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May 11, 2022

**VIA EMAIL ONLY**

Board of Trustees  
Fairfield Electric Cooperative, Inc.  
c/o Jay Bender, Esquire  
701 Blythewood Road  
Blythewood, SC 29016  
[jbender@brblegal.com](mailto:jbender@brblegal.com)

RE: Request for Inspection, Audit, Examination, and Other Relief from  
Larry Sharpe, II

Dear Members of the Board:

The South Carolina Office of Regulatory Staff (“ORS”) received a request in writing on April 26, 2022, from counsel for Larry Sharpe, II, that ORS inspect, audit, and examine (“Request for Inspection”) Fairfield Electric Cooperative, Inc. (“Fairfield”). The Request for Inspection relates to the decision of the Board of Trustees of Fairfield (“Board”) to disqualify Mr. Sharpe as a nominee or candidate for a position on the Board for purposes of the upcoming election. ORS forwarded a copy of the Request for Inspection to Fairfield’s Board on April 27, 2022. ORS served the Board with its First and Continuing Request for Production of Books, Records and Other Information (“Requests for Information”) on May 3, 2022. ORS also served Mr. Sharpe with a set of Requests for Information that same day. ORS received responses from the Board and Mr. Sharpe. By this letter, ORS submits its report of findings to the management and board of Fairfield pursuant to S.C. Code Ann. § 33-49-150(A).

**Summary of Information Provided:**

The Request for Inspection included a notarized Verification signed by Mr. Sharpe that the contents are true and correct to the best of his knowledge, information, and belief. According to the Request for Inspection, Mr. Sharpe is the Corporate Treasurer of Blythewood Oil Co., Inc. (“Blythewood Oil”), which is a wholesale distributor of petroleum products such as gasoline, kerosene, and diesel. Prior to August 31, 2021, Blythewood Oil sold Fairfield gasoline and diesel fuel for its vehicles.

Mr. Sharpe filed an application seeking nomination to be placed on the ballot for the election to Fairfield’s Board on March 11, 2022. According to the Request for Inspection, Mr. Sharpe interviewed with the Nominating Committee for Fairfield on March 14, 2022. Mr. Sharpe reported he discussed his position with Blythewood Oil during the interview and answered questions regarding the business relationship that existed between Blythewood Oil and Fairfield. Mr. Sharpe reported he indicated to the Nominating Committee that Blythewood Oil did not have a direct business relationship with Fairfield and that late summer 2021 “sounded right” as the last date Blythewood Oil had such a relationship with Fairfield. According to the Request for Inspection, Mr. Sharpe also indicated during the interview he understood Blythewood Oil could not have a direct business relationship with Fairfield if he were to serve as a member of the Board.

Mr. Sharpe indicated in the Request for Inspection that the last time Blythewood Oil provided Fairfield with any goods or services was August 18, 2021, and Blythewood Oil received payment for those goods and services on August 31, 2021. Consequently, Mr. Sharpe asserts that August 31, 2021, was the last date Blythewood Oil had a direct business relationship with Fairfield. Mr. Sharpe reported the business relationship ended because the Board removed Blythewood Oil from Fairfield’s supplier list.

The Request for Inspection describes a meeting between Mr. Sharpe and Fairfield’s employees on March 11, 2022, to discuss fuel purchasing procedures. Mr. Sharpe asserts this meeting was at Fairfield’s request. According to Mr. Sharpe, when asked by Fairfield employees if Blythewood Oil would consider being placed on Fairfield’s supplier list, Mr. Sharpe declined because he was seeking to serve as a Trustee.

On March 14, 2022, the Nominating Committee for Fairfield met to consider nominees for the Board. The Committee nominated Mr. Sharpe for a seat representing an At Large District.

On Monday, April 11, 2022, the Board held, what it termed, a Special Board Meeting at 3:00 p.m. to consider disqualification of Mr. Sharpe as a Board nominee. In response to the Requests for Information sent to Fairfield, the Board reported that the April 11th meeting was an emergency meeting. Notice of the meeting was posted at a location accessible and visible to the cooperative membership at Fairfield’s principal place of business on Friday, April 8, 2022, and on Fairfield’s website at 3:55 p.m. the same day. Fairfield provided documentation supporting the accuracy of these dates and times. The notice placed in Fairfield’s principal place of business indicated it was a “Notice of Special Board Meeting” and that the purpose was to “discuss the disqualification of a nominee for the position of trustee.” The notice on the website similarly indicated it was a “Special Called Meeting” and contained the same purpose. Neither notice used the term “emergency.” Both the Board and Mr. Sharpe reported in response to questions from ORS that no additional notice of the meeting was provided directly to Mr. Sharpe.

Fairfield provided ORS a copy of the Board-approved minutes from the April 11th meeting. All members of the Board were in attendance. Trustee Hopkins recused himself from the meeting and did not participate in the meeting or vote. The minutes contain the following information regarding the subject matter of the meeting:

1. Act No. 56 of the 2019-2020 General Assembly of South Carolina prohibits board members from having a business relationship with the cooperative separate from membership in the cooperative.
2. The bylaws prohibit a “direct business relationship” between a trustee and the cooperative.
3. Under the bylaws the Chairman and the Board of Trustees have the duty to disqualify ineligible candidates for trustee positions.
4. Larry Sharpe, Jr. is associated with Blythewood Oil Co., and as recently as March of this year had met with cooperative employees to discuss fuel purchasing procedures.
5. Over the past 25 months Blythewood Oil Co. has received payments from the cooperative of more than \$10,000 per month for purchases.
6. Over the past five years Blythewood Oil Co. has received payment in excess of \$1 Million dollars for sales to the cooperative.

The minutes further state the context of Act 56 was to eliminate self-dealing between cooperatives and the trustees of the cooperatives. Following discussion, a motion was made to disqualify Mr. Sharpe as a consequence of his business relationship with the cooperative through Blythewood Oil. The motion was seconded and carried unanimously. Mr. Sharpe learned of the meeting the same day it was held and received a copy of the minutes from the meeting on April 12, 2022.

In response to the Requests for Information ORS served, the Board indicated that based on the evidence presented Mr. Sharpe was found unqualified to serve as a Trustee “as a consequence of a business relationship between a company he represents, Blythewood Oil Co., and Fairfield.” Further, the Board stated it does not agree the business relationship between the two entities terminated on August 31, 2021. Rather, Fairfield’s position is “given the more than One Million (\$1,000,000) Dollars paid to Blythewood Oil Co. over several years, and Mr. Sharpe’s recent communications with Fairfield . . . both Mr. Sharpe and Fairfield understand a business relationship . . . continues.” The recent communications Fairfield referenced are as follows:

- December 8, 2021: Mr. Sharpe engaged in a conversation with Mr. Bruce Bacon, Fairfield CEO, regarding Fairfield’s fuel purchasing policy which was developed by accountants for Fairfield, and Mr. Sharpe submitted a request to attend the December 13, 2021 Fairfield Board meeting. Fairfield provided a copy of this request to ORS.
- December 13, 2021: Mr. Bacon advised Mr. Sharpe that he would not be able to put Mr. Sharpe on the agenda for the December board meeting but would put him on the agenda for the January board meeting.
- January 14, 2022: Mr. Sharpe declined an opportunity to attend the January 24, 2022 board meeting due to a scheduling conflict.
- March 11, 2022: Mr. Sharpe met with Mr. Kevin Shull of Fairfield to discuss Fairfield’s fuel purchasing procedures.

Fairfield does not agree that its business relationship with Blythewood Oil has ended.

In response to a question from ORS about whether a decision regarding Board composition was made at the April 11, 2022 Board meeting, the Board responded “[n]o” and that Board composition is established by Fairfield’s bylaws.

In response to ORS’s Requests for Information, Mr. Sharpe reported he has not made a request in writing that the Board reconsider its decision to disqualify him and has not requested judicial relief related to this matter.

**ORS’s Authority Under Act 56:**

ORS’s authority and jurisdiction regarding this matter is set forth in S.C. Code Ann. § 33-49-150(A), which was enacted as part of Act 56. Under this statute, ORS is vested with the authority and jurisdiction to make inspections, audits, and examinations of electric cooperatives related to compliance with the provisions of certain enumerated statutes.<sup>1</sup> Upon completion of an authorized inspection, audit, or examination, ORS must report its findings to the management and board of the electric cooperative and attempt to resolve with the management and board any compliance issues identified. The Public Service Commission of South Carolina (“Commission”) is vested with the authority and jurisdiction to resolve any disputed issues arising from ORS inspections, audits, or examinations.

Section 33-49-150(A) does not vest ORS with authority to inspect, audit, or examine compliance with a cooperative’s bylaws. This is further demonstrated by S.C. Code Ann. § 33-49-160(E), which expressly vests ORS with such authority with respect to the bylaws of an association of electric cooperatives. No similar express grant of authority exists in section 33-49-150(A). ORS expresses no opinion regarding the violations of bylaws Mr. Sharpe alleges occurred except to the extent necessary as part of assessing compliance with the statutes listed in section 33-49-150(A) that Mr. Sharpe asserts were violated.

Further, with respect to Mr. Sharpe’s request that ORS require the Board to reinstate Mr. Sharpe as a candidate prior to Fairfield’s Annual Meeting. ORS does not have authority under section 33-49-150(A) to direct the Board to take such action.

**Findings:**

Regarding the Board’s general authority with respect to the nominations and elections process, Fairfield’s bylaws delegate certain responsibilities related to Board nominations and elections to the Committee on Nominations and Credentials and Election Committee. However, pursuant to S.C. Code Ann. § 33-49-610(A), “[t]he business and affairs of a cooperative must be managed by a board of not less than five trustees.” The nominations and elections process are inherently part of the business and affairs of a cooperative, and the Board retains oversight authority in these areas, including with respect to disqualification of a nominee or candidate.

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<sup>1</sup> The enumerated statutes are S.C. Code Ann. §§ 33-49-255, 33-49-280, 33-49-420, 33-49-430, 33-49-440, 33-49-450, 33-49-610, 33-49-615, 33-49-620, 33-49-625, 33-49-630, 33-49-640, 33-49-645, 33-49-1410, 33-49-1420, 33-49-1430, 33-49-1440, 58-27-820, and 58-27-840.

Moreover, section 4.02 of Fairfield’s bylaws grants the Chairman of the Board the authority to disqualify a nominee upon establishment of the fact the nominee lacks eligibility. While section 4.02 states such decision shall be made at the meeting at which the nominee is up for election, ORS finds no violation of any of the statutes set forth in S.C. Code Ann. § 33-49-150(A) solely from the fact the Board made the disqualification decision at a meeting earlier than the Annual Meeting of Fairfield’s members at which the election was scheduled to occur. It is unclear how compliance with other provisions of chapter 49 of Title 33 of the South Carolina Code (“chapter 49”), including the requirement of the availability of early voting under certain circumstances as set forth in S.C. Code Ann. § 33-49-440, could be achieved if the disqualification decision was made at the meeting when the election is scheduled to occur.

1. S.C. Code Ann. § 33-49-630

Mr. Sharpe asserts Fairfield violated S.C. Code Ann. § 33-49-630. The pertinent portion of this statute states that a member of an electric cooperative’s board of trustees may not “have a business relationship with the electric cooperative that is distinct from or in addition to the trustee’s mandatory cooperative membership pursuant to Section 33-49-610(A) or his service on the board of trustees.” S.C. Code Ann. § 33-49-630(B)(2). Mr. Sharpe asserts the Board violated this statute by determining that he has a “direct business relationship” with Fairfield because he asserts August 31, 2021, was the last date Blythewood Oil had a business relationship with Fairfield. Fairfield does not agree with Mr. Sharpe’s assertion that the business relationship has ended. ORS notes that neither party points to any further purchases occurring after September 2021.

An electric cooperative is not prohibited from having additional qualification requirements for trustees beyond those set forth in section 33-49-630 and elsewhere in chapter 49. Indeed, Fairfield lists qualification requirements in section 4.02 of its bylaws, including that “[a] Trustee may not have a direct business relationship with the Electric Cooperative that is distinct from or in addition to the Trustee’s mandatory Cooperative membership.”

Based on the information Mr. Sharpe and the Board provided and the examination procedures performed, a factual dispute exists regarding whether a business relationship continues between them through Mr. Sharpe’s position with Blythewood Oil. ORS makes no finding of non-compliance with respect to section 33-49-630.

2. S.C. Code Ann. § 33-49-625

Mr. Sharpe also asserts the April 11, 2022 Board meeting at which the disqualification decision was made did not comply with S.C. Code Ann. § 33-49-625. Subsection (A) of this statute provides that ten-days-notice of all nonemergency board of trustee meetings must be provided through posting on the cooperative’s website and at its principal place of business. Under subsection (B) of section 33-49-625, written notice of emergency meetings of a board must be provided in the same manner as nonemergency meetings at least twenty-four hours before the meeting. “Emergency meetings of the board may be called when appropriate to deal with extraordinary circumstances, but the board of trustees must not make decisions regarding rates,

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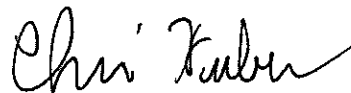
fees, charges, board of trustees composition or board of trustees compensation at an emergency meeting.” S.C. Code Ann. § 33-49-625(B).

Fairfield posted notice of the Monday, April 11th Board meeting at its principal place of business on the preceding Friday, April 8th. Fairfield posted notice on its website at 3:55 p.m. on the same day. While Fairfield stated in response to ORS’s Requests for Information that this was an emergency meeting, neither the principal place of business notice nor website notice describe it as such. Rather, they described the meeting as a Special Meeting. Further, a decision was made at the meeting to disqualify a nominated individual from being a nominee or candidate for the Board, which impacts Board composition. Under section 33-49-625(B), decisions regarding Board composition cannot be made at an emergency meeting. ORS finds that the April 11, 2022 Board meeting did not comply with section 33-49-625.

**Recommendations:**

ORS recommends Fairfield undertake a review of its processes for determining when an emergency meeting of the Board is appropriate. As stated in section 33-49-625(B), such meetings are reserved for “extraordinary circumstances” and there are limitations on the scope of decisions which can be made at such meetings. ORS further recommends Fairfield undertake a comprehensive review of its bylaws, including assessing whether any sections need updating to make them consistent with chapter 49 and Act 56. In particular, ORS recommends Fairfield review use of the terminology special board meeting versus emergency board meeting in its bylaws and review the sections of its bylaws on trustee qualifications, nominations, and elections, including section 4.02, for improvements or clarifications. Finally, ORS recommends Fairfield review its process for assessing trustee candidates’ credentials and qualifications during the process of nominating candidates for the Board.

Sincerely,



Christopher M. Huber