  
1864 | Chocolates and Celine Dion seems a little bit tame in  
1865 | comparison to this master plan. And it has been under way  
1866 | and is still underway for the last ten years.

1867 |         Mr. FRASER. One of the things that I plan to pursue is a  
1868 | prohibition against the co-ops getting into other sideline  
1869 | businesses. One of those would be generation of power. We  
1870 | have a concern about using capital credits to invest in power  
1871 | generation. At least it is my opinion that co-ops in Texas  
1872 | should not be doing that, and that is not a good use of  
1873 | capital credit money.

1874 |         Mr. COOPER. What about our friends in Alabama who did  
1875 | not have a board of directors election for their co-op for 38  
1876 | years? So as great as the Texas Legislature is, you all  
1877 | don't have jurisdiction outside of the State boundaries.  
1878 | These problems seem to be mounting in a number of different

1879 | areas, but it all depends on an enterprising reporter like  
1880 | Margaret Newkirk, like Claudia Grisales, and there was  
1881 | another one you mentioned, Mr. Watson, that I don't remember.

1882 |         Mr. WATSON. Jodi Lehman from Horseshoe Bay.

1883 |         Mr. COOPER. Those have become the watchdogs of  
1884 | democracy. The legislature was asleep, we were asleep, and  
1885 | those few intrepid reporters, sometimes relying on inside  
1886 | tips, were able to blow the whistle and help shine the light  
1887 | where it needed to be shined.

1888 |         I thank you, Mr. Chairman.

1889 |         Chairman WAXMAN. Thank you, Mr. Cooper.

1890 |         Mrs. Foxx?

1891 |         Mrs. FOXX. Thank you very much, Mr. Chairman.

1892 |         Let me say that I am a long-time member of a rural  
1893 | cooperative. Both my electricity and my telephone services  
1894 | come from co-ops. I am very dependent on those for my energy  
1895 | and my phone. In fact, I think my phone service is superior  
1896 | to phone service I could get anywhere else.

1897 |         But I am not a fan of the Federal Government getting  
1898 | involved in things that it doesn't need to get involved in.  
1899 | I have made many speeches in this Committee, on the floor,  
1900 | and in other committees about that.

1901 |         I was the only member of North Carolina State Senate  
1902 | that voted against allowing co-ops to compete with private  
1903 | enterprise in North Carolina, because I have great concerns

1904 | about that, too. I told the head of my co-op, with whom I  
1905 | have spoken recently, that I would be happy to come to this  
1906 | hearing and talk about my concern about the Federal  
1907 | Government not getting involved, but would also express my  
1908 | concerns that I have expressed in the past about the role of  
1909 | co-ops.

1910 |         I guess one of the questions I would like to ask Mr.  
1911 | Fraser or others on a panel is: how do you think that the  
1912 | problems that have been exposed by this panel and by Mr.  
1913 | Cooper should be dealt with if not dealt with by the Federal  
1914 | Government? What do you think should be done? And if you  
1915 | could make fairly short answers, then I would like to make a  
1916 | couple of other comments.

1917 |         Mr. FRASER. Madam Representative, we believe the State  
1918 | of Texas has sufficient authority to solve this problem. We  
1919 | have full regulatory control that we can exercise if needed,  
1920 | and we are in the process to determine that. I appreciate,  
1921 | as I said in my opening comments, that the Federal Government  
1922 | is looking at this. We appreciate their interest, but the  
1923 | State of Texas has sufficient authority and we need no other  
1924 | additional authority from the Federal Government to address  
1925 | this issue.

1926 |         Mr. COOPER. Would the gentlelady yield for just a  
1927 | second?

1928 |         How about on disclosure of private property in Texas?

1929 | Do you need any help on that issue?

1930 |       Mr. FRASER. Disclosure of private property? Give me a--

1931 |       Mr. COOPER. That is what we were discussing earlier.

1932 | Pedernales is still not telling each member what he or she

1933 | owns in the cooperative. That is private property.

1934 |       Mr. FRASER. You missed the conversation I had with Juan

1935 | Garza, General Manager. Starting within the next billing

1936 | cycle, he is going to be putting on all the bills everyone's

1937 | capital credit issue. I have been advised by the Association

1938 | of Co-ops in Texas that the bulk of those are doing it, but

1939 | it is something that I am going to pursue that every month on

1940 | their bill it will say that in Pedernales I have \$2,342 in

1941 | equity in that company.

1942 |       The thing you are asking is something we have the

1943 | ability to do, and it is just a matter of we didn't have it

1944 | done, but it is going to get done.

1945 |       Mr. COOPER. Thank you.

1946 |       Mrs. FOXX. Mr. Rose?

1947 |       Mr. ROSE. Congresswoman, thank you for your interest and

1948 | your service in North Carolina. I have read up a little bit

1949 | about you. I don't know how the North Carolina Senate and

1950 | House operate, but Senator Fraser and I have been commenting

1951 | back and forth today. It is strange to sit here and look at

1952 | one party on one side of this dias and the other party on the

1953 | other side of this dais, the majority and minority reports,

1954 | and all those things. I wish it wasn't that way. It is not  
1955 | that way in Texas.

1956 |         One thing that I might suggest that we all would agree  
1957 | on, on both sides of this room, would be that the Federal  
1958 | Government needs to enforce the laws that exist on the books.  
1959 | To the extent that we have co-ops spending more of their  
1960 | capital and resources outside of their core mission, if that  
1961 | violates Federal statute you all ought to do something about  
1962 | it.

1963 |         To the extent that you need to make sure that open  
1964 | meetings and open records are being followed and that  
1965 | comports with their nonprofit, tax-exempt status, you have  
1966 | got to do something about it.

1967 |         What we can do in the State of Texas--and we talked  
1968 | about this a good bit, but I will just mention--we have got  
1969 | to make sure that every co-op in the State of Texas follows  
1970 | open meetings, open records. We have got to make sure that  
1971 | every co-op in Texas submits at least an annual audit report  
1972 | to the Public Utility Commission every year. Part of that  
1973 | might be a very clear statement about the capital credit  
1974 | accumulation in that co-op, and that is something that I  
1975 | would like to consider as we move forward next session. But  
1976 | also, and finally, the third point, we have to make sure that  
1977 | there are minimum standards of democratic governance where  
1978 | members can seek, through fair elections, a membership on

1979 | their board.

1980 | Mrs. FOXX. Mr. Watson, go ahead.

1981 | Mr. WATSON. Yes, Congresswoman Foxx. Thank you.

1982 | One of the things that inhibited us members from  
1983 | learning about the workings of the PEC was that they filed  
1984 | inadequate and really incomplete form 990s, which are the  
1985 | forms required by all non-profits. The IRS, from what I read  
1986 | in the press, has been starved of enforcement money, so I  
1987 | would urge you to, as a Congressman, vote to beef up that  
1988 | enforcement, for one thing.

1989 | The other problem that we faced was the advisors, the  
1990 | professional advisors to the co-op. They worked for Mr.  
1991 | Fuelberg. They did not work for me as a member. They didn't  
1992 | work for any of us 220,000 members. I am going to name them.  
1993 | KPMG, the accounting firm, signed off on audits and on form  
1994 | 990s that were incomplete on their face.

1995 | The law firm of Clark Thomas, which has represented the  
1996 | PEC for 70 years probably, one of their lawyers Mr. Fuelberg  
1997 | reported in public or in the press had said there was a  
1998 | loophole in the Internal Revenue code that allowed him not to  
1999 | put in a key employee compensation, which is clearly called  
2000 | for on the form and in the instructions. So I asked the  
2001 | lawyer, I said, are you glad now that you advised him that  
2002 | way? And he sort of gave me a sheepish look. But I  
2003 | understood at the time that about 40 percent of all Texas

2004 co-ops were failing to accurately and correctly report on the  
2005 form 990.

2006 That is the only instrument which is publicly available  
2007 to members such as myself to learn about the compensation and  
2008 perks that are being paid to co-op employees, key employees,  
2009 and the board. So I implore you, talk to the Internal  
2010 Revenue Service. I understand that within the last year they  
2011 have let it be known that they intend to begin finally  
2012 looking at non-profits and enforcing the requirements for  
2013 990s, but it just simply takes away the only tool that we  
2014 had.

2015 Mrs. FOXX. Mr. Chairman, I know--

2016 Chairman WAXMAN. I think Mr. Higgins had a comment.

2017 Mrs. FOXX. Okay. Go ahead.

2018 Mr. HIGGINS. When you talk about the co-op that went  
2019 bankrupt getting into the golf course business, that is a  
2020 surprise to me. I don't think that co-ops ought to be in any  
2021 business except the business that they are supposed to be in.  
2022 When you say there is 15 percent latitude, I wonder about  
2023 that.

2024 The first red flag that caught my attention was that  
2025 apparently nobody was minding the store there enforcing it.  
2026 The second big red flag that catches my attention is if you  
2027 merely say to the IRS, Enforce these provisions, I am afraid  
2028 that you may punish the people who have already been punished



2029 | if they put our nonprofit status in jeopardy. So they need  
2030 | to be enforced, but don't come down on us and take away the  
2031 | advantages, whatever they are, of having a co-op to begin  
2032 | with.

2033 |         Mr. COOPER. Will the gentlelady yield just for one quick  
2034 | point?

2035 |         Of co-ops, 93 percent are in other businesses, 93  
2036 | percent, according to the NRECA, itself, so we have a lot  
2037 | more work to do in this regard.

2038 |         Mrs. FOXX. Thank you, Mr. Chairman, for your latitude. I  
2039 | appreciate it.

2040 |         I do want to say again that we have excellent service  
2041 | from our co-op. We had over 900 people at our annual meeting  
2042 | about a month ago. I have attended every annual meeting for  
2043 | 15 years. I realize that it is the members who have the  
2044 | control over what happens in the co-ops. If they want to  
2045 | have things done, they can have things done. But I have to  
2046 | say the capital credits are being paid out by our co-op in I  
2047 | think a reasonable manner. I have not investigated the  
2048 | books, but I have no doubt that things are being done. We  
2049 | have excellent people on our board.

2050 |         I want to say that I know there are co-ops that are  
2051 | operating very effectively and very well, but I think it  
2052 | worries all of us in Congress when there are problems with  
2053 | some co-ops. As with other things, it taints everyone

2054 involved. I think that it is in the interest of the co-ops  
2055 to make things better so that people aren't tainted.

2056 It is just like us in Congress. If we have a Member of  
2057 Congress who performs badly, all of us get tainted with that,  
2058 all of get accused of being bad. So I would hope that the  
2059 message from this hearing would be that if there are  
2060 problems, the co-ops, themselves, and the States, themselves,  
2061 would start looking at where the problems are. I don't want  
2062 to see an Enron kind of situation develop here because the  
2063 kinds of comments you have made--and I have only heard a few  
2064 of them, and I apologize, because I had voting in another  
2065 committee and testifying in an other committee, so I  
2066 apologize for being here only part of the time, but I do want  
2067 to caution you on that.

2068 I again thank the Chairman for his latitude.

2069 Chairman WAXMAN. I thank the gentlelady for her comments  
2070 and questions.

2071 Mr. Westmoreland?

2072 Mr. WESTMORELAND. Thank you, Mr. Chairman.

2073 I think it is good that we have this hearing, and I  
2074 appreciate the Chairman having it, and Mr. Cooper's asking  
2075 for it, but I am a little bit perplexed, having listened to  
2076 some of the testimony and having read some of the different  
2077 things. I can't fully grasp why the membership of these  
2078 EMCs--and I belong to an EMC. I buy my electricity from an

2079 EMC and I go to the annual meetings where new board members  
2080 are elected, and there is probably anywhere from 1,500, 2,500  
2081 people there.

2082         Why they don't govern themselves? I know from  
2083 experience we have had some problems, or at least some  
2084 complaints, about an EMC in Georgia. I believe it is the  
2085 Cobb EMC. Yet, over the past eight or ten years, their  
2086 electricity bills have come down, actually dropped about 7  
2087 percent, versus where the national average has gone up about  
2088 20 percent. So in Georgia I guess we oversee ours, I think,  
2089 and I am not sure what the Senator from Texas could say about  
2090 it, but it looks to me like this is a State issue, and not  
2091 really a Federal issue.

2092         But I would like to ask the Senator a question, if I  
2093 could. From one of the press releases after you attended a  
2094 cooperative meeting at the United Cooperative Services you  
2095 lauded the group and said the cooperative spirit of rural  
2096 Texans created this system which electrified rural Texas is  
2097 the same spirit that allows the majority of cooperatives to  
2098 continue to operate efficiently and effectively for their  
2099 members.

2100         Senator, would you say that you have acknowledged that  
2101 Pedernales situation is an isolated incident?

2102         Mr. FRASER. We do believe that Pedernales was an  
2103 isolated incident. We have not found any indication at the

2104 other 65 distribution co-ops in Texas that there is a  
2105 problem. That doesn't mean we are not looking, and we have an  
2106 ongoing investigation, but I sent a letter to every member of  
2107 the legislature asking them to research the co-ops in their  
2108 area. We have not found anything else, so we believe yes, it  
2109 was isolated.

2110 We are addressing the Pedernales problem, but I am not  
2111 in favor of throwing the baby out with the bath water and  
2112 totally abandoning the system, because co-ops in Texas are  
2113 needed. I am still a strong proponent, and yes, I agree,  
2114 this is a State's issue and we have the ability to address.

2115 Mr. WESTMORELAND. Senator, wouldn't you want to keep  
2116 that ability to address it without having the Federal  
2117 Government come in and try to do it that might preclude you  
2118 from addressing and legislating those things that are inside  
2119 your State?

2120 Mr. FRASER. Absolutely. The problem I always see with  
2121 State and Federal Government is you are trying to do a one  
2122 size fits all. It doesn't work. Texas has a unique system  
2123 in the way we do our independent system operator. We are the  
2124 only State that is totally defined in one network, the ERCOT,  
2125 and because of the way we govern, we take care of our own  
2126 business. I think it would be a mistake for the Federal  
2127 Government to try to intervene or to dictate a one size fits  
2128 all policy.

2129 I agree with Representative Rose: if we will enforce  
2130 Federal law that is on the books today, that should be done;  
2131 but other than that, the regulatory authority should lie with  
2132 the State.

2133 Mr. WESTMORELAND. Thank you. And just keep in mind that  
2134 we have got two speeds up here, knee-jerk and stop. This is  
2135 one of those knee-jerk speed things.

2136 Thank you, Mr. Chairman. I yield back.

2137 Chairman WAXMAN. Thank you, Mr. Westmoreland.

2138 Mr. Jordan, do you have some questions?

2139 Mr. JORDAN. Thank you, Mr. Chairman. This is the first  
2140 time I have ever walked in and got to go right away. I  
2141 appreciate that. The timing works out nice.

2142 Let me just go to the two members of the General  
2143 Assembly, if I could, Senator Fraser and Representative Rose.  
2144 I apologize, this may have been asked, but I just read some  
2145 information from one of our largest co-ops in our District  
2146 and how dissimilar they do things compared to how  
2147 Pedernales's board and their CEO handled things. People I  
2148 think are, as has been said earlier, very pleased with the  
2149 treatment they get from their co-op and how it functions, and  
2150 we certainly are in Ohio.

2151 When you did your investigation of Pedernales, did you  
2152 look at others, as well, in your State? Was this just  
2153 totally an isolated incident, or did you see in your

2154 investigation other co-ops around Texas, or, for that matter,  
2155 around the Country who were engaged in similar practices?

2156 Mr. FRASER. The last hearing we had with the Senate  
2157 Committee of Business and Commerce, we addressed Pedernales,  
2158 but we did exactly the same as the Chairman is doing here.  
2159 The second portion was the co-ops, as a whole. We had the  
2160 co-op association, of which we had one of the people from the  
2161 Texas Association here today, Eric Craven, which is their  
2162 political arm and their lawyer, and we instructed them to go  
2163 out and look at the other 65, determine if there is a  
2164 problem, and bring us back the data. I also requested the  
2165 same thing of the other members of the legislature.

2166 To this point, we have not uncovered anything other than  
2167 there have been several small changes in the way that they  
2168 elect members of the co-op, some of the reimbursement, travel  
2169 policies, some of the capital credits going out. They  
2170 realize that they are being watched and are correcting some  
2171 of the small problems.

2172 Mr. JORDAN. In your professional judgment as the  
2173 chairman of the committee that oversees this industry, you  
2174 felt this was just one co-op in your State that had a  
2175 problem?

2176 Mr. FRASER. We believe that. Unfortunately, it was the  
2177 co-op where Patrick and I live, and the largest in the  
2178 Nation, so yes, we believe that they were a renegade, one

2179 co-op, and we believe that most problems were just in that  
2180 co-op.

2181 Mr. COOPER. Would the gentleman yield for a moment?

2182 Mr. JORDAN. I would be happy to.

2183 Mr. COOPER. We discussed the Fort Worth co-op borrowed a  
2184 billion dollars to go into the hotel and golf course business  
2185 and then went bankrupt, so there must be at least one other  
2186 Texas co-op that has had significant problems, unless you  
2187 view in Texas a billion dollars as not being a lot of money.

2188 Mr. FRASER. And, Representative, we are referencing what  
2189 is happening during current periods, which is the last few  
2190 years. The incident you are talking about was not in the  
2191 current period, I don't believe, and we are looking at what  
2192 has happened in the last current period. Of the current,  
2193 ongoing co-ops that are doing business in Texas, we believe  
2194 Pedernales right now is the only one we have identified that  
2195 are still doing business in Texas.

2196 Mr. JORDAN. Mr. Representative?

2197 Mr. ROSE. Congressman, thank you for your question. I  
2198 think it would ill suit us to just focus on the question is  
2199 there one co-op who has acted poorly. I think for us as we  
2200 move forward we have got to make sure that each Texan who  
2201 lives in a co-op and is a member of a co-op has certain basic  
2202 assurances.

2203 I have said it before today, but I will say it again: I

2204 would challenge anybody to disagree with the notion that open  
2205 meetings and open records aren't appropriate in a co-op  
2206 setting. I challenge anybody to disagree with the notion  
2207 that we ought to have a democratic election that is fair for  
2208 the board. I would also challenge anybody to say that we  
2209 ought not have our co-ops report to the Public Utility  
2210 Commission a basic accounting of their books, and perhaps  
2211 also, Representative Cooper, a snapshot of capital credits  
2212 and where that co-op is from that standpoint.

2213 No disrespect, Congressman Westmoreland, but knee-jerk  
2214 and stop, neither one of those speeds is appropriate in this  
2215 situation as we approach it from the Texas legislature. We  
2216 have got to be mindful to keep this balance of statutory  
2217 oversight and local control. I think those three reforms  
2218 next session can do that.

2219 Mr. JORDAN. I thank the Chairman.

2220 Chairman WAXMAN. Thank you for your questions.

2221 I want to thank this panel. You have been very patient,  
2222 sitting here for quite a long time, but very responsive to  
2223 the questions that we have been asking, and also sharing with  
2224 us your insights about this whole problem that you have  
2225 experienced, and I think it has been very, very helpful.  
2226 Thank you so much for being here.

2227 We have another panel, but I want to take a short break  
2228 of five minutes, and then we will hear from Mr. English.



2229 [Recess.]

2230 Chairman WAXMAN. I am pleased to welcome to our  
2231 Committee hearing today a former member of this Committee and  
2232 a classmate of mine when I was first elected to Congress.  
2233 Mr. Glenn English is the CEO of the National Rural Electric  
2234 Cooperative Association, which is the electric co-op trade  
2235 association. For years he represented the sixth  
2236 Congressional District in Oklahoma.

2237 I am pleased to have you here. Before you sit down, you  
2238 might as well continue to stand and take the oath.

2239 Mr. ENGLISH. That is the reason I was standing, Mr.  
2240 Chairman.

2241 [Witness sworn.]

2242 Chairman WAXMAN. The record will indicate that that was  
2243 an affirmative answer.

2244 Mr. ENGLISH. Yes, it was. It was, indeed. But I have  
2245 been mistaken a couple of times in my life, Mr. Chairman.  
2246 Just a couple of times.

2247 Chairman WAXMAN. The full statement that you have  
2248 submitted to us will be in the record. We will have a clock  
2249 to let you know when five minutes is up, and would like you  
2250 to be mindful of that, and then we can pursue questions from  
2251 members of the panel.

2252 Let's hear from you.

2253 STATEMENT OF GLENN ENGLISH, CEO, NATIONAL RURAL ELECTRIC  
2254 COOPERATIVE ASSOCIATION

2255 STATEMENT OF GLENN ENGLISH

2256 Mr. ENGLISH. Again, first of all, let me just say I am  
2257 delighted to be back to this Committee. I have many fond  
2258 memories here of this Committee, and am certainly happy to  
2259 come back and talk about electric cooperatives.

2260 The first thing, I guess, that I am struck by as I  
2261 looked over the witness list, Mr. Chairman, is I wondered  
2262 where the Administrator of the Rural Utilities Service was.  
2263 I know each time that I ever had a hearing here in this  
2264 Committee dealing with electric cooperatives, I always  
2265 invited the Administrator of the Rural Utilities Service. I  
2266 got to thinking about that a little bit, and it made sense to  
2267 me. Golly, gee, I guess I am here in place of the  
2268 Administrator of the Rural Utilities Service, and that I  
2269 think says something.

2270 I would like to point out, Mr. Chairman, I think you and  
2271 I made a big, big mistake 25 years ago, a big mistake. If  
2272 you look at the Rural Utilities Service today, we ended up  
2273 through those years of cutting out two-thirds of the staff at

2274 | RUS, and if you look at many of the issues that we are  
2275 | talking about here today, the Rural Utilities Service still  
2276 | has rules and regulations on the books to be able to deal  
2277 | with those issues, but they don't have the staff and don't  
2278 | have the funding. They have pretty much been neutered, to be  
2279 | honest about it, when we talk about regulation. Probably  
2280 | that is the reason we are raising questions, and we have some  
2281 | folks here that obviously are not operating in the way that  
2282 | their membership thinks that they should have operated. I  
2283 | think that has become very, very obvious.

2284 |       I think that is something that we have got to weigh and  
2285 | take into consideration. Maybe that is something the  
2286 | Congress would want to do, maybe go back and rectify that  
2287 | mistake and bring the Rural Utilities Service up to full  
2288 | funding and put them in a position to where, in fact, they  
2289 | are able to carry out all their duties.

2290 |       I wasn't aware at the time--maybe you are--the Rural  
2291 | Utilities Service still has the authority to remove a CEO.  
2292 | They are supposed to be going in each year and auditing the  
2293 | books of every co-op. We have got an apparatus here that has  
2294 | fallen into disuse simply because of the fact that the folks  
2295 | don't have the resources. This was all a part of the changes  
2296 | that took place, Democratic and Republican Administrations  
2297 | and Democratic and Republican Congresses. We pretty much, as  
2298 | I said, neutered this agency.

2299           Second point I would like to make, Mr. Chairman, is the  
2300 fact that--and I have been struck by this for some time--that  
2301 the directors of electric cooperatives are elected officials,  
2302 and as we look at them as elected officials, I would suspect  
2303 that the members of this Committee and certainly in the  
2304 Congress should feel a great deal of empathy with some of the  
2305 challenges and difficulties that they face. They are not  
2306 dissimilar.

2307           I think that you and I have both seen, as we have moved  
2308 through the last 30 years or so, that people really make up  
2309 the institution. It is not the institution, itself. This  
2310 democratic process of ours is good. It is good as far as the  
2311 Congress and our Government, it is good as far as electric  
2312 cooperatives are concerned. It is the people that we get  
2313 involved. And so we run into some of those issues with  
2314 regard to people, and people, well, they damage everybody.  
2315 Everybody gets painted with the same brush.

2316           I think that is important for us to keep in mind. You  
2317 made mention of that, that it would be unfair to just say  
2318 everybody is the same. I think that is true.

2319           As we have seen, whenever individuals stub their tow or  
2320 perhaps don't move in the direction that the public thinks  
2321 they should, then the public brings about changes. Sometimes  
2322 it takes time. I have seen an awful lot of elected officials  
2323 in this body from time to time who probably were not

2324 | operating in a way that their constituents thought they  
2325 | should, but sooner or later their constituents took action  
2326 | and they dealt with that. I think we have got the same thing  
2327 | here.

2328 |         In these days, everyone should be sensitive of the fact  
2329 | of the smell test. I know each and every elected official,  
2330 | they are always mindful of that, particularly these days. I  
2331 | know the Congress is particularly sensitive about it. I was  
2332 | when I was on the Congress. And you are always looking at  
2333 | this thing. Golly, how would this read on the front page of  
2334 | the newspaper? What kind of a headline would this make?  
2335 | Maybe you are not doing anything wrong, but the appearance of  
2336 | impropriety is bad enough and that damages you if you are an  
2337 | elected official, and I think that is what we are talking  
2338 | about.

2339 |         So whether you are an electric cooperative director or a  
2340 | Member of Congress, we face the same constituency. These are  
2341 | the same people that elect us. Whether we agree or disagree  
2342 | with the wisdom of their decision as to who they pick, we  
2343 | have got to work together, and that is true within the  
2344 | electric cooperative program, as well. We all try to work  
2345 | together, and you do it in the Congress, and this is a  
2346 | struggle as to how do we deal with it.

2347 |         I think it really comes down to this question, bottom  
2348 | line: how do we come to grips with this with our peers? How

2349 | do other electric cooperative directors deal with it, other  
2350 | electric cooperative CEOs, how do Members of Congress deal  
2351 | with it with their peers? It is not easy. It is not an easy  
2352 | thing to do.

2353 |         So I appreciate your having the hearing, and certainly  
2354 | appreciate the fact that we have had this little airing here  
2355 | with regard to one property that got off track and obviously  
2356 | did some things wrong. As I understand it, there may even be  
2357 | the consideration of criminal penalties against some that  
2358 | committed some wrongs.

2359 |         I will be very straightforward with you: if there are  
2360 | any violations of the law, we ought to prosecute. That ought  
2361 | to be true for Members of Congress. It ought to be true with  
2362 | CEOs or directors of cooperatives. That is one line.

2363 |         Second line I think we come into is this question of it  
2364 | may not be illegal, but it may not be something that is very  
2365 | commendable.

2366 |         Those are issues that I think are going to have to be  
2367 | taken care of by the local people that they represent, just  
2368 | as they take care of any disagreements they might have with  
2369 | their elected officials.

2370 |         And I think we also come down to the bottom line, Mr.  
2371 | Chairman, that we all want a fair and open process. We want  
2372 | everyone engaged in competition. We want everyone doing the  
2373 | right thing, and we want all of the voters, whether they are

2374 | voting for Members of Congress or voting for directors of  
2375 | electric cooperatives, to be involved in that process.

2376 |       Thank you very much.

2377 |       [Prepared statement of Mr. English follows:]

2378 | \*\*\*\*\* INSERT \*\*\*\*\*

2379 Chairman WAXMAN. Thank you very much, Mr. English.

2380 Let me start off. It seems to me that what you said was  
2381 an oversimplification. We face our constituents, but it  
2382 looks like some of these co-op board members don't face  
2383 anybody. The elections, as we heard in this Pedernales case,  
2384 is rigged. Do you know if the elections in other co-ops are  
2385 similarly undemocratic?

2386 Mr. ENGLISH. Well, keep in mind I have nothing other  
2387 than my own anecdotal information and the surveys that we  
2388 have conducted, things that we have seen, because, again, the  
2389 RUS would be the ones that should have that information.

2390 Chairman WAXMAN. Let me ask you a question you might  
2391 know. How many States where there are co-ops have  
2392 regulations like that which was discussed earlier being  
2393 proposed for Texas?

2394 Mr. ENGLISH. As far as open meetings and things of that  
2395 sort?

2396 Chairman WAXMAN. Open board meetings and elections.

2397 Mr. ENGLISH. I would have to supply that for the record.  
2398 I don't have that handy.

2399 [The information follows:]

2400 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*



2401 Mr. ENGLISH. Let me just say, though, I can say, Mr.  
2402 Chairman, that in the last few years we have had over 40  
2403 percent of all the election co-op representatives, all the  
2404 board members have turned over, so you have got over 40  
2405 percent new board members that have come in in the last few  
2406 years. If I recall correctly, that date is somewhere in the  
2407 neighborhood of since 2001.

2408 I was comparing that, I believe, with Members of  
2409 Congress, and I don't think we have had near that kind of  
2410 turnover, even with the elections of 2006, so I don't think  
2411 you have had a similar turnover within the Congress.

2412 Chairman WAXMAN. Turnover, by itself, doesn't really  
2413 impress me if it is a rigged deal, because if the father can  
2414 pass it on to the son or the uncle or someone else, it is  
2415 just going to follow the same policies.

2416 Mr. ENGLISH. And we have that in Congress. How many of  
2417 our colleagues do we know, Mr. Chairman, that find themselves  
2418 in similar situations.

2419 Chairman WAXMAN. Let me move on, because it seems to me  
2420 that you are indicating to us there is very little Federal  
2421 oversight any longer by the Rural Electric Agency. It looks  
2422 like in Texas there wasn't oversight at all that we can tell.  
2423 Maybe there wasn't a way to have it. But if the co-ops were  
2424 designed to be self-governing through a democratic process, I  
2425 just think we have heard a good example of how that process

2426 | does not work. The Pedernales is an example. Its board  
2427 | election process was rigged. They failed to have competitive  
2428 | elections for over 30 years, maybe 40. Meanwhile, the  
2429 | directors who were in charge were enriching themselves at the  
2430 | co-op expense.

2431 |         Would you agree that the typical process that provides  
2432 | accountability at co-ops failed at Pedernales?

2433 |         Mr. ENGLISH. What I would say, Mr. Chairman, is  
2434 | obviously the people down there were not happy with the  
2435 | situation. Obviously, the situation that developed within  
2436 | Pedernales went on for some time. Obviously, the people  
2437 | locally at Pedernales did not take action until recently.  
2438 | But let me just say--

2439 |         Chairman WAXMAN. They couldn't. They couldn't take  
2440 | action.

2441 |         Mr. ENGLISH. Well, to the contrary. They did. The  
2442 | system--

2443 |         Chairman WAXMAN. They had to file a lawsuit.

2444 |         Mr. ENGLISH. Sure.

2445 |         Chairman WAXMAN. It took some enterprising reporters to  
2446 | go out and break the story. Finally some members of the  
2447 | legislature looked at it. But there are a lot of places  
2448 | where the press is not so vigorous because of all the  
2449 | cutbacks in journalism. There are a lot of places where  
2450 | people don't want to file lawsuits because it is so

2451 expensive. And there are a lot of places where the  
2452 legislators think that the heads of the co-ops are just the  
2453 powerful local people that are very prominent and maybe there  
2454 is nothing going on because they haven't heard any complaints  
2455 because there is no press reporting them.

2456 Mr. ENGLISH. Let me just first of all say that I am  
2457 going to defend the actions taken by the people in Pedernales  
2458 in making a change in the leadership in that co-op. I want  
2459 to defend, Mr. Chairman, their right to do so. I am going to  
2460 defend the fact that they have a right to have as their  
2461 representatives on their board who they may choose. And I  
2462 will certainly agree with you that the process should be free  
2463 and open and we should encourage as many people to  
2464 participate as possible. An I will agree with you, Mr.  
2465 Chairman, that that went on far too long without those kinds  
2466 of situations coming to bear.

2467 Chairman WAXMAN. Have you looked at the transparency in  
2468 other co-ops in your trade association? Does anybody look at  
2469 that or know about it?

2470 Mr. ENGLISH. Well, we look at the rules and regulations  
2471 in which they operate, the by-laws in which they operate and  
2472 what those by-laws provide. But this comes back again, Mr.  
2473 Chairman, I make this point, to people. Now, for instance,  
2474 here--

2475 Chairman WAXMAN. It does come down to people, and I must

2476 | say my view of human nature is if you give somebody the  
2477 | opportunity to go and take a lot of money and use it for  
2478 | their own purposes, there is unlimited ability to rationalize  
2479 | doing it.

2480 |         Mr. ENGLISH. That is true.

2481 |         Chairman WAXMAN. That is part of human nature. That is  
2482 | why you need some checks on this abusive power.

2483 |         Mr. ENGLISH. If I could respond, Mr. Chairman.

2484 |         Chairman WAXMAN. Sure.

2485 |         Mr. ENGLISH. I would make the point that is absolutely  
2486 | right. We have seen it. I saw it here when I was a Member  
2487 | of this body. We saw those individuals taking advantage of  
2488 | the situation. We had rules and regulations and laws on the  
2489 | books. We had new rules that were proposed and change,  
2490 | things that came about, but we still had those individuals  
2491 | come through. You have always got to be vigilant.

2492 |         As I say, those are the people, I think, that if there  
2493 | are criminal violations then we should prosecute. There is  
2494 | no excuse not to.

2495 |         Chairman WAXMAN. Okay.

2496 |         Mr. ENGLISH. And I think, in fact, we have got to  
2497 | recognize it is not an easy situation to go in and prevent  
2498 | someone from violating the law or doing wrong. We have tried  
2499 | many times in this body.

2500 |         Chairman WAXMAN. But transparency could help.

2501 Mr. ENGLISH. And we have an Ethics Committee in this  
2502 Congress--

2503 Chairman WAXMAN. Transparency could help.

2504 Mr. ENGLISH.--that doesn't stop that sort of activity.

2505 Chairman WAXMAN. I know. Does transparency help?

2506 Mr. ENGLISH. Certainly, and I wholeheartedly agree.

2507 Chairman WAXMAN. Okay. Let me move on to Mr.

2508 Westmoreland, because he is next on the line of questioning  
2509 and the red light is on.

2510 Mr. ENGLISH. Very good. Great.

2511 Mr. WESTMORELAND. Thank you, sir.

2512 Mr. English, it could be the case that an elected  
2513 official could be under indictment under Federal charges and  
2514 still be re-elected by his constituents; is that not true?

2515 Mr. ENGLISH. Well, that is my understanding, and that is  
2516 always the case, and that is the delicacy, I think, of the  
2517 problem that we are facing here. You have got two bodies of  
2518 elected officials. You have got the Congress and you have  
2519 got the directors of local electric cooperatives. That is  
2520 the reason I think there should be a certain amount of  
2521 empathy.

2522 Mr. WESTMORELAND. The membership can elect anybody they  
2523 want to.

2524 Mr. ENGLISH. That is the situation.

2525 Mr. WESTMORELAND. Whether they are convicted felons or

2526 whatever. That is up to the membership to elect them.

2527 Mr. ENGLISH. And it is up to the folks to correct the  
2528 problem if they disagree with the representation they are  
2529 getting, whether it is their Congressman or their local  
2530 director at the local co-op. But there has to be, no matter  
2531 whether you are talking about government or whether you are  
2532 talking about privately owned electric cooperatives, under  
2533 any circumstance the people are the ones who must take charge  
2534 and deal with that problem.

2535 Mr. WESTMORELAND. I have heard it said that the  
2536 cooperatives' governance activities are not transparent, but  
2537 I was looking through your written testimony here and I  
2538 noticed that you had some IRS forms attached to it. Are  
2539 these typically made public to the membership, these IRS  
2540 forms?

2541 Mr. ENGLISH. These are the new forms and I thought that  
2542 the Committee would like to see that. Obviously, they are  
2543 very extensive, far more extensive than you have got for any  
2544 corporation in this Country, even after Sarbanes-Oxley and  
2545 Enron. Yes, they are, and each cooperative is required to  
2546 make that available to any of their members who wish to look  
2547 at it, and certainly it is available. I think it is even  
2548 published on the internet.

2549 Mr. WESTMORELAND. So you are saying that really, as far  
2550 as checks and balances, as far as the EMC goes you have

2551 | actually the local control of the membership, you have got  
2552 | the Rural Utilities Service, although under-funded and not  
2553 | really functioning as it should. It is there as a check and  
2554 | a balance.

2555 |         Mr. ENGLISH. Right.

2556 |         Mr. WESTMORELAND. And also you have the Federal  
2557 | Government in the form of the IRS that takes a look at your  
2558 | paperwork.

2559 |         Really, do you know if all electric memberships have  
2560 | these annual meetings that I am accustomed to going to and  
2561 | having all this information printed, or is that--

2562 |         Mr. ENGLISH. They are supposed to have annual meetings.  
2563 | They are supposed to have elections. And certainly these  
2564 | elections are supposed to be free and open.

2565 |         Now, when we get into some situations, just as we have  
2566 | sometimes in Congress and other elected offices, the system  
2567 | doesn't always work the way it should. Any time that happens  
2568 | we ought to make corrections.

2569 |         Mr. WESTMORELAND. I have seen situations in Congress,  
2570 | Mr. English, where they won't even take a vote out of fear of  
2571 | losing.

2572 |         Mr. ENGLISH. I am not going to go there.

2573 |         Mr. WESTMORELAND. I don't know.

2574 |         Some have charged that electric cooperatives are no  
2575 | longer rural. Could you just give us some of the

2576 | characteristics of what an electric cooperative is as far as  
2577 | average size, density, amount of space they cover, or  
2578 | population-wise?

2579 |         Mr. ENGLISH. Well, we cover 75 percent of the land mass  
2580 | of the United States. We have 12 percent of the consumers in  
2581 | the Country own electric cooperatives or are members of  
2582 | electric cooperatives. And obviously that is a tremendous  
2583 | amount of territory for a few people. We have nearly 43  
2584 | percent of all the infrastructure on the distribution side is  
2585 | owned, so you have got 12 percent of the population having to  
2586 | maintain and own nearly 43 percent of all the distribution  
2587 | infrastructure of this Country.

2588 |         Roughly the average size is around 21,000, give or take.  
2589 | The smallest is less than 200. Pedernales is the largest, I  
2590 | believe, at 230 I believe is the last thing I heard as far as  
2591 | the number of members that they have at that cooperative.  
2592 | Obviously these are very resource intensive entities in that  
2593 | they have got to maintain all that infrastructure, so it is a  
2594 | heck of a struggle, but I think they have done extremely  
2595 | well. Most cooperatives have great service.

2596 |         Mr. WESTMORELAND. Let me give you a report from Georgia.

2597 |         Mr. ENGLISH. Okay. Great.

2598 |         Mr. WESTMORELAND. The agencies are doing well.

2599 |         Mr. ENGLISH. Okay.

2600 |         Mr. WESTMORELAND. And having been a member of one for



2601 | probably and different ones for probably the last 25 years,  
2602 | they do a good job in servicing their customers. They work  
2603 | hand in hand with the Southern Company, Georgia Power,  
2604 | Ogelthorpe Power, other companies in providing Georgians with  
2605 | good electric service, dependable electric service, and I am  
2606 | proud to say that in Georgia our electric rates are probably  
2607 | 15 to 20 percent below the national average. I am glad to  
2608 | have the participation of all the power providers in the  
2609 | State of Georgia, and your organization is doing a good job.

2610 |         Mr. ENGLISH. Thank you very much. That is usually the  
2611 | kind of testimonials we are used to hearing about electric  
2612 | co-ops all over the Country, so I am happy to say that what  
2613 | you find in Georgia is not unusual in the rest of the  
2614 | Country, and even the State of Texas.

2615 |         Chairman WAXMAN. Thank you, Mr. Westmoreland. Your time  
2616 | has run out.

2617 |         Mr. Cooper?

2618 |         Mr. COOPER. Thank you, Mr. Chairman.

2619 |         Glenn, as a former colleague and friend, I am sorry we  
2620 | disagree on these issues, but it was actually his kind  
2621 | invitation to let me speak at the national convention that  
2622 | first led me to do enough research to understand some of  
2623 | these things. Now I know that your PAC gives as much money  
2624 | to politicians as Boeing Corporation, so that has got a lot  
2625 | of influence. It has got a lot of influence in States, too.

2626 | You pretty much draft whatever legislation you want and get  
2627 | exempted, you know, so there is no oversight.

2628 |       But I am delighted my friend from Georgia is here,  
2629 | because we were talking about Cobb Electric earlier, and he  
2630 | was seeming to say that, well, things are fine, you are doing  
2631 | a fine job, everything is hunky-dory. Well, Cobb is one of  
2632 | the most notorious examples in all of America, because is it  
2633 | okay for a non-profit electric co-op to subcontract out its  
2634 | entire operation to a for-profit subsidiary secretly owned by  
2635 | co-op managers and still pretend to be a non-profit? That is  
2636 | a little bit like subcontracting out the entire Pentagon to  
2637 | Blackwater. This is an amazing thing. How can you pretend  
2638 | this is a nonprofit if it is really run entirely by a  
2639 | for-profit? What standards does the NRECA have if you think  
2640 | that is okay behavior?

2641 |       Mr. ENGLISH. Is that the question?

2642 |       Mr. COOPER. Yes.

2643 |       Mr. ENGLISH. Okay. Well, let me try to answer that. You  
2644 | had a number of questions that were tied up in it.

2645 |       First thing, let me just say we are very proud of our  
2646 | PAC, and we have made contributions to friends, and you have  
2647 | received quite a few of those contributions along the way,  
2648 | and we were pleased to do it. You were previously very  
2649 | supportive of electric cooperatives.

2650 |       Mr. COOPER. I still am.

2651 Mr. ENGLISH. Well, we disagree on that for sure.

2652 Mr. COOPER. I still am.

2653 Mr. ENGLISH. I guarantee you we disagree big time on  
2654 that one.

2655 Now let me finish the question here. The issue you come  
2656 down to is I could have some very serious disagreements with  
2657 the way the Congress has been contracting out a whole number  
2658 of services as far as--

2659 Mr. COOPER. Mr. English, the question is--

2660 Mr. ENGLISH. You asked me the question.

2661 Mr. COOPER.--standards that NRECA--

2662 Mr. ENGLISH. Mr. Cooper, you asked--

2663 Mr. COOPER. Mr. English, you are no longer a Member  
2664 here.

2665 Mr. ENGLISH. Let me finish my question.

2666 Chairman WAXMAN. Both of you--

2667 Mr. ENGLISH. Let me finish my answer.

2668 Chairman WAXMAN. If you will cease for a minute, we  
2669 can't have both of you talking. This is the time, as you may  
2670 recall--or if you don't--this is a time when Members ask  
2671 questions and expect answers to their questions.

2672 Mr. ENGLISH. Mr. Chairman, if you--

2673 Chairman WAXMAN. No, no.

2674 Mr. COOPER. Let me rephrase my question. Would it be  
2675 okay for every co-op in America to subcontract out its entire

2676 | operation to a for-profit subsidiary secretly owned by co-op  
2677 | management and still pretend to be a nonprofit? Is that  
2678 | tolerable behavior under NRECA guidelines?

2679 |       Mr. ENGLISH. Let me just say this. I would not  
2680 | personally recommend that. That is not something I would do.  
2681 | But I am not an elected representative of the membership in  
2682 | that particular area of the State of Georgia. Those people,  
2683 | whatever business decisions they make, have got to be held  
2684 | accountable. And as I understand it at the present time they  
2685 | are being held accountable, because there is serious  
2686 | disagreement down there among that membership, as you well  
2687 | know, raising these various issues. There may even be legal  
2688 | questions involved. That has been taken before the courts.  
2689 | That is the process that needs to be followed.

2690 |       Now, what Glenn English thinks and what the directors in  
2691 | the State of Georgia think, I don't have their constituency.  
2692 | And when I was a Member of this body people in western  
2693 | Oklahoma may not have agreed with what the people in  
2694 | Tennessee thought, and you and I didn't always vote the same  
2695 | way. That is the same thing here.

2696 |       Mr. COOPER. Mr. English, so there is no co-op  
2697 | misbehavior that would be so bad that would prevent them from  
2698 | being members of NRECA as long as a local vote ratified the  
2699 | decision?

2700 |       Mr. ENGLISH. I will go back again. We have the same

2701 | situation here. I don't know if the behavior of Members of  
2702 | Congress that prohibit them from being members of this body.

2703 | Mr. COOPER. Mr. English--

2704 | Mr. ENGLISH. NRECA is a trade association.

2705 | Mr. COOPER. I have limited time. Next question.

2706 | Mr. ENGLISH. NRECA is a trade association, and our  
2707 | members belong on that basis. It is up to their members to  
2708 | decide whether their conduct is appropriate or not.

2709 | Mr. COOPER. So you will take anyone. Mr. English, we  
2710 | mentioned in the first panel CFC, the lending arm of co-ops,  
2711 | was set up, according to its official biography, to tell Wall  
2712 | Street how rich co-ops are; meanwhile, NRECA's purpose is to  
2713 | tell Congress how poor you are. Which story is correct?

2714 | Mr. ENGLISH. Probably both. On one hand, CFC was set up  
2715 | in 1969 whenever it appeared that the Administration at that  
2716 | time was going to do away with the REA program. In fact, if  
2717 | you recall, Richard Nixon did.

2718 | Mr. COOPER. Mr. English, how can you be rich and poor at  
2719 | the same time?

2720 | Mr. ENGLISH. If I can't complete my answer, Congressman,  
2721 | if you just want to make statements, that doesn't make much  
2722 | sense to ask me questions.

2723 | The point that I would make is this: electric  
2724 | cooperatives are very proud of the fact that our bond rating  
2725 | on Wall Street is very good. We are considered to be in

2726 great financial condition. In fact, in some cases we are in  
2727 better condition than some of the big power companies of this  
2728 Nation.

2729 If you look at the cost of power because of the  
2730 infrastructure that we have, because of the fact there is  
2731 only seven co-op members per mile versus 35 for an  
2732 investor-owned utility, we have got a huge amount of  
2733 infrastructure we have to keep up. And we have some of the  
2734 poorest people in this Country that we must serve.

2735 Percentage-wise, I would dare say that we have a larger  
2736 percentage than anyone else in this Nation, and so from that  
2737 standpoint I would point out that yes, electric cooperatives  
2738 are representing some of the poorest members of this Country  
2739 and they are owned by those folks.

2740 Mr. COOPER. Mr. Chairman, I see that my time has  
2741 expired. I hope that we have time for another round of  
2742 questions, but I see that my colleague is here from Iowa.

2743 Chairman WAXMAN. We will give a second round to any  
2744 Member who wishes.

2745 Mr. Braley?

2746 Mr. BRALEY. Thank you, Mr. Chairman.

2747 Mr. English, I am here as a long-time member of the Tama  
2748 Iowa Poweshiek Rural Electric Cooperative located in  
2749 Brooklyn, Iowa, which is run by my good friend, Darryl  
2750 Heatland, who went to church with me when I was growing up in

2751 | high school, and I have got to tell you that there is a real  
2752 | big disconnect going on between my experience and perception  
2753 | of how RECs are run and operated in Iowa and some of the  
2754 | information that Mr. Cooper has shared with the Committee  
2755 | about other parts of the Country.

2756 |       I guess the opening comment that I would make is a  
2757 | comment that I would share with anyone in your position as a  
2758 | head of any type of a trade association or professional  
2759 | association, and that is: oftentimes where there is smoke  
2760 | there is fire. I think that all of those great rural  
2761 | electric cooperatives that I represent in Iowa, those 75,000  
2762 | constituents of mine who depend upon RECs to take care of  
2763 | them, to take care of their power needs, to be there for them  
2764 | in the ice storm disaster that we faced in February of 2007  
2765 | where they responded with admirable dispatch all over my  
2766 | district, when we went through this terrible tornado that we  
2767 | just had, the largest tornado in the United States this year,  
2768 | and the RECs were out in full force taking care of my  
2769 | constituents, the flooding that we are dealing with right  
2770 | now, it is the type of constituent service that I would be  
2771 | proud of to have my staff performing.

2772 |       But I also know that you are only as good as your  
2773 | weakest link as a trade association, and some of these  
2774 | concerns we are talking about are very disturbing. So what I  
2775 | would like to do is ask you at the outset, from your

2776 | perception and the perception of the member co-ops you  
2777 | represent, what should be the number one guiding principle of  
2778 | how those co-ops service the members that they take care of?

2779 |       Mr. ENGLISH. First of all let me say, as I said before,  
2780 | unfortunately, as Members of Congress are well aware, you get  
2781 | tarred with the same brush. That is just a part of it. And  
2782 | you are dealing with a lot of people.

2783 |       What we are supposed to be governed by are those seven  
2784 | cooperative principles. That is the basis on which we have  
2785 | our tax-exempt status with the Internal Revenue Service. It  
2786 | is the basis on which we make our claim that we are, indeed,  
2787 | different, and the basis on which we are a consumer  
2788 | organization.

2789 |       But at the same time, we fully recognize and understand  
2790 | that when you bring people into a process, 7,000 directors,  
2791 | 1,000 managers, yes, your chances of running into somebody  
2792 | who doesn't quite operate in the manner that we would like to  
2793 | see, then we all get tarred with that brush.

2794 |       This is a trade association. We have no authority. We  
2795 | can encourage our members. We can provide our members with  
2796 | education. We can provide our members with what their peers  
2797 | think. But as far as being able to come down and mandate and  
2798 | say, you shall do such and such, we are not a corporation  
2799 | headquarters. That is the point that I was making to the  
2800 | Chairman early on. Whenever we gutted the Rural Utilities



2801 Service--and we did it over a number of years after  
2802 1980--that took care of a lot of that regulatory basis on  
2803 which I think members of this Committee seem to be searching  
2804 for. That was deregulation.

2805 Mr. BRALEY. In the materials you provided the Committee  
2806 there is something called the Board Leadership Certificate.

2807 Mr. ENGLISH. Right.

2808 Mr. BRALEY. Which looks like a number of continuing  
2809 education types of programs that are available to member  
2810 co-ops to help them become the best and most effective type  
2811 of cooperative that we expect from our co-ops in Iowa. Can  
2812 you give us some sense of what type of participation you get  
2813 from your member co-ops in those types of leadership training  
2814 opportunities? And is it having the desired effect that the  
2815 cooperatives would expect it to?

2816 Mr. ENGLISH. Right. First of all, what we would  
2817 encourage our members to do is get their credentials. We are  
2818 looking for credentialed directors. That is their first step  
2819 after they get elected. And we have good participation in  
2820 that. We have over half of the cooperatives--and keep in  
2821 mind we have over 40 percent new directors in the last  
2822 several years--moving through that process.

2823 We do, in fact, offer higher advanced training, which  
2824 gets into power supply and a number of other more complicated  
2825 issues. We encourage our directors to participate in that,

2826 | as well.

2827 |         But our real focus, and the focus, I think, on the  
2828 | hearing that we are talking about today comes under the  
2829 | grounds of the credentialed director and, quite frankly,  
2830 | having a good dose of common sense, and recognizing and  
2831 | understanding that whatever behavior you are going to be  
2832 | following--and I don't think any amount of education would  
2833 | have taken care of that under the example that we have seen  
2834 | before us today--that comes down to just plain, bottom-line  
2835 | common sense and recognizing and understanding that you have  
2836 | to be held to a higher standard, and you are going to be  
2837 | under scrutiny, and you had better be prepared to answer for  
2838 | it. That is what they are being required to do is answer for  
2839 | it.

2840 |         Mr. BRALEY. And you also supplied us with these form  
2841 | 990s, Return of Organization Exempt from Income Tax forms,  
2842 | which do require organizations to put detailed information in  
2843 | on executive and board of directors compensation. Are you  
2844 | personally aware of what type of oversight the Internal  
2845 | Revenue Service has been performing on monitoring these forms  
2846 | to ensure their accuracy, their completeness, and to achieve  
2847 | the desired transparency that this law is supposed to?

2848 |         Mr. ENGLISH. Well, the only thing I think I can say  
2849 | about that is this is a new form, and it is to a degree that  
2850 | we have never seen before and, as I said, no other business

2851 | is being required to do. I can only assume by this that the  
2852 | IRS plans a much higher level of scrutiny and involvement in  
2853 | the proper filling out of form 990s than we have had in the  
2854 | past.

2855 |         Has everyone filled it out exactly as they should? As  
2856 | we heard some of the testimony before us, a lot of it gets  
2857 | done on the advice of accountants, and some of it gets done  
2858 | on the advice of attorneys. Quite frankly, I don't think  
2859 | some of them have gotten good advice.

2860 |         Chairman WAXMAN. Thank you, Mr. Braley.

2861 |         Mr. McHenry, do you wish to ask questions?

2862 |         Mr. MCHENRY. Thank you, Mr. Chairman.

2863 |         I am sorry. I have been kept away with other business  
2864 | today.

2865 |         This hearing is interesting to most of us. My  
2866 | experience with my co-ops in North Carolina has been a pretty  
2867 | reasonable one. We have got Duke Energy in North Carolina,  
2868 | and that consumed a lot of the attention of public policy  
2869 | when I was in the State House, but co-ops have been pretty  
2870 | well managed in my State in my experience in the State House.

2871 |         But this one is interesting to me, Mr. English, this  
2872 | hearing.

2873 |         Mr. ENGLISH. It has been interesting to me, too.

2874 |         Mr. MCHENRY. Can you give me some background on why we  
2875 | are here today? I mean, I understand Mr. Cooper has an

2876 | experience in Tennessee, and that is sort of a little history  
2877 | on that?

2878 |         Mr. ENGLISH. Well, I know Mr. Cooper and I have had our  
2879 | disagreement with regard to this issue, and I think it  
2880 | started with the issue in Tennessee. I think that is fair to  
2881 | say. And it has to do with the fact that cooperatives in  
2882 | Tennessee are unique and different from cooperatives  
2883 | elsewhere in the Country. For instance, they buy their power  
2884 | from TVA, and with a longstanding contract that TVA has had,  
2885 | it has prohibited the payment of capital credits. What TVA  
2886 | co-ops are expected to do is to reduce their rate; in other  
2887 | words, to charge less for the power, as opposed to sending a  
2888 | check back to an individual for any margins or excess over  
2889 | and above the cost of doing business.

2890 |         TVA has reiterated, in fact, I think back in the 1970s  
2891 | underscored again that this was the directive. I assume the  
2892 | reason for this is because they provide power both to  
2893 | municipalities and to electric co-ops and they want to keep  
2894 | it roughly the same as far as the cost for both entities.  
2895 | But anyway, that is the contract.

2896 |         Mr. Cooper has disagreed with that, and he wants me to  
2897 | participate and tell him the cooperatives in Tennessee should  
2898 | pay those capital credits. Perhaps he wants me to tell TVA  
2899 | that they shouldn't require this contract. Whatever. But  
2900 | anyway, that is where it started out. Now it has ballooned

2901 and I think expanded to all the cooperatives all across the  
2902 United States that we have a disagreement over.

2903 Mr. MCHENRY. So is that regulated, this going back and--

2904 Mr. ENGLISH. TVA?

2905 Mr. MCHENRY. No. Co-ops distributing money that is in  
2906 excess of their--

2907 Mr. ENGLISH. The capital credits?

2908 Mr. MCHENRY. Yes.

2909 Mr. ENGLISH. That is a part of the requirements that you  
2910 have for electric cooperatives through this process. Again,  
2911 you go back to the form 990s and the requirements that they  
2912 provide this information and make it available.

2913 Now, the issue that I think we are into, as well, here  
2914 before us today is this question of how much is available.  
2915 Even Mr. Cooper agrees that the \$31 billion that he talks  
2916 about in the way of equity, that most of that is tied up in  
2917 buildings and infrastructure and things of that sort. If you  
2918 are talking about actual cash that all the cooperatives  
2919 across the Country have on hand, you are talking about  
2920 roughly \$3.8 billion.

2921 This is a very intense industry from a resource  
2922 standpoint, and this is about 45 days' operating expenses,  
2923 which on an average on co-ops around the Country, and it is  
2924 my understanding that that is pretty much in line with what  
2925 is being recommended as any kind of prudent business

2926 practice.

2927 Mr. MCHENRY. Okay. So the Texas Legislature addressed  
2928 this particular issue that is the subject of the hearing  
2929 today, did they not?

2930 Mr. ENGLISH. The Texas Legislature is focusing on the  
2931 governance and open meetings, and I think they are looking  
2932 elsewhere at how they can ensure that the kind of situation  
2933 that took place at Pedernales won't happen again. As you  
2934 heard them testify, they seem to feel that this is a local  
2935 matter and that they have it under control.

2936 I have got to admit I personally have not run into  
2937 situations like we had in Pedernales, and so it is rather  
2938 unique, I think.

2939 Mr. MCHENRY. And how are the co-op boards elected?

2940 Mr. ENGLISH. They are elected by the same folks that  
2941 elect Members of Congress, the same constituents, so that is  
2942 where it comes from.

2943 Mr. MCHENRY. Do they do a better job of electing Members  
2944 of Congress?

2945 Mr. ENGLISH. Well, I guess that is up for every Member  
2946 to make judgment on that.

2947 Mr. MCHENRY. I am just kidding.

2948 Mr. ENGLISH. I have got to say when I was a Member of  
2949 this body there were times that I questioned the judgment of  
2950 some in other parts of the Country, but no one sitting on

2951 | this panel.

2952 |         Mr. MCHENRY. All right. Any other comments about this  
2953 | Tennessee experience of Mr. Cooper's?

2954 |         Mr. ENGLISH. Mr. Cooper could probably do better to  
2955 | address that than anything else, but that is certainly where  
2956 | he and I personally had a disagreement.

2957 |         Mr. COOPER. I would be happy to jump in if the gentleman  
2958 | would yield.

2959 |         Mr. ENGLISH. So I am sure he will want to talk about  
2960 | that some more.

2961 |         Mr. MCHENRY. Sure, I am happy to yield.

2962 |         Mr. COOPER. I thank the gentleman.

2963 |         Is Tennessee unique and different? In a way. We do  
2964 | have TVA. We are thankful for that. But Pedernales, the  
2965 | subject of this hearing, the largest co-op in America, had  
2966 | never paid a refund in 70 years, despite having a major  
2967 | surplus. So if the largest co-op in America could behave  
2968 | like ours in Tennessee, that got me worried.

2969 |         Now, regarding the Tennessee case, co-ops in Tennessee  
2970 | have so much political power that that one line in the 1935  
2971 | power contract, the TVA Board is reluctant to take it out  
2972 | because they don't want to be unpopular with their  
2973 | distributors. The TVA IGs have repeatedly, since 1994, found  
2974 | that 50 distributors in the Tennessee Valley, A, have  
2975 | embarrassing amounts of money on hand and, B, are raising

2976 rates at the same time in violation of this one sentence in  
2977 the contract that we have talked about.

2978 So we have a double whammy in our area, but it is  
2979 hitting the rest of the Country, too, like with Pedernales.

2980 Chairman WAXMAN. The gentleman's time has expired.

2981 Mr. Towns?

2982 Mr. TOWNS. Thank you very much, Mr. Chairman.

2983 It is good to see you.

2984 Mr. ENGLISH. Indeed, Mr. Towns. It is good to see you,  
2985 sir.

2986 Mr. TOWNS. Happy to know there is life after this place.

2987 Mr. ENGLISH. Well, it has been a long time since I have  
2988 been back.

2989 Mr. TOWNS. Let me just ask you, when a co-op's revenue  
2990 exceeds its expenditures, it builds equity?

2991 Mr. ENGLISH. Right.

2992 Mr. TOWNS. Well, when a cooperative refunds in the form  
2993 of capital credits to their customers, is this situation in  
2994 Texas cooperative unusual? Is this unique? I mean, if this  
2995 is--

2996 Mr. ENGLISH. It is most unusual. It is most unusual.  
2997 The overwhelming majority of our members refund capital  
2998 credits. Really, the judgment in the case that has to be mad  
2999 , and, again, this gets back to that business of a decision  
3000 of the local board, and a lot of it has to do with how



3001 | conservative they are. I had one--and certainly Mr. Cooper  
3002 | is going to strongly disagree with this, because we have had  
3003 | this discussion before--I have had one co-op that has told me  
3004 | that they want to have 100 percent equity. That is probably  
3005 | going way beyond, well, I know it is going way beyond what  
3006 | the average co-op has, which is about 40, 41 percent. But  
3007 | that is a decision on their part, because they have got very  
3008 | conservative directors, and it is their directors' idea, we  
3009 | don't want any debt, and we want to make sure that we can  
3010 | cover whatever cost we are without going out and borrowing a  
3011 | lot of money.

3012 |         That is a local decision. It is a very conservative  
3013 | board. As long as that is made available to the membership  
3014 | that they represent, then obviously that is a local decision.

3015 |         We have others that have far less, but it is a local  
3016 | decision by elected representatives who have been elected by  
3017 | their membership to make such judgments, just as Members of  
3018 | Congress have been elected to make judgments with regard to  
3019 | the budget and deficits and everything that Members of  
3020 | Congress deal with. It is similar.

3021 |         Mr. TOWNS. Well, do you think they should be doing a  
3022 | better job of communicating to their members?

3023 |         Mr. ENGLISH. Well, I think we all need to do a better  
3024 | job of communicating with the members. I think we can all do  
3025 | better on that.

3026 Mr. TOWNS. Right. Would you agree that co-op members  
3027 ought to have a say in what their co-ops are doing with the  
3028 equity?

3029 Mr. ENGLISH. I think they certainly should, and that  
3030 goes, again, they need to participate in their local  
3031 cooperative elections. They need to pay attention to the  
3032 business that is taking place at their cooperatives. They  
3033 need to pay attention to what is going on here in Congress.  
3034 They need to participate in the election of Members of  
3035 Congress. The election on an off-year for Members of  
3036 Congress, if I remember correctly, is about 36 percent, and  
3037 the election nationwide for directors of electric  
3038 cooperatives is about 31 percent. I think we both would  
3039 agree that it ought to be three-quarters or better. We ought  
3040 to have far more participation in the democratic process of  
3041 government, and certainly in the process of co-op governance.  
3042 That is something that we wholeheartedly agree.

3043 One point I would make--and, Mr. Chairman, I want to lay  
3044 this on the record, too--an awful lot of co-ops go to great  
3045 lengths to try to encourage people to participate. I know of  
3046 one electric cooperative--and it is a rather large electric  
3047 cooperative--every year just brings folks in to make sure  
3048 that they come into this thing. They will even give away a  
3049 new car. It is a drawing. That is it. You have got to be  
3050 at the meeting. You come in, you sign up as a member, and

3051 | they have a drawing. They give away scholarships to the  
3052 | local folks. I know of some others that give away old  
3053 | pickups that the co-op might have. Some of you may have  
3054 | experienced that. In others they give away a frying pan.

3055 | But they are trying to get folks in to participate in  
3056 | this process, contrary to what I think the impression has  
3057 | been created today that no one, no co-op wants people to show  
3058 | up at their meeting. Well, that is not true, and it is  
3059 | completely contrary to the experiences I have had in the last  
3060 | 14 years in working with electric cooperatives across this  
3061 | Country. They go to great lengths on that.

3062 | I think there is no question we would like to see far  
3063 | greater participation, and I am sure that you would, too, in  
3064 | your District, people coming to the poll.

3065 | Mr. TOWNS. No doubt about it. Especially to vote for  
3066 | me.

3067 | Mr. ENGLISH. Especially. And I am sure they would,  
3068 | because they are smart folks up there. No question.

3069 | Mr. TOWNS. Let me ask you, what are you doing to  
3070 | encourage that participation? Are you doing any of that?

3071 | Mr. ENGLISH. The one thing I think that we are trying to  
3072 | do is to help our members improve their overall  
3073 | communications with their membership. One of the things that  
3074 | we are doing right now is to engage them in something known  
3075 | as, Our Energy, Our Future, which is to make three points.

3076 | We are trying to get them to talk to you all, and the first  
3077 | point is to make sure that they are aware, not just election  
3078 | cooperatives, but the whole electric utility industry is  
3079 | pretty much out of capacity. We built up excess capacity in  
3080 | the late 1970s and early 1980s. We are out of that.

3081 |       Second thing is to understand, from a standpoint of  
3082 | technology, that far greater investment needs to be made in  
3083 | technology so that we can meet any climate change objectives  
3084 | that the Congress may set. If we don't, then we are probably  
3085 | going to run into situations where we are not going to have  
3086 | enough power, we are going to have rates that are excessive,  
3087 | and that is a train wreck none of us want to see.

3088 |       The third point is the fact that we also need to  
3089 | understand that electric rates, particularly those people  
3090 | that we serve--and I would suggest a lot of the folks that  
3091 | you serve--there is a real question in the future as to  
3092 | whether electric power in this Country is going to be  
3093 | affordable to all Americans. Low-income people may not be  
3094 | able to live with the promise that was created in 1936 with  
3095 | the creation of the REA and affordable electric power.

3096 |       Mr. TOWNS. Thank you very much.

3097 |       Chairman WAXMAN. Thank you, Mr. Towns.

3098 |       All Members have completed a round of questions, and  
3099 | some Members have requested a second round. Are you ready to  
3100 | go?

3101 Mr. ENGLISH. Yes, I am ready. Ready, Mr. Chairman.

3102 Chairman WAXMAN. All right.

3103 Mr. Westmoreland?

3104 Mr. WESTMORELAND. Thank you, Mr. Chairman.

3105 My good friend Mr. Cooper down there, I know that he  
3106 wants this what is best for his constituents. It may not go  
3107 along--

3108 Mr. ENGLISH. Well, he won't be an elected official long  
3109 if he doesn't.

3110 Mr. WESTMORELAND. No, I understand, but I know that he  
3111 wants to do that. I just hope he doesn't mess up what is  
3112 going on in Georgia by trying to fix what is going on in  
3113 Tennessee. In fact, the comment about the PAC is almost  
3114 laughable, that because you have got a PAC you can get  
3115 anything you want up here. If that was true, big labor and  
3116 trial lawyers would be getting anything they wanted.

3117 Mr. ENGLISH. And if I recall correctly, that is bribery,  
3118 is it not?

3119 Mr. WESTMORELAND. Well, it is.

3120 Mr. ENGLISH. And you are supposed to be prosecuted if  
3121 you have bribes. Isn't that right, Mr. Chairman?

3122 Mr. WESTMORELAND. Let me say this: I have never seen a  
3123 voter turnout method like the EMCs that I am used to use,  
3124 whether it is health screenings, giving away a pickup truck,  
3125 rides for the kids, a whole variety. They spend a lot of

3126 | money trying to get those people out to vote where I am from.

3127 |       Let me ask you this. Mr. Cooper mentioned the Cobb EMC  
3128 | case. Were there any laws broken there?

3129 |       Mr. ENGLISH. Well, that is the issue that I think there  
3130 | is between some members and some of the officials at Cobb.  
3131 | That is being dealt with, as I understand it, within the  
3132 | courts and within the membership, so at this point I have no  
3133 | information.

3134 |       Mr. WESTMORELAND. But if it was a law broken, it is  
3135 | being dealt with in the court today, isn't it?

3136 |       Mr. ENGLISH. It is being dealt with. Yes. That is  
3137 | right. It is in the courts.

3138 |       Mr. WESTMORELAND. And that is what kind of system we  
3139 | have. We are a Country of laws, right?

3140 |       Mr. ENGLISH. Right.

3141 |       Mr. WESTMORELAND. If you feel like there has been a law  
3142 | broken, then you have a remedy in the court system?

3143 |       Mr. ENGLISH. Exactly.

3144 |       Mr. WESTMORELAND. And that is exactly where this is  
3145 | being taken, I am assuming.

3146 |       Mr. ENGLISH. That is the way I was always taught.

3147 |       Mr. WESTMORELAND. Yes. And so I am assuming that if  
3148 | there are laws being broken somewhere, that they are being  
3149 | taken to court. I am not familiar with the situation in  
3150 | Tennessee, but from what I heard you say, it is a contractual

3151 | agreement between the TVA and the electric membership  
3152 | cooperative that is at question about why they can't do these  
3153 | rebates or refunds.

3154 |         Mr. ENGLISH. Got to lower the rate.

3155 |         Mr. WESTMORELAND. They have got to lower the rate for  
3156 | all users, and that is a contractual thing. And so if the  
3157 | EMC decided not to do that, that would be a contractual issue  
3158 | that could be taken to court.

3159 |         Mr. ENGLISH. In fact, it is my understanding the issue  
3160 | has been taken to court. They had some folks take it to  
3161 | court that you all are not giving us back our capital  
3162 | credits. And it is my understanding it was thrown out of  
3163 | court.

3164 |         Mr. WESTMORELAND. Okay.

3165 |         Mr. ENGLISH. The court didn't even take it up, or if  
3166 | they did the judge came down and said this is a contractual  
3167 | issue and--

3168 |         Mr. WESTMORELAND. So there has been some type of  
3169 | adjudication or something in this case?

3170 |         Mr. ENGLISH. There has been adjudication already on the  
3171 | matter, yes.

3172 |         Mr. WESTMORELAND. And the case that we are having the  
3173 | hearing on today?

3174 |         Mr. ENGLISH. Well, I think that would be a little unfair  
3175 | to Mr. Cooper, because I think what he is talking about and

3176 | what we are having the hearing on is Pedernales, but that is,  
3177 | I think, a part of this discussion, yes. I think that is a  
3178 | part of what we are talking about.

3179 | Mr. WESTMORELAND. Yes, sir.

3180 | Mr. Chairman, I thank you for doing the second round. I  
3181 | appreciate it, and I yield back the balance of my time.

3182 | Chairman WAXMAN. Would you yield to me?

3183 | Mr. WESTMORELAND. I would.

3184 | Chairman WAXMAN. I just want to get something very  
3185 | clear. As far as Federal regulation of the electric co-ops,  
3186 | it is only the IRS requirements; is that correct?

3187 | Mr. ENGLISH. No. As it stands right now, anyone who is  
3188 | an RUS borrower also then comes--

3189 | Chairman WAXMAN. Anyone who is an RUS?

3190 | Mr. ENGLISH. Borrower. Borrows from the Rural Utilities  
3191 | Service.

3192 | Chairman WAXMAN. I understand that only 50 percent of  
3193 | the co-ops actually--

3194 | Mr. ENGLISH. No, you have got about two-thirds of the  
3195 | co-ops have an RUS loan.

3196 | Chairman WAXMAN. Okay. Then what regulation do they  
3197 | have under RUS?

3198 | Mr. ENGLISH. As I say, there is a multitude of different  
3199 | regulations pertaining to the loan, but also pertaining even  
3200 | to the point that if they feel the activities of the



3201 co-op--if the CEO, for instance, is carrying out  
3202 activities--and I think you could probably stretch what was  
3203 happening down in Pedernales--they would have the authority  
3204 to remove the CEO.

3205 Chairman WAXMAN. So they have regulatory power, but they  
3206 also don't have the staff or resources to exercise it?

3207 Mr. ENGLISH. Exactly. Now, let me take this just a--

3208 Chairman WAXMAN. And you are not a regulator?

3209 Mr. ENGLISH. I am not.

3210 Chairman WAXMAN. You are the head of the trade  
3211 association.

3212 Mr. ENGLISH. Not unless you make me one, Mr. Chairman.  
3213 Now, if you want to give me that authority, then we will talk  
3214 some more.

3215 Chairman WAXMAN. I don't think you'd want that  
3216 authority. If you have got to keep all the members of your  
3217 trade association happy, you don't want that authority.

3218 Mr. ENGLISH. That is true. That makes it a little more  
3219 difficult.

3220 Chairman WAXMAN. You answered my question.

3221 Mr. ENGLISH. Let me add one point.

3222 Chairman WAXMAN. Yes.

3223 Mr. ENGLISH. There is one little part. That one-third  
3224 that is not borrowing from the Rural Utility Service, during  
3225 that period of time that I am talking about, most of those

3226 | going into the early 1980s were borrowers. They dropped off  
3227 | because of the limitations that you had staff-wise. They  
3228 | could not get a timely loan. So you get big co-ops such as  
3229 | the Pedernales situation in which they are growing very  
3230 | rapidly, and they said, RUS has been cut back so far we can't  
3231 | get this in time to meet the needs to provide the electric  
3232 | power for our membership. They got out.

3233 |         So the whole point is: if you and I had maintained  
3234 | those levels and kept RUS regulating like they should  
3235 | throughout the 1980s and 1990s, I doubt that we would be here  
3236 | today.

3237 |         Chairman WAXMAN. Does RUS regulation, if it were ever  
3238 | enforced, preclude a co-op from taking money from the co-op  
3239 | and investing in hotels and other enterprises?

3240 |         Mr. ENGLISH. Well, that is another little thing.  
3241 | Unfortunately, I have got to take a big share of that,  
3242 | although you get a little piece. The big share comes back in  
3243 | 1987 on the Agriculture Committee Ed Jones, Chairman of the  
3244 | Subcommittee, Conservation Credit, we came up and figured  
3245 | out, hey, we have no money for rural development programs.  
3246 | We are out of luck. I mean, that is when we were having  
3247 | tight budgets and all that stuff.

3248 |         So what we did at that time is, well, we have got all  
3249 | these electric cooperatives scattered all around the Country  
3250 | that are getting RUS loans. We ought to ask them to do more.

3251 | So that is when we made the move in saying you guys ought to  
3252 | be involved in developing the economies of--

3253 | Chairman WAXMAN. So we don't stop it. In fact, you  
3254 | think we have encouraged those?

3255 | Mr. ENGLISH. We encouraged it. In fact, we have got an  
3256 | Inspector General report that condemns us for not doing  
3257 | enough.

3258 | Chairman WAXMAN. You answered my question. I appreciate  
3259 | that.

3260 | Mr. ENGLISH. Yes.

3261 | Chairman WAXMAN. Mr. Cooper?

3262 | Mr. COOPER. I thank the Chair not only for holding this  
3263 | hearing but for your extraordinary patience.

3264 | I think the main NRECA argument is, well, there may be  
3265 | one bad apple. If we had had this hearing last year, they  
3266 | problem wouldn't have agreed even to one bad apple, but at  
3267 | least today we know there is one bad apple and it is called  
3268 | Pedernales.

3269 | Mr. ENGLISH. Don't put words in our mouth now.

3270 | Mr. COOPER. Okay. From the limited research I have been  
3271 | able to do--and I wish there were more data. I wish there  
3272 | were more transparency. I wish there were more disclosure,  
3273 | because I believe these are public power entities founded in  
3274 | the New Deal owned by the people, and information should be  
3275 | widely available. But the best I can tell, it is not one bad

3276 | apple; it is at least 10 percent of the 930 co-ops in the  
3277 | Country, and it may be a lot more than that. I hope that is  
3278 | not true.

3279 | I am sorry my friend from Georgia had to leave, but  
3280 | remember, very few co-ops tell you exactly the private  
3281 | property that you own. And I thought this was a Country  
3282 | built on private property. I cited the NRECA's own material  
3283 | to point out that small co-ops are charging their customers  
3284 | an extra \$220 a year, two months of light bills, just so they  
3285 | can remain small. All this is completely legal. That  
3286 | worries me.

3287 | So I think it would be a complete mistake for this  
3288 | Committee or for Members to dismiss Pedernales as a rare  
3289 | aberration. For example, Pioneer, the co-op in Alabama  
3290 | hadn't had a board of directors election in 38 years. You  
3291 | were just talking about how there is great attendance at  
3292 | elections and stuff. How many decades does it take not to  
3293 | have a board of directors election before that should affect  
3294 | their co-op status? Are you willing to accept people that a  
3295 | half century or a hundred years of no board of directors  
3296 | election? There has got to be some minimal standard to join  
3297 | the NRECA.

3298 | Mr. ENGLISH. Well, there is an awful lot of accusations  
3299 | in there, and first one I would say is this: you are saying  
3300 | bad apples. You know, as I pointed out, any group you have

3301 | got bad apples. You have got bad apples in the Congress, and  
3302 | we have had them all the way through. I can start ticking  
3303 | them off if you want me to name them. And I would dare say  
3304 | that we do not have any greater percentage of problems along  
3305 | those lines than you have got in Congress. This is anybody,  
3306 | group of people elected by the general public, you are going  
3307 | to have bad apples.

3308 |         Second issue, you are talking about the issue of public  
3309 | power.

3310 |         Mr. COOPER. How many bad apples are there in co-op land?

3311 |         Chairman WAXMAN. How many are there in Congress?

3312 |         Mr. COOPER. I ask the questions.

3313 |         Chairman WAXMAN. Would the gentleman yield to me?

3314 |         Mr. ENGLISH. And if I could, the courts--

3315 |         Chairman WAXMAN. Would the gentleman yield?

3316 |         Mr. COOPER. I would be delighted.

3317 |         Mr. ENGLISH. The courts have determined--

3318 |         Chairman WAXMAN. Excuse me. Excuse me, Mr. English. He  
3319 | controls the time.

3320 |         Mr. ENGLISH. Okay.

3321 |         Chairman WAXMAN. Look, I don't think this is a fair  
3322 | question to ask a man who is the head of the trade  
3323 | association. He is not the regulator. I think your question  
3324 | should be a rhetorical question, because he is not going to  
3325 | be able to give you an answer. He is not the regulator. If

3326 | we had a regulator, we could find out what they would say.

3327 |       Mr. ENGLISH. Well, you have got one but you don't fund  
3328 | it.

3329 |       Mr. COOPER. Mr. Chairman, a fair point, but I have met  
3330 | the regulator at RUS. He is a very nice gentlemen whose name  
3331 | is Jim Andrews. He is a former head of NRECA.

3332 |       Mr. ENGLISH. That is not right either.

3333 |       Mr. COOPER. This is a family organization.

3334 |       Mr. ENGLISH. That is not right either. He was president  
3335 | of the Board of Directors at NRECA a few years ago. He was  
3336 | not the head of it.

3337 |       My second point is--

3338 |       Mr. COOPER. President of the board of directors--

3339 |       Mr. ENGLISH. The courts have stated, Mr. Cooper, the  
3340 | courts have stated that it is not public power. Now, that is  
3341 | the courts have said that, not me. What they have said is  
3342 | privately owned. It is owned by the membership and it is  
3343 | privately owned. They may buy public power--in fact, they do  
3344 | from TVA--but they are not public power.

3345 |       Mr. COOPER. Perhaps you can explain that to your members  
3346 | like Pedernales and Representative Rose and others.

3347 |       Mr. ENGLISH. No one is here defending the management of  
3348 | Pedernales, Mr. Cooper.

3349 |       Mr. COOPER. It is public power.

3350 |       Mr. ENGLISH. No one is defending that.

3351 Mr. COOPER. Would the gentleman yield?

3352 Mr. ENGLISH. If you knew the experiences I had with  
3353 Pedernales you wouldn't be asking me that question. You  
3354 wouldn't even raise that.

3355 Mr. COOPER. Would the gentleman yield?

3356 Mr. ENGLISH. Certainly. Always yield.

3357 Mr. COOPER. The co-op family is a very small one. It is  
3358 a very precious one. There is a great bond of intimacy  
3359 between co-op members because it is a very important  
3360 institution in America. It is a little bit like a church.  
3361 Word travels fast.

3362 Mr. ENGLISH. That is going a little far.

3363 Mr. COOPER. Word travels fast. Usually if something is  
3364 going on in co-op country people hear about it. I would like  
3365 to know when you first found out, you personally, that there  
3366 were serious problems in Pedernales.

3367 Mr. ENGLISH. In Pedernales? Well, let me just say this,  
3368 that the relationship that I had with the former CEO was not  
3369 close.

3370 Mr. COOPER. But he was your largest member, right, or  
3371 Pedernales?

3372 Mr. ENGLISH. He was a member. There is no single member  
3373 of NRECA that is going to dictate what our association does.  
3374 It is governed by our resolutions.

3375 Mr. COOPER. But he was your largest member.

3376 Mr. ENGLISH. He was a large member, but no, as far--he  
3377 was the largest distribution cooperative in the Country. He  
3378 was the largest member from the standpoint--he was not the  
3379 largest dues-paying member.

3380 Mr. COOPER. When did you first find out there were  
3381 serious problems at Pedernales?

3382 Mr. ENGLISH. When I first heard about serious problems  
3383 was whenever I heard about the newspaper articles that were  
3384 coming out about it.

3385 Mr. COOPER. When did you first find out there were  
3386 serious problems at Cobb?

3387 Mr. ENGLISH. Well, I heard about the controversy at  
3388 Cobb, because I think that has not been settled by the courts  
3389 nor by the membership as to whether they are disagreeing.

3390 Let me again go back to the point. What we are talking  
3391 about here are policies--they are adopted by the board of  
3392 directors--that the membership disagreed with. What we  
3393 talked about with regard to what you and I, I think, would  
3394 agree is excessive--staying at the Ritz Carlton and so on and  
3395 so forth. I don't do that. But the point that it comes down  
3396 to is that was board policy that allowed that. That was the  
3397 direction of the directors. They allowed that to happen.

3398 The accountability comes with regard to those directors  
3399 with the membership, as it should, and those are the people  
3400 that have taken action and those are the people that took



3401 | action in Alabama and those are the people that, if they are  
3402 | going to take action, will take it in Georgia, as well.

3403 |         Mr. COOPER. Mr. Chairman, I see that my time has  
3404 | expired, but one last question.

3405 |         Mr. ENGLISH. I will yield the gentleman some extra time,  
3406 | Mr. Chairman, if you don't mind.

3407 |         Mr. COOPER. I appreciate the former Member yielding.

3408 |         I don't think it has been acknowledged in this hearing  
3409 | the fact that if you look at the NRECA's real website, the  
3410 | secret, password-protected one, they offer lots of legal or  
3411 | quasi-legal advice. For example, through the Electric Co-op  
3412 | Borrower Association and other entities, there are elaborate  
3413 | slide shows, for example, that tell you how to fill out the  
3414 | 990 form. In the earlier panel they talked about how in  
3415 | Texas some 40 percent of those forms are mis-filled out.

3416 |         So I think a trade association, to the extent it tries  
3417 | to give legal advice, should take some responsibility for  
3418 | practices, board practices and other practices that may not  
3419 | adhere to the high ethical standard that I think the average  
3420 | co-op member back home wants their co-op to adhere to,  
3421 | because these were not ever intended to be average. These  
3422 | were supposed to be idealistic organizations that did the  
3423 | most to serve the consumer interests by cutting their light  
3424 | bills, and not to have organizations that raised rates  
3425 | unnecessarily, as the TVA Inspector General has found that

3426 | too many of ours have done.

3427 |         So would the gentleman care to inform us on the slide  
3428 | shows and other information materials on the secret,  
3429 | password-protected website like this document that he refused  
3430 | to give to my office or to Mr. Watson or anyone else who  
3431 | inquired, even though this is superb legal research, it is  
3432 | extraordinarily well done, and it backs up the premise that  
3433 | co-ops need to behave in order to retain their tax-exempt  
3434 | status?

3435 |         Mr. ENGLISH. Mr. Chairman, I am sorry that Mr. Cooper  
3436 | raised this issue and asked me this question. I was hoping  
3437 | we were going to be able to avoid this.

3438 |         The reference that he made was with regard to a private  
3439 | website, and gave even a website that provides access to  
3440 | members' 401(k)s and also retirement benefits. NRECA's  
3441 | counsel has advised me that Mr. Cooper is currently under  
3442 | investigation by the Federal Bureau of Investigation for his  
3443 | unauthorized access and downloading of information from  
3444 | NRECA's password-protected website, and that is in violation  
3445 | of the Federal Computer Fraud and Abuse Act. These abuses--

3446 |         Mr. COOPER. Would the gentleman yield?

3447 |         Mr. ENGLISH. These accesses occurred on a house.gov IP  
3448 | address on December the 10th, 11th, 12th, and 14th of 2007,  
3449 | and in order to not jeopardize that investigation I would  
3450 | prefer not to answer any questions with regard to those

3451 matters that were downloaded.

3452 Mr. COOPER. Would the Chairman give me a moment to  
3453 respond?

3454 Chairman WAXMAN. Yes.

3455 Mr. COOPER. I had authorization to use the website from  
3456 someone who gave me their password and information.

3457 Mr. ENGLISH. The only people that could give you  
3458 authorization is myself or others at NRECA, a limited number.  
3459 Like I said, this is a matter under investigation by the FBI.  
3460 You can take it up with them.

3461 Chairman WAXMAN. All right. I think we have explored  
3462 this issue at great length, but I think there are still some  
3463 matters yet to be resolved. We will continue to pursue what,  
3464 to an urban guy like me, is a very interesting and surprising  
3465 turn of events.

3466 We I think have concluded the hearing for today and we  
3467 stand adjourned.

3468 [Whereupon, at 2:04 p.m., the Committee was adjourned.]