HOUSE AMENDMENTS AMENDED

March 28, 2018

**S. 954**

Introduced by Senators Leatherman, Setzler, Massey and Fanning

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Read the first time February 21, 2018.

**A** **JOINT RESOLUTION**

TO PROVIDE FOR AN EXPERIMENTAL RATE FOR CUSTOMERS OF A PUBLIC UTILITY WHO ARE PAYING COSTS ASSOCIATED WITH THE BASE LOAD REVIEW ACT; TO PROHIBIT THE PUBLIC SERVICE COMMISSION FROM HOLDING A HEARING ON THE MERITS FOR A MATTER RELATED TO THE BASE LOAD REVIEW ACT BEFORE NOVEMBER 1, 2018, BUT MUST ISSUE A FINAL ORDER ON THE MERITS BY DECEMBER 21, 2018; AND TO SUSPEND PROVISIONS IN TITLE 58 THAT ARE IN CONFLICT WITH THE PROVISIONS OF THIS JOINT RESOLUTION FOR MATTERS RELATED TO THE V.C. SUMMER NUCLEAR REACTOR UNITS 2 AND 3 UNTIL THE PUBLIC SERVICE COMMISSION ISSUES ITS FINAL ORDER IN THE MATTER.

Whereas, for the past several decades, South Carolina has experienced and welcomed tremendous residential, commercial, and industrial growth, that has in turn increased demand for safe, reliable, and cost‑effective electricity; and

Whereas, beginning in the early 2000’s, concerns regarding the ability of South Carolina’s electric utilities to satisfy increasing demands for cost‑effective electricity, projected natural gas cost increases and the possibility of federally‑imposed taxes on carbon‑based fuel emissions, presented potential challenges to continued growth of the South Carolina economy; and

Whereas, in consideration of these concerns and South Carolina’s historical reliance on and support of nuclear energy, the General Assembly passed Act No. 16 of 2007, also referred to as the “Base Load Review Act” (hereafter “BLRA”); and

Whereas, in a preamble to the BLRA, the General Assembly declared that “[t]he purpose of [the BLRA] is to provide for the recovery of the prudently incurred costs associated with new base load plants...when constructed by investor‑owned electrical utilities, while at the same time protecting customers of investor‑owned electrical utilities from responsibility for imprudent financial obligations or costs”; and

Whereas, SCANA Corporation, which includes its wholly owned subsidiary, South Carolina Electric & Gas, which will be collectively referred to as “SCANA” subsequently partnered with the Public Service Authority (the “Authority”) to develop, construct and operate two new nuclear units, with SCANA as the majority partner and on May 23, 2008, SCANA and the Authority entered into a contract with Westinghouse Electric Company to engineer, procure materials for and construct the two new nuclear units; and

Whereas, on May 30, 2008, SCANA filed an application with the South Carolina Public Service Commission (the “Commission”), pursuant to the BLRA, regarding the development, construction and operation of two new nuclear units at V.C. Summer Nuclear Station in Jenkinsville, South Carolina (hereafter “the Project”); and

Whereas, on March 2, 2009, the Commission issued a BLRA Order, finding that SCANA had demonstrated a need for the Project and authorizing SCANA to begin construction, such that the estimated total cost for both owners would be $11.5 billion and expected service date of April 2016 for Unit 2 and January 2019 for Unit 3; and

Whereas, subsequent to issuing the BLRA Order, and based upon information provided to the regulators by SCANA, the Commission approved a total of nine rate increases and construction schedule changes requested by SCANA pursuant to the BLRA, from the period beginning with the initial approval in March 2009 through October 2016, with the last approved rate increase in October 2016, such that the estimated total cost of completion for both nuclear units would be $13.9 billion for both owners, with Unit 2 projected to go into service in August 2019 and Unit 3 in 2020; and

Whereas, pursuant to these nine rate increases, SCANA is authorized to collect $445,000,978 from its customers on an annual basis, thereby adding approximately $27.03 per month to the average SCANA residential electric customer’s monthly electric bill; and

Whereas, on August 1, 2017, SCANA filed a petition with the Commission seeking to abandon construction of the Project and recover prudently incurred costs related to such abandonment; and

Whereas, shortly after SCANA filed its abandonment petition, it informed the Commission that, had the Project continued, Unit 2 would have gone into service in December 2022 and Unit 3 in March 2024, or respectively three and four years later than the in‑service dates reported to the Commission for units 2 and 3 in October 2016; and

Whereas, SCANA withdrew its petition for abandonment on August 15, 2017, allowing “public officials and legislative bodies...an opportunity to review the decisions leading to the abandonment of the new nuclear project,” and since the withdrawal of that petition, the South Carolina House of Representatives and the South Carolina Senate have conducted thorough and extensive reviews of the facts, circumstances, decisions and related actions preceding the abandonment of the Project; and

Whereas, the General Assembly’s reviews revealed that, after the issuance of the 2009 BLRA Order, SCANA withheld information regarding the status of the Project from regulators, and that the withholding of such information raises material questions as to (i) SCANA’s management of the Project’s costs and construction schedule, and (ii) the prudence of SCANA’s failure to terminate the Project prior to August 2017; and

Whereas, the General Assembly discovered during its review that SCANA had concerns about Westinghouse’s performance shortly after the 2008 contract was executed, to the extent that invoices were returned to Westinghouse as early as 2011 for failure to perform required work; and

Whereas, SCANA informed regulators of its challenges with Westinghouse’s performance, but failed to fully disclose the extent of these challenges, including, but not limited to, that SCANA contemplated legal action against Westinghouse and hired Bechtel to evaluate the Project in anticipation of legal action; and

Whereas, despite concerns and challenges, SCANA chose not to exercise options permitted in its 2008 contract with Westinghouse to rectify these matters; and

Whereas, significant questions have been raised during the course of the General Assembly’s review of the actions leading to the abandonment of the Project, including serious questions as to whether or not SCANA acted in a prudent manner in managing the project, as illustrated by concerns that SCANA may have intentionally withheld information from regulators that could have affected decisions as to what costs were appropriate to collect from SCANA’s customers, and the seriousness of Westinghouse’s material and substantial nonperformance, beginning in at least 2011; and

Whereas, the questions that have been raised since the announcement of the Project abandonment are so significant that there have been media reports that state and federal agencies have been investigating SCANA for possible violations in relation to the now abandoned Project, including potential criminal violations; and

Whereas in November 2017, SCANA offered, as part of a package of concessions developed to resolve matters concerning the Project’s abandonment, to reduce rates related to the Project by 3.5%; and

Whereas, on or about January 12, 2018, SCANA and Dominion Energy filed a petition to merge the companies, and that petition included an offer to reduce rates related to the Project by at least 5% as part of a package to resolve matters concerning the Project abandonment; and

Whereas, in February 2018, SCANA filed a S‑4 document with the U.S. Securities and Exchange Commission that shows SCANA considered differing scenarios for a rate reduction for costs related to the Project, in which one scenario of a 9.75% rate reduction as part of a settlement package could be sustainable; and

Whereas, when the Office of Regulatory Staff requested SCANA customers’ rates related to the abandoned Project be reduced, SCANA made the highly questionable claim that loss of these rates could lead to a series of events that could result in bankruptcy; and

Whereas, ignoring the fact that its customers continue to pay approximately $37 million per month and have already paid more than $2 billion for the abandoned Project, SCANA announced in January 2018 that it would issue dividends consistent with its 2017 quarterly dividend rate, in which SCANA paid an annual total of $344 million in dividends, an amount that is approximately 13% of the costs associated with the abandoned Project that is passed onto the ratepayers on an annual basis; and

Whereas, a report issued by Bates White found that SCANA paid dividends in 2017 in an amount equal to 10.4% of its earnings, as compared to 4.4% to 6.9% in dividends paid by an average electric utility in the same credit rating category, and further found that in the last 3 years, SCANA’s dividend to revenue ratio is greater than approximately 75% of the utilities in its peer group; and

Whereas, despite SCANA’s ability to immediately and permanently reduce the rates its customers pay for abandoned Project costs without unduly burdening investors, and despite recently discovered information indicating that SCANA withheld material information from regulators regarding the Project, information that may have altered regulator’s positions on the recovery of costs from customers, SCANA’s customers continue to pay the full amount authorized, approximately $445 million per year; and

Whereas, while SCANA has taken steps to reduce its own costs related to the abandoned Project, such as obtaining a guaranty settlement from Toshiba in the amount of approximately $1.2 billion for SCANA’s ownership interests, and also has received benefits from the recent federal tax code amendments, its customers’ rates continue to reflect 100% of authorized Project costs prior to abandonment; and

Whereas, the General Assembly recognizes that SCANA, as a corporate entity, has legal rights and remedies that must be considered and respected throughout the process of resolving cost recovery issues for the abandoned Project, yet believes that recognition of SCANA’s legal rights and remedies does not require that SCANA customers continue to pay 100% of the rates previously authorized by the Commission when the Project was expected, upon completion, to provide valuable services to the customers; and

Whereas, the General Assembly recognizes the need for adequate discovery by all parties, and therefore is extending the time period for the Public Service Commission to issue its final order in this matter; and

Whereas, the General Assembly passed the BLRA in 2007 for the explicit purpose of providing “recovery of the prudently incurred costs associated with new base load plants...when constructed by investor‑owned electrical utilities, while at the same time protecting customers of investor‑owned electrical utilities from responsibility for imprudent financial obligations or costs”; and

Whereas, the General Assembly, with the passage of the BLRA in 2007 did not intend to, and could not, overrule a fundamental regulatory principal for utility rate‑making that rates must be just and reasonable, the fundamental regulatory principal codified in South Carolina Code Section 58‑27‑810; and

Whereas, the General Assembly is concerned that the rates that SCANA customers are currently paying are unjust and unreasonable, and further finds that it is inequitable for SCANA customers to continue to pay the full costs for the abandoned Project during the pendency of an extended hearing process when an experimental rate can be provided during the pendency of a final resolution of this matter without causing irreversible damage to SCANA or violating its constitutional rights; and

Whereas, Section 1, Article IX of the Constitution of this State vests the General Assembly with authority to regulate investor-owned utilities in order to protect the public interest; and

Whereas, the United States Supreme Court has held that “state legislators are competent bodies to set utility rates.” Duquesne Light Co. v. Barasch, 488 U.S. 299 at 313 (1989); and

Whereas, while the General Assembly has the authority to set utility rates, the General Assembly has created the South Carolina Public Service Commission, as an arm of the legislature, to hear and decide rate cases, and the General Assembly believes the legislative body should engage in ratemaking only in rare and extreme situations; and

Whereas, the matters pending before the Public Service Commission concerning the abandonment of the Project is one of those rare and extreme situations where the General Assembly should engage in ratemaking, on an experimental and temporary basis, until the Commission can issue a final, permanent decision. The General Assembly does not make this decision in haste, but after due deliberation, and with a firm commitment that legislative ratemaking should occur only in rare and extreme situations; and

Whereas, based upon information identified in this Joint Resolution, along with other information recently made available to the South Carolina House of Representative and the South Carolina Senate, the General Assembly finds that serious questions have arisen regarding the prudency of incurred costs that have led to rate increases pursuant to the BLRA for the abandoned Project, including SCANA’s apparent failure to avoid or minimize costs that should have been avoided or minimized since at least 2011; and

Whereas, the General Assembly recognizes the protections provided by the Constitutions of the United States and the State of South Carolina, and has no desire or intention to set a rate that is unjust, unreasonable, or confiscatory, nor does it intend to jeopardize SCANA’s ability to satisfy bond payment obligations associated with the V.C. Summer nuclear units 2 and 3; and

Whereas, the General Assembly believes it is in the public interest and the interest of SCANA for SCANA to be able to operate successfully, maintain its financial integrity, attract capital, and to compensate investors who purchased bonds to finance the construction of the Project yet also acknowledging a basic financial premise that shareholders purchase stock with knowledge of risk associated with that investment; and

Whereas, the General Assembly also believes it is in the public interest of all its citizens, both private citizens and corporate, to rely upon incentives offered by the General Assembly to encourage growth in South Carolina, however, this reliance should be predicated upon a good faith effort to comply with all terms of any incentives so that noncompliance or misrepresentation in order to obtain offered incentives are not unfairly born by South Carolina’s citizens; and

Whereas, in carefully weighing the circumstances described, the General Assembly has determined that Section 1, Article IX of the Constitution requires that the General Assembly exercise its authority to set certain interim electric utility rates for the purpose of protecting the public interest until a determination can be made by the Public Service Commission in its final order as to just and reasonable rates that may be recovered from SCANA’s customers for the abandoned Project. Now, therefore,

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

SECTION 1A. The Public Service Commission shall enter an order to provide an experimental rate that customers of a public utility who are paying costs associated with the Base Load Review Act shall pay during the pendency of matters defined in this joint resolution. This experimental rate shall be the electric utility rates these ratepayers are paying as of the effective date of this joint resolution reduced by any rate increases imposed pursuant to the Base Load Review Act after the Public Service Commission’s revised rates Order, Order Number 2011‑738 in docket 2011‑207‑E, that was issued on September 30, 2011. The Public Service Commission must enter this order for experimental rates within three business days after the effective date of this joint resolution. The experimental rate shall be in effect from April 1, 2018, until the issuance of the Public Service Commission’s final order on the merits, described in SECTION 2.

(B) Within thirty business days after the issuance of the experimental rate order, the Public Service Commission shall hold a hearing as to the net effect of the experimental rate. The Public Service Commission may alter the experimental rate if it determines that an adjustment is necessary to ensure SCANA does not become insolvent before the Public Service Commission issues its final order on the merits. If required to adjust the rate, the Public Service Commission shall determine the just and reasonable rates for these ratepayers and must set the lowest possible rate so that SCANA does not become insolvent during the period before the Public Service Commission issues its final order on the merits. The Public Service Commission must issue an order as to its findings within 5 business days after the conclusion of this hearing.

SECTION 2. Notwithstanding the provisions in SECTION 1 for an experimental rate, the Public Service Commission shall not hold a hearing on the merits before November 1, 2018, for a docket in which requests were made pursuant to the Base Load Review Act; however, the Public Service Commission may hold an administrative or procedural hearing for such a docket prior to a hearing on the merits. The Public Service Commission must issue a final order on the merits for a docket in which requests were made pursuant to the Base Load Review Act no later than December 21, 2018.

SECTION 3. No final determination of matters described in this joint resolution, whether by a final order issued by the Public Service Commission or by operation of law, shall occur earlier than the time period prescribed in SECTION 2. The Public Service Commission’s failure to issue a final order prior to the time period established in this joint resolution shall not constitute approval by the Public Service Commission and a utility must not put into effect the change in rates it requested in its schedule.

SECTION 4. Any statute in Title 58 in conflict with the provisions of this joint resolution are suspended for purposes of the utility rates for matters related to V.C. Summer Nuclear Reactor Units 2 and 3 at Jenkinsville, South Carolina. This suspension remains in effect until the Public Service Commission issues its final order in this matter.

SECTION 5. If any provision of this joint resolution 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 joint resolution and that the holding does not invalidate or render unenforceable another provision of this joint resolution.

SECTION 6. This joint resolution takes effect upon approval by the Governor.

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