

STATE OF GEORGIA, COUNTY OF COBB

BILL OF INDICTMENT

IN THE SUPERIOR COURT OF SAID COUNTY

INTRODUCTION

For over a decade, **DWIGHT T. BROWN** engaged and participated in a pattern of racketeering activity that included, but was not limited to, the theft of millions of dollars from Cobb EMC, the theft of millions of dollars in patronage capital from Cobb EMC's members (including Cobb County and the Cobb County School District), and false statements to conceal these thefts from Cobb EMC's members.

COUNT 1

**VIOLATION OF GEORGIA RACKETEER INFLUENCED AND
CORRUPT ORGANIZATIONS ACT ("GEORGIA RICO") O.C.G.A.
§16-14-4 (a)**

The Grand Jurors, aforesaid, in the name and behalf of the citizens of Georgia, charge and accuse **DWIGHT T. BROWN**, with the offense of **RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS, O.C.G.A. § 16-14-4 (a)**, for the said accused, in the County of Cobb and State of Georgia approximately between the January 1, 1997 and October 31, 2009, the exact dates of the offense being unknown to the Grand Jury at this time, did, in violation of O.C.G.A. § 16-14-4 (a), unlawfully acquire and

maintain, both directly and indirectly, interests in and control of an enterprise, to wit: Cobb Energy (“Cobb Energy”) control of enterprises, to wit: Cobb Electric Membership Corporation (“Cobb EMC”) and Cobb Energy; and personal property, including United States currency of Cobb EMC and its members, through a pattern of racketeering activity and proceeds derived therefrom, as described in Counts 4 - 31 below, incorporated herein by reference as if fully set forth herein, and elsewhere in this Indictment.

DWIGHT T. BROWN is a “person” within the meaning of the Georgia RICO Act. Cobb Energy is a “person” and an “enterprise” within the meaning of the Georgia RICO Act. Cobb EMC is a “person” and an “enterprise” within the meaning of the Georgia RICO Act.

THE NATURE OF THE CASE

Cobb EMC is an electric membership cooperative headquartered in Marietta, Georgia that was formed in 1938. Cobb EMC currently serves approximately 200,000 customers located in several Georgia counties, including Cobb County, and is among the largest electric cooperatives in the United States.

Cobb EMC is not a conventional for-profit corporation. As a cooperative, Cobb EMC does not issue stock. Instead, Cobb EMC is owned

by its customers, who are commonly referred to as “members” or “patrons.” Cobb EMC’s members include individuals, private entities and political subdivisions of the State, such as Cobb County and the Cobb County School District.

The members’ ownership interest is defined and protected by Cobb EMC’s bylaws, which expressly state that the bylaws are a contract between each member and Cobb EMC. According to the bylaws, all revenue in excess of operating costs and expenses is called “patronage capital” and that patronage capital is the property of the members. In order to protect the members’ property interests, Cobb EMC’s bylaws also prohibit the disposition of Cobb EMC’s assets without written notice to the members and an affirmative vote by two-thirds of the members.

During the period 1997 through 2008, **DWIGHT T. BROWN** served as President and Chief Executive Officer (“CEO”) of Cobb EMC. As President/CEO of Cobb EMC, **DWIGHT T. BROWN**, owed Cobb EMC and its members a fiduciary duty. That fiduciary duty included the responsibility to protect Cobb EMC’s property, the members’ property interests in Cobb EMC and the members’ patronage capital.

On September 3, 1998 Cobb Energy, a for-profit entity, was formed and **DWIGHT T. BROWN** became the President/CEO of Cobb Energy as well as Chairman of its Board of Directors.

Just days after the formation of Cobb Energy, **DWIGHT T. BROWN** stood before the Cobb EMC members at the September 6, 1997 Cobb EMC annual members' meeting and made the following representations concerning Cobb Energy:

- “We will not allow Cobb EMC to subsidize this new company.”
- “We make this pledge that Cobb Electric Membership Corporation will not subsidize this other company, and this other company is created to work for you and to work for Cobb Electric Membership Corporation.”

Contrary to the promises to Cobb EMC's members, Cobb EMC promptly entered into an Operating Agreement with Cobb Energy, transferring Cobb EMC's entire workforce to Cobb Energy and obligating Cobb EMC to pay Cobb Energy a surcharge, called an “adder fee,” on the combined weekly salaries and fringe benefits of what were now Cobb Energy's employees. That adder fee was initially two percent, but later increased to six percent, and ultimately to eleven percent. **DWIGHT T. BROWN** signed the Operating Agreement, which had a duration of forty years, not on behalf of Cobb EMC, but on behalf of Cobb Energy. The

terms of the Operating Agreement were not disclosed to Cobb EMC's members.

Shortly after the execution of the Operating Agreement, all of Cobb EMC's meters were declared no longer necessary or useful to Cobb EMC's business and sold to Cobb Energy for approximately ten million dollars. Then, on May 29, 1998, Cobb Energy entered into a "Natural Gas Retail Service Alliance Agreement" with SCANA Energy Marketing, Inc. (the "SCANA Contract"). Pursuant to that contract Cobb Energy marketed SCANA natural gas to Cobb EMC members, using Cobb EMC's membership data. As with the Operating Agreement, **DWIGHT T. BROWN** signed the SCANA Contract on behalf of Cobb Energy. Cobb EMC was not a party to the SCANA Contract, although four other electric membership cooperatives became parties to the contract. Cobb EMC was neither paid any money under the SCANA Contract, nor paid anything for the use of its customer data. These facts were not disclosed to Cobb EMC's members.

Thus, less than a year after **DWIGHT T. BROWN'S** express promise to Cobb EMC's members that Cobb EMC would not subsidize Cobb Energy, all of Cobb EMC's employees were working for Cobb Energy, Cobb Energy was being paid a premium to employ Cobb EMC's former

workforce, Cobb EMC's meters were owned by Cobb Energy, and all of the revenues from the SCANA Contract were flowing to Cobb Energy. In short, Cobb EMC was subsidizing Cobb Energy to the tune of millions of dollars per year, a situation that continued for a decade.

Neither Cobb EMC's annual reports for the years 1998-2005 nor its official newsletters, each of which bore **DWIGHT T. BROWN's** picture, title and signature, disclosed the fact that the revenues from the SCANA Contract went to Cobb Energy or that Cobb EMC was not paid for the use of its valuable customer data. The accused also concealed other important facts from Cobb EMC members, including that:

- **DWIGHT T. BROWN** was drawing a separate and additional salary from Cobb Energy
- Cobb Energy gave **DWIGHT T. BROWN** and his wife \$2,000,000.00 in the form of a forgiven loan on which the Browns paid no principal and no interest
- Cobb EMC gave **DWIGHT T. BROWN** and his wife \$1,000,000.00 in the form of a forgiven loan on which the Browns paid no principal and no interest
- **DWIGHT T. BROWN** and his wife used the loan proceeds from Cobb Energy and Cobb EMC to buy \$3,000,000.00 of preferred stock in Cobb Energy, which paid them \$256,000 in dividends per year
- Cobb EMC became a party to the SCANA Contract only in late 2005, and then only for limited purposes such as giving a release and agreeing not to compete

with SCANA. Although SCANA paid \$4,000,000.00 in 2006 and 2007 for the release and non-competition provisions of the amended Contract, none of that money went to Cobb EMC

- **DWIGHT T. BROWN** directed that Cobb EMC pay Cobb Energy approximately \$3,400,000.00 in connection with the termination of the SCANA Contract, even though Cobb EMC had never received any revenue from that Contract

The concealment of this information was part of a deliberate pattern of behavior. When asked by a member at the 2007 Cobb EMC annual meeting if he received a salary from Cobb Energy, **DWIGHT T. BROWN** refused to answer. When asked at the same annual meeting who, other than Cobb EMC owned stock in Cobb Energy, **DWIGHT T. BROWN** also refused to answer, even though he owned both preferred and common stock in Cobb Energy at that time.

In addition to these non-disclosures, the accused made affirmative misrepresentations and misleading statements in the Cobb EMC annual reports and newsletters and at Cobb EMC's annual meeting. For example, **DWIGHT T. BROWN** falsely represented to Cobb EMC's members in May of 1998 that Cobb Energy was "being financed independent of Cobb EMC." In addition, the Cobb EMC annual reports and newsletters falsely stated that Cobb Energy was profitable, that Cobb Energy was making money from its various programs and subsidiaries, that Cobb Energy was

contributing to Cobb EMC's income and thereby helping to keep electricity costs as low as possible, and that Cobb EMC was part of the SCANA Contract. None of this was true. Cobb Energy lost money every year from 1998 through 2005 (during all or most of this period of time Cobb Energy's financials were not available to Cobb EMC's members) and the most profitable piece of business it had in that period of time was the SCANA Contract. Without the revenues from the SCANA Contract and the adder fees paid by Cobb EMC, Cobb Energy would have failed and Cobb Energy could not have paid **DWIGHT T. BROWN** millions of dollars in salary and other compensation, dividends on his preferred stock, and forgiven the principal and interest on the loans.

These non-disclosures and misrepresentations culminated with **DWIGHT T. BROWN'S** false representation to the assembled Cobb EMC members at the 2007 Annual Meeting, when he stated:

"I will tell you that we have never, ever, done anything without telling you. And, if you don't believe it, go back and dig out all your newsletters, all your annual reports and you will find its all there."

It isn't.

The Pattern Of Racketeering Activity

Stated more specifically, it was a part of the pattern of racketeering activity between January 1, 1997 and October 31, 2009, in the State of Georgia and County of Cobb, and elsewhere, that **DWIGHT T. BROWN**, together with others known and unknown to the Grand Jury, devised and intended to devise a scheme to acquire and maintain, both directly and indirectly, interests in Cobb Energy, consisting of preferred and common stock, control of Cobb EMC and Cobb Energy, and personal property, including United States currency, from Cobb EMC, being in substance as follows:

It was a part of the scheme and pattern of racketeering activity that **DWIGHT T. BROWN** unlawfully took and caused to be taken property belonging to Cobb EMC and used some of that property to generate revenues for Cobb Energy without compensation to Cobb EMC.

It was further a part of the scheme and pattern of racketeering activity that **DWIGHT T. BROWN** unlawfully took and caused to be taken that which should have been paid to Cobb EMC, all or part of which should have become patronage capital pursuant to the bylaws of Cobb EMC, but was instead paid to or retained by Cobb Energy. That money was used to fund Cobb Energy's unprofitable operations. The stolen SCANA revenue allowed Cobb Energy to remain in operation, benefiting the accused by

allowing him to receive an additional salary, forgiven loans and other compensation.

It was further a part of the scheme and pattern of racketeering activity that **DWIGHT T. BROWN** knowingly and willfully falsified, concealed, and covered up material facts by a trick, scheme or device; made false, fictitious and fraudulent statements and representations, and made and used false writings and documents were made and used in matters within the jurisdiction of the Secretary of State of Georgia, and the Department of Community Affairs, being departments or agencies of state government, and the County of Cobb and the Cobb County School District, being political subdivisions of the State of Georgia.

It was further a part of the scheme and pattern of racketeering activity that **DWIGHT T. BROWN** engaged in acts involving theft, chargeable under the laws of the State of Georgia and punishable by imprisonment for more than one year were committed, to wit: conspiring to defraud Cobb County, a political subdivision of the State of Georgia and a Cobb EMC member, and the Cobb County School District, a Cobb EMC member and a political subdivision of the State of Georgia.

COUNT 2

**VIOLATION OF GEORGIA RACKETEER INFLUENCED AND
CORRUPT ORGANIZATIONS ACT (“GEORGIA RICO”) O.C.G.A.
§16-14-4 (b)**

and the Grand Jurors aforesaid, in the name and behalf of the citizens of Georgia, charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS, O.C.G.A. § 16-14-4 (b)**, for the said accused, in the County of Cobb and State of Georgia approximately between the January 1, 1997 and October 31, 2009, the exact dates of the offense being unknown to the Grand Jury at this time, did unlawfully, while employed by and associated with certain enterprises, to wit: Cobb EMC and Cobb Energy, conduct and participate, both directly and indirectly, in such enterprises through a pattern of racketeering activity as described in Counts 4 - 31 below, incorporated herein by reference as if fully set forth herein, and elsewhere in this Indictment.

DWIGHT T. BROWN served as the President and Chief Executive Officer of Cobb EMC, in which capacity he was employed by and associated with Cobb EMC. **DWIGHT T. BROWN** also served as the President and Chief Executive Officer of Cobb Energy, as well as Chairman of the Board

of Directors of Cobb EMC, in which capacities he was employed by and associated with Cobb Energy.

In his capacity as President and Chief Executive Officer of Cobb EMC, **DWIGHT T. BROWN** conducted and participated in Cobb EMC through a pattern of racketeering activity, as described in Counts 4 - 31 below and elsewhere in this Indictment.

In his capacities as President and Chief Executive Officer, and Chairman of the Board of Directors, **DWIGHT T. BROWN** conducted and participated in Cobb Energy through a pattern of racketeering activity, as described below in Counts 4 - 31 below and elsewhere in this Indictment. **DWIGHT T. BROWN'S** positions in these entities allowed him to use these for his illicit activities. As the senior officer in each entity he attended all meetings of each entity's board of directors, had access to each entity's financial information, controlled the flow of information from each entity and functioned as the official voice of each entity. No other individual had as much information about Cobb EMC and Cobb Energy and no other individual had as much power and influence within those entities.

COUNT 3

**VIOLATION OF GEORGIA RACKETEER INFLUENCED AND
CORRUPT ORGANIZATIONS ACT (“GEORGIA RICO”) O.C.G.A.
§16-14-4 (c)**

and the Grand Jurors, in the name and behalf of the citizens of Georgia, charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS** for the said accused, in the County of Cobb and State of Georgia approximately between the January 1, 1997 and October 31, 2009, the exact dates of the offense being unknown to the Grand Jury at this time, did, in violation of O.C.G.A. § 16-14-4 (c), unlawfully endeavor, and conspire with Cobb Energy and others known and unknown to the Grand Jury, to acquire and maintain, directly and indirectly, control of Cobb EMC, and personal property, including money, of Cobb EMC and its members, through a pattern of racketeering activity, in violation of O.C.G.A. § 16-14-4(a), and while employed by and associated with Cobb EMC and Cobb Energy, conducted and participated, directly and indirectly, in such enterprise through a pattern of racketeering activity, in violation of O.C.G.A. §16-14-4(b).

In furtherance of this conspiracy and endeavor, **DWIGHT T. BROWN** engaged in two or more overt acts, consisting of acts of racketeering activity, as described in Counts 4 - 31 below, incorporated herein by reference as if fully set forth herein, and elsewhere in this Indictment.

COUNT 4

THEFT INVOLVING REVENUE FROM SCANA: 1998

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **THEFT BY TAKING** for the said accused, in the County of Cobb and State of Georgia, approximately during the year 1998, the exact date(s) being unknown to the Grand Jurors at this time, did, with the requisite intent, unlawfully take, or, being in lawful possession thereof, unlawfully appropriate, property of another, to wit: property of Cobb EMC and its members, including customer information and approximately \$455,143.00 in United States currency, but in any event, property having a value greater than five hundred dollars (\$500.00), with the intention of depriving said victims of said property, said accused and said crime being unknown to the State, as contemplated by O.C.G.A § 17-3-2(2), until April

22, 2009, contrary to the laws of this State, the good order, peace and dignity thereof. In addition, some victims of this theft were sixty-five years of age or older at the time of the theft, as contemplated by OGCA § 17-3-2.2. Moreover, at least through 2007, the accused took steps to conceal and cover up the thefts and other crimes charged in this indictment. The said property was taken by **DWIGHT T. BROWN**, an officer and fiduciary of Cobb EMC and its members, in breach of a fiduciary obligation.

Stated more specifically, on approximately May 29, 1998, a “Natural Gas Retail Service Alliance Agreement” (also referred to herein as the “SCANA Contract”) was entered into among several entities, including Cobb Energy and SCANA Energy Marketing, Inc., (“SCANA”). Although he was the President/CEO of Cobb EMC at the time, **DWIGHT T. BROWN** had Cobb Energy enter into the SCANA Contract and signed that contract on behalf of Cobb Energy. Under that contract, on approximately a weekly basis SCANA paid Cobb Energy substantial sums of money, in exchange for the right to market and sell natural gas to customers of Cobb EMC. Although Cobb EMC was not a party to the SCANA Contract, valuable property and assets of Cobb EMC and its members, including but not limited to customer information, were used to market and sell the natural gas to Cobb EMC customers. Cobb EMC was neither paid for the use of its

property and assets nor did it receive any of the revenues from the SCANA Contract. Under Cobb EMC's bylaws, the funds and customer information and the revenues from the SCANA Contract were the property of Cobb EMC and the members of Cobb EMC and could not be given or diverted to Cobb Energy without the affirmative vote of two-thirds of Cobb EMC's members, which never occurred. These funds should not have been diverted to Cobb Energy and the funds, or a portion of them at least greater than \$500.00, should have become patronage capital owned by the members of Cobb EMC.

Count 5

FALSE STATEMENTS AND WRITINGS CONCERNING 1998

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **FALSE STATEMENTS AND WRITINGS**, violating **O.C.G.A. §16-10-20**, for the said accused, in the County of Cobb and State of Georgia, approximately during the years 1998 through 1999, the exact date(s) being unknown to the Grand Jurors at this time, did, with the requisite intent, knowingly and willfully falsify, conceal, and cover up, by a trick, scheme or device a material fact; make false, fictitious and fraudulent

statements and representations; and make and use false writings and documents, to wit; the 1998 Cobb Electric Membership Corporation Annual Report, an Independent Auditor's Report containing a Statement of Revenue and Patronage Capital, and the May 1998, September 1998 and November 1998 issues of the Newsletter in a matter within the jurisdiction of the Secretary of State of Georgia and the Department of Community Affairs, being departments or agencies of state government, and the County of Cobb and the Cobb County School District, being political subdivisions of the State of Georgia.

Said accused and said crime being unknown to the State, as contemplated by O.C.G.A. §17-3-2(2), before April 22, 2009, contrary to the laws of said State, the peace, good order and dignity thereof.

Stated more specifically, both the 1998 Cobb EMC Annual Report, in the "Officer's Message" section, and the May 1998 Cobb EMC "Connections" Newsletter both contained the following false statement:

It is important to realize that [Cobb Energy] is . . . being financed independent of Cobb EMC.

Both of these documents bear the photograph and signature of **DWIGHT T. BROWN**, together with his title as "President/CEO." The quoted statement and representation was false, fictitious and fraudulent, the writings and

documents that contained it were false, fictitious and fraudulent, and the false, fictitious and fraudulent statements and representations contained in those writings and documents concealed and covered up the material fact that Cobb Energy was not financed independently of Cobb EMC.

In addition, the 1998 Cobb EMC Annual Report and the 1998 issues of the Newsletter concealed and covered up, by a trick, scheme or device, the material facts that Cobb EMC was not a party to the SCANA Contract, Cobb EMC did not receive any revenue from the SCANA Contract, and Cobb EMC was not paid for use of its customer information by Cobb Energy in connection with the SCANA Contract.

In addition, the September 1998 issue of the Newsletter contains a full page advertisement that includes the statement: “Cobb EMC is pleased to announce our alliance with SCANA Energy.” The quoted statement was false, fictitious and fraudulent, the writing and document that contained it was false, fictitious and fraudulent, and the false, fictitious and fraudulent statements and representations contained in that writing and document concealed and covered up the material facts that Cobb EMC was not a party to the SCANA Contract (titled an “Alliance Agreement”) and none of the revenues from the SCANA Contract went to Cobb EMC.

In addition, the November 1998 issue of the Newsletter contains an article with a picture of Dwight T. Brown, who is purportedly enrolling “to become the first Cobb EMC/SCANA Energy natural gas customer.” This quoted statement and representation was false, fictitious and fraudulent, the writing and document that contained it was false, fictitious, and fraudulent, and the false, fictitious and fraudulent statements and representations contained in that writing and document concealed and covered up the material facts that there was no such entity as “Cobb EMC/SCANA Energy,” Cobb EMC was not a party to the SCANA Contract, and none of the revenues from the SCANA Contract went to Cobb EMC.

COUNT 6

THEFT INVOLVING REVENUE FROM SCANA: 1999

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **THEFT BY TAKING** for the said accused, in the County of Cobb and State of Georgia, approximately during the year 1999, the exact date(s) being unknown to the Grand Jurors at this time, did, with the requisite intent, unlawfully take, or, being in lawful possession thereof, unlawfully appropriate, property of another, to wit: property of Cobb EMC

and its members, including customer information and approximately \$8,332,631.00 in United States currency, but in any event, property having a value greater than five hundred dollars (\$500.00), with the intention of depriving said victims of said property, said accused and said crime being unknown to the State, as contemplated by O.C.G.A § 17-3-2(2), until April 22, 2009, contrary to the laws of this State, the good order, peace and dignity thereof. In addition, some victims of this theft were sixty-five years of age or older at the time of the theft, as contemplated by OGCA § 17-3-2.2. The said property was taken by **DWIGHT T. BROWN**, an officer and fiduciary of Cobb EMC, in breach of a fiduciary obligation.

Stated more specifically, on approximately May 29, 1998, a “Natural Gas Retail Service Alliance Agreement” (also referred to herein as the “SCANA Contract”) was entered into among several entities, including Cobb Energy and SCANA Energy Marketing, Inc., (“SCANA”). Although he was the President/CEO of Cobb EMC at the time, **DWIGHT T. BROWN** had Cobb Energy enter into the SCANA Contract and signed that contract on behalf of Cobb Energy. Under that contract, on approximately a weekly basis SCANA paid Cobb Energy substantial sums of money, in exchange for the right to market and sell natural gas to customers of Cobb EMC. Although Cobb EMC was not a party to the SCANA Contract,

valuable property and assets of Cobb EMC and its members, including but not limited to customer information, were used to market and sell the natural gas to Cobb EMC customers. Cobb EMC was neither paid for the use of its property and assets nor did it receive any of the revenues from the SCANA Contract. Under the Cobb EMC's bylaws, the funds and customer information and the revenues from the SCANA Contract were the property of Cobb EMC and the members of Cobb EMC and could not be given or diverted to Cobb Energy without the affirmative vote of two-thirds of Cobb EMC's members, which never occurred. These funds should not have been diverted to Cobb Energy and the funds, or a portion of them at least greater than \$500.00, should have become patronage capital owned by the members of Cobb EMC.

Count 7

FALSE STATEMENTS AND WRITINGS CONCERNING 1999

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **FALSE STATEMENTS AND WRITINGS**, violating **O.C.G.A. §16-10-20**, for the said accused, in the County of Cobb and State of Georgia, approximately during the years 1999 through 2000, the exact date(s)

unknown to the Grand Jurors at this time, did, with the requisite intent, knowingly and willfully falsify, conceal, and cover up, by a trick, scheme or device a material fact; make false, fictitious and fraudulent statements and representations; and make and use false writings and documents, to wit; the 1999 Cobb Electric Membership Corporation Annual Report, an Independent Auditor's Report containing a Statement of Revenue and Patronage Capital, and the November, 1999 issue of the Newsletter, in a matter within the jurisdiction of the Secretary of State of Georgia, and the Department of Community Affairs, being departments or agencies of state government, and the County of Cobb and the Cobb County School District, being political subdivisions of the State of Georgia.

Said accused and said crime being unknown to the State, as contemplated by O.C.G.A. §17-3-2-(2), before April 22, 2009, contrary to the laws of said State, the peace, good order and dignity thereof.

Stated more specifically, the 1999 Cobb EMC Annual Report contains the statement that in July of 1998, "Cobb EMC began promoting its alliance with SCANA Energy to sell natural gas to its members and others in assigned zip codes." In fact there was no alliance between SCANA and Cobb EMC, Cobb EMC was not a party to the SCANA Contract, and none

of the revenues from the alliance between SCANA Energy and Cobb Energy went to Cobb EMC.

The “Officer’s Message” section, signed by **DWIGHT T. BROWN**, of the 1999 Cobb EMC Annual Report also contains the following statement:

While this is the annual report of Cobb Electric Membership Corporation, it is important to also relate its success to the success of our for-profit affiliate, Cobb Energy. Cobb Energy Management exists to assure the continued success of Cobb Electric Membership Corporation. The many products and services available through Cobb Energy Management are offered on a for-profit basis and Cobb Electric Membership Corporation will benefit from those profits, through its stock ownership and dividends.

The quoted statement was false, fictitious and fraudulent; the writing and document that contained it was false, fictitious and fraudulent; and the false, fictitious and fraudulent statement and representation contained in that writing and document concealed and covered up the material facts that Cobb Energy was operating at a loss at the time, Cobb Energy made no contribution to Cobb EMC’s success, Cobb Energy could not operate without the revenues from the SCANA Contract diverted to it from Cobb

EMC, and Cobb Energy did not pay dividends on the Cobb Energy stock owned by Cobb EMC.

The “Officer’s Message” section of the 1999 Cobb EMC Annual Report also contains the following false statement:

By far, the most significant event in Cobb EMC history occurred this fiscal year when your electric cooperative began selling natural gas. While we were confident that we had chosen the right alliance, SCANA Energy, we did not anticipate the huge success we would have this early in the deregulated gas market.

The quoted statement was false, fictitious and fraudulent; the writing and document that contained it was false, fictitious and fraudulent; and the false, fictitious and fraudulent statement and representation contained in that writing and document concealed and covered up the material facts that there was no alliance between SCANA and Cobb EMC, Cobb EMC was not a party to the SCANA Contract, Cobb EMC did not sell natural gas, and none of the revenues from the alliance between SCANA Energy and Cobb Energy went to Cobb EMC.

The 1999 Cobb EMC Annual Report further refers to “the Cobb EMC/SCANA Energy natural gas alliance” and SCANA’s “alliance with several Georgia EMC’s, such as Cobb EMC.” The quoted statement was false, fictitious and fraudulent; the writing and document that contained it

was false, fictitious and fraudulent; and the false, fictitious and fraudulent statement and representation contained in that writing and document concealed and covered up the material facts that there was no alliance between SCANA and Cobb EMC - although the alliance agreement referred to did have several EMCs as parties, Cobb EMC was not one of them - and none of the revenue from the SCANA Contract went to Cobb EMC.

In addition, the November 1999 issue of the Newsletter contains an article with a picture of Dwight T. Brown, who is purportedly enrolling “to become the first Cobb EMC/SCANA Energy natural gas customer.” This quoted statement and representation was false, fictitious and fraudulent, the writing and document that contained it was false, fictitious, and fraudulent, and the false, fictitious and fraudulent statements and representations contained in that writing and document concealed and covered up the material facts that there was no such entity as “Cobb EMC/SCANA Energy,” Cobb EMC was not a party to the SCANA Contract, and none of the revenues from the SCANA Contract went to Cobb EMC.

In addition, the 1999 Cobb EMC Annual Report and the 1999 issues of the Newsletter concealed and covered up, by a trick, scheme or device, the material facts that Cobb EMC was not a party to the SCANA Contract, Cobb EMC did not receive any revenue from the SCANA Contract, and

Cobb EMC was not paid for use of its customer information by Cobb Energy in connection with the SCANA Contract.

Count 8

THEFT INVOLVING REVENUE FROM SCANA : 2000

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **THEFT BY TAKING** for the said accused, in the County of Cobb and State of Georgia, approximately during the year 2000, the exact date(s) being unknown to the Grand Jurors at this time, did, with the requisite intent, unlawfully take, or, being in lawful possession thereof, unlawfully appropriate, property of another, to wit: property of Cobb EMC and its members, including customer information and approximately \$8,120,692.00 in United States currency, but in any event, property having a value greater than five hundred dollars (\$500.00), with the intention of depriving said victims of said property, said accused and said crime being unknown to the State, as contemplated by O.C.G.A § 17-3-2(2), until April 22, 2009, contrary to the laws of this State, the good order, peace and dignity thereof. In addition, some victims of this theft were sixty-five years of age or older at the time of the theft, as contemplated by OGCA § 17-3-2.2. The

said property was taken by **DWIGHT T. BROWN**, an officer and fiduciary of Cobb EMC, in breach of a fiduciary obligation.

Stated more specifically, on approximately May 29, 1998, a “Natural Gas Retail Service Alliance Agreement” (also referred to herein as the “SCANA Contract”) was entered into among several entities, including Cobb Energy and SCANA Energy Marketing, Inc., (“SCANA”). Although he was the President/CEO of Cobb EMC at the time, **DWIGHT T. BROWN** had Cobb Energy enter into the SCANA Contract and signed that contract on behalf of Cobb Energy. Under that contract, , on approximately a weekly basis SCANA paid Cobb Energy substantial sums of money, in exchange for the right to market and sell natural gas to customers of Cobb EMC. Although Cobb EMC was not a party to the SCANA Contract, valuable property and assets of Cobb EMC and its members, including but not limited to customer information, were used to market and sell the natural gas to Cobb EMC customers. Cobb EMC was neither paid for the use of its property and assets nor did it receive any of the revenues from the SCANA Contract. Under the Cobb EMC’s bylaws, the funds and customer information and the revenues from the SCANA Contract were the property of Cobb EMC and the members of Cobb EMC and could not be given or diverted to Cobb Energy without the affirmative vote of two-thirds of Cobb

EMC's members, which never occurred. These funds should not have been diverted to Cobb Energy and the funds, or a portion of them at least greater than \$500.00, should have become patronage capital owned by the members of Cobb EMC.

Count 9

FALSE STATEMENTS AND WRITINGS CONCERNING 2000

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **FALSE STATEMENTS AND WRITINGS**, violating **O.C.G.A. §16-10-20**, for the said accused, in the County of Cobb and State of Georgia, approximately during the years 2000 through 2001, the exact date(s) unknown to the Grand Jurors at this time, did, with the requisite intent, knowingly and willfully falsify, conceal and cover up, by a trick, scheme or device a material fact; make false, fictitious and fraudulent statements and representations; and make and use false writings and documents, to wit; the 2000 Cobb Electric Membership Corporation Annual Report, an Independent Auditor's Report containing a Statement of Revenue and Patronage Capital, and the November 2000 issue of the Newsletter, in a matter within the jurisdiction of the Secretary of State of Georgia and the

Department of Community Affairs, being departments or agencies of state government, and the County of Cobb and the Cobb County School District, being political subdivisions of the State of Georgia.

Said accused and said crime being unknown to the State, as contemplated by O.C.G.A. §17-3-2(2) before April 22, 2009, contrary to the laws of said State, the peace, good order and dignity thereof.

Stated more specifically, the November 2000 issue of the Newsletter contained the following false statement:

“Dwight Brown, President and CEO of Cobb EMC, recapped the accomplishments of 1999. He informed the crowd of [Cobb Energy's] partnership with ProCore [and ECG] 'All of these things help us hold the cost of electricity down,' said Brown"

The quoted statement was false, fictitious and fraudulent; the writing and document that contained it was false, fictitious and fraudulent; and the false, fictitious and fraudulent statement and representation contained in that document concealed and covered up the material facts that the ProCore call center was formed in approximately July, 2000 to support the relationship Cobb Energy had with SCANA. Yet, Cobb EMC paid ProCore, a subsidiary of Cobb Energy, the hourly pay of call center employees plus a markup of approximately 50%. During the year 2000, Cobb EMC's payments to ProCore were approximately \$1,477,159.45. Approximately one-third of that amount, but in any event an amount in excess of \$500, was paid as part

of the 50% markup on employee hourly rates. Those payments by Cobb EMC to ProCore, a subsidiary of Cobb Energy did nothing to help Cobb EMC hold down the cost of energy.

In addition, the 2000 Cobb EMC Annual Report, on at least two separate pages, states to the members, including Cobb County and the Cobb County School District, that a service offered is “Cobb EMC/SCANA Energy Natural Gas.” Those statements are false, fictitious and fraudulent; the writings and documents that contained them were false, fictitious and fraudulent; and the false, fictitious and fraudulent statements and representations contained within them concealed and covered up the material fact that there is no entity, product, or service known as “Cobb EMC/SCANA Energy Natural Gas.”

In addition, the 2000 Cobb EMC Annual Report and Newsletters concealed and covered up, by a trick, scheme or device, the material facts that Cobb EMC was not a party to the SCANA Contract, Cobb EMC did not receive any revenue from the SCANA Contract, and Cobb EMC was not paid for use of its customer information by Cobb Energy in connection with the SCANA Contract.

Count 10

THEFT INVOLVING REVENUE FROM SCANA: 2001

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **THEFT BY TAKING** for the said accused, in the County of Cobb and State of Georgia, approximately during the year 2001, the exact date(s) being unknown to the Grand Jurors at this time, did, with the requisite intent, unlawfully take, or, being in lawful possession thereof, unlawfully appropriate, property of another, to wit: property of Cobb EMC and its members, including customer information and approximately \$9,524,010.00 in United States currency, but in any event, property having a value greater than five hundred dollars (\$500.00), with the intention of depriving said victims of said property, said accused and said crime being unknown to the State, as contemplated by O.C.G.A § 17-3-2(2), until April 22, 2009, contrary to the laws of this State, the good order, peace and dignity thereof. In addition, some victims of this theft were sixty-five years of age or older at the time of the theft, as contemplated by OGCA § 17-3-2.2. The

said property was taken by **DWIGHT T. BROWN**, an officer and fiduciary of Cobb EMC, in breach of a fiduciary obligation.

Stated more specifically, on approximately May 29, 1998, a “Natural Gas Retail Service Alliance Agreement” (also referred to herein as the “SCANA Contract”) was entered into among several entities, including Cobb Energy and SCANA Energy Marketing, Inc., (“SCANA”). Although he was the President/CEO of Cobb EMC at the time, **DWIGHT T. BROWN** had Cobb Energy enter into the SCANA Contract and signed that contract on behalf of Cobb Energy. Under that contract, , on approximately a weekly basis SCANA paid Cobb Energy substantial sums of money, in exchange for the right to market and sell natural gas to customers of Cobb EMC. Although Cobb EMC was not a party to the SCANA Contract, valuable property and assets of Cobb EMC and its members, including but not limited to customer information, were used to market and sell the natural gas to Cobb EMC customers. Cobb EMC was neither paid for the use of its property and assets nor did it receive any of the revenues from the SCANA Contract. Under the Cobb EMC’s bylaws, the funds and customer information and the revenues from the SCANA Contract were the property of Cobb EMC and the members of Cobb EMC and could not be given or diverted to Cobb Energy without the affirmative vote of two-thirds of Cobb

EMC's members, which never occurred. These funds should not have been diverted to Cobb Energy and the funds, or a portion of them at least greater than \$500.00, should have become patronage capital owned by the members of Cobb EMC.

Count 11

FALSE STATEMENTS AND WRITINGS CONCERNING 2001

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **FALSE STATEMENTS AND WRITINGS**, violating **O.C.G.A. §16-10-20**, for the said accused, in the County of Cobb and State of Georgia, approximately during the years 2001 through 2002, the exact date(s) unknown to the Grand Jurors at this time, did, with the requisite intent, knowingly and willfully falsify, conceal, and cover up, by a trick, scheme or device a material fact; make false, fictitious and fraudulent statements and representations; and make and use false writings, to wit; the 2001 Cobb Electric Membership Corporation Annual Report, an Independent Auditor's Report containing a statement of Revenue and Patronage Capital, and the October 2001 issue of the Newsletter, in a matter within the jurisdiction of the Secretary of State of Georgia and the Department of Community Affairs,

being departments or agencies of state government, and County of Cobb and the Cobb County School District, being political subdivisions of the State of Georgia.

Said accused and said crime being unknown to the State , as contemplated by O.C.G.A. §17-3-2(2), before April 22, 2009, contrary to the laws of said State, the peace, good order and dignity thereof.

Stated more specifically, the October 2001 issue of the Newsletter contained the following false statement:

"The continued success of Cobb Energy's HomeVantage and Provanta products and services help make it possible to keep electric rates as low as possible."

This statement was false, fictitious and fraudulent; the writings and documents that contained them were false, fictitious and fraudulent; and the false, fictitious and fraudulent statements and representations contained within them concealed and covered up the material fact that the HomeVantage and Provanta programs were unprofitable and did nothing to keep electric rates as low as possible. The Financial Statement for Cobb Energy for the year ended January 31, 2002 showed a negative total retained earnings for Cobb Energy and its subsidiaries of approximately (\$3,264,000.00). The only subsidiary showing a profit was ProCore Solutions, LLC in the approximate amount of \$322,000.00.

In addition, the 2001 Cobb EMC Annual Report stated:

“As a separate, for profit affiliate of Cobb EMC, Cobb Energy provides a range of new products and services to members and customers alike. This venture has proved more than successful as both families and businesses enjoy the cost savings and convenience of HomeVantage residential and Provanta commercial products and services.”

This statement was false, fictitious and fraudulent as the HomeVantage and Provanta programs were losing money and both increased costs to members by using patronage capital to fund Cobb Energy and its subsidiary entities when, according to the EMC’s bylaws, those funds should have been credited as patronage capital to the members .

In addition, the 2001 Cobb EMC Annual Report and Newsletters concealed and covered up, by a trick, scheme or device, the material facts that Cobb EMC was not a party to the SCANA Contract, Cobb EMC did not receive any revenue from the SCANA Contract, and Cobb EMC was not paid for use of its customer information by Cobb Energy in connection with the SCANA Contract.

COUNT 12

THEFT INVOLVING REVENUE FROM SCANA: 2002

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN,**

individually and as a party concerned in the commission of a crime, with the offense of **THEFT BY TAKING** for the said accused, in the County of Cobb and State of Georgia, approximately during the year 2002, the exact date(s) being unknown to the Grand Jurors at this time, did, with the requisite intent, unlawfully take, or, being in lawful possession thereof, unlawfully appropriate, property of another, to wit: property of Cobb EMC and its members, including customer information and approximately \$7,526,423.00 in United States currency, but in any event, property having a value greater than five hundred dollars (\$500.00), with the intention of depriving said victims of said property, said accused and said crime being unknown to the State, as contemplated by O.C.G.A § 17-3-2(2), until April 22, 2009, contrary to the laws of this State, the good order, peace and dignity thereof. In addition, some victims of this theft were sixty-five years of age or older at the time of the theft, as contemplated by OGCA § 17-3-2.2. The said property was taken by **DWIGHT T. BROWN**, an officer and fiduciary of Cobb EMC, in breach of a fiduciary obligation.

Stated more specifically, on approximately May 29, 1998, a “Natural Gas Retail Service Alliance Agreement” (also referred to herein as the “SCANA Contract”) was entered into among several entities, including Cobb Energy and SCANA Energy Marketing, Inc., (“SCANA”). Although

he was the President/CEO of Cobb EMC at the time, **DWIGHT T.**

BROWN had Cobb Energy enter into the SCANA Contract and signed that contract on behalf of Cobb Energy. Under that contract, on approximately a weekly basis SCANA paid Cobb Energy substantial sums of money, in exchange for the right to market and sell natural gas to customers of Cobb EMC. Although Cobb EMC was not a party to the SCANA Contract, valuable property and assets of Cobb EMC and its members, including but not limited to customer information, were used to market and sell the natural gas to Cobb EMC customers. Cobb EMC was neither paid for the use of its property and assets nor did it receive any of the revenues from the SCANA Contract. Under the Cobb EMC's bylaws, the funds and customer information and the revenues from the SCANA Contract were the property of Cobb EMC and the members of Cobb EMC and could not be given or diverted to Cobb Energy without the affirmative vote of two-thirds of Cobb EMC's members, which never occurred. These funds should not have been diverted to Cobb Energy and the funds, or a portion of them at least greater than \$500.00, should have become patronage capital owned by the members of Cobb EMC.

Count 13

FALSE STATEMENTS AND WRITINGS CONCERNING 2002

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime with the offense of **FALSE STATEMENTS AND WRITINGS**, violating **O.C.G.A. §16-10-20**, for the said accused, in the County of Cobb and State of Georgia, approximately during the years 2002 through 2003, the exact date(s) unknown to the Grand Jurors at this time, did, with the requisite intent, knowingly and willfully falsify, conceal, and cover up, by a trick, scheme or device a material fact; make false, fictitious and fraudulent statements and representations; and make and use false writings, to wit; the 2002 Cobb Electric Membership Corporation Annual Report, an Independent Auditor's Report containing a Statement of Revenue and Patronage Capital, and the November 2002 issue of the Newsletter, in a matter within the jurisdiction of the Secretary of State of Georgia and the Department of Community Affairs, being departments or agencies of state government, and County of Cobb and the Cobb County School District, being political subdivisions of the State of Georgia.

Said accused and said crime being unknown to the State , as contemplated by O.C.G.A. §17-3-2(2), before April 22, 2009, contrary to the laws of said State, the peace, good order and dignity thereof.

Stated more specifically, the November 2002 issue of the Newsletter contained the following false statement:

"Cobb Energy, our for profit affiliate continues to succeed with its Home Vantage and Provanta products and services, helping to make it possible to keep electric rates low."

This statement was false, fictitious and fraudulent, and concealed the material fact that the HomeVantage and Provanta programs were unprofitable and did nothing to keep electric rates as low as possible. The Financial Statement for Cobb Energy dated January 31, 2003 reveals a negative total retained earnings for Cobb Energy and its subsidiaries of approximately (\$5,862,000.00). The only subsidiary showing a profit was ProCore Solutions, LLC in the approximate amount of \$585,000.00.

In addition, the 2002 Cobb EMC Annual Report and Newsletters concealed and covered up, by a trick, scheme or device, the material facts that Cobb EMC was not a party to the SCANA Contract, Cobb EMC did not receive any revenue from the SCANA Contract, and Cobb EMC was not paid for use of its customer information by Cobb Energy in connection with the SCANA Contract.

Count 14

THEFT INVOLVING REVENUE FROM SCANA: 2003

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **THEFT BY TAKING** for the said accused, in the County of Cobb and State of Georgia, approximately during the year 2003, the exact date(s) being unknown to the Grand Jurors at this time, did, with the requisite intent, unlawfully take, or, being in lawful possession thereof, unlawfully appropriate, property of another, to wit: property of Cobb EMC and its members, including customer information and approximately \$8,150,851.00 in United States currency, but in any event, property having a value greater than five hundred dollars (\$500.00), with the intention of depriving said victims of said property, said accused and said crime being unknown to the State, as contemplated by O.C.G.A § 17-3-2(2), until April 22, 2009, contrary to the laws of this State, the good order, peace and dignity thereof. In addition, some victims of this theft were sixty-five years of age or older at the time of the theft, as contemplated by OGCA § 17-3-2.2. The

said property was taken by **DWIGHT T. BROWN**, an officer and fiduciary of Cobb EMC, in breach of a fiduciary obligation.

Stated more specifically, on approximately May 29, 1998, a “Natural Gas Retail Service Alliance Agreement” (also referred to herein as the “SCANA Contract”) was entered into among several entities, including Cobb Energy and SCANA Energy Marketing, Inc., (“SCANA”). Although he was the President/CEO of Cobb EMC at the time, **DWIGHT T. BROWN** had Cobb Energy enter into the SCANA Contract and signed that contract on behalf of Cobb Energy. Under that contract, , on approximately a weekly basis SCANA paid Cobb Energy substantial sums of money, in exchange for the right to market and sell natural gas to customers of Cobb EMC. Although Cobb EMC was not a party to the SCANA Contract, valuable property and assets of Cobb EMC and its members, including but not limited to customer information, were used to market and sell the natural gas to Cobb EMC customers. Cobb EMC was neither paid for the use of its property and assets nor did it receive any of the revenues from the SCANA Contract. Under the Cobb EMC’s bylaws, the funds and customer information and the revenues from the SCANA Contract were the property of Cobb EMC and the members of Cobb EMC and could not be given or diverted to Cobb Energy without the affirmative vote of two-thirds of Cobb

EMC's members, which never occurred. These funds should not have been diverted to Cobb Energy and the funds, or a portion of them at least greater than \$500.00, should have become patronage capital owned by the members of Cobb EMC.

Count 15

FALSE STATEMENTS AND WRITINGS CONCERNING 2003

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **FALSE STATEMENTS AND WRITINGS**, violating O.C.G.A. §16-10-20, for the said accused, in the County of Cobb and State of Georgia, approximately during the years 2003 through 2004, the exact date(s) unknown to the Grand Jurors at this time, did, with the requisite intent, knowingly and willfully falsify, conceal and cover up, by a trick, scheme or device a material fact; make false, fictitious and fraudulent statements and representations; and make and use false writings and documents, to wit; the 2003 Cobb Electric Membership Corporation Annual Report, an Independent Auditor's Report containing a Statement of Revenue and Patronage Capital, and the January 2003 issue of the Newsletter, knowing the same to falsify a material fact, be false, and contain false, fictitious and

fraudulent entries and statements, in a matter within the jurisdiction of the Secretary of State of Georgia and the Department of Community Affairs, being departments or agencies of state government, and County of Cobb and the Cobb County School District, being political subdivisions of the State of Georgia.

Said accused and said crime being unknown to the State , as contemplated by O.C.G.A. §17-3-2(2), before April 22, 2009, contrary to the laws of said State, the peace, good order and dignity thereof.

Stated more specifically, the January, 2003 issue of the Newsletter contained the following false statement:

"In addition, the formation of Cobb Energy, our for profit affiliate, is providing additional revenues, which are having a positive impact on Cobb EMC."

The quoted statement was false, fictitious and fraudulent; the writing and document that contained it was false, fictitious and fraudulent; and the false, fictitious and fraudulent statements and representations contained in that writing and document concealed the material fact that Cobb Energy was unprofitable and did not provide revenue to Cobb EMC. The Financial Statement for Cobb Energy for the year ended January 31, 2003 showed a negative total retained earnings for Cobb Energy and its subsidiaries of approximately (\$5,862,000.00). The only subsidiary showing a profit was

ProCore Solutions, LLC in the approximate amount of \$585,000.00. Rather than a “positive impact,” Cobb Energy was having a significant negative impact on Cobb EMC.

In addition, the 2003 Annual Report of Cobb EMC at page 3, under the section “Letter To Our Members,” states:

“In fact, since 1996 Cobb EMC members have received more than \$21 million in rebates and have not experienced a rate increase since February of 1993. All of this has been due to our continued efforts to lower wholesale power costs **and the success of Cobb Energy**. . .” (emphasis added)

The above-quoted statement was false, fictitious and fraudulent; the writing and document that contained it was false, fictitious and fraudulent; and the false, fictitious and fraudulent statements and representations contained in that writing and document concealed and covered up the material fact that Cobb Energy was not successful and in fact was unprofitable, and further concealed the material facts that Cobb EMC was not a party to the SCANA Contract and none of the revenue from the SCANA Contract went to Cobb EMC. Contrary to the above statement to Cobb EMC’s members, including Cobb County and the Cobb County School District, according to the Balance Sheet, as of January 31, 2003, Cobb Energy lacked “success” and had a negative retained earnings of (\$5,862,000.00).

In addition, the 2003 Cobb EMC Annual Report and Newsletters concealed and covered up, by a trick, scheme or device, the material facts that Cobb EMC was not a party to the SCANA Contract, Cobb EMC did not receive any revenue from the SCANA Contract, and Cobb EMC was not paid for use of its customer information by Cobb Energy in connection with the SCANA Contract.

COUNT 16

THEFT INVOLVING REVENUE FROM SCANA: 2004

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **THEFT BY TAKING** for the said accused, in the County of Cobb and State of Georgia, approximately during the year 2004, the exact date(s) being unknown to the Grand Jurors at this time, did, with the requisite intent, unlawfully take, or, being in lawful possession thereof, unlawfully appropriate, property of another, to wit: property of Cobb EMC and its members, including customer information and approximately \$9,875,435.00 in United States currency, but in any event, property having a value greater than five hundred dollars (\$500.00), with the intention of depriving said victims of said property, said accused and said crime being unknown to the

State, as contemplated by O.C.G.A § 17-3-2(2), until April 22, 2009, contrary to the laws of this State, the good order, peace and dignity thereof. In addition, some victims of this theft were sixty-five years of age or older at the time of the theft, as contemplated by OGCA § 17-3-2.2. The said property was taken by **DWIGHT T. BROWN**, an officer and fiduciary of Cobb EMC, in breach of a fiduciary obligation.

Stated more specifically, on approximately May 29, 1998, a “Natural Gas Retail Service Alliance Agreement” (also referred to herein as the “SCANA Contract”) was entered into among several entities, including Cobb Energy and SCANA Energy Marketing, Inc., (“SCANA”). Although he was the President/CEO of Cobb EMC at the time, **DWIGHT T. BROWN** had Cobb Energy enter into the SCANA Contract and signed that contract on behalf of Cobb Energy. Under that contract, , on approximately a weekly basis SCANA paid Cobb Energy substantial sums of money, in exchange for the right to market and sell natural gas to customers of Cobb EMC. Although Cobb EMC was not a party to the SCANA Contract, valuable property and assets of Cobb EMC and its members, including but not limited to customer information, were used to market and sell the natural gas to Cobb EMC customers. Cobb EMC was neither paid for the use of its property and assets nor did it receive any of the revenues from the SCANA

Contract. Under the Cobb EMC's bylaws, the funds and customer information and the revenues from the SCANA Contract were the property of Cobb EMC and the members of Cobb EMC and could not be given or diverted to Cobb Energy without the affirmative vote of two-thirds of Cobb EMC's members, which never occurred. These funds should not have been diverted to Cobb Energy and the funds, or a portion of them, should have become patronage capital owned by the members of Cobb EMC.

Count 17

FALSE STATEMENTS AND WRITINGS CONCERNING 2004

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **FALSE STATEMENTS AND WRITINGS**, violating **O.C.G.A. §16-10-20** for the said accused, in the County of Cobb and State of Georgia, approximately during the years 2003 through 2004, the exact date(s) unknown to the Grand Jurors at this time, did, with the requisite intent, knowingly and willfully falsify, conceal, and cover up, by trick, scheme or device a material fact; make false, fictitious and fraudulent statements and representations; and make and use false writings, to wit: the 2004 Cobb Electric Membership Corporation Annual Report, an Independent Auditor's

Report containing a Statement of Revenue and Patronage Capital, and the November 2004 issue of the Newsletter, knowing the same to falsify a material fact, be false, and contain false, fictitious and fraudulent entries and statements, in a matter within the jurisdiction of the Secretary of State of Georgia and the Department of Community Affairs, being departments or agencies of state government, and the County of Cobb and the Cobb County School District, being political subdivisions of the State of Georgia.

Said accused and said crime being unknown to the State , as contemplated by O.C.G.A. §17-3-2(2), before April 22, 2009, contrary to the laws of said State, the peace, good order and dignity thereof.

Stated more specifically, in the September, 2004 Annual Report Cobb EMC stated:

"Cobb Energy, our for-profit affiliate, continues to succeed with its HomeVantage and Provanta products and services, helping make it possible to keep electric rates low."

Similarly, the November 2004 issue of the Newsletter contained the following false statement:

"Cobb Energy, our for profit affiliate, continues to succeed with its HomeVantage and Provanta products and services."

These statements were false, fictitious and fraudulent; the writings and documents that contained them were false, fictitious and fraudulent; and the false, fictitious and fraudulent statements and representations contained

within them concealed and covered up the material fact that the HomeVantage and Provanta programs were unprofitable, and Cobb Energy itself was unprofitable. The Financial Statement for Cobb Energy dated January 31, 2005 showed a negative total retained earnings for Cobb Energy and its subsidiaries of approximately (\$5,259,000.00). The only subsidiary showing a profit was ProCore Solutions, LLC in the approximate amount of \$1,556,000.00.

In addition, the 2004 Cobb EMC Annual Report and Newsletters concealed and covered up, by a trick, scheme or device, the material facts that Cobb EMC was not a party to the SCANA Contract, Cobb EMC did not receive any revenue from the SCANA Contract, and Cobb EMC was not paid for use of its customer information by Cobb Energy in connection with the SCANA Contract.

COUNT 18

THEFT INVOLVING REVENUE FROM SCANA: 2005

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **THEFT BY TAKING** for the said accused, in the County of Cobb and State of Georgia, approximately during the year 2005, the exact date(s)

being unknown to the Grand Jurors at this time, did, with the requisite intent, unlawfully take, or, being in lawful possession thereof, unlawfully appropriate, property of another, to wit: property of Cobb EMC and its members, including customer information and approximately \$9,511,173.00 in United States currency, but in any event, property having a value greater than five hundred dollars (\$500.00), with the intention of depriving said victims of said property, said accused and said crime being unknown to the State, as contemplated by O.C.G.A § 17-3-2(2), until April 22, 2009, contrary to the laws of this State, the good order, peace and dignity thereof. In addition, some victims of this theft were sixty-five years of age or older at the time of the theft, as contemplated by OGCA § 17-3-2.2. The said property was taken by **DWIGHT T. BROWN**, an officer and fiduciary of Cobb EMC, in breach of a fiduciary obligation.

Stated more specifically, on approximately May 29, 1998, a “Natural Gas Retail Service Alliance Agreement” (also referred to herein as the “SCANA Contract”) was entered into among several entities, including Cobb Energy and SCANA Energy Marketing, Inc., (“SCANA”). Although he was the President/CEO of Cobb EMC at the time, **DWIGHT T. BROWN** had Cobb Energy enter into the SCANA Contract and signed that contract on behalf of Cobb Energy. Under that contract, , on approximately

a weekly basis SCANA paid Cobb Energy substantial sums of money, in exchange for the right to market and sell natural gas to customers of Cobb EMC. Although Cobb EMC was not a party to the SCANA Contract, valuable property and assets of Cobb EMC and its members, including but not limited to customer information, were used to market and sell the natural gas to Cobb EMC customers. Cobb EMC was neither paid for the use of its property and assets nor did it receive any of the revenues from the SCANA Contract. Under the Cobb EMC's bylaws, the funds and customer information and the revenues from the SCANA Contract were the property of Cobb EMC and the members of Cobb EMC and could not be given or diverted to Cobb Energy without the affirmative vote of two-thirds of Cobb EMC's members, which never occurred. These funds should not have been diverted to Cobb Energy and the funds, or a portion of them at least greater than \$500.00, should have become patronage capital owned by the members of Cobb EMC.

COUNT 19

THEFT INVOLVING SCANA TERMINATION EXPENSES: 2005

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the

offense of **THEFT BY TAKING** for the said accused, in the County of Cobb and State of Georgia, approximately on October 31, 2005, the exact date being unknown to the Grand Jurors at this time, did, with the requisite intent, unlawfully take, or, being in lawful possession thereof, unlawfully appropriate property of another to wit: property of Cobb EMC and its members, approximately \$3,400,000.00 in United States currency, and customer information, but in any event an amount greater than five hundred dollars (\$500.00), with the intention of depriving said victims of said property, contrary to the laws of this State, the good order, peace and dignity thereof, the accused and the crime being unknown to the State, as contemplated by O.C.G.A § 17-3-2(2), before April 22, 2009. In addition, some victims of this theft were sixty-five years of age or older at the time of theft, as contemplated by OGCA § 17-3-2.2. The said property was taken by **DWIGHT T. BROWN**, an officer and fiduciary of Cobb EMC, in breach of a fiduciary obligation.

Stated more specifically, on approximately May 29, 1998, a “Natural Gas Retail Service Alliance Agreement” (“SCANA Contract”) was entered into among several entities including Cobb Energy (“Cobb Energy”), which was a for profit affiliate corporation of Cobb EMC, and SCANA Energy

Marketing, Inc., (“SCANA”). Dwight T. Brown signed the SCANA Contract on behalf of Cobb Energy.

Under the SCANA Contract, SCANA paid Cobb Energy substantial sums of money during 2005, primarily in exchange for the right to market and sell natural gas to members of Cobb EMC. Cobb EMC did not become a party to the SCANA Contract until approximately October 31, 2005, when by a “Seventh Amendment To Natural Gas Retail Service Alliance Agreement” (“Seventh Amendment”), the SCANA Contract was amended for purposes of termination. **DWIGHT T. BROWN**, who was the President and Chief Executive Officer of Cobb EMC, and the President and Chairman of the Board of Directors of Cobb Energy, caused Cobb EMC to pay Cobb Energy approximately \$3,400,000.00, but in any event an amount greater than five hundred dollars (\$500.00), in connection with the termination of the SCANA Contract. This transfer of funds from Cobb EMC to Cobb Energy was an unlawful taking and misappropriation of property of Cobb EMC and its members. The accused intentionally, in conspiracy with Cobb Energy, and in breach of his fiduciary duty to Cobb EMC and its members, misappropriated the property of Cobb EMC and its members. Under the bylaws, at least an amount greater than \$500.00 of the transferred funds was the property of Cobb EMC and its members could not be transferred without

an affirmative vote of at least two-thirds of the members, which was never done. These funds should not have been diverted to Cobb Energy and the funds, or a portion of them at least greater than \$500.00, should have become patronage capital owned by the members of Cobb EMC.

COUNT 20

THEFT INVOLVING SCANA SERVICE FEE PAYMENTS: 2005

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **THEFT BY TAKING** for the said accused, in the County of Cobb and State of Georgia, approximately during the year 2005, the exact date(s) being unknown to the Grand Jurors at this time, did, with the requisite intent, unlawfully take, or, being in lawful possession thereof, unlawfully appropriate, property of another to wit: property of Cobb EMC and its members, approximately \$3,200,000.00 in United States currency and customer information, but in any event, property having a value greater than five hundred dollars (\$500.00), with the intention of depriving said victims of said property, said accused and said crime being unknown to the State, as contemplated by O.C.G.A § 17-3-2(2), April 22, 2009, contrary to the laws of this State, the good order, peace and dignity thereof. In addition, some

victims of this theft were sixty-five years of age or older at the time of the theft, as contemplated by OGCA § 17-3-2.2. The said property was taken by **DWIGHT T. BROWN**, an officer and fiduciary of Cobb EMC, in breach of a fiduciary obligation.

Stated more specifically, on approximately May 29, 1998, a “Natural Gas Retail Service Alliance Agreement” (“SCANA Contract”) was entered into among several entities, including Cobb Energy and SCANA Energy Marketing, Inc., (“SCANA”). Although he was President/CEO of Cobb EMC at the time, Dwight T. Brown had Cobb Energy enter into the SCANA Contract and signed that contract on behalf of Cobb Energy. Under that contract, SCANA paid Cobb Energy substantial sums of money during 2005, in exchange for the right to market and sell natural gas to customers of Cobb EMC. Although Cobb EMC was not a party to the SCANA Contract, valuable property and assets of Cobb EMC and its members, including but not limited to membership and marketing data, were used to market and sell the natural gas to Cobb EMC customers. Cobb EMC was neither paid for the use of its property and assets nor did it receive any of the revenues from the SCANA Contract. Cobb EMC did not become a party to the SCANA Contract until approximately October 31, 2005, when by a “Seventh Amendment To Natural Gas Retail Service Alliance Agreement” (“Seventh

Amendment”), the SCANA Contract was amended for purposes of termination. Pursuant to the Seventh Amendment to the SCANA Contract, SCANA made the following payment for service fees, which were received by Cobb Energy:

November 30, 2005	\$1,600,000.00
December 30, 2005	\$1,600,000.00

Of that \$3,200,000.00, property having a value greater than \$500.00 was the property Cobb EMC and its members. Under Cobb EMC’s bylaws, the service fee payments were the property of Cobb EMC and its members and could not be given to Cobb Energy without the affirmative vote of two-thirds of Cobb EMC’s members, which never occurred. These funds should not have been diverted to Cobb Energy and the funds, or a portion of them at least greater than \$500.00, should have become patronage capital owned by the members of Cobb EMC.

COUNT 21

FALSE STATEMENTS AND WRITINGS CONCERNING 2005

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **FALSE STATEMENTS AND WRITINGS**, violating

O.C.G.A. §16-10-20, for the said accused, in the County of Cobb and State of Georgia, approximately during the years 2005 through 2006, the exact date(s) being unknown to the Grand Jurors at this time, did, with the requisite intent, knowingly and willfully falsify, conceal, and cover up, by a trick, scheme or device a material fact; make false, fictitious and fraudulent statements and representations; and make and use false writings and documents, to wit; the 2005 Cobb Electric Membership Corporation Annual Report, an Independent Auditor's Report containing a Statement of Revenue and Patronage Capital, in a matter within the jurisdiction of the Secretary of State of Georgia and the Department of Community Affairs, being departments or agencies of state government, and the County of Cobb and the Cobb County School District, being political subdivisions of the State of Georgia.

Said accused and said crime being unknown to the State, as contemplated by O.C.G.A. §17-3-2(2), before April 22, 2009, contrary to the laws of said State, the peace, good order and dignity thereof.

Stated more specifically, the 2005 Cobb EMC Annual Report and Newsletters covered up, by a trick, scheme or device, the material facts that Cobb EMC was not a party to the SCANA Contract, Cobb EMC did not receive any revenue from the SCANA Contract, and Cobb EMC was not

paid for use of its customer information by Cobb Energy in connection with the SCANA Contract.

In addition, the 2005 Cobb EMC Annual Report and Newsletters concealed and covered up, by trick, scheme or device, the material fact that although SCANA paid \$3,200,000.00 in 2005 for services fees under the Seventh Amendment to the SCANA Contract, and Cobb EMC did not receive any of that payment.

COUNT 22

THEFT INVOLVING SCANA SERVICE FEE PAYMENTS: 2006

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **THEFT BY TAKING** for the said accused, in the County of Cobb and State of Georgia, approximately during the year 2006, the exact date(s) being unknown to the Grand Jurors at this time, did, with the requisite intent, unlawfully take, or, being in lawful possession thereof, unlawfully appropriate, property of another to wit: property of Cobb EMC and its members, approximately \$4,000,000.00 in United States currency and customer information, but in any event, property having a value greater than five hundred dollars (\$500.00), with the intention of depriving said victims

of said property, said accused and said crime being unknown to the State, as contemplated by O.C.G.A § 17-3-2(2), April 22, 2009, contrary to the laws of this State, the good order, peace and dignity thereof. In addition, some victims of this theft were sixty-five years of age or older at the time of the theft, as contemplated by OGCA § 17-3-2.2. The said property was taken by **DWIGHT T. BROWN**, an officer and fiduciary of Cobb EMC, in breach of a fiduciary obligation.

Stated more specifically, on approximately May 29, 1998, a “Natural Gas Retail Service Alliance Agreement” (“SCANA Contract”) was entered into among several entities, including Cobb Energy and SCANA Energy Marketing, Inc., (“SCANA”). Although he was President/CEO of Cobb EMC at the time, Dwight T. Brown had Cobb Energy enter into the SCANA Contract and signed that contract on behalf of Cobb Energy. Under that contract, SCANA paid Cobb Energy substantial sums of money during 2006, in exchange for the right to market and sell natural gas to customers of Cobb EMC. Although Cobb EMC was not a party to the SCANA Contract, valuable property and assets of Cobb EMC and its members, including but not limited to membership and marketing data, were used to market and sell the natural gas to Cobb EMC customers. Cobb EMC was neither paid for the use of its property and assets nor did it receive any of the revenues from

the SCANA Contract. Cobb EMC did not become a party to the SCANA Contract until approximately October 31, 2005, when by a “Seventh Amendment To Natural Gas Retail Service Alliance Agreement” (“Seventh Amendment”), the SCANA Contract was amended for purposes of termination. Pursuant to the Seventh Amendment to the SCANA Contract, SCANA made the following payments for service fees, which were received by Cobb Energy:

January 31, 2006	\$1,600,000.00
February 28, 2006	\$1,600,000.00
June 30, 2006	\$800,000.00

Of that \$4,000,000.00, property having a value greater than \$500.00 was the property Cobb EMC and its members. Under Cobb EMC’s bylaws, the service fee payments were the property of Cobb EMC and its members and could not be given to Cobb Energy without the affirmative vote of two-thirds of Cobb EMC’s members, which never occurred. These funds should not have been diverted to Cobb Energy and the funds, or a portion of them at least greater than \$500.00, should have become patronage capital owned by the members of Cobb EMC.

COUNT 23

**THEFT OF SCANA RELEASE AND NON-COMPETITION
PAYMENT: 2006**

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **THEFT BY TAKING** for the said accused, in the County of Cobb and State of Georgia, on approximately October 31, 2006 the exact date being unknown to the Grand Jurors at this time, did, with the requisite intent, unlawfully take, or being in lawful possession thereof, unlawfully appropriate, property of another to wit: property of Cobb EMC and its members in the form of and in the approximate amount of \$2,000,000.00 in United States Currency, paid by SCANA on approximately October 31, 2006 , but in any event an amount greater than \$500 (\$500.00) with the intention of depriving said victims of said property, did, as part of the termination of the SCANA Contract between SCANA and Cobb Energy, unlawfully take and misappropriate approximately an additional \$2,000,000.00 of Cobb EMC/Member funds to Cobb Energy, contrary to the laws of this State, the good order, peace and dignity thereof. The accused and the crime were unknown to the State, as contemplated by O.C.G.A § 17-3-2(2), before April 22, 2009. In addition, some victims of this theft were

sixty-five years of age or older at the time of theft, as contemplated by OGCA § 17-3-2.2. The said property was taken by **DWIGHT T. BROWN**, an officer and fiduciary of Cobb EMC, in breach of a fiduciary obligation.

Stated more specifically, under the terms of the Seventh Amendment to the SCANA Contract between SCANA and Cobb Energy, SCANA approximately, \$2,000,000.00 was paid by SCANA to Cobb Energy on approximately October 31, 2006. That money was property of and should have gone to Cobb EMC and its members. That property was withheld from Cobb EMC and its members at the direction of the accused. At least an amount in excess of \$500.00 was the property of the members of Cobb EMC. The retention of the funds by Cobb Energy violated the bylaws of Cobb EMC, was not disclosed to the Cobb EMC members, and was not approved or consented to by the members. Under the bylaws, the funds were the property of Cobb EMC and its members and could not be withheld from them by Cobb Energy without an affirmative vote of two-thirds of the members, which was not done. These funds should not have been diverted to Cobb Energy and the funds, or a portion of them at least greater than \$500.00, should have become patronage capital owned by the members of Cobb EMC.

Count 24

FALSE STATEMENTS AND WRITINGS CONCERNING 2006

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **FALSE STATEMENTS AND WRITINGS**, violating **O.C.G.A. §16-10-20**, for the said accused, in the County of Cobb and State of Georgia, approximately during the years 2006 through 2007, the exact date(s) unknown to the Grand Jurors at this time, did, with the requisite intent, knowingly and willfully falsify, conceal, and cover up, by trick, scheme or device a material fact; make false, fictitious and fraudulent statements and representations; and make and use false writings, to wit: the 2006 Cobb Electric Membership Corporation Annual Report, an Independent Auditor's Report containing a statement of Revenue and Patronage Capital, and the 2006 Newsletters, in a matter within the jurisdiction of the Secretary of State of Georgia and the Department of Community Affairs, being departments or agencies of state government, and the County of Cobb and the Cobb County School District, being political subdivisions of the State of Georgia.

Said accused and said crime being unknown to the State, as contemplated by O.C.G.A. §17-3-2(2), before April 22, 2009, contrary to the laws of said State, the peace, good order and dignity thereof.

Stated more specifically, the 2006 Cobb EMC Annual Report and Newsletters concealed and covered up, by a trick, scheme or device, the material facts that Cobb EMC was not a party to the SCANA Contract, Cobb EMC did not receive any revenue from the SCANA Contract, and Cobb EMC was not paid for use of its customer information by Cobb Energy in connection with the SCANA Contract.

In addition, the 2006 Cobb EMC Annual Report and Newsletters concealed and covered up, by trick, scheme or device, the material fact that although SCANA paid \$4,000,000.00 in 2006 for service fees under the Seventh Amendment to the SCANA Contract, and Cobb EMC did not receive any of that payment.

In addition, the 2006 Cobb EMC Annual Report and Newsletters concealed and covered up, by trick, scheme or device, the material fact that although SCANA paid \$2,000,000.00 in 2006 for release and non-competition provisions included in the Seventh Amendment to the SCANA Contract, and Cobb EMC joined in those provisions releasing SCANA and

agreeing not to compete with it in various respects, Cobb EMC did not receive any of that payment.

COUNT 25

THEFT OF SCANA RELEASE AND NON-COMPETITION PAYMENT: 2007

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **THEFT BY TAKING** for the said accused, in the County of Cobb and State of Georgia, on approximately October 31, 2007 the exact date being unknown to the Grand Jurors at this time, did, with the requisite intent, unlawfully take, or being in lawful possession thereof, unlawfully appropriate, property of another to wit: property of Cobb EMC and its members in the form of and in the approximate amount of \$1,000,000.00 in United States Currency, of a total payment of \$2,000,000.00 by SCANA on approximately October 31, 2007, but in any event an amount greater than \$500 (\$500.00) with the intention of depriving said victims of said property, did, as part of the termination of the SCANA Contract described in Count II above, unlawfully take and misappropriate approximately an additional \$2,000,000.00 of Cobb EMC/Member funds to Cobb Energy, contrary to the laws of this State, the good order, peace and dignity thereof. The accused

and the crime were unknown to the State, as contemplated by O.C.G.A § 17-3-2(2), before April 22, 2009. In addition, some victims of this theft were sixty-five years of age or older at the time of theft, as contemplated by OGCA § 17-3-2.2. The said property was taken by **DWIGHT T. BROWN**, an officer and fiduciary of Cobb EMC, in breach of a fiduciary obligation.

Stated more specifically, under the terms of the Seventh Amendment to the SCANA Contract, between SCANA and Cobb Energy, SCANA agreed to pay approximately \$2,000,000.00, was paid by SCANA to Cobb Energy on approximately October 31, 2007. That money was the property of Cobb EMC and its members. That property was withheld from Cobb EMC and its members at the direction of the accused. At least an amount in excess of \$500.00 was the property of the members of Cobb EMC. The retention of the funds by Cobb Energy violated the bylaws of Cobb EMC, was not disclosed to the Cobb EMC members, and was not approved or consented to by the members. Under the bylaws, the funds were the property of Cobb EMC and its members and could not be withheld by Cobb Energy without an affirmative vote of two-thirds of the members, which was not done. These funds should not have been diverted to Cobb Energy and the funds, or a portion of them at least greater than \$500.00,

should have become patronage capital owned by the members of Cobb EMC.

Count 26

FALSE STATEMENTS AND WRITINGS CONCERNING 2007

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **FALSE STATEMENTS AND WRITINGS**, violating **O.C.G.A. §16-10-20**, for said accused in Cobb County and the State of Georgia on the approximate dates stated below, with the requisite intent did knowingly and willfully falsify, conceal and cover up, by a trick, scheme or device a material fact; make false, fictitious and fraudulent statements and make and use false writing and documents to wit: from 2007 through 2008 **DWIGHT T. BROWN** and the directors and officers of Cobb EMC concealed and cover up a material fact and failed to disclose to the Cobb EMC members the SCANA payments discussed above in Count 24, said omission concealing and covering up a material fact in a matter within the jurisdiction of the County of Cobb, and the Cobb County School District, being political subdivisions of the State of Georgia.

Said accused and said crime being unknown to the State, as contemplated by O.C.G.A. §17-3-2(2) before April 22, 2009, contrary to the laws of said State, the peace, good order and dignity thereof.

Stated more specifically, at the 2007 Cobb EMC Annual Meeting the accused falsely stated to the members the following:

“I will tell you that we have never, ever, done anything without telling you. And, if you don’t believe it, go back and dig out all your newsletters, all your annual reports and you will find its all there.”

This statement and representation was false, fictitious and fraudulent.

In addition, the 2007 Cobb EMC Annual Report and Newsletters concealed and covered up, by a trick, scheme or device, the material facts that Cobb EMC was not a party to the SCANA Contract, Cobb EMC did not receive any revenue from the SCANA Contract, and Cobb EMC was not paid for use of its customer information by Cobb Energy in connection with the SCANA Contract.

In addition, the 2007 Cobb EMC Annual Report and Newsletters concealed and covered up, by trick, scheme or device, the material fact that SCANA paid \$2,000,000.00 for release and non-competition provisions included in the Seventh Amendment to the SCANA Contract. Cobb EMC joined in those provisions, releasing SCANA and agreeing not to compete

with it in various respects, but Cobb EMC did not receive any of the \$2,000,000.00 paid by SCANA for those provisions.

Count 27

CONSPIRACY TO DEFRAUD COBB COUNTY

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN** with the offense of **CONSPIRACY TO DEFRAUD COBB COUNTY**, violating **O.C.G. A. § 16-10-21(b)**, for the said accused, in the County of Cobb and State of Georgia, approximately between 1998 through 2007, the exact date(s) being unknown to the Grand Jurors at this time, did, with the requisite intent, conspire or agree with Cobb Energy and others to commit the theft of property which belonged to Cobb County, a Cobb EMC member and a political subdivision of the State of Georgia, to wit; property of Cobb County in the form of patronage capital that should have been credited to Cobb County in its capacity as a member of Cobb EMC, in an amount greater than five hundred dollars (\$500.00), with the intention of depriving Cobb County of said property, and in furtherance of the conspiracy did perform overt acts, including the conduct set forth in Count 4, and Count 7 through Count 33 below, as well as affixing or allowing to be affixed to each of Cobb EMC's annual reports for the years 1998 – 2007, and to Cobb

EMC's Newsletters during the years 1998 - 2007, his photograph, title, and signature, knowing those annual reports and Cobb EMC "Connections, The Official Newsletter Of Cobb Electric Membership Corporation," (referred herein as the "Newsletter") to contain false and misleading statements, said accused and said crime being unknown to the State, as contemplated by O.C.G.A. § 17-3-2(2), before April 22, 2009, contrary to the laws of said State, the peace, good order and dignity thereof.

Count 28

CONSPIRACY TO DEFRAUD THE COBB COUNTY SCHOOL DISTRICT

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse **DWIGHT T. BROWN** with the offense of **CONSPIRACY TO DEFRAUD THE COBB COUNTY SCHOOL DISTRICT**, violating **O.C.G.A. §16-10-21(b)**, for the said accused, in the County of Cobb and State of Georgia, approximately between 1998 through 2007, the exact date(s) being unknown to the Grand Jurors at this time, did, with the requisite intent, conspire or agree with Cobb Energy and others to commit the theft of property which belonged to the Cobb County School District, a Cobb EMC member and a political subdivision of the State of Georgia, to wit; property of the Cobb County School District in the form of patronage capital due to it in its capacity as a

member of Cobb EMC, in an amount greater than five hundred dollars (\$500.00), with the intention of depriving the Cobb County School District of said property and in furtherance of the conspiracy did perform overt acts, including the conduct set forth in Count 4, and Count 7 through Count 33 below, as well as affixing or allowing to be affixed to each of Cobb EMC's annual reports for the years 1998 – 2007, and to Cobb EMC's Newsletter, his photograph, title, and signature, knowing those annual reports and Newsletters to contain false and misleading statements, said accused and said crime being unknown to the State, as contemplated by O.C.G.A. § 17-3-2(2), before April 22, 2009, contrary to the laws of said State, the peace, good order and dignity thereof.

COUNT 29

THEFT INVOLVING METER READING FEES

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse, **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **THEFT BY TAKING** for the said accused, in the County of Cobb and State of Georgia, in approximately December 2000, the exact date being unknown to the Grand Jurors at this time, did, with the requisite intent, unlawfully take, or, being in lawful possession thereof, unlawfully

appropriated, property of another to wit: property of Cobb EMC and its members in the form of meter reading fees in an amount greater than five hundred dollars (\$500.00) in United States currency, with the intention of depriving said victims of said property, said accused and said crime being unknown to the State, as contemplated by O.C.G.A § 17-3-2(2), before April 22, 2009 contrary to the laws of this State, the good order, peace and dignity thereof. In addition, some victims of this theft were sixty-five years of age or older at the time of theft, as contemplated by OGCA § 17-3-2.2. The said property was taken by **DWIGHT T. BROWN**, an officer and fiduciary of Cobb EMC, in breach of a fiduciary obligation.

Stated more specifically, on approximately 11/17/97, Cobb EMC entered a contract with Bermex, Inc. (“Bermex”), under which Bermex was to furnish meter reading services for Cobb EMC. Cobb Energy was not a party to the contract. Under the supervision and direction of the accused, Cobb EMC paid fees to Cobb Energy for the meter reading services that were furnished by Bermex. The meter reading fees paid to Cobb Energy by Cobb EMC during 1999 through 2007 was approximately \$2,890,775.00. Payment of the fees by Cobb EMC to Cobb Energy was the misappropriation of the property of Cobb EMC and its members. At least an amount in excess of \$500.00 was the property of the members of Cobb

EMC. The receipt and retention of these funds by Cobb Energy violated the bylaws of Cobb EMC, was not disclosed to the Cobb EMC members, and was not approved or consented to by the members. Under the bylaws, the funds were the property of Cobb EMC and its members and could not be paid to and retained by Cobb Energy without an affirmative vote of two-thirds of the members, which was not done. These funds should not have been diverted to Cobb Energy and the funds, or a portion of them at least greater than \$500.00, should have become patronage capital owned by the members of Cobb EMC.

COUNT 30

THEFT INVOLVING STOCK DIVIDENDS

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse, **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **THEFT BY TAKING** for the said accused, in the County of Cobb and State of Georgia, approximately between 1997 and 2007, the exact dates being unknown to the Grand Jurors at this time, did unlawfully take, or, being in lawful possession thereof, unlawfully appropriate, property of another to wit: property of Cobb EMC members, in the approximate amount greater than five hundred dollars (\$500.00) in United States currency, with

the intention of depriving said victims of said property, said accused and said crime being unknown to the State, as contemplated by O.C.G.A § 17-3-2(2), before April 22, 2009 contrary to the laws of this State, the good order, peace and dignity thereof. In addition, some victims of this theft were sixty-five years of age or older at the time of theft, as contemplated by OGCA § 17-3-2.2. The said property was taken by **DWIGHT T. BROWN**, an officer and fiduciary of Cobb EMC, in breach of a fiduciary obligation.

Stated more specifically, on approximately February 1, 2002, Cobb EMC and Cobb Energy each provided **DWIGHT T. BROWN** with an interest free loan of \$1,500,000. In 2005 the loan arrangement was modified so that \$2,000,000.00 was lent by Cobb Energy and \$1,000,000.00 Cobb EMC was lent by Cobb EMC. The loan funds were used to buy preferred stock in Cobb Energy for **DWIGHT T. BROWN** and his wife. All principal and interest on the loans was forgiven and **DWIGHT T. BROWN** and his wife continued to own the preferred stock and receive substantial dividends thereon. For the approximate period February 1, 2002 through December, 2008, **DWIGHT T. BROWN** and his wife received dividends on their shares of preferred stock in Cobb Energy of approximately \$1,836,375.00. The dividend payments were a theft of property from the Cobb EMC and its members. The accused intentionally, in conspiracy with Cobb Energy, paid

dividends to the accused and his wife and misappropriated funds of Cobb EMC and its members. Of that property, at least an amount in excess of \$500.00 was the property of the members of Cobb EMC. The payment of these dividends with funds belonging to Cobb EMC and its members violated the bylaws of Cobb EMC, was not disclosed to the Cobb EMC members, and was not approved or consented to by the members. Under the bylaws, the funds were the property of Cobb EMC and its members and could not be retained or distributed by Cobb Energy without an affirmative vote of two-thirds of the members, which was not done. These funds should not have been diverted to Cobb Energy and the funds, or a portion of them at least greater than \$500.00, should have become patronage capital owned by the members of Cobb EMC.

COUNT 31

THEFT INVOLVING LOANS

and the Grand Jurors, aforesaid, in the name and on behalf of the citizens of Georgia, further charge and accuse, **DWIGHT T. BROWN**, individually and as a party concerned in the commission of a crime, with the offense of **THEFT BY TAKING** for the said accused, in the County of Cobb and State of Georgia, approximately in October, 2005, the exact dates being unknown to the Grand Jurors at this time, did, with the requisite intent,

unlawfully take, or, being in lawful possession thereof, unlawfully appropriated, property of another to wit: property of Cobb EMC members in an amount greater than five hundred dollars (\$500.00) in United States currency, with the intention of depriving said victims of said property, said accused and said crime being unknown to the State, as contemplated by O.C.G.A § 17-3-2(2), before April 22, 2009 contrary to the laws of this State, the good order, peace and dignity thereof. In addition, some victims of this theft were sixty-five years of age or older at the time of theft, as contemplated by OGCA § 17-3-2.2. The said property was taken by **DWIGHT T. BROWN**, an officer and fiduciary of Cobb EMC, in breach of a fiduciary obligation.

Stated more specifically, on approximately February 1, 2002, Cobb EMC and Cobb Energy each provided **DWIGHT T. BROWN**, who at the time was President and Chief Executive Officer of Cobb EMC, President and Chief Executive Officer of Cobb Energy, and a director of Cobb Energy, with an interest free loan of \$1,500,000. In 2005 the loan arrangement was modified so that \$2,000,000 was lent by Cobb Energy and \$1,000,000 was lent by Cobb EMC to **DWIGHT T. BROWN**. The proceeds of those loans were used to buy preferred stock in Cobb Energy for **DWIGHT T. BROWN** and his wife. All the principal and interest on the loans was

forgiven and **DWIGHT T. BROWN** and his wife retained the preferred stock and continued to receive the substantial dividends thereon. The forgiven loans were a theft of property from the Cobb EMC and its members in excess of \$500.00. The accused intentionally, in conspiracy with Cobb Energy and others, misappropriated property of Cobb EMC and its members. This activity was not disclosed to or approved by the members of Cobb EMC. Of the stolen property, an amount in excess of at least \$500.00 was the property of the members of Cobb EMC. The receipt and retention of these funds from Cobb Energy violated the bylaws of Cobb EMC, was not disclosed to the Cobb EMC members, and was not approved or consented to by the members. Under the bylaws, the funds were the property of Cobb EMC and its members and could not be transferred to the accused without an affirmative vote of two-thirds of the members, which was not done. These funds should not have been diverted to Cobb Energy and the funds, or a portion of them at least greater than \$500.00, should have become patronage capital owned by the members of Cobb EMC.