



1401 Main Street, Suite 900

Phone: (803) 737-0800

November 10, 2022

Via Email Only

Board of Trustees
Marlboro Electric Cooperative, Inc.
c/o Paul Conway, Esquire
676 HWY 9 East
Bennettsville, SC 29512
pconway@marlboro.coop

Re: 2022 Compliance Examination in Accordance with S.C. Code Ann. § 33-49-615 Disclosure of Compensation and Benefits, and S.C. Code Ann. § 33-49-630(A) Compensation of Trustee Related to Meeting Attendance

Dear Members of the Board:

In accordance with S.C. Code Ann. § 33-49-150(A), the South Carolina Office of Regulatory Staff ("ORS") has examined Marlboro Electric Cooperative, Inc.'s ("the Cooperative") compliance with S.C. Code Ann. § 33-49-615, which requires disclosures of the compensation or benefits by category paid to or provided for board of trustee members during the previous calendar year, and ORS also examined compliance with S.C. Code Ann. § 33-49-630(A), which provides that compensation shall not be paid except for actual attendance upon activities authorized by the board. The time period examined was the 2021 calendar year. The disclosures required by S.C. Code Ann. § 33-49-615 for the 2021 calendar year were required to be made no later than May 15, 2022. S.C. Code Ann. § 33-49-615 went into effect on May 1, 2020, and is one of the provisions in Act 56, which was enacted in 2019.

Our compliance examination verified that the following information regarding board member compensation and benefits for the 2021 calendar year was disclosed at a location accessible and visible to the cooperative membership on the Cooperative's website by May 15, 2022: (1) daily per diem amounts; (2) total per diem compensation for attendance at meetings of cooperative service organizations; (3) total per diem compensation for attendance at regular and special meetings, including board of trustee committee meetings, (4) total per diem compensation for trustee training and certification; (5) total expenses paid or reimbursed, including mileage, subsistence, entertainment or travel expenses paid in conjunction with the preceding four items; (6) total value of and description of any other fringe benefit provided, and (7) the total value of and a description of any goods or services required to be disclosed by S.C. Code Ann. § 33-49-630(C)(3).

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Our compliance examination also included limited inquiries, review of minutes of meetings, and review of amended bylaws, if applicable.

Based upon the examination procedures performed and the results obtained, it appears that the Cooperative is in compliance with the above referenced code sections except for:

In response to a discovery question ORS issued as part of this audit, the Cooperative responded that “[i]n 2021 a fixed fee tied to all attendance in that specific month was paid; however, the Cooperative, as of 1/1/22, is paying Trustees on a per diem basis.” At the conclusion of the last audit, ORS stated in its January 27, 2022 review letter to the board, that the Cooperative’s practice of paying a monthly fixed fee to trustees did not comply with S.C. Code Ann. § 33-49-630(A). ORS will be conducting a follow up to the last audit before the end of calendar year 2022 to evaluate any corrective action taken by the Cooperative.

Recommendations:

1 Eighteen out of twenty-two cooperatives audited by ORS provided the disclosures required under section 33-49-615 broken down by individual board members. Marlboro Electric Cooperative is one of four cooperatives that provided the disclosures as lump sums for the entire boards. As in the review letters after the 2020 and 2021 compliance examinations, ORS continues to recommend that all cooperatives break down their disclosures of compensation on a per board member basis to ensure greater transparency to the membership.

Other:

Question 6 of ORS’s First and Continuing Request for Production of Books, Records and Other Information to the Cooperative in this compliance examination asked about compensation or benefits board of trustee members receive from affiliates or subsidiaries of the Cooperative and whether this information was included on the 2021 board compensation and benefits disclosure to the membership. The Cooperative’s initial response to the First and Continuing Request did not include a written response to this question. By letter dated September 15, 2022, ORS requested the Cooperative provide a written response to the question.

By letter dated September 27, 2022 (attached), the Cooperative responded that beginning with the 2022 calendar year disclosure, the Cooperative “intend[s] to provide subsidiary and affiliate compensation as per S.C. Code Ann. 33-49-150(A).” It is ORS’s position that the annual compensation and benefits disclosure posted to an electric cooperative’s website per S.C. Code Ann. § 33-49-615(A) shall include compensation or benefits board of trustee members receive from affiliates or subsidiaries of the electric cooperative. Based on the Cooperative’s September 27, 2022 letter, ORS understands that the Cooperative agrees to include all subsidiary and affiliate compensation and benefits on its disclosure to the membership beginning with its 2022 calendar year disclosure which must be posted by May 15, 2023. If this understanding is incorrect, please notify our office in writing as soon as possible. Starting with the Cooperative’s 2022 calendar year disclosure, future ORS compensation and benefits reviews will include procedures covering disclosures of subsidiary and affiliate compensation.

For future reviews of the Electric Cooperatives and the Association, ORS is planning the following audit schedule:

1. In 2021, compliance reviews were completed covering the major provisions of S.C. Code Ann. § 33-49-150(A) for the period ending June 30, 2021. For the Cooperatives that received reports that included written findings, the ORS will follow up with those organizations and review their corrective actions. This work will be completed before the end of 2022.
2. For calendar year 2023 and each year thereafter, the ORS will:
 - a) Review each Cooperative's and the Association's disclosure of compensation and benefits as required by S.C. Code Ann. § 33-49-615, which requires disclosing the compensation or benefits by category paid to or provided for board of trustee members during the previous calendar year. These disclosures are required to be made by a Cooperative no later than May 15 and disclose amounts paid for the previous calendar year.
 - b) Review each Cooperative's and the Association's compliance with S.C. Code Ann. § 33-49-630(A), which provides that compensation shall not be paid except for actual attendance upon activities authorized by the board. The review period will be the same as covered in the compensation and benefits review.

Regarding comprehensive audits (beyond examining Compensation and Benefits disclosures), the ORS is proposing a three (3) year rotation auditing eight (8) entities per year. The audit rotation schedule for comprehensive audits would begin in 2024 as follows:

1. **2024 Comprehensive Audits:**
 - Conduct 8 comprehensive audits covering a test period from July 1, 2021 to December 31, 2023. (Test period is 2.5 years)
 - The initial selection of 8 will be randomly selected from the 24 entities subject to review.
2. **2025 Comprehensive Audits:**
 - Conduct 8 comprehensive audits covering a test period July 1, 2021, to December 31, 2024. (Test period is 3.5 years)
 - This next selection of 8 will be randomly selected from the remaining 16 entities subject to review.
3. **2026 Comprehensive Audits:**
 - Conduct 8 comprehensive audits covering a test period July 1, 2021, to December 31, 2025. (Test period is 4.5 years)
 - The remaining 8 entities will be included in this rotation.
4. **In 2027 the rotation would start over.**

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The ORS is requesting your feedback on this proposed schedule no later than December 31, 2022.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Herpel', written in a cursive style.

David M. Herpel, CPA
ORS Audit Manager

September 27, 2022

Via Electronic Mail Only

Mr. Christopher M. Huber, Esquire
General Counsel
Office of Regulatory Staff
1401 Main Street
Suite 900
Columbia, SC 29201
chuber@ORS.sc.gov

RE: Response to ORS' letters dated September 15, 2022, to Marlboro Electric Cooperative
and Pee Dee Electric Cooperative

Dear Chris:

On behalf of both Marlboro Electric Cooperative, Inc. and Pee Dee Electric Cooperative, Inc. (collectively "Cooperatives"), I am writing to inform you that beginning with the 2022 calendar year, the Cooperatives intend to provide subsidiary and affiliate compensation as per S.C. Code Ann. 33-49-150(A).

Sincerely,



Paul J. Conway

General Counsel to Marlboro Electric Cooperative, Inc.
Counsel to Pee Dee Electric Cooperative, Inc.