COMMITTEE REPORT

May 1, 2018

**H. 4375**

Introduced by Reps. McCoy, Ott, Lucas, Anderson, Ballentine, Blackwell, Caskey, Crawford, Crosby, Davis, Finlay, Forrester, Gilliard, Hardee, Henegan, Hixon, Mack, Pope, Rutherford, J.E. Smith, Sandifer, Stavrinakis, Erickson, Huggins, W. Newton, Bales, Young, McEachern, Clary, Tallon, Brown, Fry, Robinson‑Simpson, V.S. Moss, Clyburn, Martin, Magnuson, Bennett, Arrington, Daning, Weeks, Henderson and Govan

S. Printed 5/1/18--S.

Read the first time February 1, 2018.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4375) to amend Section 58‑33‑220, Code of Laws of South Carolina, 1976, relating to definitions under the Base Load Review Act, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking lines 4-21 on page 2.

To further amend the bill, as and if amended, by striking SECTION 2, lines 13-20 on page 3, and inserting:

/ SECTION 2A. As of the effective date of this act, the Public Service Commission must not accept a base load review application, nor may it consider any requests made pursuant to Article 4, Chapter 33 of Title 58 other than in a docket currently pending before the Commission.

B. The provisions of Article 4, Chapter 33 of Title 58 are repealed upon the conclusion of litigation concerning the abandonment of V.C. Summer Units 2 and 3. /

To further amend the bill, as and if amended, by striking SECTION 3, beginning on line 22, page 3.

To further amend the bill, as and if amended, by striking SECTION 4, lines 21-23, page 5.

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Amended by the House of Representatives on January 31, 2018**

**State Expenditure**

The amended bill adds an item to Section 58-33-220 to define the terms imprudent and prudent and to list the items PSC must consider in determining whether an action or decision is deemed prudent. Also, the amended bill deletes Articles 4 and 5, Chapter 33, Title 58, which are the Base Load Review Act and Judicial Review, respectively. However, the provisions of Articles 4 and 5, Chapter 33, Title 58 continue to apply to projects or plants begun pursuant to an order issued under Article 4, Chapter 33, Title 58, including any amendments, and must remain in effect for any matters or petitions pending before PSC. The bill adds Chapter 34 to Title 58, which applies to rates for the investor-owned utility (South Carolina Electric and Gas Company) holding the majority interest in the V.C. Summer Nuclear Reactor Units 2 and 3. Further, within five calendar days after the effective date of this bill, PSC must provide an experimental rate that customers must pay during pendency of litigation currently before PSC, or any appeal therefrom or final resolution of any action in a court of competent jurisdiction, or until replaced by an order of PSC. PSC must monitor the net effect of the experimental rate and may alter the experimental rate only if it determines that an adjustment to the experimental rate is necessary to satisfy constitutional requirements. PSC is not prohibited from adopting the experimental rate directed by the General Assembly as its own rate. The bill takes effect upon approval by the Governor and applies to all cases, proceedings, petitions, or matters pending before PSC or in any court or venue on or after the effective date of the bill.

**Office of Regulatory Staff (ORS).** This bill could increase Other Funds expenses by $200,000 in FY 2018-19 for additional expert witnesses and other professional expertise. If the public utility does not cover the expenses pursuant to Section 58-4-100, the Department of Revenue will assess each public utility its portion of the expenses in proportion to its gross income for operation in the state. The Department of Revenue currently collects these assessments and pays the balance of the collections, minus the administrative costs, into the state treasury.

**Public Service Commission (PSC).** PSC indicates that this bill will have no expenditure impact on Other Funds as the bill requires the agency to perform activities that will be conducted within the normal course of agency business. Since PSC is solely operated by other funds, this bill will have no expenditure impact on the general fund or federal funds.

**State Revenue**

The sudden abandonment of the construction of two nuclear power plants by the SCANA Corporation has introduced many uncertainties and contingencies in projecting revenues. Since the amended bill proposes reducing the electric rates that customers would pay based on their electricity usage, this bill may affect the sales tax, the corporate income tax, the corporate license tax, and the electric power tax. The following analysis estimates the potential impact on state revenues, though a final estimate may depend upon a review of all financial and economic conditions at the time of implementation.

Currently, the sales of electricity to private residences and manufacturing plants are exempt from the state sales and use tax in South Carolina. The sale of electricity to the commercial (business) sector, however, is subject to the sales and use tax. If electric rates are changed, those rate changes will be reflected in the charges for electricity on customer’s monthly billing statements. The changes in commercial billing rates will be reflected ultimately in changes in state sales and use tax revenue collections.

According to the latest data from the U.S Department of Energy, Energy Information Administration, total energy expenditures in the commercial sector totaled more than $2,600,000,000 in South Carolina. Of this amount, electricity accounts for 85 percent of all energy used in the commercial sector. Adjusting this figure by an average annual rate increase in electricity consumption of 2.4 percent per year, total electricity expenditures in the commercial sector are estimated to reach $2,465,400,000 in FY 2018-19. Also, according to the U.S. Department of Energy, South Carolina Electric and Gas (SCE&G) commands 28.39 percent of the total electricity demand in South Carolina based upon the total amount of megawatt hours sold. Multiplying an estimated $2,465,400,000 of electricity expenditures by the commercial sector in FY 2018-19 by 28.39 percent of the electricity market controlled by SCE&G and applying an 18 percent electricity rate reduction and a 6 percent state sales and use tax, yields a reduction of an estimated $7,559,000 in state sales and use tax revenue in FY 2018-19. Of this amount, general fund sales and use tax revenue will be reduced by $5,039,000, the EIA will be reduced by $1,260,000, and the Homestead Exemption Fund will be reduced by $1,260,000 in FY 2018-19.

This bill may also affect revenue collections from the corporate income tax, the corporate license tax, and the electric power tax. Since the accounting for the loss of a planned capital investment in the utility industry is extraordinarily difficult and unpredictable, the effects of the abandonment of the two nuclear reactor projects by SCANA on corporation income tax and corporate license tax is uncertain. Also, there is much discussion about the change in ownership of the public utility and the changing of utility rates. Despite these obstacles, we expect electric power will continue to be generated, and the electric power generation tax should not be affected.

Additionally, PSC indicates that this bill could increase revenue from the sale of transcripts from proceedings as a result of increased interest in cases brought before the agency. This could result in an increase of approximately $9,000 in other funds revenue of PSC.

This bill also creates a felony associated with the willful and intentional failure to provide relevant information or the willful and intentional misrepresentation of a matter to PSC. Anyone found guilty of this felony must be fined, in the discretion of the court, and may be found in contempt of court. We anticipate that most of the cases for this offense will be tried in circuit court. Existing law distributes revenue generated from fines, assessments, and surcharges imposed for conviction in courts among the general fund, specified state agencies and programs, and local governments. Since data is not available to determine the number of convictions that may result from this section of the bill, the revenue impact on general fund and other funds revenue is undetermined.

Also, this bill creates a felony associated with the willful and intentional failure to comply with a subpoena issued by the Executive Director of ORS pursuant to Section 58-4-55. Anyone found guilty of this felony must be fined, in the discretion of the court, and may be found in contempt of court. We anticipate that most of the cases for this offense will be tried in circuit court. Existing law distributes revenue generated from fines, assessments, and surcharges imposed for conviction in courts among the general fund, specified state agencies and programs, and local governments. Since data is not available to determine the number of convictions that may result from this section of the bill, the revenue impact on general fund and other funds revenue is undetermined.

This bill also adds Section 2-1-260 to provide that departments, bureaus, officers, commissions, institutions, and other state agencies, upon request, must immediately furnish any information requested to the President Pro Tempore of the Senate or the Speaker of the House of Representatives. Information that is considered exempt from public disclosure pursuant to Section 30-4-40 does not constitute a waiver of confidentiality. Further, any member of the General Assembly who obtains this information and willfully violates the confidentially provisions must be deemed guilty of a crime of moral turpitude and upon conviction must be fined no more than $100 or imprisoned for no more than thirty days for a first offense. For a second offense, the fine is no more than $200 or imprisonment for no more than sixty days. For third and subsequent offenses, the fine is no more than $300 or imprisonment for no more than ninety days. We anticipate that most of the cases for this offense will be tried in circuit court. Existing law distributes revenue generated from fines, assessments, and surcharges imposed for conviction in courts among the general fund, specified state agencies and programs, and local governments. Since data is not available to determine the number of convictions that may result from this section of the bill, the revenue impact on general fund and other funds revenue is undetermined.

Additionally, the amended bill adds an item to Section 58-33-220 to define the terms imprudent and prudent and to list the items PSC must consider in determining whether an action or decision is deemed prudent. Also, the bill defines fraud as the term relates to the determination of factors to consider whether an action is deemed prudent.

This bill could reduce other funds revenue of ORS by an amount that the agency is not reimbursed for expenses incurred to employ expert witnesses and other professional expertise. The reduction in other funds revenue is undetermined since the amount that may not be reimbursed by the public utility is unknown. Typically, if the public utility does not cover the expenses pursuant to Section 58-4-100, the Department of Revenue will assess each public utility its portion of the expenses in proportion to its gross income for operation in the state. The Department of Revenue currently collects these assessments and pays the balance of the collections, minus the administrative costs, into the state treasury.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 58‑33‑220, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS UNDER THE BASE LOAD REVIEW ACT, SO AS TO ADD CERTAIN DEFINITIONS; TO REPEAL ARTICLES 4 AND 5, CHAPTER 33, TITLE 58, RELATING TO THE BASE LOAD REVIEW ACT, AND TO PROVIDE A SPECIFIC EXCEPTION TO THIS REPEAL; BY ADDING CHAPTER 34 TO TITLE 58 SO AS TO PROVIDE FOR THE MANNER IN WHICH AND PROCEDURES UNDER WHICH ELECTRICITY RATES FOR CERTAIN RATEPAYERS WHO ARE PAYING ADDITIONAL CHARGES UNDER THE BASE LOAD REVIEW ACT FOR THE CONSTRUCTION OF NUCLEAR PLANTS OR PROJECTS SHALL BE REVISED AND DETERMINED; AND TO PROVIDE FOR PROCEDURES AND PROVISIONS OF LAW WHICH APPLY AND DO NOT APPLY IN REGARD TO THE ADJUSTMENT OF ELECTRICITY RATES AS PROVIDED BY CHAPTER 34.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 58‑33‑220 of the 1976 Code is amended by adding appropriately numbered items to read:

“( ) ‘Imprudent’ or ‘imprudence’ includes, but is not limited to, lack of caution, care, or diligence as determined by the commission in regard to any action or decision taken by the utility or one acting on its behalf including, but not limited to, its officers, board, agents, employees, contractors, subcontractors, consultants affecting the project or any other person acting on behalf of or for the utility affecting the project. Imprudent or imprudence includes, but does not require, a finding of negligence, carelessness, or recklessness.

Imprudence on behalf of any contractor, subcontractor, agent, or person hired to construct a plant or perform any action or service on behalf of the utility shall be attributed to the utility.

Imprudence includes, but is not limited to, any one or more of the following:

(a) failure to timely disclose and provide to the commission or the Office of Regulatory Staff any report, study, analysis, or written communication material to a particular project prepared by a third party engaged or caused to be engaged by the utility and furnished to the utility which relates to the management, supervision, or oversight of the project, the budgeted costs of the project, the performance of contractors or subcontractors on the project, or the scheduled completion date of the project;

(b) inappropriate or poor management or oversight decisions in the construction of the project including, but not limited to, failure to keep knowledgeable utility management or supervisory personnel on the project site to ensure proper supervision and oversight of the project and its construction; and

(c) any other fact, factor, or relationship which indicates the lack of prudence as defined in this item as determined by the commission.

( ) ‘Prudent’, ‘prudence’, or ‘prudency’ means a high standard of caution, care, and diligence in regard to any action or decision taken by the utility or one acting on its behalf including, but not limited to, its officers, board, agents, employees, contractors, subcontractors, consultants affecting the project or any other person acting on behalf of or for the utility affecting the project.

To the extent a utility enters a contract with a third party that delegates some or all decision‑making authority related to the project, the utility retains the burden of establishing the prudency of specific items of cost or specific third-party decisions.

‘Prudent’, ‘prudence’, or ‘prudency’ also requires that any action or decision be made in a timely manner.

In determining whether any action or decision was prudent, the commission shall consider, including, but not limited to:

(a) whether the utility acts in a timely manner, with any passage of time which results in increased costs or expense prior to the utility acting or making the decision weighing against a finding of prudency;

(b) whether prior actions or decisions by the utility were imprudent and such imprudent actions led to a decision by the utility that could otherwise be prudent. Such circumstances weigh against a finding of prudency; and

(c) any other relevant factors, including commission of a fraudulent act, which are deemed not to be prudent.

As used in item (c), ‘fraud’ includes, in addition to its normal legal connotation, concealment, omission, misrepresentation, or nondisclosure of a material fact in any proceeding or filing before the commission or Office of Regulatory Staff. Proceedings and filings to which the provisions of this paragraph apply include, but are not limited to, rate or revised rate filings, responsive filings, motions, pleadings, briefs, memoranda, document requests, and other communications before the commission or Office of Regulatory Staff.”

SECTION 2. (A) Articles 4 and 5, Chapter 33, Title 58 of the 1976 Code are repealed on the effective date of this act.

(B) Notwithstanding the provisions of subsection (A), the provisions of Article 4 and 5, Chapter 33, Title 58, continue to apply only to projects or plants begun pursuant to an order issued under Article 4, Chapter 33, Title 58, and such provisions, including any amendments, shall remain in effect for any matters or petitions pending before the Public Service Commission related thereto.

SECTION 3. Title 58 of the 1976 Code is amended by adding:

“CHAPTER 34

Determination of Electricity Rates

Section 58‑34‑10. (A) The investor-owned utility holding the majority interest in the V. C. Summer Nuclear Reactor Units 2 and 3 at Jenkinsville, South Carolina, has entered into a merger agreement with an out‑of‑state investor-owned utility. This merger agreement contemplates the continuation of rate increases imposed under the Base Load Review Act contained in Article 4, Chapter 33, Title 58.

(B) Pursuant to the authority vested in the General Assembly by Section 1, Article IX of the Constitution of this State, the General Assembly is required to regulate investor owned utilities in order to protect the public interest. The General Assembly has determined that Section 1, Article IX of the Constitution requires that the General Assembly exercise its authority to set certain utility rates for the purpose of protecting the public interest until a determination can be made by the appropriate regulatory and judicial authorities. This rate shall apply to all customers of the investor-owned utility identified in subsection (A), which has imposed nine rate increases for the purpose of funding the V. C. Summer project.

Section 58‑34‑20. Within five calendar days after the effective date of this chapter, the Public Service Commission, by order, is directed to exercise its authority pursuant to Section 58‑27‑870(F) to provide an experimental rate that customers of the utility identified in Section 58‑34‑10 shall pay during the pendency of litigation currently before the commission, or any appeal therefrom or final resolution of any action in a court of competent jurisdiction, or until replaced by an order of the commission under Section 58‑34‑30. This experimental rate shall be the electric utility rates these ratepayers are paying as of the effective date of this section, reduced by all rate increases imposed under the provisions of the Base Load Review Act. The commission’s order shall take effect five calendar days after it is issued and the commission shall serve an attested copy of the order upon all interested parties.

Section 58‑34‑30. Notwithstanding any other provision of law, the experimental rate set pursuant to Section 58‑34‑20 shall remain in full force and effect during the pendency of the matters before the commission. However, the commission shall monitor the net effect of the experimental rate and may alter the experimental rate, on its own motion, only if it determines that an adjustment to the experimental rate is necessary to satisfy constitutional requirements of utility ratemaking. If required to adjust the rate, the commission shall, under applicable provisions of law, determine the just and reasonable rates for these ratepayers after considering all factors and evidence. In determining such rate and in considering the constitutionally allowable zone of reasonableness in which rates may properly fall, the commission is directed to set the lowest possible rate within the zone of reasonableness. Nothing herein prevents the commission from adopting as its own rate the experimental rate directed by the General Assembly in Section 58‑34‑10 and ordered pursuant to Section 58‑34‑20.

Section 58‑34‑40. Any provision of Article 7, Chapter 27, Title 58 in conflict with the provisions of this chapter, including, but not limited to, Section 58‑27‑870(B), are suspended for purposes of the utility rates provided for by this chapter and for any pending matters related to V.C. Summer Nuclear Reactor Units 2 and 3 at Jenkinsville, South Carolina, pending before the commission on or after the effective date of this chapter. The suspension remains in effect during the pendency of any litigation or appeal concerning the experimental or interim rates directed by the General Assembly or ordered by the Public Service Commission pursuant to this chapter, or related issues surrounding the establishment of these rates, until a final determination of the matter, including any subsequent appeals, is made by the appropriate court.

Section 58‑34‑50. Section 58‑27‑930 and the time limitations contained in Section 58-33-240(A) and (E) are hereby suspended for purposes of the utility rates provided for by this chapter and for any pending matters related to V.C. Summer Nuclear Reactor Units 2 and 3 at Jenkinsville, South Carolina, pending before the commission on or after the effective date of this chapter. The suspension remains in effect during the pendency of any litigation or appeal concerning the experimental or interim rates directed by the General Assembly or ordered by the Public Service Commission pursuant to this chapter, or related issues surrounding the establishment of these rates, until a final determination of the matter, including any subsequent appeals, is made by the appropriate court.

SECTION 4. The provisions of this act must be liberally construed to further the legislative intent of the General Assembly to provide the maximum ratepayer protection as more fully stated in this act.

SECTION 5. If any provision of this act is held or determined to be unconstitutional, invalid, or otherwise unenforceable by a court of competent jurisdiction, it is the intention of the General Assembly that the provision is severable from the remaining provisions of this act and that the holding does not invalidate or render unenforceable another provision of this act.

SECTION 6. This act takes effect upon approval by the Governor and applies to all cases, proceedings, petitions, or matters pending before the public service commission or in any other court or venue on or after the effective date of this act.

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