

Chapter 19

Electric Membership Corporation Reporting Requirements

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(a) *General.* G.S. 117-18.1 allows electric membership corporations (EMCs) to own and operate separate business entities that provide energy services and products, telecommunications services and products, water, and wastewater collection and treatment, subject to certain conditions. One of those conditions is that the separate business entity fully compensate the EMC for the use of personnel, services, equipment, or tangible and intangible property of the EMC at the greater of a competitive price or the EMC's fully distributed costs. The Utilities Commission is empowered, upon complaint, to direct the EMC to adjust charges that do not comply with this condition and, if the EMC does not comply, to direct the EMC to divest its interest in the other business entity. To enforce G.S. 117-18.1(a)(3), the Commission, the Commission Staff, and the Public Staff are authorized to inspect the books and records of such other business entities and the EMCs, and the Commission is authorized to adopt rules and reporting requirements. G.S. 62-53 provides that in addition to any other authority granted in this Chapter, the Commission has the authority to regulate EMCs as provided in G.S. 117-18.1.

(b) *Applicability.* This rule is applicable to each EMC providing electric service in North Carolina.

(c) *Reporting Requirements by Electric Membership Corporations.* Each EMC that conducts activities pursuant to G.S. 117-18.1 shall file with the Commission the following:

- (1) a copy of its audited financial statements, on an annual basis;
- (2) a cost allocation manual, updated within 30 days of any significant change in cost allocation methodologies;
- (3) a code of conduct adopted by the board of directors of the EMC, updated not later than 30 days prior to the effective date of any change;
- (4) an annual report of investments in reportable separate business entity activities on a form prescribed by the Commission. "Reportable separate business entities" include all separate business entities that provide energy services and products, telecommunications services and products, water, or wastewater collection and treatment. For purposes of the required form, an "active" role is one in which the EMC has an ownership interest in a reportable separate business entity and provides personnel, services, equipment, tangible property, or intangible property to the reportable separate business entity. A "passive" role is defined as one in which the EMC has an ownership interest in a reportable separate business entity and does not provide personnel, services, equipment, tangible property, or intangible property to the reportable separate business entity. Participation by personnel of the EMC in the reportable

- separate business entity solely in an advisory or oversight role as a member of that entity's board of directors is not considered an "active" role for purposes of this section; and
- (5) an annual report on transactions between the EMC and reportable separate business entities by which the EMC is an active participant in the conduct of activities permitted by G.S. 117-18.1, on a form prescribed by the Commission and available through the Chief Clerk of the Commission.

The financial statements and annual reports on investments and affiliated transactions shall each cover an annual reporting period of January 1st to December 31st and shall be filed as soon as possible after the close of the calendar year but in no event later than May 1st of the year following the calendar year covered by financial statements and annual reports. The initial cost allocation manual and code of conduct shall be filed no later than 90 days after an EMC conducts its first activity permitted by G.S. 117-18.1. The financial statements and annual reports shall be verified by the oath of the chief executive officer of the EMC in accordance with the requirements of G.S. 62-53.

(d) *Confidentiality of Information Submitted Pursuant to Rule.* Any claim of confidentiality with regard to information submitted pursuant to this Rule shall be made with specificity by the EMC and shall, if necessary, be determined by the Commission in accordance with Chapter 132 of the North Carolina General Statutes, the Public Records Act. Consistent with G.S. 132-1.2, any claim of confidentiality made by an EMC shall relate to "trade secrets" as defined in G.S. 66-152(3) and shall be explicit; i.e., every page for which such a claim is asserted shall be clearly stamped "CONFIDENTIAL" at the time of the filing. In the event an interested person shall desire access to information claimed by the affected EMC to constitute a trade secret, the person desiring such access shall file a letter with the Chief Clerk of the Commission, with a copy to the affected EMC, requesting a determination as to the extent to which the information in question is actually protected from public disclosure under the Public Records Act.

(e) *Electric Membership Corporations That Do Not Conduct Activities Permitted by G.S. 117-18.1.* An EMC that does not conduct activities permitted by G.S. 117-18.1 during a calendar year shall only be required to file an annual statement to that effect, no later than May 1st of the following calendar year.

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