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CHAPTER 39

South Carolina Distributed Energy Resource Program

**SECTION 58‑39‑110.** Short title; goals of chapter.

 This chapter may be cited as the “South Carolina Distributed Energy Resource Act”. The goals of this chapter are to promote the establishment of a reliable, efficient, and diversified portfolio of distributed energy resources for the State.

HISTORY: 2014 Act No. 236 (S.1189), Section 2, eff June 2, 2014.

Editor’s Note

2014 Act No. 236, Section 9, provides as follows:

“SECTION 9. If the application of the provisions of this act to any wholesale electrical contract existing on the date of its adoption is determined to impair unlawfully any term of such contract or to add material costs to either party, then that contract will be exempt from the terms of this act to the extent necessary to cure such impairment or to avoid the imposition of additional material costs.”

**SECTION 58‑39‑120.** Definitions.

 As used in this chapter:

 (A) “AC” means alternating current, as measured at the point of interconnection of the renewable energy facility to the interconnecting electrical utility’s transmission or distribution system.

 (B) “Avoided costs” means payments for purchases of electricity made according to an electrical utility’s most recently approved or established avoided cost rates in this State or rates negotiated pursuant to PURPA, in the year the costs are incurred, for purchases of electricity from qualifying facilities pursuant to Section 210 of the Public Utility Regulatory Policies Act, said costs to be calculated as set forth in Section 58‑39‑140(A)(1).

 (C) “Distributed energy resource” (DER) means demand‑ and supply‑side resources that can be deployed throughout the system of an electrical utility to meet the energy and reliability needs of the customers served by that system, including, but not limited to, renewable energy facilities, managed loads (including electric vehicle charging), energy storage, and other measures necessary to incorporate renewable generation resources, including load management and ancillary services, such as reserves, voltage control, and reactive power, and black start capabilities.

 (D) “Electrical utility” shall be defined as in Section 58‑27‑10 of the 1976 Code, provided, however, that electrical utilities serving less than 100,000 customer accounts shall be exempt from the provisions of this chapter.

 (E) “Renewable energy facility” means a facility that generates electric power by the use of a renewable generation resource that was placed in service for use by or to provide power to an electrical utility after January 1, 2014. A “renewable energy facility” also shall mean any incremental capacity installed after January 1, 2014, that delivers energy from a renewable generation resource.

 (F) “Renewable generation resource” means solar photovoltaic and solar thermal resources, wind resources, low‑impact hydroelectric resources, geothermal resources, tidal and wave energy resources, recycling resources, hydrogen fuel derived from renewable resources, combined heat and power derived from renewable resources, and biomass resources.

HISTORY: 2014 Act No. 236 (S.1189), Section 2, eff June 2, 2014.

Editor’s Note

2014 Act No. 236, Section 9, provides as follows:

“SECTION 9. If the application of the provisions of this act to any wholesale electrical contract existing on the date of its adoption is determined to impair unlawfully any term of such contract or to add material costs to either party, then that contract will be exempt from the terms of this act to the extent necessary to cure such impairment or to avoid the imposition of additional material costs.”

**SECTION 58‑39‑130.** Distributed energy resource program.

 The purpose of this section is to establish the “distributed energy resource program” for this State. To accomplish the goals of this chapter:

 (A) An electrical utility may apply to the Public Service Commission for approval to participate in the distributed energy resource program. After conducting a hearing on the application, the commission may approve such application if the applicant demonstrates that the program will further the goals of this chapter as set forth in Section 58‑39‑110.

 (1) The application shall, at a minimum, include the following information:

 (a) a statement of the specific goals to be addressed by the program and the benefits to be achieved from its implementation;

 (b) a description of the principal elements of the program and a statement of the benefits to be achieved from the implementation of each of those elements;

 (c) a description of the electrical utility’s planned actions to implement the program and the anticipated timing of those actions;

 (d) where relevant, the locational benefits and costs of proposed distributed energy resources proposed to be located on the distribution and transmission system, including, but not limited to, reductions or increases in local generation capacity needs, and avoided or increased investments in distribution infrastructure;

 (e) any proposed customer programs and changes in tariffs, or other mechanisms that support the prudent, efficient, and reliable deployment of cost‑effective distributed energy resources and the goals of the distributed energy resource program as defined in Section 58‑39‑110, including, but not limited to, programs intended to support access to distributed energy resources for tax‑exempt entities;

 (f) additional utility expenditures necessary to integrate cost‑effective distributed energy resources into distribution and transmission planning;

 (g) where relevant, a description and evaluation of any barriers to the deployment of distributed energy resources as envisioned in the plan, including, but not limited to, safety standards related to technology or operation of the distribution circuit in a manner that ensures reliable service;

 (h) a schedule of the projected incremental costs anticipated to implement the electrical utility’s distributed energy resource program for each year of the subject period; and

 (i) an estimate of costs to be incurred pursuant to the distributed energy resource program as defined in Section 58‑39‑130 and an estimate of those costs to be recovered pursuant to Sections 58‑27‑865 and 58‑39‑140 to fully recover the projected costs of the program.

 (2) Upon approval of its application, an electrical utility shall be permitted to recover its costs related to the approved distributed energy resource program pursuant to Sections 58‑27‑865 and 58‑39‑140 to the extent those costs are reasonably and prudently incurred to implement an approved program. Approval of a program, measure, or investment shall constitute a finding by the commission that it is just, reasonable, and prudent for the utility to implement the program, measure or investment as approved until such time as the commission orders otherwise.

 (3) The Office of Regulatory Staff, an electrical utility, or any other interested party may file a petition for amendment of a distributed energy resource program at any time. The commission may hold a hearing on such petition if it determines that the extent of the proposed changes warrant a hearing. The petition for amendment shall include the information set forth in Section 58‑39‑130(A)(1) to the extent that such information is relevant to the amendments proposed.

 (4) The effect of a decision to amend or terminate an approved distributed energy resource program, investment, or measure shall be prospective only and costs incurred prior to that decision shall be recoverable.

 (5) An electrical utility may invest in distributed energy resources or programs outside of an approved distributed energy resource program under this chapter. The utility may seek recovery of the costs associated with such programs and resources under the ratemaking principles and procedures generally applicable to electrical utilities outside of this chapter. The fact that such resources are not part of an approved distributed energy resource program shall create no negative inference concerning their recoverability under other ratemaking provisions.

 (6) An electrical utility may file an application to participate in a distributed energy resource program at any time.

 (B) An electrical utility may implement a distributed energy resource program by one or more of the following:

 (1) investment in distributed energy resources located in South Carolina as defined in Section 58‑39‑120;

 (2) purchase of power from renewable energy facilities located in South Carolina;

 (3) investment in technologies necessary to mitigate the effects of variable renewable energy generation through provision of ancillary services, including, but not limited to, reserves, voltage control, and reactive power in South Carolina; and

 (4) investment in technologies that enhance load management including, but not limited to, electric vehicle charging and energy storage.

 (C) Any distributed energy resource program proposed by an electrical utility shall, at a minimum, result in development by 2021 of renewable energy facilities located in South Carolina in an aggregated amount of installed nameplate generation capacity equal to at least two percent of the previous five‑year average of the electrical utility’s South Carolina retail peak demand. All investments and procurements proposed by an electrical utility under its program shall be reviewed by the commission before the program is implemented to determine whether the investments or procurements are reasonable and prudent in light of the nature of the resources to be acquired, the goals of the utility’s distributed energy resources program and alternatives available in the market. In the proposed distributed energy resource program, the electrical utility shall:

 (1) submit a plan to invest in or procure power from renewable energy facilities located in South Carolina, each with a nameplate capacity that is greater than one thousand kilowatts (1,000 kW AC) but no greater than ten thousand kilowatts (10,000 kW AC) in an aggregated amount of installed nameplate generation capacity equal to one percent of the electrical utility’s previous five‑year average of the electrical utility’s South Carolina retail peak demand.

 (2) establish a program, to be implemented no later than one year from the initial approval of a distributed energy resource program, to encourage customers of the electrical utility to purchase or lease renewable energy facilities, each no greater than one thousand kilowatts (1,000 kW AC) in nameplate capacity in an aggregated amount of installed nameplate generation capacity equal to one percent of the electrical utility’s previous five‑year average of the electrical utility’s South Carolina retail peak demand with no less than twenty‑five percent of the capacity being from renewable energy facilities each no greater than twenty kilowatts (20 kW AC) in nameplate capacity. Said program shall be implemented according to the following options:

 (a) an incentive to encourage residential customers of the electrical utility to purchase or lease renewable energy facilities in order to become an eligible customer‑generator, as defined in Section 58‑40‑10.

 (b) an incentive to encourage customers of the electrical utility to purchase or lease renewable energy facilities, each no greater than one thousand kilowatts (1000 kW AC) in nameplate capacity, which are intended primarily to offset part or all of an electrical utility customer’s own electrical energy requirements.

 (3) establish a program, to be implemented no later than one year from the initial approval of a distributed energy resource program, to support access to distributed energy resources for South Carolina entities holding tax‑exempt status under the Internal Revenue Code and governmental entities and instrumentalities.

 (D) Upon satisfaction of the minimum aggregate generation capacity targets specified in subsection (C), the electrical utility may invest in renewable energy facilities located in South Carolina, each with a nameplate capacity that is less than ten thousand kilowatts (10,000 kW AC) and greater than one thousand kilowatts (1,000 kW AC), with a cumulative installed nameplate generation capacity equal to one percent of the previous five‑year average of the electrical utility’s South Carolina retail peak demand.

 (E) If the application of the provisions of this chapter to any wholesale electrical contract executed on or before the effective date of this act is determined to impair unlawfully any term of such contract or to add material costs to either party, then that contract will be exempt from the terms of this chapter to the extent necessary to cure such impairment or to avoid the imposition of additional material costs.

HISTORY: 2014 Act No. 236 (S.1189), Section 2, eff June 2, 2014.

Editor’s Note

2014 Act No. 236, Section 9, provides as follows:

“SECTION 9. If the application of the provisions of this act to any wholesale electrical contract existing on the date of its adoption is determined to impair unlawfully any term of such contract or to add material costs to either party, then that contract will be exempt from the terms of this act to the extent necessary to cure such impairment or to avoid the imposition of additional material costs.”

**SECTION 58‑39‑140.** Submittal of estimates of incremental or avoided costs for the next twelve months; hearing; regulations; report; expiration.

 (A) For purposes of this section, “incremental costs” means all reasonable and prudent costs incurred by an electrical utility to implement a distributed energy resource program pursuant to the provisions of Section 58‑39‑130 of this chapter, including, but not limited to:

 (1) The cost an electrical utility incurs in excess of the electrical utility’s avoided cost rate, as defined in this section. All costs paid under avoided cost rates, or negotiated rates pursuant to PURPA, whichever is lower, shall be considered an avoided cost under Section 58‑39‑120(B) and shall be recovered under Section 58‑27‑865.

 (2) The full cost of an electrical utility’s investment in nongenerating distributed energy resources, such as, but not limited to, energy storage devices.

 (3) The electrical utility’s weighted average cost of capital as applied to the electrical utility’s investment in distributed energy resources. The weighted average cost of capital means the utility’s weighted average cost of (a) common equity, as most recently approved by the commission, and (b) long term debt. The capital costs of the resource shall include, but not be limited to, all reasonable and prudent costs associated with the design, siting, selection, acquisition, licensing, permitting, constructing, testing, and placing into service of the resource as well as capital maintenance and other capital costs associated with its repair, renewal, replacement, and upgrading. Such costs also shall include all reasonable and prudent costs incurred to expand, upgrade, or reconfigure transmission or distribution systems to accommodate power flows from the resource or to respond to other requirements placed by the resource on the electrical system, along with all other costs properly considered capital costs for a project or asset under generally accepted principles of regulatory or utility accounting or accounting orders issued by the commission. Capital costs shall include the utility’s weighted average cost of equity and long‑term debt applied to the balance of construction work in progress for which capital costs are not yet being collected through a fuel cost component approved under this chapter and Section 58‑27‑865.

 (4) Operating and maintenance expenses, taxes, insurance, depreciation, overheads, and all other expenses properly considered to be expenses associated with a project, asset, or program under generally accepted principles of regulatory, or utility accounting or accounting orders issued by the commission, provided that such expenses shall be recorded as a capital cost of the resource or program until such time as a fuel cost component providing for their recovery goes into effect.

 (5) The electrical utility’s incremental labor cost associated with implementing a distributed energy resource program.

 (B) Upon approval of a distributed energy resource program, the commission shall direct the electrical utility which incurs incremental or avoided costs to submit to the commission and to the Office of Regulatory Staff, within such time and in such form as the commission may designate, its estimates of incremental or avoided costs for the next twelve months. The commission may hold a public hearing at any time between the twelve‑month reviews to determine whether an increase or decrease in the fuel cost component designed to recover incremental or avoided costs should be granted. Upon conducting public hearings in accordance with law, the commission shall direct the electrical utility to place in effect an amount designed to recover, during the succeeding twelve months, the incremental or avoided costs determined by the commission to be appropriate for that period, adjusted for the over‑recovery or under‑recovery from the preceding twelve‑month period. This amount shall be a component of the fuel cost factor established under Section 58‑27‑865(A). The commission shall direct the electrical utility to send notice to the utility customers with the antecedent billing of the time and place of any public hearing to be held pursuant to this subsection, and the commission shall again direct the electrical utility to send notice to the utility customers with the next billing if the utility is granted a rate increase by the commission.

 (C) Upon request by the Office of Regulatory Staff or the electrical utility, a public hearing must be held by the commission coincident with the fuel cost recovery proceeding required under Section 58‑27‑865 to determine whether an increase or decrease in the fuel cost component designed to recover incremental or avoided costs should be granted. If the request is by an electrical utility for an increase or decrease in the fuel cost factor, the commission shall direct the utility to send notice of the request and hearing to all customers with the next billing, and if the commission grants the rate request subsequent to the request and hearing, the commission shall direct the utility to send notice of the amount of the increase or decrease to all customers with the next billing.

 (D) The commission is authorized to promulgate, in accordance with the provisions of this section, all regulations necessary to allow the recovery by electrical utilities of all their prudently incurred distributed energy resource program implementation costs incurred pursuant to Sections 58‑39‑130 and 58‑39‑140 of this chapter.

 (E) No later than July 31, 2016, the Office of Regulatory Staff shall prepare and submit to the General Assembly with copies to all members of the State Regulation of Public Utilities Review Committee a report on the implementation of this chapter and Chapter 40 of this title. The Office of Regulatory Staff shall update this report no later than July 31, 2017, and each two years thereafter. Upon receipt and review of these reports, and in consultation with the General Assembly, the Public Utilities Review Committee shall make recommendations to the Office of Regulatory Staff as to any changes in implementation that may be needed.

 (F) The authorization to propose or approve new components of DER programs shall sunset and expire on January 1, 2021, provided however that the cost recovery provisions of this chapter shall remain in force until the costs associated with all approved DER program components have been recovered.

HISTORY: 2014 Act No. 236 (S.1189), Section 2, eff June 2, 2014.

Editor’s Note

2014 Act No. 236, Section 9, provides as follows:

“SECTION 9. If the application of the provisions of this act to any wholesale electrical contract existing on the date of its adoption is determined to impair unlawfully any term of such contract or to add material costs to either party, then that contract will be exempt from the terms of this act to the extent necessary to cure such impairment or to avoid the imposition of additional material costs.”

**SECTION 58‑39‑150.** Caps to residential, commercial, and industrial accounts.

 For the protection of consumers and to ensure that the cost of DER programs do not exceed a reasonable threshold, the commission must not approve a DER plan in which the total incremental costs to be incurred by an electrical utility and recovered from the electrical utility’s South Carolina retail customer classes exceeds the following annual amounts per number of accounts for costs that are incurred on or after January 1, 2014: residential: twelve dollars; commercial: one hundred twenty dollars; and industrial: twelve hundred dollars. The application of these caps to residential, commercial, and industrial accounts will be as set forth in the electrical utility’s approved distributed energy resource program.

HISTORY: 2014 Act No. 236 (S.1189), Section 2, eff June 2, 2014.

Editor’s Note

2014 Act No. 236, Section 9, provides as follows:

“SECTION 9. If the application of the provisions of this act to any wholesale electrical contract existing on the date of its adoption is determined to impair unlawfully any term of such contract or to add material costs to either party, then that contract will be exempt from the terms of this act to the extent necessary to cure such impairment or to avoid the imposition of additional material costs.”