

## Chapter 117.

### Electrification.

#### Article 1.

##### Rural Electrification Authority.

#### **§ 117-1. Rural Electrification Authority created; appointments; terms of members.**

An agency to be known as the North Carolina Rural Electrification Authority is hereby created as an agency of the State of North Carolina, such agency to consist of five members to be appointed by the Governor of North Carolina. Current members of the North Carolina Rural Electrification Authority shall complete their respective terms of office. On or after June 5, 1975, the Governor shall appoint two members to replace those members whose terms expire on said date. All appointments made by the Governor shall be made for terms of four years. (1935, c. 288, s. 1; 1975, c. 709, s. 7.)

#### **§ 117-2. Powers.**

The purpose of said North Carolina Rural Electrification Authority is to secure electrical service for the rural districts of the State where service is not now being rendered, and it is hereby empowered to do the following in order to accomplish that purpose:

- (1) To investigate all applications from communities unserved, or inadequately served, with electrical energy in North Carolina, and to determine the feasibility of obtaining such service therefor.
- (2) To employ such personnel as shall be necessary to conduct surveys, assist the several communities to organize and finance extensions of rural distribution lines; to negotiate with power companies and other agencies for the supply of electric energy for and on behalf of the rural communities that desire service.
- (3) To contact the power companies and other agencies contiguous to the area and areas desiring service, for the purpose of arranging for the extension by said companies, or other agencies, of service in that community for such extension as may be feasible for the power company, or other agency, contiguous to the area to finance itself.
- (4) To make estimates of costs of extension which the power company would not be willing to finance and report such findings to the citizens of the community desiring service or to the corporations organized under this Chapter, to be known as "electric membership corporations."
- (5) To estimate the service charges which said community would have to set up in addition to the rates for energy as may be found necessary in order to make extension self-liquidating.
- (6) To have authority to call upon the Utilities Commission of the State to fix such rates and service charges as will be necessary to accomplish the purpose, and the right to petition the Utilities Commission to require extension of lines by the power companies when, in its opinion, it is proper and feasible.
- (7) To have the power of eminent domain for the purpose of condemning rights-of-way for the erection of transmission and distribution lines, either in its own name, or in its own name on behalf of the electric membership corporations to be formed as provided by law. For the purposes of exercising the powers of eminent domain the North Carolina Rural Electrification Authority shall be

deemed a private condemnor and shall follow the procedures of Chapter 40A for a private condemnor.

- (8) To have such right and authority to secure for said local communities or electric membership corporations as may be set up assistance from any agency of the United States government, either by gift or loan, as may be possible to aid said local community in securing electric energy for said community.
- (9) To investigate all applications from communities for the formation of electric membership corporations and determine and pass upon the question of granting the authority to form such corporations; to provide forms for making such applications; and to do all things necessary to a proper determination of the question of establishment of the local electric membership corporations.
- (10) To act as agent for any electric membership corporations formed under direction or permission of the North Carolina Rural Electrification Authority in securing loans or grants from any agency of the United States government.
- (11) To prescribe rules and regulations and the necessary blanks for the electric membership corporations in making applications for grant or loan from any agency of the United States government.
- (11a) To receive and investigate complaints from members of electric membership corporations.
- (12) To do all other acts and things which may be necessary to aid the rural communities in North Carolina to secure electric energy. (1935, c. 288, s. 2; 1981, c. 919, s. 12; 2013-187, s. 3.)

#### **§ 117-2.1. Additional powers.**

In addition to the powers provided in G.S. 117-2, the Authority is empowered, authorized and directed to make, promulgate and implement plans and programs whereby the electric membership corporations organized or domesticated under this Chapter shall promote and foster methods of conserving electric energy in accordance with provisions of the National Energy Act as delegated to the states. (1979, c. 285, s. 1.)

#### **§ 117-3. Authority not granted power to fix rates or order line extensions; right of suggestion and petition.**

The Authority itself shall not be a rate-making body, and shall have no power to fix the rates or service charges, or to order the extension of lines by the power companies. The function of making rates and service charges and orders for the extension of lines shall remain in the Utilities Commission of North Carolina, and the Authority shall only have the right of suggestion and petition to the Utilities Commission of its opinion as to the proper rates and service charges and line extensions, and no rate recommended or suggested by the Authority shall be effective until approved by the Utilities Commission: Provided, that if the Utilities Commission of North Carolina does not have the right under the existing law to fix service charges in addition to the rates prescribed for electrical energy, and the power to order line extensions, such power and authority is hereby granted the Utilities Commission of North Carolina to fix and promulgate service charges in addition to rates in any community which avails itself of this Article, and form a corporation authorized hereunder to be known as electric membership corporation, and to order line extensions when it shall determine that the same is proper and feasible. (1935, c. 288, s. 3.)

**§ 117-3.1. Regulatory fee.**

(a) Fee imposed. – It is the policy of the State of North Carolina to provide fair regulation of electric and telephone membership corporations in the interest of the public. The cost of regulating electric and telephone membership corporations is a burden incident to the privilege of operating as an electric or telephone membership corporation. Therefore, for the purpose of defraying the cost of regulating electric and telephone membership corporations, every electric and telephone membership corporation subject to the jurisdiction of the Authority shall pay a quarterly regulatory fee, in addition to all other fees and taxes, as provided in this section. The fees collected shall be used only to pay the expenses of the Authority in regulating electric and telephone membership corporations in the interest of the public.

(b) Rate. – For each fiscal year, the regulatory fee shall be the greater of the following:

- (1) The rate established by the General Assembly for that year for each electric membership corporation's North Carolina meter connected for service and each telephone membership corporation's North Carolina access line connected for service for each quarter of the year.
- (2) Four cents (4¢) for each electric membership corporation's North Carolina meter connected for service and for each telephone membership corporation's North Carolina access line connected for service for each quarter of the year.

When the Authority prepares its budget request for the upcoming fiscal year, the Authority shall propose a rate for the regulatory fee. For fiscal years beginning in an odd-numbered year, that proposed rate shall be included in the budget message the Governor submits to the General Assembly pursuant to G.S. 143C-3-5. For fiscal years beginning in an even-numbered year, that proposed rate shall be included in a special budget message the Governor shall submit to the General Assembly. If the General Assembly decides to set the regulatory fee at a rate higher than the rate in subdivision (2) of this subsection, it shall set the regulatory fee by law.

The regulatory fee may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Authority for the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of operating the Authority for the upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Authority or a possible unanticipated increase or decrease in North Carolina electric meters and North Carolina telephone access lines.

(c) When Due. – The regulatory fee imposed under this section is due and payable to the Authority on or before the 15th day of the second month following the end of each quarter. Every electric and telephone membership corporation subject to the regulatory fee shall, on or before the date the fee is due for each quarter, prepare and render a report on a form prescribed by the Authority. The report shall state the electric or telephone membership corporation's total North Carolina electric meters or North Carolina telephone access lines connected for service for the preceding quarter and shall be accompanied by any supporting documentation that the Authority may by rule require.

(d) Use of Proceeds. – A special fund in the office of the State Treasurer, the North Carolina Rural Electrification Authority Fund (NCREA Fund), is created. The fees collected pursuant to this section and all other funds received by the Authority shall be deposited in the NCREA Fund. The NCREA Fund shall be placed in an interest bearing account and any interest or other income derived from the NCREA Fund shall be credited to the NCREA Fund. Moneys in the NCREA Fund shall only be spent pursuant to an appropriation by the General Assembly.

The NCREA Fund shall be subject to the provisions of the State Budget Act except that no unexpended surplus of the NCREA Fund shall revert to the General Fund. All funds credited to the NCREA Fund shall be used only to pay the expenses of the Authority in regulating electric and telephone membership corporations in the interest of the public as provided by this Chapter.(1991, c. 473, s. 1; 1991 (Reg. Sess., 1992), c. 803, s. 1; 2006-203, s. 58.)

**§ 117-4. Organization meeting of Authority; chairman and secretary.**

Promptly after their appointment the Authority shall meet and organize at such meeting, and at the first meeting of each year thereafter, the members shall choose from their number a chairman. They shall also choose a secretary, who shall be a competent engineer and shall fix his salary subject to the approval as provided in G.S. 143-35 to 143-47. (1935, c. 288, s. 4.)

**§ 117-5. Compensation and expenses.**

All members of the Authority, except the secretary, shall receive as compensation for their services per diem and actual expenses incurred while in the performance of their duties in accordance with the provisions of G.S. 138-5. (1935, c. 288, s. 5; 1939, c. 97; 1975, c. 709, s. 8.)

Article 2.

Electric Membership Corporations.

**§ 117-6. Title of Article.**

This Article may be cited as the "Electric Membership Corporation Act." (1935, c. 291, s. 1.)

**§ 117-7. Definitions.**

The following terms, whenever used or referred to in this Article, shall have the following meanings, unless a different meaning clearly appears from the context:

- (1) "Acquire" shall mean acquire by purchase, lease, devise, gift or other mode of acquisition.
- (2) "Board" shall mean the board of directors of a corporation formed under this Article.
- (3) "Corporation" shall mean a corporation formed under this Article.
- (4) "Federal agency" shall mean and include the United States of America, the President of the United States of America, the Federal Emergency Administrator of Public Works and any and all other authorities, agencies, and instrumentalities of the United States of America, heretofore or hereafter created.
- (5) "Law" shall mean any act or statute, general, special or local of this State.
- (6) "Person" shall mean and include natural persons, firms, associations, corporations, business trusts, partnerships and bodies politic. (1935, c. 291, s. 2.)

**§ 117-8. Formation in unserved communities; filing application with Rural Electrification Authority.**

When any number of persons residing in the community not served, or inadequately served, with electrical energy desire to secure electrical energy for their community and desire to form corporations to be known as electric membership corporations for said purpose, they shall file

application with the North Carolina Rural Electrification Authority for permission to form such corporation. (1935, c. 291, s. 3.)

**§ 117-9. Issuance of privilege for formation of such corporation.**

Whenever any such application is made by as many as five members of the community, the North Carolina Rural Electrification Authority shall cause a survey of said territory to be made and if, in its opinion, the proposal is feasible, shall issue to said community a privilege for the formation of a corporation as hereinafter set out. Whenever an application has been filed by any community with the North Carolina Rural Electrification Authority, and its application for formation of an electric membership corporation has been approved, the same may be formed as hereinafter provided. (1935, c. 291, s. 4.)

**§ 117-10. Formation authorized.**

Any number of natural persons not less than three may, by executing, filing and recording a certificate as hereinafter provided, form a corporation not organized for pecuniary profit for the purpose of promoting and encouraging the fullest possible use of electric energy in the rural section of the State by making electric energy available to inhabitants of the State at the lowest cost consistent with sound economy and prudent management of the business of such corporations. (1935, c. 291, s. 5.)

**§ 117-10.1. Municipal franchises.**

An electric membership corporation shall be eligible to receive a franchise pursuant to G.S. 160-2(6) from any city or town:

- (1) In which such electric membership corporation is on April 20, 1965 furnishing electric service at retail to a majority of the electric meters; or
- (2) To which such electric membership corporation is on April 20, 1965 furnishing the entire supply of electricity at wholesale; or
- (3) Which is newly incorporated subsequent to April 20, 1965, and in which on the effective date of such incorporation the electric membership corporation is furnishing electric service at retail to a majority of the meters. (1965, c. 287, s. 9.)

**§ 117-10.2. Restriction on municipal service.**

Except as otherwise provided in this section, no electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of G.S. 117-10.1, or as permitted under G.S. 160A-331, 160A-331.2, 160A-332, and 160A-333. In addition, an electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing. (1965, c. 287, s. 10; 1997-346, s. 3; 1999-111, s. 1; 2005-150, s. 6; 2007-419, s. 2.)

**§ 117-10.3:** Repealed by Session Laws 2007-419, s. 3, effective August 21, 2007.

**§ 117-11. Contents of certificate of incorporation.**

(a) Required Provisions. – The certificate of incorporation shall be entitled and endorsed "Certificate of Incorporation of \_\_\_\_\_ Electric Membership Corporation" (the blank space being filled in with the name of the corporation), and shall state:

- (1) The name of the corporation, which name shall be such as to distinguish it from any other corporation.
- (2) A reasonable description of the territory in which its operations are principally to be conducted.
- (3) The location of its principal office and the post-office address thereof.
- (4) The maximum number of directors, not less than three.
- (5) The names and post-office addresses of the directors, not less than three, who are to manage the affairs of the corporation for the first year of its existence, or until their successors are chosen.
- (6) The period, if any, limited for the duration of the corporation. If the duration of the corporation is to be perpetual, this fact should be stated.
- (7) The terms and conditions upon which members of the corporation shall be admitted.

(b) Permissible Provisions. – The certificate of incorporation of a corporation may also contain any provision not contrary to law which the incorporators may choose to insert for the regulation of its business, and for the conduct of the affairs of the corporation; and any provisions, creating, defining, limiting or regulating the powers of the corporation, its directors and members. (1935, c. 291, s. 6.)

**§ 117-12. Execution and filing of certificate of incorporation by residents of territory to be served.**

The natural persons executing the certificate of incorporation shall be residents of the territory in which the principal operations of the corporation are to be conducted who are desirous of using electric energy to be furnished by the corporation. The certificate of incorporation shall be acknowledged by the subscribers before an officer qualified to administer oaths. When so acknowledged, the certificate may be filed in the office of the Secretary of State, who shall forthwith prepare a certified copy or copies thereof and forward one to the register of deeds in each county in which a portion of the territory of the corporation is located, who shall forthwith file such certified copy or copies in their respective offices and record the same as other certificates of incorporation are recorded. As soon as the provisions of this section have been complied with, the proposed corporation described in the certificate so filed, under its designated name, shall be and constitute a body corporate. (1935, c. 291, s. 7; 1967, c. 823, s. 32.)

**§ 117-13. Board of directors; compensation; president and secretary.**

Each corporation formed under this Article shall have a board of directors, in which management of the affairs of the corporation is vested. The directors of the corporation, other than those named in its certificate of incorporation, shall be elected annually by the members entitled to vote, but if the bylaws so provide the directors may be elected on a staggered-term basis: Provided, that the total number of directors on a board shall be so divided that not less than one third of them, or as nearly thereto as their division for that purpose will permit, shall be elected annually, and no term shall be longer than for three years; and provided further that, except as may be necessary in inaugurating such a plan, all directors shall be elected for terms of equal duration. The directors shall be entitled to receive for their services only such compensation as is provided in the bylaws.

The board shall elect annually from its own number a president and a secretary. The directors must be members of the corporation, except that for those corporations whose principal purpose is to furnish bulk electric wholesale power supplies and whose membership consists of other electric membership corporations, the directors may be members, directors, officers or managers of the member corporations, and shall be elected by the member corporation's board of directors. (1935, c. 291, s. 8; 1959, c. 387, s. 1; 1969, c. 760; 1975, c. 314; 1979, c. 285, s. 2; 1981, c. 478.)

**§ 117-14. Powers of board.**

The board shall have power to do all things necessary or convenient in conducting the business of a corporation, including, but not limited to:

- (1) The power to adopt and amend bylaws for the management and regulation of the affairs of the corporation: Provided however, that the certificate of incorporation may reserve to the members of the corporation the power to amend the bylaws. The bylaws of a corporation may make provisions not inconsistent with law or its certificate of incorporation, regulating the admission, withdrawal, suspension or expulsion of members; the transfer of membership; the fees and dues of members and the termination of memberships on nonpayment of dues or otherwise; the number, times and manner of choosing, qualifications, terms of office, official designations, powers, duties, and compensations of its officers; defining a vacancy in the board or in any office and the manner of filling it; the number of members to constitute a quorum at meetings, the date of the annual meeting and the giving of notice thereof, and the holding of special meetings and the giving of notice thereof; the terms and conditions upon which the corporation is to render service to its members; the disposition of the revenues and receipts of the corporation; regular and special meetings of the board and the giving of notice thereof.
- (2) To appoint agents and employees and to fix their compensation and the compensation of the officers of the corporation.
- (3) To execute instruments.
- (4) To delegate to one or more of the directors or to the agents and employees of a corporation such powers and duties as it may deem proper.
- (5) To make its own rules and regulations as to its procedure. (1935, c. 291, s. 9; 1941, c. 260.)

**§ 117-15. Certificates of membership.**

A corporation may issue to its members certificates of membership and each member shall be entitled to only one vote at the meetings of the corporation. (1935, c. 291, s. 10.)

**§ 117-16. Corporate purpose; terms and conditions of membership.**

The corporate purpose of each corporation formed hereunder shall be to render service to its members only, and no person shall become or remain a member unless such person shall use energy supplied by such corporation and shall have complied with the terms and conditions in respect to membership contained in the bylaws of such corporation: Provided, that such terms and conditions of membership shall be reasonable; and provided further, that no bona fide applicant for membership, who is able and willing to satisfy and abide by all such terms and conditions of membership, shall be denied arbitrarily, or capriciously, or without good cause. With respect to the

members of an electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale, the word "use" as used in this section shall also mean either "use and purchase" or "purchase" solely, as the case may be, and the words "supplied by" shall also mean "supplied for the account of". With respect to an electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale, it shall be lawful for such corporation to enter into joint arrangements with other power supply entities, including but not limited to investor-owned public utilities and bodies politic, for the purchase and sale of bulk power supplies and bulk power services and for the joint ownership of bulk power supply properties. (1935, c. 291, s. 11; 1959, c. 387, s. 2; 1979, c. 285, s. 3.)

**§ 117-16.1. Discrimination prohibited.**

No electric membership corporation shall, as to rates or services, make or grant any unreasonable preference or advantage to any member or subject any member to any unreasonable prejudice or disadvantage. No electric membership corporation shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. No electric membership corporation shall give, pay, or receive any rebate or bonus, directly or indirectly, or mislead or deceive its members in any manner as to rates charged for the services of such electric membership corporation. (1965, c. 287, s. 11.)

**§ 117-17. General grant of powers.**

Each corporation formed under this Article is hereby vested with all power necessary or requisite for the accomplishment of its corporate purpose and capable of being delegated by the legislature; and no enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained, nor to limit any such grant to a power or powers of the same class as those so enumerated. (1935, c. 291, s. 12.)

**§ 117-18. Specific grant of powers.**

Subject only to the Constitution of the State, a corporation created under the provisions of this Article shall have power to do any and all acts or things necessary or convenient for carrying out the purpose for which it was formed, including, but not limited to:

- (1) To sue and be sued.
- (2) To have a seal and alter the same at pleasure.
- (3) To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein, and to pay therefor in cash or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.
- (4) To render service and to acquire, own, operate, maintain and improve a system or systems.
- (5) To pledge all or any part of its revenue or mortgage or otherwise encumber all or any part of its property for the purpose of securing the payment of the principal of and interest on any of its obligations.
- (6) The right to apply to the North Carolina Rural Electrification Authority for permission to construct or place any parts of its system or lines in and along any State highway or over any lands that are now, or may be, the property of this State, or any political subdivision thereof. In all questions involving the right-of-way, or the right of eminent domain, the rulings of the North Carolina



Rural Electrification Authority are final. Notwithstanding the foregoing sentence and notwithstanding subdivision (7) of G.S. 117-2, electric membership corporations may, without necessity of the Authority's rulings or participation, exercise the right of eminent domain for the purposes of constructing, operating and maintaining electric generating, transmission, distribution and related facilities, individually and solely in their own names, pursuant to the provisions of Chapter 40A of the General Statutes; provided, that notwithstanding G.S. 117-30, the foregoing grant of the power of eminent domain to electric membership corporations shall not apply to telephone membership corporations; and, provided further, that the grant of the power of eminent domain is supplementary to the power of eminent domain already devolved upon the Authority.

- (7) To accept gifts or grants of money, property, real or personal, from any person or federal agency, and to accept voluntary and uncompensated services.
- (8) To make any and all contracts necessary or convenient for the full exercise of the powers in this Article granted, including, but not limited to, contracts with any person or federal agency, for the purchase or sale of energy; for the management and conduct of the business of the corporation, including the regulation of the rates, fees or charges for service rendered by the corporation.
- (9) To sell, lease, mortgage or otherwise encumber or dispose of all or any part of its property, as hereinafter provided.
- (10) To contract debts, borrow money, and to issue or assume the payment of bonds.
- (11) To fix, maintain and collect fees, rents, tolls and other charges for service rendered.
- (12) To perform any and all of the foregoing acts and to do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person or federal agency.
- (13) To extend, construct, operate and maintain power lines into adjacent states.
- (14) As to electric membership corporations, to conduct the activities permitted by G.S. 117-18.1. (1935, c. 291, s. 13; 1941, c. 335; 1975, c. 141; 1999-180, s. 1; 2001-487, s. 38(f).)

#### **§ 117-18.1. Subsidiary business activities.**

(a) Electric membership corporations may form, organize, acquire, hold, dispose of, and operate any interest up to and including full controlling interest in separate business entities that provide energy services and products, telecommunications services and products, water, and wastewater collection and treatment, so long as those other business entities meet all of the following conditions:

- (1) They are not financed with loans or grants from the Rural Utilities Service (RUS) of the United States Department of Agriculture (USDA) or the USDA or with similar financing from any successor agency. This limitation shall not apply to RUS or USDA loans or grants, or loans or grants from successor agencies, for water or wastewater collection and treatment projects.
- (2) They are subject to all taxes, specifically including federal and State income taxes, levied against business entities of the same structure and engaged in the same activities.

- (3) They fully compensate the electric membership corporation for the use of personnel, services, equipment, or tangible and intangible property, the greater of (i) a competitive price, which is a price comparable with prices generally being charged at the time in arms length transactions in the same market, or (ii) the electric membership corporation's fully distributed costs, which shall include all direct and indirect costs, including cost of capital incurred in providing the personnel, services, equipment, tangible property, or intangible property in question. The value of real property shall include the intangible value of not having to purchase the real property being used, and the value of the identification with the EMC that will exist because of the use of the particular real property. Should the Utilities Commission, upon complaint showing reasonable grounds for investigation, find after investigation, that the charges for those transactions between the electric membership corporation and the other business entity do not conform with the provisions of this subdivision, the Utilities Commission is empowered to direct the electric membership corporation to adjust those charges to comply with the provisions of this subdivision. If the electric membership corporation does not comply with the Utilities Commission's directive, then the Utilities Commission is empowered to direct the electric membership corporation to divest its interest in the other business entity. For purposes of enforcing this subdivision, members of the Utilities Commission, the Utilities Commission staff, and the Public Staff are authorized to inspect the books and records of such other business entities and the electric membership corporations. The Utilities Commission shall have the authority to adopt rules and reporting requirements to enforce this subdivision. The provisions of G.S. 62-310(a), 62-311, 62-312, 62-313, 62-314, 62-315, 62-316, 62-326, and 62-327 shall apply to electric membership corporations with respect to the application of this subdivision.
- (4) They are organized and operated pursuant to Chapter 55 or Chapter 57D of the General Statutes.
- (5) They do not receive from an electric membership corporation any investment, loan, guarantee, or pledge of assets in an amount that, in the aggregate, exceeds ten percent (10%) of the assets of that electric membership corporation.

(b) An electric membership corporation may not form or organize a separate business entity to engage in activities involving the distribution, storage, or sale of oil, as defined in G.S. 143-215.77(8), specifically including liquefied petroleum gases, but may acquire, hold, dispose of, and operate any interest in an existing business entity already engaged in these activities, subject to the other provisions of this section.

(c) No director, or spouse of a director, of an electric membership corporation may be employed or have any financial interest in any separate business entity formed, organized, acquired, held, or operated by an electric membership corporation pursuant to the provisions of this section.

(d) The provisions of subdivisions (1) and (3) of subsection (a) of this section do not apply to the separate business activities of an electric membership corporation that forms, organizes, acquires, holds, disposes of, or operates any interest up to and including full controlling interest in a separate business entity that provides or supports high-speed broadband services to one or more

households, businesses, or community anchor points in an unserved area. For purposes of this subsection, the following definitions shall apply:

- (1) "Anchor points." – The term shall include schools, libraries, community colleges, community centers, and other similar places.
- (2) "High-speed broadband services." – Internet transmission speeds of a minimum of 25 megabits per second (Mbps) downstream and 3 Mbps upstream.
- (3) "Unserved area." – A location where inhabitants or businesses do not have access to high-speed broadband services. (1999-180, s. 2; 2013-157, s. 30; 2019-17, s. 1.)

**§ 117-19. Taxes and assessments.**

(a) From and after April 20, 1965, no electric membership corporation heretofore or hereafter organized, reorganized, or domesticated under the provisions of this Chapter shall be a public agency; nor shall any such corporation be, or have the rights of, a political subdivision of the State.

(b) With respect to its properties owned and revenues received on and after January 1, 1967, each electric membership corporation operating within the State shall be subject to, and shall pay taxes and assessments under, all laws relative to State, county, municipal and other local taxes and assessments applicable to the electric light and power companies in this State, except income tax.

(c) through (e) Repealed by Session Laws 1997-6, s. 16. (1935, c. 291, s. 14; 1965, c. 287, s. 12; 1997-6, s. 16.)

**§ 117-20. Encumbrance, sale, etc., of property.**

No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property which lie within the limits of an incorporated city or town, or which shall represent not in excess of ten percent (10%) of the total value of the corporation's assets, or which in the judgment of the board are not necessary or useful in operating the corporation) unless

- (1) Authorized so to do by the votes cast in person or by proxy by at least two-thirds of its total membership, and
- (2) The consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained.

Notwithstanding the foregoing provisions of this section, the members of such a corporation may, by the affirmative majority of the votes cast in person or by proxy at any meeting of the members, delegate to the board of directors the power and authority (i) to borrow moneys from any source and in such amounts as the board may from time to time determine, (ii) to mortgage or otherwise pledge or encumber any or all of the corporation's property or assets as security therefor, and (iii) with respect to Electric Membership Corporations only, to sell and lease back any of the corporation's property or assets. (1935, c. 291, s. 15; 1965, c. 287, s. 13; 1969, c. 670, s. 1; 1987, c. 448, s. 1; 1997-346, s. 4; 1999-111, s. 1; 2003-24, s. 1.)

**§ 117-21. Issuance of bonds.**

A corporation formed hereunder shall have power and is hereby authorized, from time to time, to issue its bonds in anticipation of its revenue for any corporate purpose. Said bonds may be authorized by resolution or resolutions of the board, and may bear such date or dates, mature at such time or times, not exceeding 40 years from their respective dates, bear interest at such rate or

rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, not exceeding par and accrued interest, as such resolution or resolutions may provide. Such bonds may be sold in such manner and upon such terms as the board may determine at not less than par and accrued interest. Any provision of law to the contrary notwithstanding, any bonds and the interest coupons appertaining thereto, if any, issued pursuant to this Article shall possess all of the qualities of negotiable instruments. (1935, c. 291, s. 16; 1969, c. 670, s. 2.)

**§ 117-22. Covenants or agreements for security of bonds.**

In connection with the issuance of any bonds, a corporation may make covenants or agreements and do any and all acts or things that a business corporation can make or do under the laws of the State in order to secure its obligations or which, in the absolute discretion of the board, tend to make the obligations more marketable, notwithstanding that such covenants, agreements, acts and things may constitute limitations on the exercise of the powers herein granted. (1935, c. 291, s. 17.)

**§ 117-23. Purchase and cancellation of bonds.**

A corporation shall have power out of any funds available therefor to purchase any bonds issued by it at a price not exceeding the principal amount thereof and accrued interest thereon. All bonds so purchased shall be canceled. (1935, c. 291, s. 18.)

**§ 117-24. Dissolution.**

Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed "Certificate of Dissolution of \_\_\_\_\_" (the blank space being filled in with the name of the corporation) and shall state:

- (1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.
- (2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.
- (3) That the corporation elects to dissolve.
- (4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by at least two-thirds of its total membership.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied

or discharged shall be distributed among the members in such manner as is provided for in the corporation's charter or bylaws, and the charter or bylaws may provide for distributions to persons who were members in one or more prior years. (1935, c. 291, s. 19; 1965, c. 287, s. 14; 1987, c. 448, s. 2; 1997-346, s. 5; 1999-111, s. 1; 2003-24, s. 1.)

**§ 117-25. Amendment of certificate of incorporation.**

A corporation created hereunder may amend its certificate of incorporation to change its corporate name, to increase or reduce the number of its directors or change any other provision therein: Provided, however, that no corporation shall amend its certificate of incorporation to embody therein any purpose, power or provisions which would not be authorized if its original certificate, including such additional or changed purpose, power or provisions, were offered for filing at the time a certificate under this section is offered. Such amendment may be accomplished by filing a certificate which shall be entitled and endorsed "Certificate of Amendment of \_\_\_\_\_ Electric Membership Corporation" and state:

- (1) The name of the corporation, and if it has been changed, the name under which it was originally incorporated.
- (2) The date of filing the certificate of incorporation in each public office where filed.
- (3) The purposes, powers, or provisions, if any, to be amended or eliminated, and the purposes, powers or provisions, if any, to be added or substituted.

Such certificate shall be subscribed in the same manner as an original certificate of incorporation hereunder by the president or a vice-president, by the secretary or the assistant secretary, who shall make and annex an affidavit stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by a majority of the members of the corporation entitled to vote. Such certificate shall be filed in the same places as an original certificate of incorporation and thereupon the amendment shall be deemed to have been effected. (1935, c. 291, s. 20.)

**§ 117-26. Application for grant or loan from governmental agency.**

Whenever any corporation organized hereunder desires to secure a grant or loan from any agency of the United States government now in existence or hereafter authorized, they shall apply through the North Carolina Rural Electrification Authority and not direct to the United States agency, and the said North Carolina Rural Electrification Authority alone shall have the authority to make applications for grants or loans to any corporations created hereunder. (1935, c. 291, s. 21.)

**§ 117-27. Repealed by Session Laws 1965, c. 287, s. 15.**

Article 3.

Miscellaneous Provisions.

**§ 117-28. Foreign corporations; domestication; rights and privileges.**

Any electric or telephone membership corporation created and existing under and by virtue of the laws of any adjoining state, which corporation desires to extend its lines into this State for the purpose of obtaining its power and energy needs, or an exchange interconnection, or for the purpose of supplying electric or telephone service to citizens and residents of this State, shall be and is hereby granted the right to domesticate in this State as such electric or telephone

membership corporation, and, after such domestication, any such corporation shall have and enjoy all the rights, privileges, benefits and immunities granted to electric or telephone membership corporations under the laws of this State and shall be subject to the terms, provisions and conditions of this Chapter, and other applicable laws, to the same extent as such laws are now applicable to membership corporations organized under the laws of this State. (1941, c. 12; 1959, c. 387, s. 3.)

**§ 117-28.1. Electric membership corporations; easements.**

(a) Any easement owned, held, or otherwise used by an electric membership corporation for the purpose of electrification, as stated in G.S. 117-10 may also be used by the corporation, or its wholly owned subsidiary, for the ancillary purpose of supplying high-speed broadband service, where such use does not require additional construction and is ancillary to the electrification purposes for which broadband fiber is or was installed. Nothing in this subsection shall affect, abrogate, or eliminate in any way any obligation of the corporation or its wholly owned subsidiary to comply with any applicable requirements related to notice, safety, or permitting when constructing or maintaining lines or broadband fiber on, over, under, or across property owned or operated by a railroad company.

(b) Notwithstanding G.S. 1A-1, Rule 23, a class action may not be maintained against an electric membership corporation or its wholly owned subsidiary in a suit in trespass or inverse condemnation based on a claim of expanded use of an easement. If, in a suit in trespass or inverse condemnation based on a claim of expanded use of an easement, an individual property owner prevails over a corporation or its wholly owned subsidiary, the trespass shall be deemed permanent and the actual damages awarded shall be the fair market value which, notwithstanding any other provision of law, shall always be greater than zero but shall not exceed the difference between the fair market value of the property owner's entire property immediately before the taking and the fair market value of the property owner's property immediately after the taking. Evidence of revenues or profits derived or the rental value of an assembled communications corridor shall not be admissible in determining fair market value. A property owner's actual damages shall be fixed at the time of the initial trespass and shall not be deemed to continue, accumulate, or accrue. Upon payment of damages, the corporation or its wholly owned subsidiary shall be granted a permanent easement for the trespass that was the subject of the claim. (2019-17, s. 2; 2020-74, s. 30.)

Article 4.

Telephone Service and Telephone Membership Corporations.

**§ 117-29. Assistance from Rural Electrification Authority in procuring adequate telephone service.**

Any number of persons residing in any rural community who are not provided with telephone service or are inadequately provided with same, may make application to the Rural Electrification Authority, upon such form as may be provided by the Rural Electrification Authority for assistance in securing telephone service, showing the circumstances of such community or communities with regard to telephone service and the need therefor. The Rural Electrification Authority shall make an investigation of the situation with respect to telephone service in such rural community or communities and if, upon investigation, it appears that such community or communities are not served with needed telephones or are inadequately served, the facts with reference thereto shall be collected by the Rural Electrification Authority and the Rural Electrification Authority shall promptly bring these facts to the attention of any telephone company serving the area, and shall

make reasonable efforts to get such telephone company to provide the needed telephone service in such community or communities. (1945, c. 853, s. 1.)

**§ 117-30. Telephone membership corporations.**

(a) In the event it is ascertained by the Rural Electrification Authority that the community or communities referred to in the foregoing section G.S. 117-29 are in need of telephone service and that there is a sufficient number of persons to be served to justify such services, and the telephone company serving in the area in which the community or communities are located is unwilling to provide such service, a telephone membership corporation may be organized by such community or communities in the same manner that electric membership corporations may be formed under Article 2 of this Chapter, and all of the provisions of said Article shall be applicable to the formation of telephone membership corporations and such corporations shall have all the authority, powers and duties of such a corporation when formed under the provisions of said Article; except that the provisions of G.S. 117-8, 117-9, 117-10.1, 117-10.2, 117-16.1, 117-18(14), 117-18.1, 117-19 and 117-24 shall not be applicable to the organization of a telephone membership corporation, and except that such corporations so formed for the express purpose of providing telephone service necessary to serve the community or communities prescribed in the application may also provide the community or communities prescribed in the application with any communication service for the transmission of voice, sounds, signals, pictures, writing or signs of all kinds through the use of electricity or the electromagnetic spectrum between the transmitting and receiving apparatus, together with any telecommunications service requiring band-width capacity, including, but not limited to community antenna and cable television services, and including all lines, wires, cables, radio, light, electromagnetic impulse and all facilities, systems or other means used in the rendition of such services, but not including message telegram service or radio broadcasting services or facilities within the meaning of section 3(o) of the Federal Communications Act of 1934, as amended (47 USC § 153(o)) and except that such corporation so formed shall have no authority to engage in any other business. Provided, that the references in Article 2 of this Chapter to "power lines" or "energy" as to such telephone membership corporations shall be construed to mean telephone lines, broadband cables and lines, telephone service and broadband communications services. Provided further, that nothing herein shall be construed to authorize any telephone membership corporation organized hereunder to duplicate any line or lines, systems or other means by which adequate telephone service is being furnished; or to build or to construct a telephone line, or telephone lines, or telephone systems, or otherwise to provide facilities or means of furnishing telephone service to any person, community, town or city then being adequately served by a telephone company, corporation or system; or to provide telephone service in an unserved area while any telephone company, corporation or system is acting in good faith and with reasonable diligence in arranging to provide adequate telephone service to such person, community, town or city.

(b) Any telephone membership corporation formed under this Article which now provides or has imminent plans to provide any service which is subject to the requirement of a state or local franchise shall make reasonable efforts to secure any such state or local franchise required for the operation of such service within its service area. Unless otherwise prohibited, any such franchise granted to a telephone membership corporation may be transferred or assigned by that corporation, in its discretion, if such transfer or assignment is reasonably calculated to contribute to the development of any such service within the franchised area. Provided, however, that no telephone membership corporation shall be required to obtain a state or local franchise to provide the types of

telephone services being provided on July 1, 1979 by a telephone membership corporation, or the types of telephone services offered by existing telephone membership corporations on July 1, 1979 and proposed to be offered by any telephone membership corporation formed thereafter, without respect to the facilities or methods which are used to provide such services. (1945, c. 853, s. 2; 1965, c. 345, s. 1; 1979, c. 586; 1999-180, s. 3.)

**§ 117-31. Power of Rural Electrification Authority to prosecute requested investigations.**

In investigating the application filed with the Rural Electrification Authority under the provisions of G.S. 117-30 of this Article, the Rural Electrification Authority shall have the authority to employ such personnel as shall be necessary to conduct surveys; to contact the telephone companies serving the general area for the purpose of arranging for extension of telephone service by such companies to such community or communities; to make estimates of the cost of the extension of telephone service to such community or communities; to call upon the Utilities Commission of the State to fix such rates as will be applicable to such service; to secure for such community or communities any assistance which may be available from the federal government by gift or loan or in any other manner; to investigate all applications for the creation of telephone membership corporations and determine and pass upon the question of granting authority to form such corporation; to provide forms for making such applications, and to do all things necessary to a proper determination of the question of the establishment of such telephone membership corporations in keeping with the provisions of this Article; to act as agent for any such telephone membership corporation in securing loans or grants from any agency of the United States government; to prescribe rules and regulations and the necessary blanks for such membership corporations in making applications for grants or loans from any agency of the United States government; to do all other acts and things which may be necessary to aid the rural communities in North Carolina in securing telephone service. (1945, c. 853, s. 3.)

**§ 117-32. Loans from federal agencies; authority of county, etc., to engage in telephone business.**

Whenever any corporation organized under the provisions of this Article desires to secure a grant or loan from any agency of the United States government now in existence or hereafter authorized, it shall apply through the North Carolina Rural Electrification Authority and not direct to the United States agency, and the said North Carolina Rural Electrification Authority alone shall have the authority to make application for grants or loans to any such corporation. Nothing in this Article shall be deemed to authorize any county, city or town to engage in the telephone business. (1945, c. 853, s. 4.)

**§ 117-33. Declared public agency of State; taxes and assessments.**

A telephone membership corporation heretofore or hereafter organized under this Article shall be, and is hereby declared to be a public agency, and shall have within its limits for which it was formed the same rights as any other political subdivision of the State, and all property owned by said telephone membership corporation and used exclusively for the purpose of said corporation shall be held in the same manner and subject to the same taxes and assessments as property owned by any county or municipality of the State so long as said property is owned by said telephone membership corporation and is used for the purposes for which the corporation was formed. Notwithstanding the foregoing, a telephone membership corporation shall not be eligible to receive a permanent registration plate issued under G.S. 20-84. (1965, c. 345, s. 2; 2012-159, s. 2.)



**§ 117-34. Dissolution.**

Any telephone membership corporation created under this Article may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed "Certificate of Dissolution of \_\_\_\_\_" (the blank space being filled in with the name of the corporation) and shall state:

- (1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.
- (2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.
- (3) That the corporation elects to dissolve.
- (4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person by at least two-thirds of its total membership, without proxies.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall pass to and become the property of the State. (1965, c. 345, s. 2; 1987, c. 448, s. 3.)

**§ 117-35. Article complete in itself and controlling.**

Article 4 is complete in itself and shall be controlling. The provisions of any other law, general, special, or local except as provided in this Article, shall not apply to a telephone membership corporation formed under this Article. (1965, c. 345, s. 2.)

**§§ 117-36 through 117-40. Reserved for future codification purposes.**

Article 5.

Consolidation and Merger.

**§ 117-41. Consolidation.**

(a) Any two or more electric membership corporations or any two or more telephone membership corporations, organized and operating under this Chapter (each of which is hereinafter designated a "consolidating corporation"), may consolidate into a new corporation (hereinafter designated the "new corporation"), by complying with the provisions of subsections (b) and (c) hereof and of G.S. 117-43.

(b) The proposition for the consolidation of the consolidating corporations into the new corporation and proposed articles of consolidation to give effect thereto shall be submitted to a

meeting of the members of each consolidating corporation, the notice of which shall have attached thereto a copy of the proposed articles of consolidation.

(c) If the proposed consolidation and the proposed articles of consolidation, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of each consolidating corporation voting thereon at each such meeting, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating corporation by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of consolidation shall recite that they are executed pursuant to this Chapter and shall state:

- (1) The name of each consolidating corporation and the address of its principal office;
- (2) The name of the new corporation and the address of its principal office;
- (3) A statement that each consolidating corporation agrees to the consolidation;
- (4) The names and addresses of the directors of the new corporation; and
- (5) The terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner in which members of the consolidating corporations may or shall become members of the new corporation; and may contain any provisions not inconsistent with this Chapter deemed necessary or advisable for the conduct of the business of the new corporation. The president or vice-president of each consolidating corporation executing such articles of consolidation shall make and annex thereto an affidavit stating that the provisions of this section in respect of such articles were duly complied with by such corporation. (1979, c. 285, s. 4.)

#### **§ 117-42. Merger.**

(a) Any one or more electric membership corporations or any one or more telephone membership corporations, organized and operating under this Chapter (each of which is hereinafter designated a "merging corporation"), may merge into another like corporation (hereinafter designated the "surviving corporation"), by complying with the provision of G.S. 117-42(b) and (c), and G.S. 117-43.

(b) The proposition for the merger of the merging corporation(s) into the surviving corporation and proposed articles of merger to give effect thereto shall be submitted to a meeting of the members of such merging corporation(s) and of the surviving corporation, the notice of which shall have attached thereto a copy of the proposed articles of merger.

(c) If the proposed merger and the proposed articles of merger, with any amendments, are approved by the affirmative vote of not less than two thirds of those members of each corporation voting thereon at each such meeting, articles of merger in the form approved shall be executed and acknowledged on behalf of each such corporation by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of merger shall recite that they are executed pursuant to this Chapter and shall state:

- (1) The name of each merging corporation and the address of its principal office;
- (2) The name of the surviving corporation and the address of its principal office;
- (3) A statement that each merging corporation and the surviving corporation agree to the merger;
- (4) The names and addresses of the directors of the surviving corporation; and
- (5) The terms and conditions of the merger and the mode of carrying the same into effect, including the manner in which members of the merging corporations

may or shall become members of the surviving corporation; and may contain any provisions not inconsistent with this Chapter deemed necessary or advisable for the conduct of the business of the surviving corporation. The president or vice-president of each corporation executing such articles of merger shall make and annex thereto an affidavit stating that the provisions of this section in respect of such article were duly complied with by such corporation. (1979, c. 285, s. 4.)

**§ 117-43. Filing and recording of articles of consolidation or merger.**

Articles of consolidation or merger shall be filed with the Secretary of State, who shall forthwith prepare one or more certified copies thereof and forward one to the register of deeds of each county in which a portion of the territory of the filing corporation is authorized to furnish service, which registers of deeds shall forthwith file such certified copy in their respective offices and record the same as articles of incorporation are recorded. As soon as the provisions of this section have been complied with, the new consolidated corporation or the surviving merged corporation, described and named in the articles so filed, shall become and constitute a body corporate in accordance with the provisions of such articles. (1979, c. 285, s. 4.)

**§ 117-44. Effect of consolidation or merger.**

Upon compliance with the provisions of G.S. 117-44:

- (1) a. In the case of a consolidation, the existence of the consolidating corporations shall cease and the articles of consolidation shall be deemed to be the articles of incorporation of the new corporation; and  
b. In the case of a merger, the separate existence of the merging corporations shall cease and the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger.
- (2) All the rights, privileges, immunities and franchises and all property, real and personal, including without limitation applications for membership, all debts due on whatever account and all other choses in action, of each of the consolidating or merging corporations shall be deemed to be transferred to and vested in the new or surviving corporation without further act or deed.
- (3) The new or surviving corporation shall be responsible and liable for all the liabilities and obligations of each of the consolidating or merging corporations and any claim existing or action or proceeding pending by or against any of the consolidating or merging corporations may be prosecuted as if the consolidation or merger had not taken place, but the new or surviving corporation may be substituted in its place.
- (4) Neither the rights of creditors nor any liens upon the property of any of such corporations shall be impaired by such consolidation or merger. (1979, c. 285, s. 4.)

**§ 117-45. Validation.**

No provision of Article 5 nor any provision thereof shall, or shall be construed to, express or imply the invalidity or invalidation of the incorporation or operations of any electric or telephone membership corporation heretofore organized and operating under Chapter 117 of the General

Statutes, including but not limited to North Carolina Electric Membership Corporation and any two or more electric or telephone membership corporations which have substantively merged or consolidated; and any such substantive mergers or consolidations are hereby specifically validated. (1979, c. 285, s. 4.)

Article 6.

Indemnification.

**§ 117-46. Indemnification of directors, officers, employees, or agents.**

The powers, authority and requirements as to indemnification, payment of expenses, and purchase of liability insurance for directors, officers, employees and agents, as set out in G.S. 55A-17.1, 55A-17.2 and G.S. 55A-17.3 shall apply to and may be exercised by any corporation formed under this Chapter. The indemnification of a director, officer, employee or agent of a corporation provided by this section shall not be deemed exclusive of any other rights to which such director, officer, employee or agent may be entitled, under any bylaw, agreement, vote of board of directors or members, or otherwise with respect to any liability or litigation expenses arising out of his activities as director, officer, employee, or agent. (1987, c. 107.)