

# Supplement to AOR 1999-40

WILEY, REIN & FIELDING  
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### Facsimile Transmission

To: Jonathan Levin  
From: Jan Baran  
Date: February 14, 2000  
Pages to Follow: 1  
User Number: 0799  
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Fax Number: 219-0130  
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2000 FEB 15 P 3 10

Mr. Levin:

Attached please find a further explanation of "capital credits", from our client, the National Rural Electric Cooperative Association, in connection with Advisory Opinion Request 1999-40.

Sincerely,

Jan Witold Baran



## National Rural Electric Cooperative Association

A Touchstone Energy® Partner 

4301 Wilson Boulevard  
Arlington, VA 22203-1860  
Telephone: (703) 907-5300  
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www.nreca.org

February 14, 2000

Mr. Jan Witold Baran  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006

Dear Mr. Baran,

Here is a brief description of capital credits.

On an annual basis, most electric cooperatives allocate to their members the excess of revenue received from providing electric energy over the cost of providing electric energy. The amount allocated to each member is based upon, and proportionate to, the value or quantity of business each member did with the electric cooperative during the year. These allocations are made to an account in the name of each member and are often referred to as "capital credits." Once allocated, an electric cooperative may not change the amount of capital credits. The electric cooperative, however, retains some discretion regarding when to return, or "retire," these allocated capital credits to its members.

Electric cooperatives generally retain allocated capital credits for a specified time to assist in operating the electric cooperative. Most electric cooperatives, however, eventually retire, or pay, these allocated capital credits to their members. Most electric cooperatives have bylaws or policies governing the time, manner, and method of retiring allocated capital credits. For instance, some electric cooperatives retain allocated capital credits for 5 years before retiring them, some 10 years, some 15 years, etc. Some electric cooperatives retire capital credits on a first-in, first-out basis, some on a last-in, last-out basis, and some on a combination or other basis. In general, however, an electric cooperative's member-elected board of directors may only retire capital credits if the retirement will not adversely affect the electric cooperative's financial condition.

Once an electric cooperative's board of directors retires allocated capital credits to a group of members, those members have a vested legal right in the retired capital credits.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Dawson".

Rob Dawson  
Government Relations Department

# Wiley, Rein & Fielding

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February 7, 2000

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Jonathan Levin, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: Advisory Opinion Request 1999-40 (National Rural  
Electric Cooperative Association)

Dear Mr. Levin:

This letter confirms our recent telephone conversation regarding the above-captioned Advisory Opinion Request ("AOR").

Specifically, I advised you that the "capital credits" mentioned in the AOR are declared by the board of directors of the local cooperative. Once declared, the credits must be distributed to each member.

As stated in the AOR, the capital credits are distributed to members in one of two ways: either as a credit on a bill subsequent to the declaration or as a check mailed to the member. The method of distribution is at the discretion of the board of directors of the cooperative. The directors are elected by the members of the cooperative.

The amount of capital credits returned to each member and is not reduced by the cooperative once declared. The AOR seeks the commission's opinion with respect to a member's voluntary decision to contribute a portion of the capital credits to the political action committee once the capital credits have been declared.

*Wiley, Rein & Fielding*

Jonathan Levin, Esq.

February 7, 2000

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I trust this confirms the salient issues which we discussed. If I can be of further assistance, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Witold Baran". The signature is fluid and cursive, with a large initial "J" and "W".

Jan Witold Baran

cc: Wallace F. Tillman, Chief Counsel  
Richard Meyer, Senior Regulatory Counsel  
National Rural Electric Cooperative Association