

September 9, 2016

Dear OPALCO Board of Directors:

Please find attached the results of our Member Review Committee on elections. After meeting weekly through the month of August, our Committee of seven Co-op members representing all four OPALCO districts has thoroughly and thoughtfully reviewed the entire election process, including any bylaw and/or policy implications. A description of seven categories for recommended changes to the OPALCO election process is attached.

The Committee's mission statement is: *To support a transparent election process that enables members to feel fairly and well represented.*

During the past six weeks of meetings, comprehensive research and diligent review there was healthy debate and discussion among the Committee members. In addition, Committee members sought input from members in their districts, which was shared with the Committee as a whole.


The Committee stands in complete consensus with these findings, as presented, and we ask that the Board give them serious consideration as a whole. Each of the seven categories of recommendations are integral and necessary parts of the whole solution, in order to reach our goals of fairness, transparency and good communication with the membership.

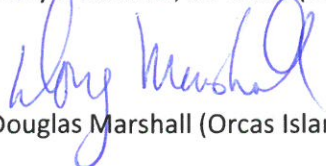
We understand the Board will review and discuss these recommendations at the September 16th board meeting and then collect broad member feedback on the recommendations during member open house events in October. Committee members will attend these open house events and also the October 20th board meeting when the Board will make decisions on changes that will be enacted before the 2017 election cycle begins.

The Committee thanks the OPALCO leadership for this opportunity to be of service to our member-owned cooperative and especially thanks the Board Members for their duty of care and initiative in asking members to participate in this process, which is key to our representative democracy.

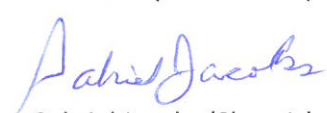
Sincerely,


Wally Gudgell, Co-Chair (Orcas Island)


Terry O'Sullivan, Co-Chair (Orcas Island)


Douglas Marshall (Orcas Island)


Ed Sutton (Orcas Island)


Gabriel Jacobs (Shaw Island)


Rob Thesman (Lopez Island)


Stephen Shubert (San Juan Island)

REPORT OF OPALCO ELECTIONS REVIEW COMMITTEE

For Presentation to the Board of Directors, September 16, 2016

Opalco Members Participating on the Committee: Terry O'Sullivan, Co-Chair; Wally Gudgell, Co-Chair; Gabriel Jacobs, Doug Marshall, Rob Thesman, Stephen Shubert & Ed Sutton

OVERVIEW & SUMMARY

The charge given to this volunteer Committee was *"to help Opalco conduct a comprehensive review of the co-op elections process"*. To define our work plan more precisely, we concluded our mission was *"to support a transparent election process that enables members to feel fairly and well represented"*.

During our Committee's five work sessions, we reviewed the election-related portions of Opalco's governing statute (Ch. 24.06 RCW), the Articles of Incorporation, the Bylaws, the Director Candidate Disclosure Statement, Sections 5 and 11 of the Board's "Policy 1" statement, and the "Election Neutrality" policy document which guides employees.

This Report presents to the Board seven categories of recommendations which we feel will (1) promote fairness in election procedures, (2) provide transparency for members looking at the process, and (3) promote more communications with members. We believe these three values will, in turn, support the larger objective of encouraging members' participation, promoting confidence in the election process, and helping select effective directors.

We emphasize that these recommendations are not in any way a commentary on the current directors. In fact, only a few of our Committee's members actually are well acquainted with the current directors. These recommendations are designed to help our cooperative ensure capable leadership in the years to come, and we believe they will be in the best interests of the Opalco cooperative.

Our 7 categories of recommendations are explained in detail in the 7 Sections which follow. They are summarized here:

Recommendation #1: Encourage more member interest in the cooperative and its election process. Several specific suggestions are offered, including formal district meetings.

Recommendation #2: Elect five of the director positions by district and two at large, in order to encourage greater interest and promote member communications. Replace the present four

districts with the same three districts used in County Council elections, and stagger the terms from each district (rather than electing all directors from each district during the same year), so that almost all members vote each year on at least one director position. Recommended transition steps are suggested.

Recommendation #3: Create a standing Nominating Committee composed of 3 members from each director district, each with rotating 3 year terms. Recruit and nominate the best Board candidates, regardless of incumbency.

Recommendation #4: Adjust the elections timeline to provide more time for nominating directors by petition, and update the required number of petition signers from 15 to 20.

Recommendation #5: Obtain member feedback over the next year regarding the concept of having up to two additional Board positions elected by the Board, based on candidates' expertise – but with no requirement that the director be a member. Non-member directors are allowed by state law, and this option also is recognized by the Rural Cooperatives Business Services agency of USDA. Our Committee envisions that the seven Board members elected from among the membership would then select individuals whose background would help the Board address our cooperative's challenges. The goal is an experienced board with a broad skill set.

Recommendation #6: Review director compensation, and publicize the benefits of board service during the nominating process.

Recommendation #7: Adopt a series of clarifying "housekeeping" changes to the provisions of the Bylaws that relate to elections.

We hope these recommendations will be adopted in time for next Spring's elections, although we recommend waiting to obtain member feedback before formally considering the Recommendation #5, that the Board could select up to 2 additional directors for their expertise, and who need not be members (expanding the board from 7 to 8 or 9).

An additional thought: We humbly suggest that this review of the elections process has been a helpful and worthwhile exercise. It was apparent that the Bylaws we reviewed needed updating, and we suggest that a review of the remaining Bylaw provisions also would be worthwhile. We suggest that the Board consider establishing a similar committee of volunteer members every five years or so, to review Opalco's entire set of bylaws and related documents.

Recommendation #1 – Encouraging More Member Interest

Your Committee believes there will be more interest in elections, and a stronger election process, if there is more interest in all aspects of the cooperative. We recognize that creating member interest and involvement is always a challenge for any cooperative. So, we start with a series of suggestions which should help stimulate interest in both the cooperative and the election process.

Many cooperatives use their director districts for “local” meetings to promote member communications and involvement. Opalco is fortunate to have a strong member communications program, but we believe that as a general rule cooperatives benefit from frequent opportunities for direct communication between directors and their constituents. We believe such contacts will, over time, stimulate member interest in the elections process and promote participation in elections.

District meetings should be chaired by local directors. We envision director and management presentations, followed by discussions, including pros and cons. This should give members a feel for the issues their directors confront, provide an opportunity for dialogue, and help members come to know the people who run for the Board positions. Such meetings also offer a great opportunity to solicit member feedback on topics of interest. And the elections process itself could be used for informal advisory balloting, much like formal resolutions. Asking for input makes it more likely that members will participate. Publicity for the meetings should emphasize the topics of discussion.

We recommend that Opalco hold at least two such meetings each year in each district, one just before ballots go out that would include a Candidate Forum and other topics, then a second meeting in the fall. In addition to discussion about Opalco, the meeting could be used to help generate interest in serving on the Nominating Committee or becoming a director candidate. The Board seems to have been moving in this direction, with Candidate Forums and informal member meetings. We recommend formalizing it.

This Committee supports continuing the concept of retaining a professional moderator for the “Candidate Forum” portion of these district meetings. The moderator also should oversee a debate regarding any resolutions or other ballot propositions.

Ideally the Spring meetings would be scheduled after a “Voting Guide” has been finalized, so it can be distributed as a handout, but before the ballots have been mailed out. The Voting Guide is not discussed in the Bylaws or policy documents, so we are not sure who approves it – but we recommend that the Board (or a designated Board member or Board Committee) do so. We also recommend that when a resolution is to be voted on, statements “pro” and “con” should be solicited, with each side then being allowed to submit one responding rebuttal. The Washington State Voters Guide would be the model. We note that when multiple statements are submitted pro or con, the Secretary of State encourages submitters to consolidate their statements.

Section III.b(3) of the Bylaws presently requires that the ballot used for director elections “*shall show separately nominations made by the nominating committee and the nominations made by*

petition". Our Committee is concerned this might be interpreted as favoring those nominated by committee. We believe this identification is appropriate information for a candidate's statement in the Voting Guide, but feel it should not appear elsewhere in the Voting Guide or on the ballot itself.

Underlying this Recommendation #1 is our strong belief that member meetings will be better attended if they are seen as substantive information meetings with opportunity for Q&A. In keeping with that, we suggest that in the past too much time at the annual meeting has been devoted to the elections process, relative to the amount of time spent in substantive discussions. We recommend that the Board consider requiring all ballots to be received by mail or electronically or in person at the Opalco offices, by a published deadline a day or two prior to the meeting (and discontinue voting "on the boat"). Instead, a Ballot Committee could convene on the day prior to the Annual Meeting to count the votes cast, and the results could be posted as soon as the Committee completes its work. Then, the formal report of the Ballot Committee can be formally "received" by Motion at the Annual Membership Meeting itself, and the new directors can be formally declared to be elected.

Together, the various steps recommended above should help make the process as fair as possible, and also will promote a culture of member ownership and involvement. The Committee clearly understands that, in any member-based organization, members will be less interested when things are perceived as going well, and more interested when problems are perceived. The goal should be to sustain interest at times there are no "hot button issues".

Recommendation #2 – Elect 5 Directors "By District" and 2 "At Large"

This recommendation builds upon the above Recommendation to strengthen the election district concept. We propose that five of the board positions should be voted upon only by members in each district ("elected by district"), with all members voting on the other two positions ("elected at large").¹

Opalco's current practice is to nominate by district, but to elect at large. While this ensures geographic diversity, it does not promote familiarity with the candidates. And it creates the possibility that a district could be represented by a candidate who had only a minority of votes from the district (if the other districts favor that candidate). We note that in the last election cycle, the turnout was far greater from the Lopez District than from the other districts. The Committee believes this was probably because voters in the other districts were not comfortable choosing from

¹ Seattle recently changed its City Council positions to elect some by district and others at large, to obtain a balance between the two concepts.

candidates they did not know. We see a similar phenomenon in elections for public office, where many voters abstain from voting for minor offices with less well known candidates².

We believe that election by director districts would enhance district meetings, and make directors better known in their districts. An analogy is that we are less likely to interact with our U.S. Senators (elected statewide), than with our State Senator (elected from one of 49 legislative districts in the State). While our goal is that directors should be closer to their districts, and elected from their district, this also could make it tempting to promote the interests of the district over the interests of the entire cooperative. We emphasize that the obligation of all directors is to make decisions which benefit the cooperative as a whole, not their district, and we recommend that the Board work with legal counsel to include a statement to that effect in its policy on “Functions of the Board”.

This Committee took into consideration the fact that a proposal for periodic redistricting was rejected by the membership at the last annual meeting, and we asked ourselves whether this current recommendation is inconsistent with that vote. We concluded that our recommendation is quite different in its intent from the Bylaw change that was proposed. The major opposition arguments in the Voting Guide were that the language was vague as drafted, and that it would be unnecessarily expensive to go through a redistricting process more often than needed. This proposal addresses both issues by recommending that Opalco director districts adopt the boundaries established for County Council districts, as they may be adjusted by the County from time to time. The Board has (and should have) the flexibility to adjust those boundaries for Opalco’s purposes, if it wishes to wade into the controversies inherent in finding a “better” set of boundaries.

We recommend that the current 7 board positions be elected as follows:

- Positions 1 and 2 elected by the San Juan Island District (est. over 5,000 members)
- Positions 3 and 4 elected by the Orcas Island District (est. about 3,700 members)
- Position 5 elected by the Lopez/Shaw/Decatur District (est. about 2,500 members)
- Positions 6 and 7 elected at large.

The Committee concluded that a system of three election districts should be used, because the numbers of members in the present four Opalco membership districts are too disproportionate to be used for elections by district. We recommend using the three County Council districts because they are generally accepted as fair, and may be the easiest boundaries for members to understand. However, the Committee also feels that the Board should consider adjusting the county boundaries if appropriate to achieve better proportionality of representation, and we suggest reviewing district membership at least every five years to reassess population changes. ***Attached as Appendix 1 are maps showing the current Opalco Districts and the County Council Districts.***

² It is widely accepted that familiarity with the candidates is a factor in voter participation, and in abstentions. For example, during the 2012 statewide election, more than 3 million votes were cast in a hotly contested race for Governor, whereas votes cast in the various Court of Appeals races totaled roughly half that amount.

One issue highlighted in the Committee discussion was that the all of the islands in the present Opalco "Shaw District" are part of the "Orcas" county council district, with the exception of Canoe Island and Shaw itself. Moving Shaw and Canoe to that district as well would make the membership breakdown between the three districts slightly closer to the 2-2-1 ratio (40%-40%-20%) of the five district Board positions, and it would make it more convenient for Shaw residents to attend their district meetings if held on Orcas. We leave it to the Board to judge whether it is better to make such district adjustments, or to simply hold fast with the County Council districts (as they may change from time to time) and thereby avoid spending a lot of board time on districting issues.

We recommend promoting interest in director elections by staggering the terms so that most members vote on at least one director position every year. For example, the 3-year election cycle might look like this:

2017: Positions 1 and 3

2018: Positions 2 and 4 and 6

2019: Positions 5 and 7

With that election cycle, every district would have at least one race to vote on each year, except the first year of the cycle when the Lopez/Shaw/Decatur district would not. This fits with our first recommendation, of having district meetings twice a year -- one prior to the Annual Meeting, to include candidates; and then a second meeting in the fall when candidates are being sought for the Nominating Committee and the director elections.

We recommend that the transition to the proposed election cycle should honor the existing terms of the elected directors, by using the following steps. Ask the current directors to pick, in order of their seniority on the Board, their choice of the new board positions for which they are eligible (that is, a position from their district, or an at large position). Then after expiration of the present 3 year terms to which the current directors already have been elected, short term elections should be held as needed to achieve the staggered term concept described above.

Recommendation #3 – Strengthen the Nominating Process

During our Committee's discussions about this Recommendation #3 and the Recommendation which follows, we recognized how important, and how difficult, the Nominating Committee's task really is. We developed two recommendations about the Nominating Committee composition that we believe will help the Nominating Committee recruit excellent candidates:

First, we recommend that it be a standing committee with staggered and rotating three year terms, rather than being appointed with new members each year. Sometimes candidate recruitment is a multiple year process. Continuity will promote a more efficient process. A standing committee ideally should reflect the district structure in its composition. We recommend appointing three members from each of the three director districts described in the previous recommendation. The

three from each district would recommend candidates from their district and at-large candidates, for approval of the nine member Committee as a whole. Ideally the three from each district would come from more than one island, so that potential candidates on the smaller islands can be more easily identified. These suggestions about the Nominating Committee could be addressed in the Bylaws, or in Section 11 of Board Policy 1.

Our second recommendation about the composition of the Committee is that, ideally, it would include at least one former Board member, who can explain what is expected of potential nominees and perhaps guide the Committee toward the needs of the cooperative. This may not always be possible, so it should not be specified in the Bylaws.

Bylaw Article III.3(a), which covers the Nominating Committee, provides that the Committee *“if possible, should nominate at least two (2) candidates for each open position, one of whom shall be the incumbent director, unless such director does not wish to be considered for re-election”*. This Elections Review Committee feels that the Nominating Committee members should be free to select what they feel are the best candidates it can find, regardless of incumbency. We recommend that this Bylaw provision be modified to end the sentence just quoted after “open position”. We note that a director who is not selected by the Committee is free to seek re-election by petition, just as is any other candidate who is not nominated by the Committee. We could identify only one rationale for giving incumbents a preference, and that is because a lot of time and expense has been invested in educating them during their service on the board. We concluded, however, that the importance of prior service is a decision for the Nominating Committee and the members to make.

The ability of the Nominating Committee to seek good candidates is intertwined with the subject of eligibility to serve as a director, because eligibility conditions restrict the pool of people from whom nominees can be recruited. Section III.2 establishes three eligibility requirements. The Committee supports the philosophy behind two of them: a director candidate must not be employed by Opalco, nor have an employment or financial relationship with any business which competes with Opalco. The Committee does not understand the rationale for the third requirement, which denies eligibility to a candidate who has run within the past three years; this makes a bit of sense under the current election procedure, but it would become more relevant, and less understandable, if at large board positions are created (as this Committee recommends). We also recommend that these Bylaw provisions be clarified to explicitly apply to the employees and competitors of Opalco **“or any subsidiaries of Opalco”**.

Section III.2 also provides that a potential candidate is disqualified if one of these conditions applies to a “husband” or “wife”. We suggest that consideration should be given to whether the same rationale should apply to children or parents of a candidate (some conflicts of interest policies use the term “close relatives”). In addition, legal counsel should be asked whether applying the restriction to a spouse violates the law against discrimination based on marital status, inasmuch as it would allow service in a similar situation involving unmarried couples.

This Committee recommends that candidate eligibility should be reviewed and considered in the larger context of an Opalco conflict of interest policy. Presently, the Board's policies have one paragraph which requires disclosure of conflicts (paragraph 4). We recommend that the Board establish a process to review conflict and disclosure policies. Once a comprehensive Conflicts policy is developed, the Bylaws could be amended to replace the specific director qualifications discussed above, with a statement that all candidates must comply with a new Bylaw provision that covers Conflicts and Disclosure.

The three substantive questions which should be considered are: (1) what types of situations should totally disqualify an individual from board service, (2) what other types of situations should be disclosed by any director as a potential conflict of interest, and (3) whether, when such a potential conflict arises, the remedy is recusal or merely disclosure of the conflict. A process question is whether to use a disclosure form, which would be filled out by all candidates and annually by all directors -- or merely require disclosure at the time a potential conflict arises.

This Committee leans toward disclosure, rather than disqualification from board service. We recommend recusal in "significant" conflict situations, although all conflicts involving a non-trivial business relationship with Opalco should be disclosed. We recommend having all directors fill out an annual disclosure statement, and that all candidates for board positions do so as well -- with the forms then included along with the Candidates' statements in the Voting Guide. The "Washington Nonprofit Handbook"³ and the Benton REA documents in the Committee's file illustrate some of the concepts we are suggesting.

Finally, this Committee recommends deletion of Bylaw Section V.11, which provides that an employee of Opalco who is a director or a close relative of a director shall have their compensation set by the members. Compare the director qualifications in Section III.2, which prohibits a director or spouse to be an employee. As to other close relatives Section V.11 may cover, requiring member approval of compensation is tantamount to a prohibition on board service. This should be superseded by the sort of comprehensive conflicts of interest policy recommended above.

Recommendation #4 - Timelines

Currently, Bylaw Section III.3(a) requires the Nominating Committee to be appointed at least 100 days in advance of the Annual Meeting, and they must submit their report at least 70 days prior to the Annual Meeting. The Committee feels the 30 day period is appropriate.

Candidates who are not selected by the Nominating Committee but still wish to file by petition have until 55 days prior to the meeting to obtain 15 signatures. Depending on when the Nominating

³ See pages 33-34 of this handbook, which is available on the Secretary of State's web site at https://www.sos.wa.gov/_assets/charities/Washington%20Nonprofit%20Handbook.pdf

Committee report is filed, this can leave only from the 70th day to the 55th day (as few as 15 days) to seek nomination by petition. The Committee feels that a longer period for petitions would be fairer, and recommends that the Nominating Committee's work period be adjusted to 110 and 80 days prior, thereby allowing 10 more days for the petition process. We note that moving up the time frame by 10 days probably makes it desirable to begin the outreach to solicit volunteers for the Nominating Committee meeting during October.

Our Committee also recommends that the number of petition signatures be increased from 15 to 20. This also justifies a longer period for the petition process. We suspect that there were many fewer members when the requirement of 15 petitioners was established, so requiring 20 rather than 15 petitioners will be consistent with past percentages of the membership. We took note of a recent NRECA study of cooperative practices indicates that typically, the number of petitioners needed to nominate a director is in the 11 to 25 range.

Our Committee supports the current practice of using an outside vendor to conduct balloting. We understand the current vendor needs about 3 weeks between finalization of the candidate slate and the date ballots are mailed. If ballots are to be mailed out early in the 10-35 day period specified in Bylaw Section III.3(b), the candidate slate must be finalized no later than the currently required 55th day. Therefore, we recommend retaining the present 55th day deadline for filing nomination petitions.

We call to the Board's attention a confusing aspect of the timelines in the Bylaws. Currently Bylaw Section II.3 provides that Notice of a Special or Annual Meeting of the members must be given 10 to 50 days prior to the meeting. But Section III.3(b) provides that the period for sending out absentee ballots is 10 to 35 days prior to the annual meeting, ***"together with notice of said meeting, containing appropriate information and instructions relative to voting . . ."***

These two notice periods overlap, which may or may not have been intentional. A single notice meeting the second time frame would meet both requirements. The Committee supports what we are advised is the current practice: a first notice is given at around the 50 day mark, and then a second notice goes out with the ballots. If such a two-notice system is the intent, that should be clarified in the Bylaws, with the first notice given out approximately 50 days prior, and the second notice roughly 35 days prior. If the Board disagrees with our recommendation for a two-notice system, it would be helpful to clarify the intent of having two separate provisions and what they mean (especially when there are resolutions and director elections on the same ballot).

We are concerned that the ten-day notice periods in the two provisions just discussed are insufficient to adequately publicize the meeting, and explain the agenda. We recommend that there be at least 21 calendar days' notice, rather than 10.

The current timelines in the Bylaws are, necessarily, counted backwards from the annual meeting at which elections occur. In the past, some ballots have been cast at the annual meeting. As discussed earlier (Recommendation #1), this Committee recommends that all the votes be due a

day or two prior to the annual meeting, rather than at the Annual Membership Meeting, with the report of the Ballot Committee then being posted as soon as that committee is able to complete their vote tally. That Committee Report should formally presented at the annual meeting, and be “accepted” to finalize the elections process. This maintains consistency with the usual practice of electing directors at annual membership meetings, while minimizing the time devoted to elections during the annual meeting (to allow more time for substantive discussion).

Finally, we interpret the various date ranges in the timelines to be calendar days. We recommend that this be clarified. One approach would be to insert the word “calendar” wherever appropriate. But then it would be helpful to also clarify what happens if a deadline for filing a nominating petition falls on a weekend or holiday. An alternative approach would be to simply convert all the time periods to “business days” (which automatically excludes weekends and holidays).

Recommendation #5 – Option to Select Additional Directors for their Expertise

Our Committee recommends that over the next year or so, the OPALCO board should sponsor a constructive member discussion about whether it would be helpful to add up to two more directors to the 7-member board, who would be elected by the Board based upon their expertise in a field that the elected directors feel would be helpful, and without regard to whether they are members. Nonmember directors are explicitly allowed under our organizing statute⁴, and are likely to be acceptable to Opalco’s lender (the Rural Utilities Service of USDA, or RUS) inasmuch as it is an option publicized by the Rural Business Cooperative Service of USDA (RBCS).⁵

Whether to take advantage of that opportunity, and how it should be structured, should be thoughtfully discussed with the membership. Attached to this report, as Appendix A, is a front/back 2-page handout that could be used for that discussion, which includes an excerpt from an RBCS publication. As RBCS noted, a Board always has the option to hire consultants, but this concept goes beyond consulting -- to bringing an experienced individual into the management of the cooperative. We recommend annual terms for these appointed directors, which would allow the elected directors to periodically review the value of this concept and to make changes as different types of needs are identified. This review committee feels that this concept could be very positive for our cooperative, but we propose it as an option for the Board to use if the elected directors see fit.

⁴ The chapter of state law under which Opalco is organized provides that directors “need not be residents of this state or members or shareholders of the corporation” (RCW 24.06.125).

⁵ See RBCS Cooperative Information Report 60, “Agricultural Cooperatives in the 21st Century”. That Report draws from focus panels of prominent members of the cooperative community across the country. *“Panelists repeatedly urged the inclusion of one or more outside directors on cooperative boards. Outside directors are typically non-members who are experts in areas vital to the association but normally outside the experience of [members], such as finance and marketing. Preferably, the outside directors are given a genuine role in the cooperative's leadership by making them voting directors, not just advisors.”* That quote is from page 18, which is part of Appendix A to this report.

A challenge faced by all cooperatives is that there is no way to guarantee that a board elected only from the cooperative's membership will, collectively, include individuals with meaningful experience or expertise in all the types of issues that will confront that board. This becomes more and more of a challenge as the cooperative grows in size and in its sophistication. An additional board member could be selected to bring a helpful type experience to the board, and a different perspective.

Opalco's nominating committee does consider the experience of potential board candidates, and we believe our Board has been blessed over the years with technical expertise in the energy industry and general management. But it's a pretty likely that the board of an \$30,000,000 investor owned electric company would have a different profile than that of Opalco's Board, because an investor owned utility would recruit the best possible board from a larger pool. A cooperative board should be different in its orientation to the member/customer, but ideally a cooperative's board also would have a skill set as broad as that of its investor owned counterparts.

We believe directors selected for their expertise could help the elected directors. The most important thing any board does is select the organization's manager. It would be a mistake to expect that a director's expertise would "help" the manager manage – that's not the board's role. However, any board needs some members with management expertise to help evaluate recommendations from management, such as budgets, strategic plans, communications (including perhaps crisis management), potential litigation traps (regulatory issues, antitrust, HR issues, etc.), executive compensation -- and more. The ideal, "best possible board" would include at least one director whose expertise will help the other directors evaluate each of those types of issues. Some of the elected directors will have expertise in some of those areas, and they can select other directors to help cover the other key issue areas.

This could help management. The type of director that an investor owned electric company might select is likely to have a background more like that of Opalco's management, than like the background of most directors elected from the membership. Adding more of that type of background to Opalco's Board might help facilitate communication and discussion between directors and management, and in some situations could help management present technical issues to the board and to the membership. The perspective of a "neutral" outsider with technical expertise could be particularly helpful in explaining issues that are controversial among the members.

This concept also should help members, who as owners of the cooperative would benefit from the success we should expect from a more diverse board of directors. A good appointment potentially could help the Board and management work together more efficiently and toward more optimum results. A cooperative typically has some members who feel the elected board is "too close" to management, and that concern can be mitigated if an experienced appointed director has sufficient credibility to reassure members that good decisions are being made.

Coupled with the non-member director issue is the separate question of how many directors Opalco's board should have. We understand that there have been 7 directors for a very long time. If one of them becomes ill, or turns out not to take an active interest in an issue, the board loses 15% of its collective thinking. Are nine heads better than seven? The Committee notes that many corporate boards choose to have more than 9, which suggests 9 is a workable number.

This is a great opportunity for members to discuss both the size of the board, and whether they favor the appointed expert director concept. We do recommend this concept, and are willing to help explain it to Opalco's membership.

Recommendation #6 – Review Director Compensation

During the Committee's review of the Bylaws, we noted that Section III.5 allows director compensation on a per-meeting basis, but not on a fixed monthly basis. Our ensuing discussion led us to recommend that the Board conduct a broad review of director compensation, to ensure the fairness of the compensation for the work expected, and to ensure that inadequate compensation is not a barrier to attracting outstanding director candidates. We were not charged with recommending what compensation is appropriate, but we feel obliged to publicly advocate a periodic review of director compensation, and to explain why it is important to the process of electing a successful board.

We recognize that cooperatives and other non-profits have a cultural tradition that board service is more of an honor or a duty, than a fee for services. We respect that tradition, but feel that when a director spends more time in service to our cooperative than the rest of us spend, then the rest of us collectively owe that director fair compensation for the time spent on our behalf.

In addition, we expect that fair compensation also will help encourage highly qualified individuals to run for the board. To help determine the extent to which compensation is a factor in decisions to run for the Board, we recommend that the members of past years' Nominating Committees be asked for their thoughts. Going forward, we recommend that Opalco directors' reported (Form 1099) compensation be detailed or summarized in the annual report (as it would be with public companies) for members' information and for use by the Nominating Committee. Publicizing directors' compensation may help interest candidates.

The Committee fully understands how difficult it is for boards of cooperatives and other types of non-profit organizations to deal with their own compensation, because it can become controversial among members. We note that similar concerns among our State legislators led to the appointment of a standing Citizens' Commission to periodically review and set salaries of state elected officials, and many municipalities do something similar. This Committee believes that most Opalco members recognize that attracting a good board is very important, and that investing in a

strong board could pay for itself just in mistakes not made. We believe that a transparent and well explained compensation review is very likely to receive substantial member support.

If a review of director compensation indicates that some portion of the compensation should take the form of a fixed monthly amount, then we recommend amending Section III.5 accordingly.

Recommendation #7 – “Housekeeping” Changes to Bylaws

During the Committee’s review of Opalco’s Bylaws and other documents this Committee reviewed, we felt the following items were worth noting. We feel most of these recommended changes mostly fall in the “housekeeping” category, and suggest that it will be member-friendly and support the elections process to clear up the confusion or other issues we have identified.

1. The Committee reviewed the provisions of “Board Policy 1” related to elections. We feel this is the Board’s document, and any changes should be made by the Board. But we do recommend clarifying the provisions relating to confidentiality of information and what questions can be answered for members, with particular attention to ensuring that these provisions do not impose a burden that would unnecessarily discourage someone from becoming a candidate for the Board.
2. No comments were noted regarding the “election neutrality” document for employees.
3. Opalco is organized under Washington’s “Nonprofit Miscellaneous and Mutual Corporations Act” (google “RCW 24.06”). It requires that the initial Articles of Incorporation identify the number of directors and the initial board of directors. That provision is the only aspect of Opalco’s Articles which seems to relate to our review. Note that RCW 24.06.025 specifically authorizes changing the number of directors by Bylaw amendment, rather than using the more cumbersome process required to amend other aspects of the Articles.
4. Our remaining comments cover the provisions of the Bylaws that pertain to elections.
 - a. Bylaw Section II is entitled “Meeting of Energy Members”.
 - Housekeeping Suggestion: Since both the annual meeting and special meetings are covered, this should be retitled “Meetings of Energy Members.”
 - b. Sections II.1 and II.2 provide for Annual and Special Meetings of the Membership. We have no comments.
 - c. Section II.3 establishes notice requirements for member meetings. The title references “System Members’ Meetings”. This may be a typo, or an obsolete reference to earlier Bylaw terminology.
 - Housekeeping Suggestion: Change title to “Notice of Energy Members’ Meetings.”

- d. Section II.3 also provides for notice of member meetings be sent out from 10 to 50 days prior to the meeting. This timing does not synch up with Section III.3.b, which provides that if absentee ballots are used, they must be sent out 10 to 35 days prior to the member meeting.
 - See the discussion in Recommendation #4 regarding a 2-notice system.
- e. Section II.3 only requires that notice of a meeting may be given “personally, by electronic transmission, or by mail”, and that formal notice need be given only once. As a matter of governance, that is probably fine. But as a policy matter, the Committee recommends that meeting notices continue to be given through all potential communications channels (news releases, billing stuffers, etc.).
 - See Recommendation #4 regarding a 2-notice system.
- f. Section II.4 requires that there be a quorum of 100 members actually present at the meeting at which directors are elected.
 - Housekeeping Suggestion: The Board may want to provide that participation by absentee ballot counts against the quorum, rather than requiring 100 in person. Or, alternatively, lower the figure from 100. This could be especially important in the event of a “Special Meeting”.
- g. Section II.5 provides (in the last sentence) that “Issues submitted to the energy membership for vote will be objectively stated and as free from bias as possible.” The language does not distinguish between the Voting Guide and the official Ballot. The Committee agrees with those goals, if they refer narrowly to the way a resolution must be worded. However, the Committee is concerned that the reference to bias might be interpreted to prohibit pro, con, and rebuttal statements and recommends that such statements be specifically provided for in the Bylaws.
 - See Recommendation #1, regarding the Voting Guide.
- h. Section II.5 also provides that each “member” shall have only one vote, and provides that only one vote can be cast by “a married couple” even if both are present. Of course this issue is automatically addressed when absentee balloting is used, because only one ballot is sent out.
 - Housekeeping Suggestion: Work with legal counsel to update this Bylaw to give similar treatment to domestic partners, roommates, relatives, etc. Perhaps it would be sufficient to simply require that “only one vote may be cast on behalf of a membership”.
- i. Bylaw Section II.6 provides in the first sentence of the 2nd paragraph that “an exact copy of all motions or resolutions” shall be sent out with the meeting notice. This apparently is to be the ballot, but that is not stated. Another confusion is whether “all motions” to be voted on would include the “Ballot for Directors” discussed in Section III.3(b), which seems to describe separate provisions for voting that ballot. The subsequent language allowing electronic balloting is confusingly mixed in with the requirement to return a ballot in an

envelope addressed to Opalco. More concerning is that the language requires that a vote be cast on “each” item to be voted on, which if interpreted literally would preclude abstentions and/or require that a ballot be tossed out if the member chooses not to cast a vote on all items.

- Housekeeping Suggestions: This paragraph would be clearer if it read that *“The Secretary shall enclose with the notice of such meeting a Mail Ballot containing an exact copy of all motions or resolutions to be acted upon. In the event of an election of directors, the notice shall include a list of all candidates . . .”* and then later *“. . . vote thereon by either voting electronically following the written instructions provided by the Cooperative, or voting by absentee Mail Ballot in accordance with instructions provided by the Cooperative”* (and delete the detailed instructions from the Bylaws). If written instructions are sufficient for electronic voting, they also should work for absentee ballots without specifying the procedures in the Bylaws. If it is felt appropriate to specify in the Bylaws (rather than the instructions) the date for returning ballots, then confusion can be prevented by establishing both the date and hour (ie, *“no later than by 10:00 am of the day before the annual or special meeting”*).
 - Comment: The Committee endorses the recent practice of using an outside election vendor to count the ballots and provide the electronic voting alternative. Their needs should be considered in any of these changes.
- j. Section II.6 also provides (in the final paragraph) that “If a married couple holds a joint membership . . . they shall be entitled to vote by absentee ballot.” The Committee questions whether this is needed, and is concerned that it raises issue of comparable treatment for domestic partners, roommates, relatives, etc.
- Housekeeping Suggestion: The Board should consider simply eliminating this sentence.
- k. Sections II.7 & II.8 – No comments.
- l. Section III.1 establishes a 7-member Board of Directors.
- See Recommendation #5, regarding the option to add two appointed directors.
- m. Bylaw Section III.2 establishes four director districts, from which the 7-person board of directors shall be residents. Typically, where an organization uses districting, its Bylaws specify the number of directors from each district or establish a procedure for determining how many directors shall represent each district. Opalco’s Bylaws apparently did this until 1998, at which time they were revised to provide that when a director’s term expired, a new director would be elected from the same district. This is sufficient to guide the elections process, but can be confusing to the membership.
- Housekeeping Suggestion: The Bylaws should clearly state how many directors shall be elected from each district or at large.
 - See Recommendations #1 and #2, regarding strengthening the election district system, transitioning to a 3-district system, and electing 5 of the 7 directors by district.

- n. Section III.2 establishes three eligibility requirements. The Committee supports two of them: a director candidate must not be employed by Opalco, nor have an employment or financial relationship with any business which competes with Opalco. The Committee does not understand the rationale for the third requirement, which denies eligibility to a candidate who has run within the past three years; this makes a bit of sense under the current election procedure, but it would become more important, and less understandable, if at large board positions are created (as this Committee recommends).
- Possible different approach: The Opalco Board has a compendium of policies (See Policy 1, Section 5). That document could be expanded to include a comprehensive conflict of interest policy, rather than use Bylaw language. Then, the Bylaws could be modified to simply require that all candidates must meet the Qualifications and Conflicts of Interest policies established by the Board. See the discussion in Recommendation #3, regarding director qualifications.
 - Housekeeping Suggestion: The requirement that a director not be employed by “the Cooperative” should be clarified to include “the Cooperative **or any subsidiaries of the Cooperative.**”
 - Housekeeping Suggestion: The Board should eliminate the 3-year requirement. Administrative Suggestion: The Board amended this Bylaw provision last May, to eliminate the language restricting candidacy by a member who sells electrical or plumbing appliances. The Candidate Disclosure Form will have to be updated to reflect that change.
- o. Section III.2 also provides (last paragraph) that the qualifications just mentioned must apply to both the candidate and any spouse. The committee respects the intent, but suggests that legal counsel should be asked whether this violates the state laws against discrimination based on marital status (especially inasmuch as it ignores similar potential conflicts of interest for domestic partners, children, and other relatives).
- Housekeeping Suggestion: We repeat the alternative suggested above, of simply requiring that the candidates must observe and comply with a comprehensive conflict of interest policy established by the Board (which preferably would be in the Bylaws but could be in the Board’s Policy Statement).
- p. Section III.3(a) establishes a Nominating Committee. The Committee agrees that “No officer or member of the Board” should serve on the Committee.
- See Recommendation #3, urging consideration of former board members for the Nominating Committee; it may be useful to clarify that “a former member of the Board may serve”.
 - Housekeeping Suggestion: The Bylaw should be amended to provide that “no employee of the Cooperative **or its Subsidiaries**” may serve on the Nominating Committee.

- Comment: The Nominating Committee should be given staff support, and providing that support under the direction of the Committee should not be prohibited. We recommend clarifying this provision, accordingly.
- q. Section III.3(a) also establishes a timeline for the Committee's work.
- See Recommendation #4, discussing the Committee's recommendation to change this time frame from 100 days and 70 days, to 110 days and 80 days, to permit additional time after the Committee nominations are published for filing a nomination by petition.
- r. Section III.3(a) also provides that members who are not nominated by the Nominating Committee may be nominated by a petition of 15 members from the district.
- See Recommendation #4, discussing the Committee's recommendation to increase the number of petitioners from 15 to 20.
 - Housekeeping Recommendation: We believe that the eligibility requirements to hold a director position apply whether the nomination is by Committee or by Petition, but if not clear then this should be clarified. For example, "Any 15(20) or more members may make other nominations of qualified members from their particular district, by petition . . . ". In the event at large voting is adopted, then the petitioners could be from any district.
- s. Section III.3(a) requires that the Nominating Committee's nominations be posted on the web site and published in the newspaper. The Committee understands that publishing the nominees as a legal notice is deemed appropriate by RUS, and so does not question the merits of publication. However, the language is confusing, first requiring that the nominees be posted on the web site, and then saying that it may be posted on the web site as an alternative to publication in "the local newspaper(s) which carries legal notices".
- Housekeeping Suggestion: Provide for both in the Bylaws.
 - Housekeeping Suggestion: If RUS approves, consider replacing publication as a "legal notice" (which the Committee feels will not be widely read) with publishing the nominees "in a large format advertisement in the newspapers which serve the various Islands in the Cooperative's service area". Alternatively, do both.
- t. Section III.3(a) requires that the Notice of Meeting identify the directors to be elected from each district "showing separately the nominations made by petition, if any". Section III.3(b) then provides that the ballot also shall identify those nominated by committee and those nominated by petition.
- See Recommendation #1, discussing the Committee's recommendation to make this distinction in the Voting Guide but not on the ballot.
- u. Section III.3(b) provides for "Election of Directors". It provides that a "Ballot for Directors" be mailed to all members 10 to 35 days in advance of the membership meeting at which the election is to be held.

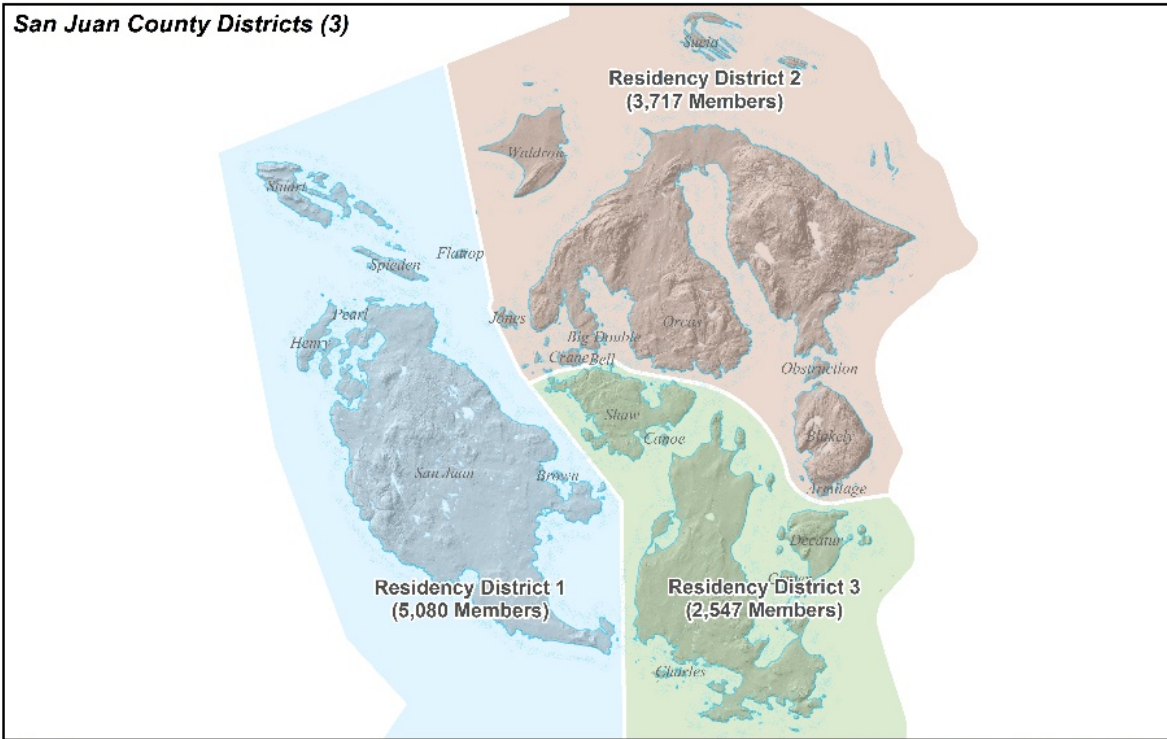
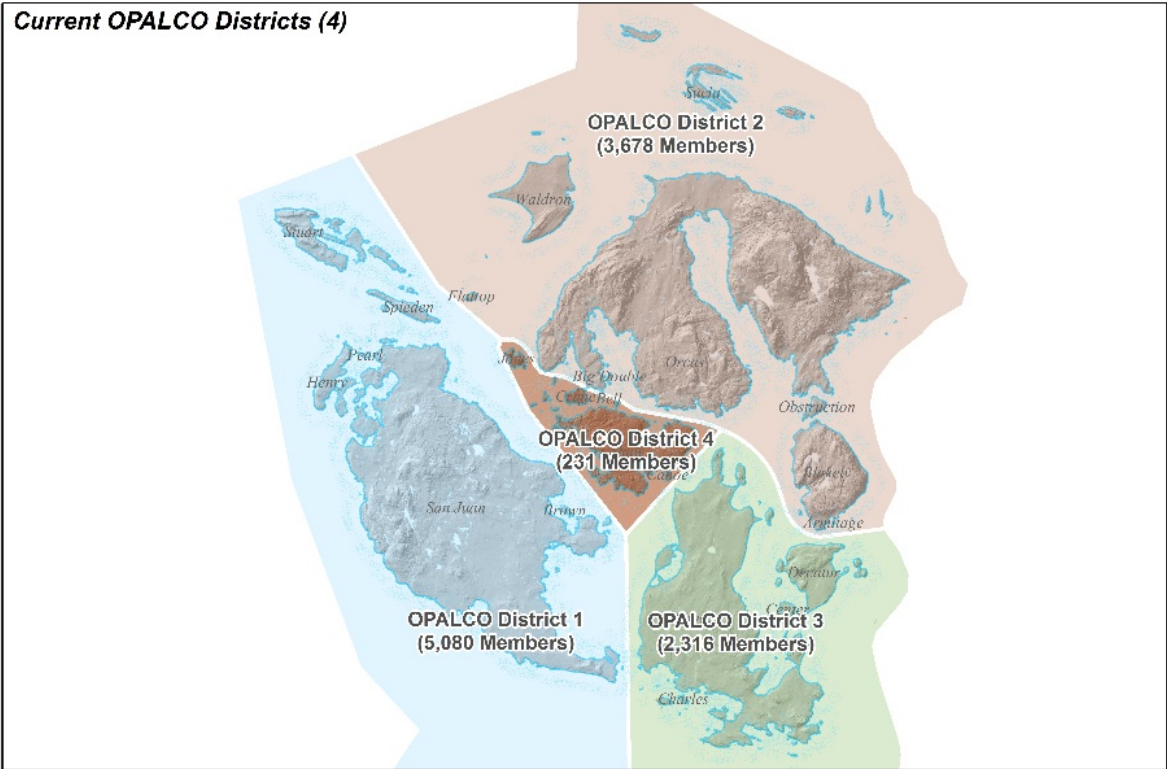
- Housekeeping Suggestion: It is confusing to separate these ballot requirements for directors (in Section II.3(b)) from those involving other types of absentee balloting (Section II.6). In fact, a literal reading of the Bylaws suggests that the ballot for directors must be separate from an absentee ballot on a resolution (which makes no sense). This Committee recommends restructuring Section II.6 to cover both, and then modify this Section III.3(b) to refer back to that earlier section.
 - See Recommendation #4, discussing the Committee's recommendation to alter the time periods.
- v. Section III.4, dealing with board vacancies, appears to have a typo: "shall serve for an unexpired portion of the term or **tell** his or her successor shall have been elected . . . "
- Housekeeping Suggestion: Change "tell" to "until."
- w. Section III.5 provides that Directors shall not receive a salary, but shall receive a fee for attendance at "meetings".
- See Recommendation #6, recommending that as the Board determines director compensation, they should have flexibility to use salaries if they see fit.
- x. The Committee has reviewed Sections III.6, III.7, III.8, & III.9. We have no comments.
- y. Section V.11 also deals with compensation, and provides that the compensation of any employee of Opalco who is a director or a close relative of a director shall have their compensation set by the members. We note that this conflicts with the director qualifications in Section III.2 (next to last paragraph) which provides that no director or spouse of a director can be employed by the Cooperative.
- See Recommendation #3, recommending that this section be deleted and replaced with a general review of conflicts of interest and disclosure requirements.

Conclusion

The volunteer members of the Elections Review Committee appreciate this opportunity to be of service to our cooperative. We are enthusiastic about the potential of these recommendations to positively impact our cooperative. We urge the Opalco Board of Directors to give them serious consideration, and we offer our continuing support for that process.

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Appendix A – Comparison of Opalco District and County Council District Maps



Date: 9/1/2016

Document Path V:\MISC Projects\OPALCO District\OPALCO District Map.mxd

Appendix B - Questions and Answers regarding Appointed Non-Member Directors

Opalco's Elections Review Committee proposes a discussion within the cooperative about whether to add up to two more directors to our 7-member board, who would need not be a member and who would be appointed by the Board based upon their experience in a field that the elected directors might feel would be helpful. Such "outside directors" would provide Opalco's Board a broader base of experience than might be available if we draw only from members who are willing to serve.

1. Is the concept of a non-member director consistent with cooperative governance? Yes! The time-honored Rochdale cooperative principles include member control, but do not suggest that members make all decisions. USDA's RBCS Cooperative Information Report #60 highlights the concept of "outside directors" (*p. 18 is attached*). Example: the Ocean Spray cranberry marketing cooperative has two non-member directors. There is no conflict with the state law under which Opalco is organized, nor with Opalco's Articles of Incorporation, nor with the operating requirements for a cooperative under the Internal Revenue Code. The existing Opalco policy which requires directors to attend cooperative education courses help every director learn more about cooperative principles.
2. Would an outside director have a 3-year term? They could. But the Committee discussed annual terms, so that the elected Board can make changes if a director is not working out, or if another area of expertise is felt to be more valuable.
3. Should such directors be elected by the members, or by the Board? Either way could work, as long as the Board determines the types of expertise that are needed. Many Boards (including Opalco's) are empowered to fill vacancies between elections. Drawing on that concept, the Committee recommends the member elected Board should recruit and select individuals whom they can work with, and who possess a skill set that would help their decision making. Also, it would be more difficult to recruit a director if the job were subject to member election.
4. How much would an appointed director cost? The Committee recommends they should be compensated similarly to the elected directors, with the option of an additional amount if the Board feels that is necessary to attract qualified candidates. We recommend researching cost before formally presenting this concept to the membership, because members will want some idea, in order to evaluate whether the additional cost justifies the potential benefit of additional experience.
5. Would a 9-member board be unmanageable? Many corporate boards choose to have more than 9.
6. Would this require an Amendment to our Articles of Incorporation and Bylaws? State law allows expansion of our board by Bylaw Amendment, without amending the Articles.
7. Where is meant by an "outside" director? Many large companies have both inside directors (full time employees, such as the president and chief financial officer) and outside directors (who typically work for other companies and are not involved in day to day management). Outside directors are typically picked for their expertise and their independent perspective. Examples: Boeing has brought in former Secretaries of State, to help understand the global environment in which they operate. The CEO of Apple is also an outside director for Nike, where he chairs the Compensation Committee that sets inside director salaries. The 12-member board of Puget Energy (our state's largest electricity utility) includes 2 who work with other energy companies.
8. Would this make Opalco "too corporate"? It should not change the nature of our cooperative, but it should provide a broader base of experience that will help Opalco be well run in the years ahead.