~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 1, 2018

**H. 4379**

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, Bennett, Arrington, Daning, Pendarvis, Govan and Toole

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

Read the first time January 25, 2018.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4379) to amend the Code of Laws of South Carolina, 1976, by adding Article 9 to Chapter 7, Title 1 so as to create the Utilities Consumer Advocate in the office, 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 all after the enacting language and inserting:

/ SECTION 1. Section 37‑6‑602 of the 1976 Code of Laws is amended to read:

The Consumer Advocate may be the Administrator of Consumer Affairs or he may be appointed by the administrator with the approval of the Commission on Consumer Affairs. The Consumer Advocate must be an attorney qualified to practice in all courts of this State with a minimum of ~~three~~ eight years’ practice experience.

SECTION 2. Section 37‑6‑604 of the 1976 Code of Laws is amended to read:

(A) The functions and duties of the Division of Consumer Advocacy are:

(1) to provide legal representation of the consumer interest before the state and federal regulatory agencies which undertake to fix rates or prices for consumer products or services or to enact regulations or establish policies related thereto and to provide legal representation of the consumer interest concerning insurance matters, certificates of need for health facilities and services as required for an activity under Section 44‑7‑160, and other health‑related provisions;

(2) to monitor existing regulations, rate structures, and policies of that agency of special interest to consumers and report to the public through the news media proposed changes therein under consideration and the effect of those changes on the lives of the citizens of the State; and

(3) to evaluate and act upon requests from consumers concerning the matters set forth in items (1) and (2), except that any proceedings initiated by the Consumer Advocate must be brought on behalf of the public at large and not for individuals; initiation or continuation of any proceedings is in the sole discretion of the Consumer Advocate.

(B) The annual report required of the Commission on Consumer Affairs must include a report on the activities of the Division of Consumer Advocacy.

(C) ~~After January 1, 2005, the division must not represent consumers in matters arising under Title 58. Matters or appeals under Title 58 that are pending on January 1, 2005, shall be transferred to the Office of Regulatory Staff.~~ The Consumer Advocate shall be provided notice of any matter filed at the Public Service Commission that could impact consumers’ utility rates, and may intervene as a party to advocate for the interest of consumers before the Public Service Commission and appellate courts in such matters as the Consumer Advocate deems necessary and appropriate.

SECTION 3. Section 37‑6‑607 of the 1976 Code of Laws is amended to read:

~~With the exception of matters arising under Title 58, the~~ The Consumer Advocate is considered to have an interest sufficient to maintain actions for judicial review and may, as of right and in the manner prescribed by law, intervene or otherwise participate in any civil proceeding which involves the review or enforcement of an agency action that the Consumer Advocate determines may substantially affect the interests of consumers.

SECTION 4. Section 58‑4‑10 of the 1976 Code of Laws is amended to read:

“Section 58‑4‑10. (A) There is hereby created the Office of Regulatory Staff as a separate agency of the State with the duties and organizations as hereinafter provided.

(B) Unless and until it chooses not to participate, the Office of Regulatory Staff must be considered a party of record in all filings, applications, or proceedings before the commission. The regulatory staff must represent the public interest of South Carolina before the commission. For purposes of this chapter, ‘public interest’ means the ~~a balancing of the following:~~

~~(1)~~ concerns of the using and consuming public with respect to public utility services, regardless of the class of customer~~;~~

~~(2)~~ ~~economic development and job attraction and retention in South Carolina;~~ and

~~(3)~~ preservation of ~~the financial integrity of the state’s public utilities and~~ continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

(C) The Office of Regulatory Staff is subject to the provision of Section 58-3-260 prohibiting ex parte communications with the commission, and any advice given to the commission by the regulatory staff must be given in a form, forum, and manner as may lawfully be given by any other party or person.”

SECTION 5. Section 58‑4‑80 of the 1976 Code of Laws is amended to read:

The executive director representing the regulatory staff is considered to have an interest sufficient to maintain actions for judicial review from commission orders or decisions and may, as of right and in a manner prescribed by law, intervene or otherwise participate in any civil proceeding which involves the review or enforcement of commission action that the executive director determines may substantially affect the public interest. This right includes intervention in any action for judicial review from commission orders or decisions that are pending at any stage of the action. The executive director representing the regulatory staff has the same rights of appeal from commission orders or decisions as other parties to commission proceedings. On appeal, the Office of Regulatory Staff does not represent the commission.

SECTION 6. This bill takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Updated for Additional Agency Response**

**Introduced on January 9, 2018**

**State Expenditure**

This bill creates within the Office of the Attorney General the Utilities Consumer Advocate (UCA), an attorney licensed to practice in all state courts who answers to and is appointed by the Attorney General. The Office of the Attorney General must cover necessary expenses related to the UCA position from state appropriations and will set the salary for the position.

The Office of Regulatory Staff (ORS) shall assist the UCA in carrying out their duties by providing research, expertise, and any other assistance requested by the UCA. The UCA represents the public utility interests of consumers. However, a person cannot serve as the UCA if they are affiliated with a utility governed by the PSC. In contrast, a person can serve as the UCA if they are affiliated with a business governed by the PSC, provided they file an annual statement of economic interest and the business affiliation does not cause conflict in the performance of their duties. The official duties of the UCA include: representing consumer interests before state and federal regulatory agencies tasked with fixing rates or prices for public utilities; monitoring regulations, rate structures, and policies of agencies of special interest to utility consumers; conveying relevant information to the public; acting upon consumer requests concerning these matters; and providing the General Assembly with an annual report on the previous year’s activities on behalf of the interests of utility consumers.

The UCA may review the records of the ORS and all other state agencies when necessary to carry out their duties. During the process of ratemaking or other PSC proceedings related to public utilities, the UCA may request the issuance of an order compelling a witness or company to produce or allow inspection of documentary evidence. The bill establishes time requirements for appeals to the issuance or non-issuance of an order. This bill provides the UCA with the power to intervene or participate in any civil proceeding involving the review or enforcement of an action believed to affect the interests of public utility consumers.

In addition to the above, the bill removes the requirement that ORS be responsible for preserving the financial integrity of the state’s public utilities and the continued investment in and maintenance of utility facilities. In addition to the ORS’ subpoena power, the bill also requires the agency to issue subpoenas at the request of the UCA. The executive director has the right to intervene in civil proceedings; however, the ORS will not represent the PSC when there is an appeal.

**Office of the Attorney General.** The bill requires the department to hire a Utilities Consumer Advocate. This position will occupy one FTE and receive an annual salary of $130,000 with a fringe amount of $40,000. Additional operating expenses associated with the position are expected to be $25,000 annually. The total recurring expenditure impact on the general fund will be $195,000.

**Office of Regulatory Staff (ORS).** ORS indicates that the bill will increase other funds expenses by approximately $349,000 in FY 2018-19. Recurring expenses are expected to total $300,000 for 4 FTE’s and $29,000 for operating expenses. The 4 FTE’s include an auditor, utility rates analyst, consumer services position, and a liaison with the Office of the Attorney General. These positions are needed to comply with the requirement that ORS staff must provide research, expertise, and assistance to the Utilities Consumer Advocate. Operating expenses include new computer equipment, phones, travel, training, supplies, and annual database maintenance. Nonrecurring expenses are expected to total $20,000 to replace the consumer services complaint-tracking database. This section of the impact statement has been updated to include a response from ORS.

**State Revenue**

The bill prohibits the Utilities Consumer Advocate from interviewing or seeking employment with a public utility while serving as the Utilities Consumer Advocate. Additionally, the Utilities Consumer Advocate must not represent or appear on behalf of a public utility in any proceeding before the Public Service Commission in any matter for one year after serving as the Utilities Consumer Advocate. The bill creates a new misdemeanor for a person who violates the provisions of this section of the bill. Upon conviction, the individual must be fined no more than $5,000, imprisoned for no more than one year, or both. Additionally, the bill creates a new misdemeanor for individuals that fail to provide information requested by the Executive Director of ORS, staff of ORS, or the Utilities Consumer Advocate. Upon conviction, the misdemeanor is punishable by thirty days imprisonment or a fine of $500.

Existing law distributes revenue generated from fines, assessments, and surcharges imposed in courts among the general fund, specified state agencies and programs, and local governments. Since data is not available to estimate the number of convictions that may result from this bill, the revenue impact on the general fund and other funds is undetermined. This section of the impact statement has been added to include an analysis on the impact to state revenue.

**Local Expenditure**

Since the bill creates two new misdemeanors, data is not available to estimate the number of convictions that may result from the bill. The bill’s effect on proceedings in court and local detention facilities is unknown. Therefore, the expenditure impact on local governments is undetermined. This section of the impact statement has been added to include an analysis on the impact to local governments.

**Local Revenue**

Since the bill creates two new misdemeanors, data is not available to estimate the number of convictions that may result from the bill. Existing law distributes revenue generated from fines, assessments, and surcharges imposed in courts among the general fund, specified state agencies and programs, and local governments. The revenue impact on local governments is undetermined. This section of the impact statement has been added to include an analysis on the impact to local governments.

**Introduced on January 9, 2018**

**State Expenditure**

This bill creates within the Office of the Attorney General the Utilities Consumer Advocate (UCA), an attorney licensed to practice in all state courts who answers to and is appointed by the Attorney General. The Office of the Attorney General must cover necessary expenses related to the UCA position from state appropriations and will set the salary for the position.

The Office of Regulatory Staff (ORS) shall assist the UCA in carrying out their duties by providing research, expertise, and any other assistance requested by the UCA. The UCA represents the public utility interests of consumers. However, a person cannot serve as the UCA if they are affiliated with a utility governed by the PSC. In contrast, a person can serve as the UCA if they are affiliated with a business governed by the PSC, provided they file an annual statement of economic interest and the business affiliation does not cause conflict in the performance of their duties. The official duties of the UCA include: representing consumer interests before state and federal regulatory agencies tasked with fixing rates or prices for public utilities; monitoring regulations, rate structures, and policies of agencies of special interest to utility consumers; conveying relevant information to the public; acting upon consumer requests concerning these matters; and providing the General Assembly with an annual report on the previous year’s activities on behalf of the interests of utility consumers.

The UCA may review the records of the ORS and all other state agencies when necessary to carry out their duties. During the process of ratemaking or other PSC proceedings related to public utilities, the UCA may request the issuance of an order compelling a witness or company to produce or allow inspection of documentary evidence. The bill establishes time requirements for appeals to the issuance or non-issuance of an order. This bill provides the UCA with the power to intervene or participate in any civil proceeding involving the review or enforcement of an action believed to affect the interests of public utility consumers. The bill prohibits the UCA from interviewing or seeking employment with a public utility during their service as the UCA and bars the person from representing a public utility within one year after their service as the UCA. Persons violating this provision are guilty of a misdemeanor and are subject to a penalty of not more than $5,000 or imprisonment for not more than one year, or both.

In addition to the above, the bill removes the requirement that ORS be responsible for preserving the financial integrity of the state’s public utilities and the continued investment in and maintenance of utility facilities. In addition to the ORS’ subpoena power, the bill also requires the agency to issue subpoenas at the request of the UCA. Entities failing to provide information requested by ORS staff or the UCA shall be guilty of a misdemeanor punishable by a $500 fine or 30 days imprisonment. The executive director has the right to intervene in civil proceedings; however, the ORS will not represent the PSC when there is an appeal.

**Office of the Attorney General.** The bill requires the department to hire a Utilities Consumer Advocate. This position will occupy one FTE and receive an annual salary of $130,000 with a fringe amount of $40,000. Additional operating expenses associated with the position are expected to be $25,000 annually. The total recurring expenditure impact on the general fund will be $195,000.

**Office of Regulatory Staff.** The expenditure impact of this bill is pending, contingent upon a response from the agency.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 9 TO CHAPTER 7, TITLE 1 SO AS TO CREATE THE UTILITIES CONSUMER ADVOCATE IN THE OFFICE OF THE ATTORNEY GENERAL, AND TO PROVIDE FOR THE DUTIES AND RESPONSIBILITIES OF THE UTILITIES CONSUMER ADVOCATE, AMONG OTHER THINGS; TO AMEND SECTION 58‑4‑10, RELATING TO THE OFFICE OF REGULATORY STAFF AND ITS MISSION, SO AS TO REMOVE THE PRESERVATION OF THE FINANCIAL INTEGRITY OF THE STATE’S PUBLIC UTILITIES, CONTINUED INVESTMENT, AND MAINTENANCE OF FACILITIES FROM THE MISSION; TO AMEND SECTION 58‑4‑50, RELATING TO REGULATORY STAFF DUTIES AND RESPONSIBILITIES, SO AS TO ADD THAT THE OFFICE SHALL PROVIDE RESEARCH, EXPERTISE, AND OTHER ASSISTANCE TO THE UTILITIES CONSUMER ADVOCATE AND MAKE OTHER CONFORMING CHANGES; TO AMEND SECTION 58‑4‑55, RELATING TO THE OFFICE OF REGULATORY STAFF’S ABILITY TO REQUEST CERTAIN INFORMATION, SO AS TO ADD THAT THE OFFICE SHALL HAVE SUBPOENA POWERS AND THAT THE UTILITIES CONSUMER ADVOCATE MAY REQUEST THE EXECUTIVE DIRECTOR TO ISSUE SUBPOENAS ON HIS BEHALF, AND TO PROVIDE A PENALTY FOR FAILURE TO PROVIDE REQUESTED INFORMATION UNDER CERTAIN CIRCUMSTANCES; AND TO AMEND SECTION 58‑4‑80, RELATING TO INTERVENTION IN CIVIL PROCEEDINGS BY THE EXECUTIVE DIRECTOR OF THE OFFICE OF REGULATORY STAFF, SO AS TO PROVIDE THAT ON APPEAL THE OFFICE DOES NOT REPRESENT THE PUBLIC SERVICE COMMISSION.

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

SECTION 1. Chapter 7, Title 1 of the 1976 Code is amended by adding:

“Article 9

Section 1‑7‑1310. There is created within the Office of the Attorney General the Utilities Consumer Advocate with duties and responsibilities as provided in this article.

Section 1‑7‑1320. For purposes of this article, the term:

(1) ‘Commission’ and ‘Regulatory Staff’ have the same meaning as provided in Section 58‑4‑5.

(2) ‘Public Utility’ has the same meaning as provided in Section 58‑4‑5, but also shall include in the meaning those electric utilities which are under the jurisdiction of the Public Service Commission; provided, however, that ‘public utility’ does not include those carriers that have elected to be regulated under an alternative regulation plan pursuant to Section 58‑9‑576 and 58-9-577.

Section 1‑7‑1330. (A) The Utilities Consumer Advocate must be appointed by the Attorney General, shall serve at the pleasure of the Attorney General, and must be an attorney qualified to practice in all courts of this State. The Utilities Consumer Advocate shall not report to the Office of Regulatory Staff but may avail himself of the services of the Office of Regulatory Staff as necessary in representing the public utility interests of consumers. The Office of Regulatory Staff shall cooperate with any and all requests by the Utilities Consumer Advocate and Regulatory Staff and shall be available to provide research and expertise to the Utilities Consumer Advocate as requested.

(B) Unless otherwise provided by law, no person may serve as the Utilities Consumer Advocate if the Public Service Commission regulates any utility that is a business with which he is associated. The Utilities Consumer Advocate and the Attorney General, including any member of his staff, may not receive anything of value from a public utility and the Attorney General is prohibited from receiving a campaign contribution from a public utility.

Section 1‑7‑1340. The Utilities Consumer Advocate must be provided office space and be otherwise equipped by the Office of the Attorney General to perform the functions prescribed in this article. Necessary expenses must be paid from appropriations to the Office of the Attorney General provided annually in the General Appropriations Act. The Attorney General shall set the salary of the Utilities Consumer Advocate.

Section 1‑7‑1350. (A) The duties and responsibilities of the Utilities Consumer Advocate are:

(1) to represent the public utility interests of consumers;

(2) to provide legal representation of the consumer interests before the state and federal regulatory agencies which undertake to fix rates or prices for public utilities;

(3) along with the Office of Regulatory Staff, to monitor existing regulations, rate structures, and policies of those agencies of special interest to utility consumers and report to the public through the news media proposed changes under consideration and the effect of those changes on the lives of the citizens of the State; and

(4) to evaluate and act upon requests from consumers concerning the matters provided in items (1) through (3), except that any proceedings initiated by the Utilities Consumer Advocate must be brought on behalf of the public at large and not for individuals; initiation or continuation of any proceedings is in the sole discretion of the Utilities Consumer Advocate.

(B) The Utilities Consumer Advocate shall provide an annual report to the General Assembly on January fifteenth of each year regarding the previous year’s activities on behalf of the interests of utility consumers.

Section 1‑7‑1360. In the performance of his assigned functions, the Utilities Consumer Advocate shall have reasonable access to records of the Office of Regulatory Staff and any other state agency, as necessary, which are not classified by law as confidential, and those state agencies must cooperate with the Utilities Consumer Advocate in the performance of his duties. In addition, the Utilities Consumer Advocate must have reasonable access to confidential records and information if he enters a proprietary agreement to ensure their confidentiality. During the course of a ratemaking or other proceeding initiated before the Public Service Commission relating to public utilities, the Utilities Consumer Advocate, as a party of record, may request in writing, in addition to all other methods of discovery as provided by law, the issuance of an order compelling a witness or company to either produce or allow inspection of documentary evidence relevant to the matter. If an order is not issued, the aggrieved party may appeal. The written request, in addition to showing a general relevance and reasonable scope of the evidence sought, also must specify with particularity the books, accounts, papers, records, or other materials of the business desired and the facts expected to be proved. In lieu of a written request, the request for such an order may be made orally upon the record at the hearing, for good cause shown. Any objections to the issuance of the order must be filed within three days of being notified of the written request or the order. Any objections so filed must list the specific grounds for objection. Objections must be ruled on within ten days or the objection is denied.

Section 1‑7‑1370. The Utilities Consumer Advocate is considered to have an interest sufficient to maintain actions for judicial review and may, as of right and in the manner prescribed by law, intervene or otherwise participate in any civil proceeding which involves the review or enforcement of an action that the Utilities Consumer Advocate determines may substantially affect the interests of public utility consumers.

Section 1‑7‑1380. Decisions of the Utilities Consumer Advocate respecting whether, when, or how to initiate, continue, or intervene in proceedings pursuant to this article, are in the sole discretion of the Utilities Consumer Advocate, except as modified by order of a court of competent jurisdiction. All prior references to the Consumer Advocate’s role in so far as it conflicts with the Utilities Consumer Advocate’s role are considered to be the responsibility of the Utilities Consumer Advocate.

Section 1‑7‑1390. The Utilities Consumer Advocate must not interview or seek employment with a public utility while serving as the Utilities Consumer Advocate. The Utilities Consumer Advocate may not represent or appear on behalf of a public utility in any proceeding before the commission in any matter within the commission’s jurisdiction for one year after serving as the Utilities Consumer Advocate. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or be imprisoned for not more than one year, or both.”

SECTION 2. Section 58‑4‑10 of the 1976 Code is amended to read:

“Section 58‑4‑10. (A) There is hereby created the Office of Regulatory Staff as a separate agency of the State with the duties and organizations as hereinafter provided.

(B) Unless and until it chooses not to participate, the Office of Regulatory Staff must be considered a party of record in all filings, applications, or proceedings before the commission. The regulatory staff must represent the public interest of South Carolina before the commission. For purposes of this chapter, ‘public interest’ means a balancing of the following:

(1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;

(2) economic development and job attraction and retention in South Carolina; and

(3) ~~preservation of the financial integrity of the state’s public utilities and continued investment in and maintenance of utility facilities so as to provide~~ preservation of reliable and high quality utility services.

(C) The Office of Regulatory Staff is subject to the provision of Section 58‑3‑260 prohibiting ex parte communications with the commission, and any advice given to the commission by the regulatory staff must be given in a form, forum, and manner as may lawfully be given by any other party or person.”

SECTION 3. Section 58‑4‑50 of the 1976 Code is amended to read:

“Section 58‑4‑50. (A) It is the duty and responsibility of the regulatory staff to:

(1) when considered necessary by the Executive Director of the Office of Regulatory Staff or the Utilities Consumer Advocate and in the public interest, review, investigate, and make appropriate recommendations to the commission with respect to the rates charged or proposed to be charged by any public utility;

(2) when considered necessary by the Executive Director of the Office of Regulatory Staff and in the public interest, make inspections, audits, and examinations of public utilities regarding matters within the jurisdiction of the commission. The regulatory staff has ~~sole~~ responsibility for this duty but shall also make such inspections, audits, or examinations of public utilities as requested by the commission or the Utilities Consumer Advocate;

(3) when considered necessary by the Executive Director of the Office of Regulatory Staff or the Utilities Consumer Advocate and in the public interest, review, investigate, and make appropriate recommendations to the commission with respect to the service furnished or proposed to be furnished by any public utility;

(4) represent the public interest in commission proceedings, hearings, rulemakings, adjudications, arbitrations, and other regulatory matters unless the Executive Director of the Office of Regulatory Staff chooses to opt out as a participant under the provisions of item ~~10~~ (10);

(5) investigate complaints affecting the public interest generally, including those which are directed to the commission, commissioners, or commission employees, and where appropriate, make recommendations to the commission and the Utilities Consumer Advocate, as appropriate, with respect to these complaints;

(6) upon request by the commission or the Utilities Consumer Advocate, make studies and recommendations to the commission with respect to standards, regulations, practices, or service of any public utility pursuant to the provisions of this title;

(7) make recommendations to the commission and the Utilities Consumer Advocate with respect to standards, regulations, practices, or service of any public utility pursuant to the provisions of this title;

(8) when considered necessary by the Executive Director of the Office of Regulatory Staff and in the public interest, provide legal representation of the public interest before state courts, federal regulatory agencies, and federal courts in proceedings that could affect the rates or service of any public utility;

(9) to serve as a facilitator or otherwise act directly or indirectly to resolve disputes and issues involving matters within the jurisdiction of the commission;

(10) when considered appropriate by the Executive Director of the Office of Regulatory Staff and not adverse to the public interest, choose to not participate in any commission proceeding; and

(11) when considered necessary by the Executive Director of the Office of Regulatory Staff, along with the Utilities Consumer Advocate and in the public interest, educate the public on matters affecting public utilities which are of special interest to consumers.

(B) Subject to the provisions of Section 58‑3‑260 and, upon request, the Executive Director of the Office of Regulatory Staff must employ the resources of the regulatory staff to furnish to the commission, or its members, such information and reports or conduct such investigations and provide other assistance as may reasonably be required in order to supervise and control the public utilities of the State and to carry out the laws providing for their regulation.

(C) The Executive Director of the Office of Regulatory Staff and regulatory staff employees shall provide research, expertise, and any other assistance requested by the Utilities Consumer Advocate as provided in Article 9, Chapter 7, Title 1.

(D) Each year, the Executive Director of the Office of Regulatory Staff ~~and the~~, regulatory staff employees, and the Utilities Consumer Advocate must attend a workshop of at least six contact hours concerning ethics and the Administrative Procedures Act. This workshop must be developed with input from the review committee.”

SECTION 4. Section 58‑4‑55 of the 1976 Code is amended to read:

“Section 58‑4‑55. (A) The regulatory staff, in accomplishing its responsibilities under Section 58‑4‑50~~,~~ and the provisions of Article 9, Chapter 7, Title 1, shall have necessary subpoena powers and may require the production of books, records, and other information that, upon request of the regulatory staff, must be submitted under oath. If the books, records, or other information provided do not appear to disclose full and accurate information and, if such apparent deficiencies are not cured after reasonable notice, the regulatory staff may require the attendance and testimony under oath of the officers, accountants, or other agents of the parties having knowledge thereof at such place as the regulatory staff may designate and the expense of making the necessary examination or inspection for the procuring of the information must be paid by the party examined or inspected, to be collected by the regulatory staff by suit or action, if necessary. If, however, the examination and inspection and the reports thereof disclose that full and accurate information had previously been made, the expense of making the examination and inspection must be paid out of the funds of the regulatory staff.

(B) If the regulatory staff initiates an inspection, audit, or examination of a public utility, the public utility that is the subject of the inspection, audit, or examination may petition the commission to terminate or limit the scope of such inspection, audit, or examination. The commission must grant such petition if it finds that such inspection, audit, or examination is arbitrary, capricious, unnecessary, unduly burdensome, or unrelated to the public utility’s regulated operations.

(1) If such an inspection, audit, or examination is not part of a contested case proceeding, the public utility may also raise objections or seek relief available under the South Carolina Rules of Civil Procedure to a party upon whom discovery is served or to a person upon whom a subpoena is served. The commission shall provide the regulatory staff reasonable notice to respond to any such objection or request. Absent the consent of the public utility raising such an objection or request and the Office of Regulatory Staff, the commission must rule on such an objection or request within sixty days of the date it was filed. During the pendency of the commission’s ruling, the public utility making such an objection or request is not required to produce or provide access to any documents or information that is the subject of the objection or request.

(2) If such an inspection, audit, or examination is part of a contested case proceeding, the commission shall address objections to information sought by the regulatory staff in the same manner in which it addresses objections to discovery issued by the parties to the contested case proceeding.

(C) Any public utility that provides the regulatory staff with copies of or access to documents or information in the course of an inspection, audit, or examination that is not part of a contested case proceeding may designate any such documents or information as confidential or proprietary if it believes in good faith that such documents or information would be entitled to protection from public disclosure under the South Carolina Rules of Civil Procedure or any provision of South Carolina or federal law. The regulatory staff may petition the commission for an order that some or all of the documents so designated are not entitled to protection from public disclosure and it shall be incumbent on the utility to prove that such documents are entitled to protection from public disclosure under the South Carolina Rules of Civil Procedure or any provision of South Carolina or federal law. The commission shall rule on such petition after providing the regulatory staff and the utility an opportunity to be heard. Unless the commission’s order on such a petition contains a finding to the contrary, all documents or information designated as confidential or proprietary pursuant to this subsection are exempt from public disclosure under Sections 30‑4‑10, et seq. and the regulatory staff shall not disclose such documents and information, or the contents thereof, to any member of the commission or to any other person or entity; provided, however, that, if the commission determines that it is necessary to view such documents or information in order to rule on such a petition, it shall order the regulatory staff to file the documents or information with the commission under seal, and such documents or information shall not be available for public inspection during the pendency of the petition.

(D) Nothing in this section restricts the regulatory staff’s ability to serve discovery in a contested case proceeding that seeks the type of documents or information the regulatory staff has obtained in the course of any review, investigation, inspection, audit, or examination, nor does anything in this section restrict the ability of any public utility to object to such discovery or to seek relief regarding such discovery, including without limitation the entry of a protective order. At the request of the Utilities Consumer Advocate, the Executive Director of the Office of Regulatory Staff shall issue subpoenas in accordance with the reviews delineated in this chapter and in Article 9, Chapter 7, Title 1.

(E) Failure to provide information requested by the Executive Director of the Office of Regulatory Staff or the regulatory staff pursuant to the provisions of this chapter or failure to provide information requested by the Utilities Consumer Advocate is a misdemeanor punishable by thirty days imprisonment or a five hundred dollar fine. The offense contained in this section is a separate offense and is in addition to any other offense for which the person may be convicted.”

SECTION 5. Section 58‑4‑80 of the 1976 Code is amended to read:

“Section 58‑4‑80. The executive director representing the regulatory staff is considered to have an interest sufficient to maintain actions for judicial review from commission orders or decisions and may, as of right and in a manner prescribed by law, intervene or otherwise participate in any civil proceeding which involves the review or enforcement of commission action that the executive director determines may substantially affect the public interest. This right includes intervention in any action for judicial review from commission orders or decisions that are pending at any stage of the action. The executive director representing the regulatory staff has the same rights of appeal from commission orders or decisions as other parties to commission proceedings. On appeal, the Office of Regulatory Staff does not represent the commission.”

SECTION 6. The provisions of this act take effect ten days after approval by the Governor, and the Attorney General shall appoint the Utilities Consumer Advocate by the effective date of this act.

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