

**TANNER ELECTRIC COOPERATIVE  
BOARD OF DIRECTORS**

**Regular Meeting  
September 14, 2021**

**MINUTES**

The Tanner Electric Cooperative (TEC) Board of Directors met in Regular Session at 3:00 p.m. on Tuesday, September 14, 2021, in the boardroom at the TEC administration building in North Bend, Washington.

**I. CALL TO ORDER**

Board President Mike Hodge called the meeting to order at 3:04 p.m.

**II. ROLL CALL & PLEDGE OF ALLEGIANCE**

Roll call was taken, and the following Directors were present or participated by video conference:

President Mike Hodge  
Vice President Roger Guay  
Treasurer Paul Bay  
Secretary-Susan Serrette-Egan  
John Saatela  
Steve Nicholes  
David McGoldrick  
Carol Paschal  
Dutch Siedentopf

**Absent:** None

**Quorum:** A quorum was established.

**Staff Present:**

Steven Walter, Chief Executive Officer  
Nick Himebauch, Operations Manager  
Kevin Burns, Director of Finance  
Joel Merkel, General Counsel  
Lisa Peabody, Executive Administrative Assistant

### **III. APPROVAL OF THE BOARD MEETING AGENDA (Action Item)**

Motion: To accept the meeting agenda as presented. The motion was seconded and passed by a unanimous voice vote of all Directors present and participating by video conference as follows:

RESOLVED, that the September 2021 TEC Board meeting agenda be, and is hereby approved.

**Moved:** Carol Paschal                      **Second:** Dave McGoldrick                      **Status:** Passed

### **IV. UNFINISHED BUSINESS**

#### **Receive the Consent Agenda (Action Item)**

Motion: To receive and file the consent agenda items as presented during the September 2021 TEC Board meeting. The motion was seconded and passed by a voice vote of all Directors present and participating by video conference as follows:

RESOLVED, that the consent agenda including New Memberships, Release of Easements on Anderson Island, and Monthly Outage Reports be, and are hereby received by the Board without modifications.

**Moved:** David McGoldrick                      **Second:** Dutch Siedentopf                      **Status:** Passed

#### **Approval of the August Board Meeting Minutes (Action Item)**

The minutes from the previous meeting were included as an attachment to the agenda and distributed to the Board for review.

Motion: To accept and approve the TEC Board meeting minutes from August 17, 2021, as modified.

The motion was seconded and passed by a unanimous voice vote of all Directors present and participating by video conference as follows:

RESOLVED, that the August 2021 TEC Board of Director's meeting minutes be, and are hereby approved.

**Moved:** Dutch Siedentopf                      **Second:** Roger Guay                      **Status:** Passed

### **Approval of the Summary minutes for the *Ruralite* (Action Item)**

Motion: Move to approve the August Board meeting minutes for the *Ruralite* magazine. The motion was seconded and passed by a unanimous voice vote of all Directors present and participating by video conference as follows:

RESOLVED, that the August 2021, minutes for the *Ruralite* be, and are hereby approved.

**Moved:** Roger Guay

**Second:** David McGoldrick

**Status:** Passed

### **Continuing Education for TEC Directors**

The President prepared a written report that was distributed as an attachment to the agenda for the Board to review related to the education issue at hand. The Board discussed if a Director wants to further their director education beyond the National Rural Electric Cooperative Association Credentialed Cooperative Director Program, is it necessary, affordable, and in the best interest of the Cooperative. Following a lengthy discussion; all opinions were heard, and it was the consensus of the Board to have the Personnel Committee revisit the matter, consider drafting a budget for continuing education and recommend a list of beneficial courses.

## **V. FINANCIAL REVIEW – Mr. Kevin Burns (Action Item)**

### **TEC Funds Disbursement List**

The Board reviewed the Checks, ACH and Wire Transactions for the month of August.

### **Monthly P & L**

Mr. Burns presented the August profit and loss reports to the Board.

Motion: To receive and file the Financial Reports as presented to the Board for the month of August. The motion was seconded and passed by a voice vote by all the Directors present and participating by video conference as follows:

RESOLVED, that the August 2021 Financial reports as presented be, and are hereby received by the Board without modifications.

**Moved:** Steve Nicholes

**Second:** Susan Serrette-Egan

**Status:** Passed

## **VI. REPORTS**

### **CEO Report – Mr. Steven Walter**

Mr. Walter submitted a written report that was distributed to the Board as an attachment to the agenda. During the meeting, he discussed the current AR balances, the acceleration of market power prices and the concerns related to winter weather and shortages.

### **Operations Manager's Report – Nick Himebauch**

Mr. Himebauch submitted a written report that was distributed to the Board as an attachment to the meeting agenda. During the meeting he discussed the present-day escalation of costs and lead times on the manufacturing, shipping, and receiving for many of the materials being ordered.

### **Personnel Committee –Mike Hodge, Chairperson**

Nothing to report.

### **Finance & Audit Committee – Paul Bay, Chairperson**

Mr. Bay reported that the committee met today and reviewed the first preliminary draft of the 2022 budgets. The committee recommended some modifications to the staff, and they will meet again before the October Board meeting.

### **Policy & Bylaws – Dutch Siedentopf, Chairperson**

Mr. Siedentopf reported the committee is proceeding with their review of TEC policies.

### **New Technology & Conservation –Roger Guay, Chairperson**

Nothing to report.

### **Operations and Facilities – Steven Walter, Chairperson**

Nothing to report.

## **Union Affairs – Steven Walter, Chairperson**

Nothing to report.

## **Youth Development – Susan Serrette-Egan, Chairperson**

Nothing to report.

## **King County Right of Way Report- Joel Merkel**

General Counsel Joel Merkel reported on the final order that was entered on August 27, 2021 regarding the July 23, 2021 hearing on utility motions for partial summary judgment. He noted that the Court entered the following rulings:

1. Intervenor-Defendants' [Tanner and 5 water coops] uncontested motion for a determination that King County cannot compel Utilities to accept terms to which they do not agree was granted.
2. Tanner's motion that the County is contractually obligated under Tanner's Bylaws to provide Tanner with access to its ROW without charge, other than for the County's costs to administer the Franchise was denied as unripe prior to actual negotiations with the County on a new Franchise.
3. The Districts and Intervenor Defendants motion for a declaratory order that they have statutory rights to condemn access to the County ROW was denied as unripe prior to actual negotiations with the County on a new Franchise.
4. King County's Motion for Partial Summary Judgment was granted in part, as follows:
  - a. Issues pertaining to: (i) the calculation and reasonableness of specific Franchise Rental Compensation amounts, individual Utilities' entitlement to offsets, (ii) individual Utilities' rights within particular segments of King County right-of-way, (iii) compliance with notice and other provisions in individual franchise agreements, and (iv) other specific terms applicable to individual franchise agreements are subject to continuing negotiations between the County and individual Utilities and, consequently, they are not ripe for determination on summary judgment as applied to all Utilities.
  - b. King County has not waived its ability to require arbitration of any specific franchise agreement provision or Franchise Rental Compensation amounts by filing this declaratory judgment action. Whether claims between the County and a specific Utility

must be arbitrated is an individualized decision based on arbitration provisions, if any, within each specific agreement.

c. King County Ordinance 18403, which require indemnity damages arising from the franchisee's exercise of its rights under the franchise agreement, including damages arising from fire suppression services and activities, are facially valid as an exercise of King County's broad authority as a home rule county; however, the County cannot compel agreement to indemnification terms proposed by the County. The indemnification terms and conditions for use of County ROW is subject to negotiation between the parties.

d. The Utilities sought an affirmative determination that because of their rights of condemnation, they may acquire easements within King County rights-of-way that are not subject to Franchise Rental Compensation. The County asked the Court to find that a Utilities' right of condemnation as to any County right-of-way is not ripe on this record. The Court agreed with the County that this issue cannot be decided in the abstract. The Court found that to the extent individual Utilities have condemnation rights that bear on the determination of reasonable Franchise Rental Compensation, that issue must be raised in negotiations with the County regarding each specific Utility, the specific right-of-way at issue, and the specific franchise agreement subject to the negotiations.

e. The County asserted that the Utilities do not have standing to challenge its determination to deposit Franchise Rental Compensation received from the rental fees into the County's General Fund. The Court relied on the Supreme Court's finding that Franchise Rental Compensation is a charge for a valuable property right. The Court interpreted the Supreme Court to say that the rental fee is not the equivalent of a charge for "use upon county roads", which must be deposited into a county road fund and the County is not required to deposit this revenue into its County Road Fund and may deposit the rental fee funds into its General Fund.

In short, the Court held that the parties (the utilities and the County) must first attempt to arrive at a final determination as to terms related to a specific through negotiations before a Utility may bring any of the above "as-applied" challenges regarding these terms. This, of course, was what the County wanted. That is, the County sought to force the utilities to negotiate with the County in the hope that it could divide and conquer or at least to wear out the utilities and encourage some to give up their claims and reach an agreement through negotiations. Mr. Merkel noted that while some of the utilities claims are unique to each individual utility (e.g. Tanner's Bylaw Easement Claim). Other claims are more general, e.g. the utilities all have condemnation rights and they all claim that the payment to the County for condemnation of ROW easements would result in a far lower recovery for the County than the proposed rental fee. And some claims are general, but subject to different facts in each case,

e.g. whether utilities have property rights under the individual deeds, grants or other agreements by which the County acquired the ROW.

Mr. Merkel concluded that he expected the utilities to continue to work together, as their interests align, to oppose the County's effort to impose what they regard as an unreasonable and excessive "rental fee."

## **VII. NEW BUSINESS**

### **Line Extensions and Latecomers Discussion**

The CEO reviewed the current procedure for service line extensions related to latecomers. No action was taken by the Board and the current policy will remain in place.

## **VIII. ADJOURN TEC BOARD MEETING**

Following no further business, the Board President adjourned the September 2021 Board of Directors meeting at 5:23 p.m. The next Board of Directors meeting is scheduled for October 19<sup>th</sup> at the Administration building in North Bend.