

May 17, 2013

Robert M. Fenner  
RMF Consulting, LLC  
2014 N. Nottingham St.  
Arlington, VA 22205

Dear Mr. Fenner:

RE: Electric Cooperatives

You have asked us to clarify what standard NCUA uses to determine if an electric cooperative qualifies to be included in a federal credit union's (FCU) field of membership (FOM). NCUA applies a totality of the circumstances test to determine if an electric cooperative shares a sufficient associational common bond to be included in the FOM. No single factor is dispositive in making that determination.

NCUA's Chartering and Field of Membership Manual (Chartering Manual) sets out the totality of the circumstances test as consisting of seven factors to be considered.<sup>1</sup> Specifically, the totality of the circumstances test considers:

- Whether members pay dues;
- Whether members participate in the furtherance of the goals of the association;
- Whether the members have voting rights. To meet this requirement, members need not vote directly for an officer, but may vote for a delegate who in turn represents the members' interests;
- Whether the association maintains a membership list;
- Whether the association sponsors other activities;
- The association's membership eligibility requirements; and
- The frequency of meetings.<sup>2</sup>

NCUA considers all of these factors together. No one factor alone is determinative of membership eligibility as an association. This includes whether the cooperative requires its members to purchase electricity from it, as you inquired about in your letter to us. The totality of the circumstances controls over any individual factor.

In the past, we have stated that a cooperative that is based primarily on a client-customer relationship fails to satisfy the associational common bond requirements. We have also stated that an incidental client-customer relationship does not preclude a cooperative from otherwise

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<sup>1</sup> NCUA Chartering and Field of Membership Manual, Chapter II, Article III.A.1; 12 C.F.R. Part 701, Appendix B.

<sup>2</sup> *Id.*

Mr. Fenner  
May 17, 2013  
Page 2

satisfying the requirements of the totality of the circumstances test. In the end, the particular details of a cooperative's structure and other factors surrounding its operation will determine if its relationship with its members is primarily or incidentally a customer-client relationship and if it satisfies the totality of the circumstances test.

Please contact Staff Attorney Justin Anderson with any questions or if you wish to provide details about a particular electric cooperative.

Sincerely,

Michael J. McKenna  
General Counsel

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