

August 15, 2012

Discounting of Capital Credits of Deceased Members Upheld in North Carolina

On August 8, 2012, the North Carolina Business Court held that electric cooperatives may lawfully discount capital credits of deceased members when they are retired early. The court also held that electric cooperatives do not owe a fiduciary duty to those members with respect to the timing and procedures for retiring capital credits. The court did not address whether the individual applications of certain estates were handled correctly.

These rulings were made in *Lockerman v. South River Electric Membership Corp.* (11 CVS 152, Sampson County, NC), a class action case filed in February 2011. In the complaint, the plaintiffs challenged South River Electric Membership Corporation's (SREMC) decision to amend its bylaws in 2001 to allow for discounting of early retirement of capital credits upon the death of a member. Under this procedure, the estate of a deceased member is allowed to request that accrued capital credits be paid out without waiting for the scheduled retirement date. If the request is granted, SREMC reduces the amount of the capital credit to reflect the time value of money. Plaintiffs alleged that this was done in order to benefit SREMC by converting to permanent equity the difference between an estate's total capital credits and the amount refunded after discounting.

The court found that SREMC's discretionary determination to adopt the early retirement discounting policy was a lawful exercise of the directors' business judgment. The court noted that legislatures and courts in other jurisdictions had recognized the purposes achieved by discounting early retirements.

The court also ruled that SREMC did not owe a fiduciary duty to the plaintiff estates with respect to the retirement of their decedents' capital credits. The court observed that the form signed by estate representatives to request early retirement disclosed on its face that a discount factor would be applied in determining the amount of capital credit to be refunded.

The court's holdings were summary judgment rulings. Subsequent proceedings will be scheduled to resolve remaining issues.



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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