



January 4, 2023

Christopher M. Huber, Esq.
General Counsel
Office of Regulatory Staff
1401 Main St., Suite 900
Columbia, SC 29201

Re. Response of Fairfield Electric Cooperative, Inc. to May 11, 2022
correspondence involving Request for Inspection, Audit,
Examination, and Other Relief from Larry Sharpe, II

Dear Mr. Huber:

Please accept this response on behalf of Fairfield Electric Cooperative, Inc. to your May 11, 2022 letter to the Board of Trustees. Fairfield Electric Cooperative, Inc. did not understand that a response was expected to the letter, and provides the following information which it believes will satisfy any concern that the Office of Regulatory Staff might have regarding the meeting of the Board of Trustees on April 11, 2022.

Notice of the meeting was consistent with Section 33-49-625 of the South Carolina Code of Laws. The referenced code section states requirements for notice of “emergency meetings:”

Written notice of emergency meetings of the board of trustees must be posted at a location accessible and visible to the cooperative membership on the cooperative’s website and at the cooperative’s principal place of business at least twenty-four hours before the meeting.

Fairfield Electric Cooperative, Inc. complied with this section by posting notice on April 8. It might have been a better practice to consistently label the meeting as an “emergency meeting,” but no language in the statute commands such identification. A comprehensive revision of by-laws is in progress, and to avoid

the potential for future confusion notice of meetings deemed emergencies will be identified as such under the proposed amendments.

The subject of the meeting did not involve the composition of the board of trustees. Section 33-49-610(A) of the South Carolina Code of Laws vests management of the cooperative in a board of trustees composed of not less than five trustees:

The business and affairs of a cooperative must be managed by a board of not less than five trustees, each of whom must be a member of the cooperative or of another cooperative which is a member of the cooperative.

Subsections (E) and (F) of Section 33-49-610 make it clear that the position of trustee is distinct from the composition of the board by referencing vacancies in the office of trustee. Clearly a vacancy in an office of trustee can exist without changing the composition of the board as the composition remains the number of positions established by the by-laws provided there are not fewer than five trustees. Given this statutory language it seems beyond argument that the meeting of the board of trustees on April 11, 2022 did not change the number of trustees so it cannot be said that the board acted to change the composition of the board. The board of trustees acted as it was authorized to act to determine the eligibility of a candidate for a board position. The composition of the board was not affected by the board's decision regarding the eligibility of the candidate as the number of board positions remained unchanged.

Proposed by-law revisions will seek to eliminate potential ambiguities and inconsistencies in the nomination and qualification process. The board of trustees of Fairfield Electric Cooperative, Inc. has recognized that the existing by-laws have ambiguities and inconsistencies in several provisions including those relating to the determination of eligibility of candidates and the resolution of potential election disputes. The board has commissioned a comprehensive revision of the existing by-laws in an effort to achieve consistency with state law, and to eliminate potential conflicts and confusion. The board appreciates your advice, and looks forward to continuing a harmonious relationship with the Office of Regulatory Staff which shares with the Fairfield Electric Cooperative, Inc. the goal of effectively serving their respective constituents.

Please do not hesitate to call on our board or staff if we may ever be of assistance or provide information in the future.

Sincerely,

FAIRFIELD ELECTRIC COOPERATIVE, INC.



Mitchell D. Rabon, President
Board of Trustees