**A** **BILL**

TO AMEND SECTION 58-31-200 OF THE 1976 CODE, RELATING TO JOINT OWNERSHIP OF THE NUCLEAR ELECTRIC GENERATING STATION IN FAIRFIELD COUNTY, TO PROVIDE THAT THE PUBLIC SERVICE AUTHORITY IS JOINTLY RESPONSIBLE FOR PRESERVING ANY PARTIALLY CONSTRUCTED NUCLEAR ELECTRIC GENERATION UNITS ON THE SITE AT OR NEAR PARR SHOALS IN FAIRFIELD COUNTY; TO PROVIDE THAT A PRIVATELY OWNED ELECTRIC UTILITY PROVIDING POWER TO RATEPAYERS PURSUANT TO SECTION 58-27-620 THAT IS A JOINT OWNER WITH THE PUBLIC SERVICE AUTHORITY OF A PARTIALLY CONSTRUCTED NUCLEAR ELECTRIC PLANT SHALL BE RESPONSIBLE FOR PRESERVING THE PARTIALLY CONSTRUCTED SITE AS A CONDITION OF BEING APPROVED TO DO BUSINESS IN THIS STATE; TO PROVIDE FOR COST RECOVERY; AND TO PROVIDE CONDITIONS FOR PRESERVATION; AND TO DEFINE NECESSARY TERMS.

Findings of Fact by the General Assembly:

Whereas, in 2006, the General Assembly amended Section 58‑31‑200 of the 1976 Code of Laws to confirm that the South Carolina Public Service Authority, a state‑owned utility, and a privately owned electric utility could jointly own future nuclear electric generation units to be constructed on a site at or near Parr Shoals in Fairfield County, including planning, financing, acquiring, owning, operating, and maintaining joint ownership interests in the future units; and

Whereas, in May 2008, the South Carolina Public Service Authority and South Carolina Electric & Gas, a privately owned utility subsidiary of the privately owned SCANA Corporation, announced plans to jointly own and build two nuclear reactors in Fairfield County commonly known as Units 2 and 3 of the V. C. Summer Nuclear Facility, with a projected completion cost of $9.8 billion and with the former owning 45% of the project and the latter 55% and being obligated for a corresponding share of the cost, that is, $4.4 billion and $5.4 billion, respectively; and

Whereas, in September 2008, the South Carolina Office of Regulatory Staff recommended approval of the nuclear project, and the South Carolina Public Service Commission provided South Carolina Electric & Gas with permission to begin site work, and thereafter in March 2009 approved the building plan, which called for construction on the two units to begin in 2012, for fuel to be loaded into the first reactor in 2015, for the first reactor to begin operation in 2016, and for the second reactor to begin operation in 2019; and

Whereas, in March 2012, the federal Nuclear Regulatory Commission issued construction and operating licenses for the two reactors; and

Whereas, the nuclear project subsequently experienced a series of delays, cost overruns, and other obstacles and impediments to timely completion for the estimated cost, including, but not limited to, the following: In June 2013, South Carolina Electric & Gas announced that the first reactor completion would be delayed until late 2017 or early 2018. In August 2014, contractors notified the owners that the project would cost $1.2 billion more than initially estimated. In October 2015, South Carolina Electric & Gas and the South Carolina Public Service Authority revised the completion date of Units 2 and 3 from 2016 and 2019, respectively, to 2019 and 2020, based on negotiations and an agreement with the contractors; and

Whereas, on July 31, 2017, the South Carolina Public Service Authority announced it was ceasing construction on the nuclear project, and South Carolina Electric & Gas announced it would abandon construction. South Carolina Electric & Gas subsequently has acted to abandon its full interest in the project; and

Whereas, decisions by the South Carolina Public Service Authority and South Carolina Electric & Gas to construct the two nuclear reactors at V. C. Summer and to continue such construction despite the referenced obstacles and impediments, and the support and approval of the project by the South Carolina Office of Regulatory Staff and the South Carolina Public Service Commission, were in material part influenced by an apparent willingness by the United States Congress and the federal government’s executive agencies to act on climate change; and

Whereas, this apparent willingness by the federal government to act on climate change was evidenced by, among other things, a bill with one hundred forty-one co‑sponsors, commonly known as the Waxman‑Markey Bill, passed by the United States House of Representatives in 2010, which would have capped the amount of greenhouse gas emissions allowed for an electric utility and would have created a trading system to purchase CO2 emission credits. At the time, the South Carolina Public Service Authority was emitting in excess of twenty-five million tons of CO2 per year and, had the Waxman‑Markey Bill become law, the authority would have incurred an estimated cost of $300 million in the first year of the trading program; and

Whereas, this apparent willingness by the federal government to act on climate change was further evidenced by, among other things, the Clean Power Plan first proposed by the Environmental Protection Agency in June 2014 (and which was stayed by order of the Supreme Court of the United States issued in February 2016). Units 2 and 3 at V. C. Summer, when completed, would have provided zero carbon‑emitting energy, which, based on typical growth projections, would have made South Carolina compliant with the Clean Power Plan until at least 2030 and obviated the need to purchase emission credits; and

Whereas, the South Carolina Public Service Authority has already taken steps to preserve the improvements on the site, including, but not limited to, developing a list of specific preventative maintenance action items, issuing a purchase order with a maintenance company to cover preservation work for one year, and holding meetings between co‑owners’ nuclear teams to discuss preventative maintenance going forward; and

Whereas, the decisions by the South Carolina Public Service Authority and South Carolina Electric & Gas to construct the two nuclear reactors at V. C. Summer and to continue such construction despite the referenced obstacles and impediments, and the support and approval of the project by the South Carolina Office of Regulatory Staff and the South Carolina Public Service Commission, were also in material part influenced by the price of natural gas, as well as the historic volatility of natural gas prices, which in 2005 averaged $14.84/MMBtu and which is trading as of January 2018 at approximately $3.50/MMBtu, principally as a result of technology breakthroughs in hydraulic fracturing (fracking), which have generated surplus product supplies and made it the current energy resource of choice for baseload power generation; and

Whereas, at present, there is no longer an apparent willingness by the United States Congress and the federal government’s executive agencies to act on climate change, but such is subject to change in the future; and

Whereas, the current low price of natural gas, as well as the recent stability of natural gas prices, which makes it a current energy resource of choice for baseload power generation, is also subject to change, in that there are more frequent reports that fracking may be the cause of earthquakes and may impact groundwater aquifers, and any future regulation of this method of natural gas recovery would drive the cost of this fuel source up; and

Whereas, these conditions related to the federal regulation of emissions, federal nuclear production tax credits, and the federal or state regulation of natural gas fracking may be affected by federal government action at the presidential, congressional, or agency levels; and

Whereas, no third party has, as of January 12, 2018, expressed a desire to purchase an ownership interest from or otherwise share the costs of the project with the South Carolina Public Service Authority or the privately owned electric utility; and

Whereas, in light of the over $9 billion investment that has been made in the two partially completed reactors at V. C. Summer, and because the conditions that currently make completion of those reactors economically unviable are subject to change, the General Assembly finds it to be prudent at this juncture to preserve all of the improvements at the site in good condition and as required by the federal Nuclear Regulatory Commission in a manner and at a cost proportional to the co‑owners’ respective interests in the project; and

Whereas, the cost associated with these preservation activities having been credibly estimated to be approximately $12 million annually, with the South Carolina Public Service Authority’s 45% share of said cost being an estimated $5.4 million annually and South Carolina Electric & Gas’s 55% share an estimated $6.6 million, the General Assembly finds that such annual expenditures would be prudent and would preserve the asset for a potential benefit to the customers of the South Carolina Public Service Authority and South Carolina Electric & Gas. Now, therefore,

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

SECTION 1. Section 58‑31‑200 of the 1976 Code is amended to read:

“Section 58‑31‑200. (A) The South Carolina Public Service Authority shall have the power to become a joint owner with one or more privately owned electric utilities in existing or future nuclear electric generation units, and related transmission facilities, to be constructed on a site at or near Parr Shoals in Fairfield County and specifically the power to plan, finance, acquire, own, operate, and maintain joint ownership interest in such plants and facilities necessary or incidental to the generation and transmission of electric power generated at the plant, and to make such plans and enter into such contracts or other agreements as are necessary or convenient for the planning, financing, acquisition, construction, ownership, operation, and maintenance of the plant and facilities; provided, however, that the Public Service Authority’s joint ownership interest shall be equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction of the plant and facilities and the Public Service Authority shall own and control a like percentage of the electrical output thereof; provided, further, that the Public Service Authority shall be severally liable, in proportion to its joint ownership interest in the plant and facilities, for the acts, omissions, or obligations performed, omitted, or incurred by the operator or other owners of the plant while acting as the designated agent of the Public Service Authority for purposes of constructing, operating, or maintaining the plant and facilities or any of them, but shall not otherwise be liable, jointly or severally, for the acts, omissions, or obligations of the operator or other owners of the plant; nor shall any money or property of the Public Service Authority be credited or otherwise applied to the account of the operator or other owners of the plant, or be charged with any debt, lien, or mortgage as a result of any debt or obligation of the operator or other owners of the plant.

(B) The South Carolina Public Service Authority is jointly responsible, with one or more privately owned electric utilities, for preserving any partially constructed nuclear electric generation units on the site at or near Parr Shoals in Fairfield County. The Public Service Authority and any privately owned electric utility shall be responsible, in proportion to their respective joint ownership interests, for costs associated with preservation.

(C) Any privately owned electric utility providing power to ratepayers pursuant to Section 58‑27‑620 that is a joint owner with the South Carolina Public Service Authority of a partially constructed nuclear electric plant under the provisions of this section shall be responsible for preserving the partially constructed site as a condition of being approved to do business in this State.

(D) For the purposes of subsections (B) and (C), preservation activities shall include, but not limited to, performing environmental work required for permit(s) compliance, maintaining site insurance, using best efforts to maintain the licenses issued by the federal Nuclear Regulatory Commission, maintaining site security, securing and maintaining off‑site warehoused equipment, maintaining and preserving equipment, testing insulation‑resistance (Megger) to confirm the condition of motor insulation, rotating pumps and shafts, lubricating motors and bearings, monitoring batteries, actuating and cycling valves, using nitrogen blankets for atmospheric control, and installing and maintaining equipment heaters.

(E) Notwithstanding the obligation to preserve described in subsection (D), the South Carolina Public Service Authority and a privately owned electric utility may sell the commodities or equipment that were purchased but not yet used in the construction of the project and that can be sold for reasonable cost recovery.

(F) These obligations to preserve shall continue until the earlier of July 31, 2019 or the occurrence of any one of the following conditions:

(1) the South Carolina Public Service Authority and a privately owned electric utility both decide to proceed with construction of one or both units of the project; or

(2) the South Carolina Public Service Authority, a privately owned electric utility, or both transfer all or a portion of either entity’s ownership interest in the project to a third party, and the owner, or owners, following such a transfer decides to proceed with construction of one or both units of the project.”

SECTION 2. This act takes effect upon approval by the Governor.

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