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**Members**

**Coles-Moultrie Electric Cooperative**

**Dear Fellow Members:**

I have recently learned that there has been some confusion concerning the retirement of capital credits, especially capital credits that are owed to deceased members of the Cooperative. At the request of your Board of Directors and the staff of the Coles-Moultrie Electric Cooperative, I have been asked to address the process for the retirement of capital credits, especially those that are owed to deceased members.

Under our Bylaws, Article 9, our Cooperative operates as a not-for-profit company. As such, all revenues collected in excess of expenses are annually allocated to the members of the Cooperative. As members of the Cooperative, we each have patronage capital accounts reflecting the amount of excess revenues or "profits" that have been allocated to us over the years of our membership. Under our Bylaws and Illinois law, we have no vested right to those profits until they are properly "retired" by the Board of Directors. Article 9, Sections 3 and 4 of our Bylaws establish the manner in which capital credits may, from time to time, be retired by the Board of Directors. Those Sections establish two (2) separate types of retirements: general retirements under Section 3 and special retirements under Section 4.

Under Section 3, a general retirement can be authorized by the Board at such time as the Board deems appropriate, giving consideration to the overall financial well-being of the Cooperative. General retirements are typically done on an annualized basis, meaning that the capital credits for a given year would be retired in some future year. At this writing, our last retirement occurred in 2020, retiring all capital credits that were allocated to the members for 1983. Future retirements will most likely proceed with 1984 and subsequent years. On occasion, multiple years have been retired at one time.

Under Section 4 of Article 9, our Bylaws allow for two (2) types of special retirements. The first involves a special retirement for the estate of deceased members. The Cooperative is not obligated by either the Bylaws or Illinois state law to make special retirements for deceased members. However, the Cooperative does do so from time to time. Much of the concern that has developed around capital credits has been the right of heirs or next of kin to access the

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capital credits of deceased members. These issues are governed by Illinois law, which the Cooperative must follow.


The Cooperative can only pay the capital credits of a deceased member to a duly-authorized representative of that deceased member's estate. There are only two (2) ways that an individual can act as an authorized representative of a deceased member. First, a representative could open an estate with the probate court and obtain Letters of Office from that court. Any representative presenting Letters of Office for a deceased member can collect that deceased member's capital credits, if the Board has approved such a special retirement. Alternatively, the representative of a deceased member could present a Small Estate Affidavit. This Affidavit is provided for under Illinois law and protects the Cooperative from claims that it may have improperly distributed a deceased member's estate to someone not authorized to receive those capital credits. Without a properly completed Small Estate Affidavit or Letters of Office, the Cooperative has no right to distribute a deceased member's capital credits to anyone. It would simply be illegal for us to do so.

In an effort to protect the Cooperative, the Board of Directors and staff has authorized my office to review and consider any Small Estate Affidavit submitted by a representative seeking to collect the capital credits of a deceased member. We can only approve distributions for those Small Estate Affidavits that have been properly and fully completed. In that regard, we have had a number of issues with representatives failing to name all heirs of a decedent or failing to attach the death certificate or Will of the decedent to the Small Estate Affidavit, all as required by law. Again, as a matter of Illinois law, the Cooperative simply cannot distribute proceeds with an incomplete or improper Small Estate Affidavit.

The second type of special retirement occurs for members who are in debt to the Cooperative. For members who have failed to pay their bills, the Cooperative can use the retirement of capital credits to address those outstanding balances. This, too, may be completed by Board action applying those capital credits to the outstanding balance.

I hope this letter has been helpful in explaining the process and means by which your Cooperative may retire capital credits. As always, the staff and this office remain available to address your questions on these issues.

Very truly yours,



William R. Tapella