CHAPTER 3

Public Service Commission

ARTICLE 1

General Provisions

**SECTION 58‑3‑5.** Definitions.

 As used in this chapter:

 (1) “Business with which he is associated” means a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock.

 (2) “Immediate family” means an individual who is:

 (a) a child residing in the person’s household;

 (b) a spouse of the person; or

 (c) an individual claimed by the person or the person’s spouse as a dependent for income tax purposes.

 (3) “Commission” means the Public Service Commission.

 (4) “Hearing officer” means a person employed by the commission to serve as a presiding officer in an adjudicative proceeding before the commission.

 (5) “Regulatory staff” means the executive director or the executive director and employees of the Office of Regulatory Staff.

 (6) “Public utility” means public utility as defined in Section 58‑5‑10, telephone utility as defined in Section 58‑9‑10, government‑owned telecommunications service provider as defined in Section 58‑9‑2610, radio common carrier as defined in Section 58‑11‑10, carriers governed by Chapter 13 of Title 58, railroads and railways as defined in Section 58‑17‑10, motor vehicle carrier as defined in Section 58‑23‑10, or electrical utility as defined in Section 58‑27‑10.

 (7) “Review committee” means the State Regulation of Public Utilities Review Committee.

HISTORY: 2004 Act No. 175, Section 4, eff February 18, 2004.

**SECTION 58‑3‑10.** Continuation of Public Service Commission.

 (A) The commission, as constituted under law in effect before February 18, 2004, by the Governor, is reconstituted to continue in existence with the appointment and qualification of the members as prescribed in this article and with the changes in duties and powers as prescribed in this title.

 (B) Nothing in this act affects the commission’s jurisdiction over matters pending before the commission, on or before February 18, 2004.

HISTORY: 1962 Code Section 58‑51; 1952 Code Section 58‑51; 1942 Code Section 8199; 1932 Code Section 8243; 1922 (32) 956; 1935 (39) 25; 2004 Act No. 175, Section 4, eff February 18, 2004.

CROSS REFERENCES

Regulation of publicly owned utilities and privately owned utilities serving the public, see SC Const. Art. IX, Section 1.

Report to Public Service Commission in case of railroad accident, see Section 17‑7‑670.

Library References

Public Utilities 141.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 148 to 151.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 3, Common Carriers.

NOTES OF DECISIONS

In general 1

1. In general

The Public Service Commission is a body of limited jurisdiction and has only such powers as are conferred, expressly or by reasonably necessary implication, or such as are merely incidental to the powers expressly granted. Black River Elec. Co‑op., Inc. v. Public Service Commission (S.C. 1961) 238 S.C. 282, 120 S.E.2d 6. Public Utilities 145.1

Limited powers. The Public Service Commission is a governmental body of limited power, for under the provisions of this section [Code 1962 Section 58‑51] and SC Const, Art 9, Section 14, the Commission has only those powers vested in it by act of the General Assembly. Piedmont & Northern Ry. Co. v. Scott (S.C. 1943) 202 S.C. 207, 24 S.E.2d 353.

Prescribed by law. The General Assembly, consistently with the provisions of this section [Code 1962 Section 58‑51] that the powers of the Commission “shall be prescribed by law,” has undertaken to define the fundamental powers of the Commission in respect to the regulation of rates, standards, classifications and practices. Piedmont & Northern Ry. Co. v. Scott (S.C. 1943) 202 S.C. 207, 24 S.E.2d 353.

It is beyond the power of the Public Service Commission to issue an order providing for a State‑wide official routing system for the handling of freight in intrastate commerce by railroad. Piedmont & Northern Ry. Co. v. Scott (S.C. 1943) 202 S.C. 207, 24 S.E.2d 353.

The Commission is a statutory tribunal and can exercise only the jurisdiction conferred by statute. City of Columbia v. Pearman (S.C. 1936) 180 S.C. 296, 185 S.E. 747.

**SECTION 58‑3‑20.** Membership; election and qualifications; Review Committee; terms; vacancies.

 (A) The commission is composed of seven members to be elected by the General Assembly in the manner prescribed by this chapter. Each member must have:

 (1) a baccalaureate or more advanced degree from:

 (a) a recognized institution of higher learning requiring face‑to‑face contact between its students and instructors prior to completion of the academic program;

 (b) an institution of higher learning that has been accredited by a regional or national accrediting body; or

 (c) an institution of higher learning chartered before 1962; and

 (2) a background of substantial duration and an expertise in at least one of the following:

 (a) energy issues;

 (b) telecommunications issues;

 (c) consumer protection and advocacy issues;

 (d) water and wastewater issues;

 (e) finance, economics, and statistics;

 (f) accounting;

 (g) engineering; or

 (h) law.

 (B) The review committee may find a candidate qualified although the candidate does not have a background of substantial duration and expertise in one of the eight enumerated areas contained in subsection (A)(2) of this section if three‑fourths of the review committee vote to qualify the candidate and provide written justification of their decision in the report as to the qualifications of the candidates.

 (C) The qualification provisions of subsection (A) of this section do not apply to the reelection of a commissioner elected by the General Assembly on March 3, 2004, so long as there is no break in service.

 (D)(1) Beginning in 2004, the members of the Public Service Commission must be elected to staggered terms. In 2004, the members representing the Second, Fourth, and Sixth Congressional Districts must be elected for terms ending on June 30, 2006, and until their successors are elected and qualify. Thereafter, members representing the Second, Fourth, and Sixth Congressional Districts must be elected to terms of four years and until their successors are elected and qualify. In 2004, the members representing the First, Third, and Fifth Congressional Districts and the State at large must be elected for terms ending on June 30, 2008, and until their successors are elected and qualify. Thereafter, members representing the First, Third, and Fifth Congressional Districts and the State at large must be elected to terms of four years and until their successors are elected and qualify. Notwithstanding the provisions of this section, members representing the First, Third, and Fifth Congressional Districts shall serve until the expiration of their terms, and in 2013, members representing the First, Third, and Fifth Congressional Districts must be elected for terms ending on June 30, 2016, and until their successors are elected and qualified.

 (2) In the event there are Seven Congressional Districts, the member elected from the State at large shall serve until the expiration of his term, and in 2013, a member representing the Seventh Congressional District must be elected for a term ending on June 30, 2016, and until his successor is elected and qualified. Thereafter, the member representing the Seventh Congressional District must be elected to terms of four years and until his successor is elected and qualified. Upon the election and qualification of the member representing the Seventh Congressional District, the at large member elected to satisfy the requirements of subsection (E) immediately shall cease to be a member of the commission.

 (E) The General Assembly must provide for the election of the seven‑member commission and elect its members based upon the congressional districts established by the General Assembly pursuant to the latest official United States Decennial Census. If the number of congressional districts is less than seven, additional members must be elected at large to provide for a seven‑member commission. In the event the congressional districts established by the General Assembly are under review by a court for compliance with statutory or constitutional requirements, an election scheduled pursuant to this section shall not be held until a final determination is made by the courts regarding the congressional districts. The inability to hold an election due to judicial review of the congressional districts does not constitute a vacancy on the commission and the commissioners serve until their successors are elected and qualify.

 (F) The Governor may fill vacancies in the office of commissioner until the successor in the office for a full term or an unexpired term, as applicable, has been elected by the General Assembly. In cases where a vacancy occurs on the commission when the General Assembly is not in session, the Governor may fill the vacancy by an interim appointment. The Governor must report the interim appointment to the General Assembly and must forward a formal appointment at its next ensuing regular session.

HISTORY: 1962 Code Section 58‑52; 1952 Code Section 58‑52; 1942 Code Section 8200; 1932 Code Section 8244; 1922 (32) 956; 1932 (37) 1380; 1935 (39) 25; 1935 (48) 323; 1979 Act No. 167, Section 3, eff July 1, 1979; 1993 Act No. 181, Section 1549, eff July 1, 1993; 1994 Act No. 493, Section 1, eff in the election cycle of 1998 and upon approval of the Governor (approved July 14, 1994); 2004 Act No. 175, Section 4, eff February 18, 2004, as to subsections (A), (B), (C), (D), (F); 2004 Act No. 175, Section 4, eff July 1, 2004, as to subsection (E); 2012 Act No. 279, Section 25, eff June 26, 2012.

Editor’s Note

1980 Act No. 440, Section 3, provides as follows:

“SECTION 3. Notwithstanding the provisions of Act 223 of 1979 and Section 58‑3‑20 of the 1976 Code, incumbent members of the Public Service Commission serving as commissioners on the effective date of this act (May 26, 1980), shall continue to serve as commissioners until July 1, 1981 unless their successors are elected prior to that date.”

1982 Act No. 485, Sections 1 and 2, effective March 5, 1982, provide as follows:

“SECTION 1. The General Assembly finds that pursuant to Section 58‑3‑20 of the 1976 Code it is required to provide for the election of seven members of the Public Service Commission during the 1982 session, one from each of the six congressional districts established according to the official United States Census of 1980, and one to be elected at large. The candidates for election by the General Assembly must be nominated by the Public Service Commission Merit Selection Panel and screened by the Joint Legislative Screening Committee.

“The General Assembly further finds that, because a congressional reapportionment plan for South Carolina based upon the 1980 census has not been enacted, the Merit Selection Panel has been substantially delayed in its screening and nominating of candidates for consideration by the General Assembly. In order to eliminate the confusion surrounding the screening and nominating of candidates for the Public Service Commission due to the uncertainty of the new congressional districts, the General Assembly, by the adoption of this Joint Resolution, has determined to establish the election districts for the purpose of electing members of the Public Service Commission during 1982 only.

“SECTION 2. Notwithstanding the provisions of Section 58‑3‑20 of the 1976 Code and only for purposes of the 1982 election, those members of the Public Service Commission to be elected in 1982 shall be elected from the six congressional districts as they were constituted on January 1, 1981 and one member from the state at large. The term of each of the seven commissioners elected in 1982 shall be for four years and until their successors are elected and qualify.

“In the event vacancies occur on the Commission during the term of those commission members elected in 1982, successors shall be elected from the six congressional districts as those districts were constituted on January 1, 1981, and one member from the state at large, for the remainder of the unexpired term or terms. Members of the Commission whose terms expire July 1, 1982, shall continue to serve as commissioners until their successors are elected and qualify pursuant to the provisions of this resolution for terms extended until the General Assembly provides for the election of members of the Commission based upon the seven public service commission districts as they were constituted on January 1, 1981.”

2012 Act No. 279, Section 33, provides as follows:

“Due to the congressional redistricting, any person elected or appointed to serve, or serving, as a member of any board, commission, or committee to represent a congressional district, whose residency is transferred to another district by a change in the composition of the district, may serve, or continue to serve, the term of office for which he was elected or appointed; however, the appointing or electing authority shall appoint or elect an additional member on that board, commission, or committee from the district which loses a resident member as a result of the transfer to serve until the term of the transferred member expires. When a vacancy occurs in the district to which a member has been transferred, the vacancy must not be filled until the full term of the transferred member expires. Further, the inability to hold an election or to make an appointment due to judicial review of the congressional districts does not constitute a vacancy.”

Library References

Public Utilities 142.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 156 to 158.

Attorney General’s Opinions

There is no constitutional or legal impediment to electing the members of the Public Service Commission in 1994 according to the procedure in Section 58‑3‑20 which utilizes the congressional district lines drawn according to the 1980 census. 1994 Op.Atty.Gen., No. 94‑20, p. 50 (1994 WL 136193).

Whether the General Assembly should amend Section 58‑3‑20 to reflect the 1990 census and congressional lines drawn accordingly or make other statutory changes are matters of policy to be determined by the General Assembly. This Office recommends that the statute be amended to reflect the current census and population distribution, to ensure that the interests of all citizens of this State are well‑represented. 1994 Op.Atty.Gen., No. 94‑20, p. 50 (1994 WL 136193).

Commission members are subject to Retirement Act. The mandatory provisions of the Retirement Act with respect to retirement from service are applicable to the members of the Public Service Commission. 1968‑69 Op.Atty.Gen., No 2651, p 66 (1969 WL 10654).

NOTES OF DECISIONS

In general 1

1. In general

A commissioner must be a legal resident of the district from which he is elected. Moss v. U.S., 1956, 145 F.Supp. 10.

**SECTION 58‑3‑24.** General Assembly members and immediate family ineligible for election to commission.

 No member of the General Assembly or member of his immediate family shall be elected to the commission while the member is serving in the General Assembly; nor shall a member of the General Assembly or a member of his immediate family be elected to the Public Service Commission for a period of four years after the member either:

 (1) ceases to be a member of the General Assembly; or

 (2) fails to file for election to the General Assembly in accordance with Section 7‑11‑15.

HISTORY: 1979 Act No. 167 Section 4, eff July 1, 1979; 1993 Act No. 181, Section 1550, eff July 1, 1993; 2004 Act No. 175, Section 4, eff February 18, 2004.

Library References

Public Utilities 142.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 156 to 158.

Attorney General’s Opinions

Members of the General Assembly are eligible to election to the Public Service Commission until January 1, 1981; thereafter, they are not eligible to election during service as a Member and for four years thereafter; unless a Member of the House has been nominated by the Merit Selection Panel to fill a vacancy on the Public Service Commission, he need not file a statement of financial interest; if he is nominated by the Merit Selection Panel, he must file such a statement and then should refrain from voting on any budgetary matters concerning the Public Service Commission; if he is nominated by the Merit Selection Panel, he need not resign as a Member of the House during the time his candidacy is before the General Assembly. 1980 Op.Atty.Gen., No. 80‑11, p 33 (1980 WL 81895).

**SECTION 58‑3‑25.** Conflict of interest; commission members and employees.

 (A) Unless otherwise provided by law, no person may serve as a member of the commission if the commission regulates any business with which that person is associated.

 (B) If the commission regulates a business with which an employee of the commission is associated, the employee must annually file a statement of economic interests notwithstanding the provisions of Section 8‑13‑1110.

 (C) No person may be an employee of the commission if the commission regulates a business with which the employee is associated, and this relationship creates a continuing or frequent conflict with the performance of his official responsibilities.

HISTORY: 2004 Act No. 175, Section 4, eff February 18, 2004.

Editor’s Note

A previous Section 58‑3‑25, derived from 1979 Act No. 167, Section 5, pertained to the criteria for selecting persons for nomination to the Public Service Commission. This section was repealed by 1993 Act No. 181, Section 1617(A), eff July 1, 1993.

Library References

Public Utilities 142.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 156 to 158.

**SECTION 58‑3‑30.** Oaths; Code of Judicial Conduct applicable; ethics and the Administrative Procedure Act workshop.

 (A) The commissioners shall take the oath of office provided by the Constitution and the oaths prescribed by law for state officers.

 (B) The commissioners and commission employees are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules, except as provided in Section 58‑3‑260, and the State Ethics Commission must enforce and administer those rules pursuant to Section 8‑13‑320. In addition, commissioners and commission employees must comply with the applicable requirements of Chapter 13 of Title 8.

 (C) Each year, the commissioners and their employees 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.

HISTORY: 1962 Code Section 58‑53; 1952 Code Section 58‑53; 1942 Code Section 8200; 1932 Code Section 8244; 1922 (32) 956; 1932 (37) 1380; 1935 (39) 25; 2004 Act No. 175, Section 4, eff February 18, 2004.

Library References

Public Utilities 142.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 156 to 158.

Ethics Commission Opinions

Staff briefings of the Public Service Commission do not violate the open meeting rules of the Freedom of Information Act or the adjudicative responsibilities of the Code of Judicial Conduct. Op. S.C. St. Ethics Comm., SEC AO2015‑001, Sept. 17, 2014.

Public Service Commission officials and employees are governed by both the Ethics Reform Act and the Judicial Code of Conduct. Op. S.C. St. Ethics Comm., SEC AO2005‑002, Jan. 19, 2005.

Attorney General’s Opinions

Pursuant to Section 58‑3‑30 Governor is authorized to make interim appointment to fill vacancy on Public Service Commission, such appointment expiring upon election of deceased commissioner’s successor by General Assembly and successor’s qualification. Merit Selection Panel is authorized to begin selection process outlined in Section 58‑3‑23 et seq. and submit names of qualified candidates to General Assembly when that body returns for next regular or special session. 1990 Op.Atty.Gen. No. 90‑54 (1990 WL 482441).

**SECTION 58‑3‑40.** Election of chairman; hearing officer.

 (A) The commission must elect one of its members as chairman for a period of two years.

 (B) The chairman is the chief executive and administrative officer of the commission.

 (C)(1) Upon the request of any party or any commissioner, the commission may employ a hearing officer who may hear and determine procedural motions or other matters not determinative of the merits of the proceedings and made prior to hearing; and, at the hearing, shall make all rulings on nondispositive motions and objections. If qualified pursuant to item (3), a commission staff attorney may serve as hearing officer.

 (2) The hearing officer has full authority, subject to being overruled by the commission, to rule on questions concerning the conduct of the case and the admission of evidence but may not participate in the determination on the merits of any case.

 (3) The hearing officer must be an attorney qualified to practice in all courts of this State with a minimum of eight years’ practice experience.

HISTORY: 1962 Code Section 58‑54; 1952 Code Section 58‑54; 1942 Code Section 8201; 1932 Code Section 8245; 1922 (32) 956; 1979 Act No. 167 Section 7, eff July 1, 1979; 2004 Act No. 175, Section 4, eff February 18, 2004.

Library References

Public Utilities 142, 146.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 26, 28, 156 to 158, 167.

**SECTION 58‑3‑50.** Administration of oaths.

 The clerk of the commission may administer oaths.

HISTORY: 1962 Code Section 58‑55; 1952 Code Section 58‑55; 1942 Code Section 8292‑22; 1932 Code Section 8283; Civ. C. ‘22 Section 4831; Civ. C. ‘12 Section 3155; Civ. C. ‘02 Section 2077; G. S. 1465; R. S. 1640; 1892 (21) 16; 1935 (39) 25; 2004 Act No. 175, Section 4, eff February 18, 2004.

Library References

Oath 2.

Westlaw Topic No. 280.

C.J.S. Aliens Section 250.

C.J.S. Oaths and Affirmations Sections 5 to 6.

**SECTION 58‑3‑60.** Employment of clerk, attorneys and other staff; salaries; travel authorization and approval; exception as to functions of Office of Regulatory Staff

 (A) The commission is authorized and empowered to employ: a chief clerk and deputy clerk; a commission attorney and assistant commission attorneys; hearing officers; hearing reporters; and such other professional, administrative, technical, and clerical personnel as the commission determines to be necessary in the proper discharge of the commission’s duties and responsibilities as provided by law. The chairman must organize and direct the work of the commission staff. The salaries of the chairman, the commissioners, and the chief clerk shall not be construed as limiting the maximum salary which may be paid to other employees of the Public Service Commission. The commission staff shall not appear as a party in commission proceedings and shall not offer testimony on issues before the commission.

 (B) Subject to Section 58‑3‑580, the commission must be staffed and equipped to perform the functions set forth in this title except for those responsibilities and functions reserved to the Office of Regulatory Staff. The expenses must be paid from the assessments collected pursuant to Section 58‑3‑100. The chairman, within allowed budgetary limits and as otherwise allowed by law, must authorize and approve travel, subsistence, and related expenses of personnel incurred while traveling on official business.

 (C) The commissioners shall not supervise the Office of Regulatory Staff.

 (D) The commission shall not inspect, audit, or examine public utilities. The inspection, auditing, and examination of public utilities is solely the responsibility of the Office of Regulatory Staff.

HISTORY: 1962 Code Section 58‑56; 1952 Code Section 58‑56; 1942 Code Section 8519; 1932 Code Section 8519; 1925 (34) 252; 1950 (46) 2466; 1983 Act No. 138, Section 11, eff June 15, 1983; 2004 Act No. 175, Section 4, eff January 1, 2005.

Library References

Public Utilities 142, 144, 145.1.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 26, 28 to 32, 156 to 166, 169 to 171, 177 to 178.

Attorney General’s Opinions

One person concurrently serving as both Administrative Law Judge and member of Juvenile Parole Board would contravene dual office holding provisions of State Constitution. 1984 Op.Atty.Gen., No. 84‑126, p. 292 (1984 WL 159932).

**SECTION 58‑3‑70.** Compensation of commission members; limitations on other employment.

 The chairman and members of the commission shall receive annual salaries payable in the same manner as the salaries of other state officers are paid. Each commissioner must devote full time to his duties as a commissioner and must not engage in any other employment, business, profession, or vocation during the normal business hours of the commission.

HISTORY: 1962 Code Section 58‑57; 1952 Code Section 58‑57; 1942 Code Section 8201; 1932 Code Section 8245; 1922 (32) 956; 1951 (47) 506; 1964 (53) 1918; 2004 Act No. 175, Section 4, eff February 18, 2004.

Library References

Public Utilities 144.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Section 156.

**SECTION 58‑3‑90.** Meetings of Commission; quorum.

 The commission must meet at least once each month, and the chairman must call a meeting at any other time upon the written request of any two members of the commission. A majority of the commissioners constitutes a quorum for the transaction of all business pertaining to their office.

HISTORY: 1962 Code Section 58‑59; 1952 Code Section 58‑59; 1942 Code Section 8201; 1932 Code Section 8245; 1922 (32) 956; 2004 Act No. 175, Section 4, eff February 18, 2004.

Library References

Public Utilities 150.

Westlaw Topic No. 317A.

Attorney General’s Opinions

Public Service Commissions may seek certain business records and information of business thought to be operating as motor vehicle carrier in the State. 1984 Op.Atty.Gen., No. 84‑34, p. 75 (1984 WL 159841).

**SECTION 58‑3‑100.** Assessment for expenses of Commission; Commission an other‑funded agency.

 Except as specifically provided in Sections 58‑5‑940 and 58‑27‑50, all other expenses of the Public Service Commission must be borne by the public utilities subject to the commission’s jurisdiction. On or before the first day of July in each year, the Department of Revenue must assess each public utility, railway company, household goods carrier, and hazardous waste for disposal carrier its proportion of the expenses in proportion to its gross income from operation in this State in the year ending on the thirtieth day of June preceding that on which the assessment is made which is due and payable on or before July fifteenth. The assessments must be charged against the companies by the Department of Revenue and collected by the department in the manner provided by law for the collection of taxes from the companies including the enforcement and collection provisions of Article 1, Chapter 54 of Title 12 and paid, less the department’s actual incremental increase in the cost of administration into the state treasury as other taxes collected by the department.

 The commission must certify to the South Carolina Department of Revenue annually, but no later than May first, the amounts to be assessed.

 The commission shall operate as an other‑funded agency.

HISTORY: 1962 Code Section 58‑60; 1952 Code Section 58‑60; 1942 Code Sections 8205, 8232, 8292‑11, 8543; 1932 Code Sections 8249, 8250, 8292, 8543; Civ. C. ‘22 Sections 4810, 4840, 5026; Civ. C. ‘12 Sections 3141, 3164, 3328; Civ. C. ‘02 Sections 2066, 2221; G. S. 1453, 1454; R. S. 1626, 1628, 1629; 1882 (17) 817; 1892 (21) 10; 1898 (22) 780; 1904 (24) 496; 1922 (32) 956; 1935 (39) 25; 1982 Act No. 331, Section 1, eff April 9, 1982; 1989 Act No. 184, Section 1, eff June 8, 1989; 1993 Act No. 181, Section 1552, eff July 1, 1993; 1994 Act No. 497, Part II, Section 12A, eff July 1, 1994; 1995 Act No. 145, Part II, Section 68A, eff May 1, 1996; 2004 Act No. 175, Section 4, eff February 18, 2004; 2006 Act No. 318, Section 1, eff May 24, 2006.

Editor’s Note

1994 Act No. 497, Part II, Section 12B, C, provide as follows:

“B. Notwithstanding the provisions of Section 58‑3‑100 of the 1976 Code as amended by subsection A of this section and in fiscal year 1994‑95 only, the Public Service Commission must generate at least $2,849,177 from motor transport fees, registration fees, and commission assessments for deposit to the credit of the general fund of the State.

“C. The Public Service Commission shall work with the staff of the Governor’s Office, the House and Senate budget writing committees, and the motor carrier industry to determine whether an adjustment should be made in the license fees charged to motor carriers beginning Fiscal Year 1995‑96. This review must be made with the goal of reducing or eliminating the subsidy by motor carriers to the general fund.”

CROSS REFERENCES

Assessments against electric utilities for expenses and charges incurred by the Public Service Commission, see Section 58‑27‑50.

Assessments against gas utilities for expenses and charges incurred by the Public Service Commission, see Section 58‑5‑940.

Compensation and expenses of administrative law judges and hearing officers as expenses under this section, see Section 58‑3‑60.

Definition of “public utility”, see Section 58‑5‑10.

Library References

Public Utilities 141.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 148 to 151.

Attorney General’s Opinions

The penalties provided by Section 12‑45‑180 are not to be applied to the late payment of assessments issued under authority of Section 58‑3‑100. 1987 Op.Atty.Gen., No 87‑13, p 51 (1987 WL 245422).

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

This section [Code 1962 Section 58‑60] is complete within itself, and nothing incident to its adoption suggests that the simple language of Code 1962 Section 58‑1 concerning jurisdiction was intended to have any less than its obvious meaning and effect. City of Columbia v. Pearman (S.C. 1936) 180 S.C. 296, 185 S.E. 747.

Action to recover assessments for share of railroad commission expenses paid under protest is within the statute authorizing such units against the county treasurer. Columbia Gaslight Co. v. Mobley (S.C. 1927) 139 S.C. 107, 137 S.E. 211. Taxation 2776

Where an act created a railroad commission and provided that the expenses thereof should be borne by the several railroads of the State according to their gross income, this statute became a part of the charter of every railroad company thereafter incorporated, and assessments for this purpose annually included in the several tax acts were not successive amendments of these charters, but merely a provision to carry into execution a law already enacted. Columbia & Greenville R. Co. v. Gibbes (S.C. 1885) 24 S.C. 60, 1885 WL 3704, Unreported.

2. Constitutional issues

Gen.St.S.C.1882, c. 40, providing that the entire expenses of the railroad commission shall be borne by the several corporations owning or operating railroads within the state, is not in conflict with U.S.C.A. Const.Amend. 14, securing to every person the equal protection of the law. Charlotte, C. & A.R. Co. v. Gibbes (U.S.S.C. 1892) 12 S.Ct. 255, 142 U.S. 386, 35 L.Ed. 1051.

The provision of Gen.St.S.C.1882, c. 40, that the entire expenses of the railroad commission, which is thereby created and invested with general supervision of all railroads in the state, “shall be borne by the several corporations owning or operating railroads” within the state, is not in conflict with U.S.C.A.Const. 14th Amend. Section 1, forbidding deprivation of property without due process of law, as the business of such corporations is affected with a public use, and subject to legislative regulation, and the regulations imposed are within the power of the state to prescribe, and the exercise of the duties of the commissioners is beneficial to the public, and also to the railroad corporations. Ownership of personalty is presumed from possession. Charlotte, C. & A.R. Co. v. Gibbes (U.S.S.C. 1892) 12 S.Ct. 255, 142 U.S. 386, 35 L.Ed. 1051.

Gen.St.S.C.1882, c. 40, providing that entire expenses of railroad commission should be borne by several railroads operating within state is not unconstitutional. Charlotte, C. & A.R. Co. v. Gibbes (U.S.S.C. 1892) 12 S.Ct. 255, 142 U.S. 386, 35 L.Ed. 1051.

General Railroad Act 1881, Section 41, requires all railroad companies in the state to contribute to the salary and expenses of the state railroad commissioner. Held, that the tax so imposed is uniform. Charlotte, C. & A. R. Co. v. Gibbes (S.C. 1887) 27 S.C. 385, 4 S.E. 49.

By Const.1868, art. 12, Section 5, corporations may be formed under general laws, but such laws may, from time to time, be altered. By article 12, Section 5, the general assembly is to regulate the public use of franchises. By Act 1841, Section 41, the charter of every corporation created under a general law, and every charter granted by act of the general assembly, unless such act declares the contrary, is subject to amendment. The general railroad act of 1881 gives to a state officer the supervision of railroads in the state, and by section 41 thereof the burden of paying the officer’s salary and expenses is imposed on all the railroad companies in the state. Under Act March, 1869, containing no such declaration as provided by Act 1841, Section 41, a railroad obtained its charter, the constitution of 1868 and act of 1841 being then in force. Held, that the general assembly had unlimited power to amend the charter so obtained, provided the amendment did not go beyond regulation, supervision, and control of the corporation, and that the general railroad act of 1881, Section 41, was a valid amendment. Charlotte, C. & A. R. Co. v. Gibbes (S.C. 1887) 27 S.C. 385, 4 S.E. 49.

An exaction of a yearly contribution laid by the legislature upon a railroad corporation is not unconstitutional where the corporation accepted its charter subject to such an exaction. Columbia & Greenville R. Co. v. Gibbes (S.C. 1885) 24 S.C. 60, 1885 WL 3704, Unreported.

**SECTION 58‑3‑110.** Advance of funds for office of Commission.

 The appropriation for the commission’s office must be advanced by the State until it has been collected from the corporations liable therefor and, when collected, must be placed in the state treasury.

HISTORY: 1962 Code Section 58‑61; 1952 Code Section 58‑61; 1942 Code Section 3195; 1932 Code Section 3195; Civ. C. ‘22 Section 891; Civ. C. ‘12 Section 811; 1909 (26) 281; 1935 (39) 25; 2004 Act No. 175, Section 4, eff February 18, 2004.

Library References

Public Utilities 141.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 148 to 151.

**SECTION 58‑3‑130.** State agencies, boards, and commissions must supply records and information to Commission.

 Upon demand by the Office of Regulatory Staff, each state department, board, and commission, and each officer or agent of the State must furnish to the Office of Regulatory Staff, for inspection and confidential use, any record or information on file with the department, board, commission, or officer, as appropriate, concerning the property values, operation, income, or other matter of any person doing business as a public utility in this State.

HISTORY: 1962 Code Section 58‑63; 1952 Code Section 58‑63; 1942 Code Section 8216; 1932 Code Section 8258; 1930 (36) 1297; 1935 (39) 25; 2004 Act No. 175, Section 4, eff January 1, 2005.

Library References

Public Utilities 145.1.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 26, 28 to 32, 159 to 166, 169 to 171, 177 to 178.

**SECTION 58‑3‑140.** Powers to regulate public utilities.

 (A) Except as otherwise provided in Chapter 9 of this title, the commission is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State.

 (B) The commission must develop and publish a policy manual which must set forth guidelines for the administration of the commission. All procedures must incorporate state requirements and good management practices to ensure the efficient and economical utilization of resources.

 (C) The commission must facilitate access to its general rate request orders in contested matters involving more than one hundred thousand dollars by publishing an order guide which indexes and cross‑references orders by subject matter and case name. The order guide must be made available for public inspection.

 (D) The commission must promulgate regulations to require the direct testimony of witnesses appearing on behalf of utilities and of witnesses appearing on behalf of persons having formal intervenor status, such testimony to be reduced to writing and prefiled with the commission in advance of any hearing.

 (E) Nothing in this section may be interpreted to repeal or modify specific exclusions from the commission’s jurisdiction pursuant to Title 58 or any other title.

 (F) When required to be filed, tariffs must be filed with the office of the chief clerk of the commission and, on that same day, provided to the Executive Director of the Office of Regulatory Staff.

HISTORY: 1962 Code Section 58‑1; 1952 Code Section 58‑1; 1942 Code Section 8204; 1932 Code Section 8248; 1922 (32) 956; 1935 (39) 25; 1983 Act No. 138, Section 7, eff June 15, 1983; 2004 Act No. 175, Section 4, eff January 1, 2005.

CROSS REFERENCES

Designation of eligible telecommunications carriers, federal universal service support, see S.C. Code of Regulations R. 103‑690.

Regulation of publicly owned utilities and privately owned utilities serving the public, see SC Const. Art. IX, Section 1.

Library References

Public Utilities 120, 122, 145.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 5, 11, 13 to 32, 74 to 75, 104 to 109, 159 to 167, 169 to 171, 177 to 178.

Attorney General’s Opinions

A member of the Public Service Commission is not disqualified to sit in a hearing in which the SC Electric and Gas Company is a party merely because a member of his family is employed by a power company. 1974‑75 Op.Atty.Gen., No 3959, p 30 (1975 WL 22257).

Salaries paid by a utility company do not ordinarily come within the jurisdiction of the Public Service Commission; however, if there has been an abuse of discretion by the utility company in setting the salaries or excessive or unwarranted or incurred in bad faith, then the PSC has a duty to scrutinize the utility’s judgment. 1975 Op.Atty.Gen., No 3987, p 57 (1975 WL 22285).

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1. In general

The Public Service Commission is the ultimate fact‑finder in a ratemaking application; it has the power to independently determine whether an applicant has met its burden of proof, and it is not bound by Office of Regulatory Staff’s determination that an expenditure was reasonable and proper for inclusion in a rate application. Utilities Services of South Carolina, Inc. v. South Carolina Office of Regulatory Staff (S.C. 2011) 392 S.C. 96, 708 S.E.2d 755, on remand 2013 WL 811866. Public Utilities 122

Fact that water and sewer utility had sought increase in its previously‑approved new account customer charge did not diminish Public Service Commission’s (PSC) authority to consider all facts before it and order reduction in charge in utility rate case. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Municipal Corporations 712(8); Water Law 2201(1)

The Public Service Commission (PSC) has the authority to adjust a rate based on proven and measurable changes to occur in the future; the PSC is not limited to considering only historical data when making a rate adjustment. Hamm v. Southern Bell Tel. and Tel. Co. (S.C. 1990) 302 S.C. 132, 394 S.E.2d 311, certiorari denied 111 S.Ct. 1018, 498 U.S. 1109, 112 L.Ed.2d 1099.

The Public Service Commission’s order approving motor freight carrier’s transfer of portion of its franchise or certificate of convenience and necessity to another such carrier was within scope of Commission’s authority. Code 1942, Sections 8204, 8507‑8530, 8508, 8510, 8516, 8518. Beard‑Laney, Inc. v. Darby (S.C. 1948) 213 S.C. 380, 49 S.E.2d 564. Automobiles 105

It is inapplicable to railroads. Piedmont & Northern Ry. Co. v. Scott (S.C. 1943) 202 S.C. 207, 24 S.E.2d 353.

This section [Code 1962 Section 58‑1] refers only to those companies which are classified as “public utilities” in contradistinction to “transporting and transmitting corporations.” Darby v. Southern Ry. Co. (S.C. 1940) 194 S.C. 421, 10 S.E.2d 465.

2. Construction with other laws

Public Service Commission (PSC) had statutory authority to remove price caps for certain of interexchange telecommunications carrier’s (IXC) services after determining that carrier had failed to prove that services were “competitive” within meaning of statute prohibiting price caps for competitive services; another portion of statute, which allowed Commission to implement regulatory alternatives for noncompetitive services, and statutes vesting Commission with general rate powers over telephone utilities authorized Commission to remove price caps. Porter v. South Carolina Public Service Com’n (S.C. 1997) 327 S.C. 220, 489 S.E.2d 467. Telecommunications 950

Construed with Code 1962 Section 58‑101. As this section [Code 1962 Section 58‑1] does not define what are “public utilities” within the meaning of this term as used in the statute, and as the statute is elsewhere silent as to what corporations this classification includes, it was necessary, in order to correctly interpret the legislative intention, to construe this section [Code 1962 Section 58‑1] with Code 1962 Section 58‑101 (3). Darby v. Southern Ry. Co. (S.C. 1940) 194 S.C. 421, 10 S.E.2d 465.

3. Jurisdiction

The Commission would not lose jurisdiction to regulate the rates and transportation service of a power company if it should require or permit a complete substitution of buses for streetcars, (The court held that under the broad provisions of this section [Code 1962 Section 58‑1]). City of Columbia v. Pearman (S.C. 1936) 180 S.C. 296, 185 S.E. 747.

Jurisdiction. Commission had jurisdiction to permit substitution of bus service for streetcar service on certain street, under this section [Code 1962 Section 58‑1]. City of Columbia v. Tatum (S.C. 1934) 174 S.C. 366, 177 S.E. 541. Urban Railroads 7.1

4. Regulations

Reasonable rules and regulations when properly filed and published have the power and effect of law, and must be observed by power companies. Woody v. South Carolina Power Co. (S.C. 1943) 202 S.C. 73, 24 S.E.2d 121. Electricity 2.1

5. Retroactive ratemaking

Unamortized portion of water and sewer utility’s rate‑case expense that Public Service Commission (PSC) had approved in prior rate case, but that utility had not yet recovered, was anticipated and nonrecurring and qualified as “extraordinary expense” and, thus, Public Service Commission (PSC) did not engage in impermissible “retroactive ratemaking” when it allowed utility to recover unamortized portion of rate‑case expense, amortized over next three years, in utility rate case, where rate‑case expense was expected to be fully recovered before next rate case. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Municipal Corporations 712(8); Water Law 2195

Retroactive ratemaking with respect to utilities is prohibited based on general principle that customers who use service provided by utility should pay for its production rather than requiring future ratepayers to pay for past use. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Public Utilities 120

Ideally, amortization period for utility rate recovery of its unamortized costs from prior rate cases matches expected interval between rate cases. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Public Utilities 122

Water and sewer utility’s expenses for painting tanks and repairing mains were not “extraordinary expenses” within extraordinary‑expense exception to rule against retroactive ratemaking with respect to utilities and, thus, Public Service Commission (PSC) engaged in impermissible “retroactive ratemaking” in utility rate case when it allowed deferred charges for recovery of expenses which utility incurred before test year; expenses were not unanticipated or nonrecurring because they were routine and required at regular intervals, and Commission should have allowed prospective, rather than retroactive, recovery of expenses. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Municipal Corporations 712(8); Water Law 2195

Prospective reduction of new account customer charge which Public Service Commission (PSC) had previously approved for water and sewer utility would not constitute impermissible “retroactive ratemaking” in subsequent utility rate case. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Municipal Corporations 712(8); Water Law 2198

Reduction of previously approved utility fee does not violate rule against retroactive ratemaking if reduction is prospective only. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Public Utilities 122

Under extraordinary‑expense exception to rule prohibiting retroactive ratemaking with respect to utilities, “extraordinary expense” is one that is unanticipated and nonrecurring. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Public Utilities 128

6. Expenses

The Public Service Commission may determine that some portion of an expense actually incurred by a utility should not be passed on to consumers. Utilities Services of South Carolina, Inc. v. South Carolina Office of Regulatory Staff (S.C. 2011) 392 S.C. 96, 708 S.E.2d 755, on remand 2013 WL 811866. Public Utilities 128

Adjustments for known and measurable changes in expenses are within Public Service Commission’s (PSC) discretion in setting utility rates; absolute precision is not required, so long as adjustments are known and measurable within a degree of reasonable certainty. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Public Utilities 128

Generally, amortizing extraordinary expense incurred in past does not result in impermissible retroactive ratemaking with respect to utility. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Public Utilities 128

Public Service Commission (PSC) did not abuse its discretion in using per‑book amounts of operating expenses to adjust cash working capital in determining allowance for cash working capital to be included in rate base in water and sewer utility rate case, despite contention that consistency required Commission to use pro forma amounts of operating expenses for adjustment because pro forma adjustments were made to operating and maintenance expenses in determining rate base; Commission based its reduction of cash working capital on known amounts supported by record, and rate base calculation employing either methodology was substantially the same. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Municipal Corporations 712(8); Water Law 2185

7. Test year

In water and sewer utility rate case, use of 8.85% average capitalization percentage for test year and prior two years to reduce amount of operators’ salary expense in test year by salary expense attributable to capital projects would not materially alter rate base from that obtained through use of 5.74% capitalization percentage from test year alone to reduce operators’ salary expense for capital project salaries and, thus, Public Service Commission (PSC) was not required to adjust test year salary expense by using higher average capitalization percentage, as use of higher percentage would result in difference of approximately .3% to total rate base. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Municipal Corporations 712(8); Water Law 2186

In public utility ratemaking, test year is established to provide basis for making the most accurate forecast of utility’s rate base, reserves, and expenses in near future when prescribed rates are in effect. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Public Utilities 122

When unusual situation exists for utility ratemaking purposes resulting in test year figures that are atypical and thus do not indicate future trends, Public Service Commission (PSC) should adjust test year data. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Public Utilities 122

Comparison between test year capitalization percentage of 5.74% and average capitalization percentage of 8.85% for test year and prior two years was not dispositive in determining whether Public Service Commission (PSC) should have used higher percentage for reducing test year salary expense by salary expense attributable to capital projects in water and sewer utility rate case; question was whether amount for test year was markedly different from that for other years, thereby indicating it was atypical. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Municipal Corporations 712(8); Water Law 2186

Adjustment for atypical test year figures is required in calculation of utility rates only if variation in expense materially alters rate base. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Public Utilities 124

Public Service Commission (PSC) did not abuse its discretion in water and sewer utility rate case by increasing test year revenue by standardized per‑customer adjustment to reflect impact of projected number of new customers on utility’s net operating income, despite contention that standardized adjustment assumed equal increase in expenses per customer that utility had failed to demonstrate; actual amount of income generated for particular customer was not readily ascertainable, and employing average net income generated by each customer resulted in adjustment that was known and measurable within a degree of reasonable certainty. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Municipal Corporations 712(8); Water Law 2185

8. Mandamus

Mandamus proper remedy when jurisdiction refused. This section [Code 1962 Section 58‑1] carries an implied mandate that the Commission shall decide matters properly submitted and within its jurisdiction; and mandamus is the proper remedy where the Commission expressly refuses to decide such an issue. City of Columbia v. Pearman (S.C. 1936) 180 S.C. 296, 185 S.E. 747.

9. Remand

Public Service Commission’s (PSC) failure to make specific finding that water and sewer utility’s existing new account customer charge was supported by the evidence when Commission rejected utility’s request for increase in charge and Consumer Advocate’s request for decrease in charge warranted remand for Commission to make findings regarding appropriate amount that should be allowed for charge, on appeal in utility rate case. Porter v. South Carolina Public Service Com’n (S.C. 1997) 328 S.C. 222, 493 S.E.2d 92. Municipal Corporations 712(8); Water Law 2201(4)

**SECTION 58‑3‑142.** Limitation on appearance of members of General Assembly in rate‑fixing proceedings.

 No member of the General Assembly or any member of a member’s law firm shall appear before the commission in any rate‑fixing proceeding by representing any party in the proceeding for any purposes including political purposes, and it is the duty of the presiding commissioner or hearing officer to enforce the provisions of this section. However, this section does not apply to any member of the General Assembly appearing as a witness on either side of any hearing.

HISTORY: 1979 Act No. 167 Section 6, eff July 1, 1979; 2004 Act No. 175, Section 4, eff February 18, 2004.

Library References

Public Utilities 161.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 110 to 114, 208 to 209.

**SECTION 58‑3‑170.** Commission empowered to fix agreements, contracts, and rates between common carriers and telephone and telegraph companies.

 In case of failure of common carriers and telephone and telegraph companies to agree, the commission must supervise and fix all agreements, contracts, rates, or the divisions thereof and regulations between or among common carriers and telephone and telegraph companies, of whatever kind, placed under the control or supervision of the commission.

 Except for rates, transactions affecting rates, or transactions affecting service areas, the provisions of this section do not apply to transactions between a telephone cooperative association and its subsidiary corporation or cooperative association.

HISTORY: 1962 Code Section 58‑8; 1952 Code Section 58‑8; 1942 Code Section 8310; 1932 Code Section 8310; Civ. C. ‘22 Section 4857; 1920 (31) 1064; 1935 (39) 25; 1983 Act No. 67 Section 2, eff May 26, 1983; 2004 Act No. 175, Section 4, eff February 18, 2004.

Library References

Carriers 10, 12(0.5).

Telecommunications 751.

Westlaw Topic Nos. 70, 372.

C.J.S. Carriers Section 330.

NOTES OF DECISIONS

In general 1

1. In general

The Public Service Commission (PSC) has the authority to adjust a rate based on proven and measurable changes to occur in the future; the PSC is not limited to considering only historical data when making a rate adjustment. Hamm v. Southern Bell Tel. and Tel. Co. (S.C. 1990) 302 S.C. 132, 394 S.E.2d 311, certiorari denied 111 S.Ct. 1018, 498 U.S. 1109, 112 L.Ed.2d 1099.

Power of Public Service Commission to exercise any fundamental regulatory power over railroads in the state must be found in specific legislative provisions. Code 1942, Sections 8199 et seq., 8204, 8223, 8227, 8228, 8292‑21, 8294, 8297, 8304, 8310‑8315, 8327, 8330; Const. art. 9, Section 14. Piedmont & Northern Ry. Co. v. Scott (S.C. 1943) 202 S.C. 207, 24 S.E.2d 353.

**SECTION 58‑3‑180.** Promulgation of regulations to effectuate Section 58‑3‑170.

 The commission must promulgate regulations as necessary to effectuate the provisions of Section 58‑3‑170.

HISTORY: 1962 Code Section 58‑9; 1952 Code Section 58‑9; 1942 Code Section 8311; 1932 Code Section 8311; Civ. C. ‘22 Section 4858; 1920 (31) 1064; 1935 (39) 25; 2004 Act No. 175, Section 4, eff February 18, 2004.

**SECTION 58‑3‑190.** Reports by entities subject to commission jurisdiction; audits by Office of Regulatory Staff.

 (A) The commission has the authority to require periodic written reports to be submitted by persons or entities subject to its jurisdiction. Such reports must relate to matters within the jurisdiction of the commission and must be filed with the commission and provided to the Office of Regulatory Staff.

 (B) If, in the judgment of the commission, any report referred to in subsection (A) is not furnished within a reasonable time or does not satisfactorily address the matters the commission requires to be addressed in such reports, the commission must give the person or entity written notice of the reasons why the report is not satisfactory, and the person or entity shall have a reasonable time period in which to comply with the requirements of the notice.

 (C) The commission may request the Office of Regulatory Staff to make, pursuant to Section 58‑4‑50(A)(2), an inspection, audit, or examination of the persons or entities referred to in subsection (A) regarding matters the commission requires to be addressed in the reports referred to in subsection (A).

HISTORY: 1962 Code Section 58‑13; 1952 Code Section 58‑13; 1942 Code Section 8214; 1932 Code Section 8256; 1930 (36) 1297; 1935 (39) 25; 2004 Act No. 175, Section 4, eff January 1, 2005.

CROSS REFERENCES

Provision of public and private records relating to proceedings before the Commission to the Consumer Advocate, see Section 37‑6‑605.

Library References

Public Utilities 145.1, 146.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 26, 28 to 32, 159 to 167, 169 to 171, 177 to 178.

Attorney General’s Opinions

Public Service Commissions may seek certain business records and information of business thought to be operating as motor vehicle carrier in the State. 1984 Op.Atty.Gen., No. 84‑34, p. 75 (1984 WL 159841).

NOTES OF DECISIONS

In general 1

1. In general

Evidence of an electric utility’s imprudence in incurring costs which entered into its rate increase request may be provided by the Consumer Advocate as an intervenor through Section 37‑6‑605, or through the Public Service Commission’s broad investigatory powers, pursuant to Sections 58‑3‑190 and 58‑27‑1960. Hamm v. South Carolina Public Service Com’n (S.C. 1992) 309 S.C. 282, 422 S.E.2d 110. Public Utilities 165

**SECTION 58‑3‑200.** Inspections, audits and examinations.

 The commission has the authority to initiate inspections, audits, and examinations of all persons and entities subject to its jurisdiction. Such inspections, audits, and examinations must relate to matters within the commission’s jurisdiction. Notwithstanding any other provision of law, the commission must not conduct such inspections, audits, and examinations itself, but must request that they be conducted by the Office of Regulatory Staff pursuant to Section 58‑4‑50(A)(2).

HISTORY: 1962 Code Section 58‑14; 1952 Code Section 58‑14; 1942 Code Section 8215; 1932 Code Section 8257; 1930 (36) 1297; 1935 (39) 25; 2004 Act No. 175, Section 4, eff January 1, 2005.

CROSS REFERENCES

Provision of public and private records relating to proceedings before the Commission to the Consumer Advocate, see Section 37‑6‑605.

Library References

Public Utilities 145, 161, 166.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 26 to 32, 110 to 114, 159 to 167, 169 to 171, 177 to 178, 208 to 209, 214.

Attorney General’s Opinions

Public Service Commissions may seek certain business records and information of business thought to be operating as motor vehicle carrier in the State. 1984 Op.Atty.Gen., No. 84‑34, p. 75 (1984 WL 159841).

**SECTION 58‑3‑220.** Disposition of penalties and forfeitures for failure to comply with orders of commission.

 One‑half of all penalties and forfeitures collected from railroad, express, telegraph, and telephone companies for failure to comply with orders of the commission must be paid into the state treasury, and the other half into the county treasury of the county in which the suit is brought imposing the penalty or forfeiture collected. The revenues accruing from these collections must be used for general state and county purposes.

HISTORY: 1962 Code Section 58‑17; 1952 Code Section 58‑17; 1942 Code Section 8224; 1932 Code Section 8267; Civ. C. ‘22 Section 4815; Civ. C. ‘12 Section 3143; 1911 (27) 158; 1935 (39) 25; 2004 Act No. 175, Section 4, eff February 18, 2004.

Library References

Carriers 20(1).

Telecommunications 1000.

Westlaw Topic Nos. 70, 372.

C.J.S. Carriers Section 332.

C.J.S. Telecommunications Sections 136 to 137.

**SECTION 58‑3‑225.** Conduct of hearings; absence of commissioner; ejection of disruptive party; contempt; withdrawal of petition.

 (A) Hearings conducted before the commission must be conducted under dignified and orderly procedures designed to protect the rights of all parties. If a commissioner is absent from or leaves the hearing for fifteen consecutive minutes or longer, the commission must recess the hearing until the commissioner is present, or the commissioner may not participate in the deliberations or vote on the matter. If a commissioner is absent from or leaves the hearing for less than fifteen consecutive minutes, the commission shall cause the record of the proceeding to reflect the absence and the duration of the absence.

 (B) All persons appearing in a representative capacity before the commission in its proceedings should conform to the standards of ethical conduct required of attorneys practicing before the courts of this State.

 (C) Any person, firm, or corporation who disregards commission orders after due notice or who engages in conduct calculated to bring the due and orderly course of commission proceedings into disrespect or disregard, or to interfere with or prejudice parties or their witnesses during the proceedings may, by order of the commission or its presiding officer, be ejected for the remainder of that day from the proceedings. If that person, firm, or corporation engages in further conduct resulting in ejection for a second day or portion thereof in the same proceeding, he must also be declared in contempt and cited to any circuit judge, who may punish by a fine not to exceed five hundred dollars or imprisonment not to exceed thirty days, or both. The proscribed conduct includes, but is not limited to, any person, firm, or corporation intentionally delaying the proceedings by the injection of matters determined not to be relevant after a proper warning that the matters shall not be pursued.

 (D) The provisions of this section must not be construed as limiting any powers of the commission under existing law.

 (E) A party may withdraw its petition, application, complaint, counterclaim, cross‑claim, or third‑party claim from any commission docket one time as a matter of right, and without prejudice, provided that it does so prior to the later of the date that responsive pleadings are filed or the date that the withdrawing party’s direct testimony addressing such petition, application, complaint, counterclaim, cross‑claim, or third‑party claim is due to be filed with the commission. A party may thereafter withdraw its petition, application, complaint, counterclaim, cross‑claim, or third‑party claim from any commission docket only upon order of the commission and upon such terms and conditions as the commission considers proper.

HISTORY: 1980 Act No. 440, Section 2, eff May 26, 1980; 2004 Act No. 175, Section 4, eff July 1, 2004.

Editor’s Note

1980 Act No. 440, Section 1, provides as follows:

“Section 1. The General Assembly finds that the Public Service Commission (Commission) was created by the General Assembly to regulate common carriers and utilities serving the public as, and to the extent, required by the public interest. The regulation of such carriers and utilities is one of the Commission’s most important functions and one that fundamentally affects the daily lives of the citizens of this State and in light of the importance of the Commission’s functions, all proceedings before the Commission should be conducted in the most equitable, efficient and dignified manner. It further finds that many proceedings before the Commission have become increasingly lengthy, with a substantial number of different parties representing different interests. It is the purpose of this act to improve the Commission’s effectiveness and efficiency and to allow the Commission to have an equitable and dignified forum in which to conduct such proceedings.”

Library References

Public Utilities 161, 167.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 110 to 115, 119 to 129, 208 to 209, 219 to 223, 240 to 241.

**SECTION 58‑3‑230.** Unauthorized change of utility provider service; authorization; penalties; “customer” defined.

 (A) A utility, as defined in Sections 58‑5‑10, 58‑9‑10, and 58‑27‑10, may not submit a change request for a customer’s utility service until the customer’s authorization for the change is obtained by using marketing or anti‑slamming guidelines approved by the appropriate federal and state regulatory agencies. In the case of utilities defined by Section 58‑9‑10, the appropriate regulatory agencies are the Federal Communications Commission and the South Carolina Public Service Commission. If a utility other than that directly receiving the customer authorization subsequently effects the change into billing or operational systems, it is not:

 (1) required to secure additional customer authorization; and

 (2) liable pursuant to this section for errors, omissions, or unauthorized changes submitted by the utility originating the request.

 (B) A utility defined in Sections 58‑5‑10 and 58‑27‑10 that violates subsection (A) is liable to the customer for all charges incurred by the customer, in excess of those normally incurred through his designated provider, during the period of the unauthorized change.

 (C) A utility defined in Section 58‑9‑10 that violates subsection (A) is liable as specified in Federal Communications Commission guidelines promulgated pursuant to the United States Code of Laws, Chapter 1, Title 47.

 (D) A utility, as defined in Sections 58‑5‑10, 58‑9‑10, and 58‑27‑10, that wilfully, knowingly, or repeatedly violates the provisions of subsection (A) is subject to a fine of not less than two thousand dollars nor more than ten thousand dollars for each violation. The fines collected by the Public Service Commission pursuant to this section must remain with the commission and be used to offset costs associated with this section.

 (E) As used in this section “customer” means:

 (1) the party identified in the account records of a utility as the one responsible for payment of the utility bill;

 (2) an adult person authorized by the responsible party to change utility services or to charge services to the account; or

 (3) a person contractually or otherwise lawfully authorized to represent the responsible party.

HISTORY: 2005 Act No. 5, Section 1, eff July 1, 2004.

Library References

Public Utilities 114.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 5 to 9, 202 to 207.

**SECTION 58‑3‑240.** Definitions; exemption from certain regulations for certain utility services.

 (A) As used in this section:

 (1) “Privately‑owned industrial park” means a privately‑ owned tract of real property which is used solely for industrial uses, in which the provider of utility services owns or operates an industrial premises and owns or operates facilities for the provision of utility services and on which there is located one or more industrial users. “ Privately‑owned industrial park” also means those additional tracts as may be subsequently incorporated into the industrial park.

 (2) “Industrial premises” means a building, structure, plant, or facility which is located in a privately‑owned industrial park and is owned or leased by an industrial user.

 (3) “Industrial user” means any person, corporation, or association which is engaged in the business of manufacturing, processing, assembling, fabricating, or related work.

 (4) “Provider of utility services” means a person, corporation, or association, other than a regulated public utility or its affiliates, that offers or provides, or both, utility services to the public or any portion of it outside a privately‑owned industrial park, which provides any or all of those services which are defined in Chapters 5 and 7 of this title, excluding gas, and subject to regulation by the commission and where the services are provided to an industrial user in a privately‑owned industrial park.

 (5) “Jurisdictional utilities” means those persons, corporations, associations, or political subdivisions which provide services subject to the jurisdiction of the commission under Chapters 5 and 7 of this title, excluding gas.

 (B) The provisions of Chapters 5 and 7 of this title, excluding gas, are not applicable to the provision of utility services to industrial users of these services where the industrial users are located in a privately‑owned industrial park where the provider of utility services and the industrial user have agreed in writing to the terms and conditions for the provision of utility services and where all jurisdictional utilities which would have a right to provide any or all of the utility services have agreed in writing to waive their right to further notice and opportunity for hearing with respect to the written agreement and the provision of the services under the terms of the agreement.

 (C) Within twenty days after the execution of a written agreement between a provider of utility services and an industrial user pursuant to subsection (B), the provider of utility services must file with the commission and provide to the Office of Regulatory Staff, for information only, the written agreement and all waivers executed by jurisdictional utilities pursuant to subsection (B).

HISTORY: 2001 Act No. 47, Section 1, eff May 29, 2001; 2004 Act No. 175, Section 4, eff February 18, 2004; 2006 Act No. 318, Section 2, eff May 24, 2006.

Library References

Public Utilities 103.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 1 to 3, 5, 10.

**SECTION 58‑3‑250.** Final orders and decisions; contents; service on parties.

 (A) All final orders and decisions of the commission must be sufficient in detail to enable the court on appeal to determine the controverted questions presented in the proceedings and must include:

 (1) findings and conclusions, and the reasons or bases therefor, upon all the material issues of fact or law presented in the record; and

 (2) the appropriate rule, order, sanction, relief, or statement of denial thereof.

 (B) A copy of every final order or decision under the seal of the commission must be served by electronic service, registered or certified mail, upon all parties to the proceeding or their attorneys. Service of every final order or decision upon a party or upon the attorney must be made by emailing a copy of the order to the party’s email address provided to the commission or by mailing a copy to the party’s last known address. If no email or other address is known, however, service shall be made by leaving a copy with the chief clerk of the commission. The order takes effect and becomes operative when served unless otherwise designated and continues in force either for a period designated by the commission or until changed or revoked by the commission. If, in the judgment of the commission, an order cannot be complied with within the time designated, the commission may grant and prescribe additional time as is reasonably necessary to comply with the order and, on application and for good cause shown, may extend the time for compliance fixed in its order.

HISTORY: 2004 Act No. 175, Section 4, eff February 18, 2004; 2012 Act No. 208, Section 1, eff June 7, 2012.

Library References

Public Utilities 169.1.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 110, 118, 136 to 147, 228 to 237, 243.

**SECTION 58‑3‑260.** Communications between commission and parties prohibited; exempt communications; disclosure of improper communications; penalties.

 (A) For purposes of this section:

 (1) “Proceeding” means a contested case, generic proceeding, or other matter to be adjudicated, decided, or arbitrated by the commission.

 (2) “Person” means a party to a proceeding pending before the commission, a member of the Office of Regulatory Staff, a representative of a party to a proceeding pending before the commission, individuals, corporations, partnerships, limited liability companies, elected officials of state government, and other public and elected officials.

 (3) “Communication” means the transmitting of information by any mode including, but not limited to, oral, written, or electronic.

 (4) “Allowable ex parte communication briefing” means any communication that is conducted pursuant to the procedure outlined in subsection (C)(6) of this section.

 (5) “Communication of supplemental legal citation” means the submission, subsequent to the submission of post‑hearing briefs or proposed orders in a proceeding, of statutes, regulations, judicial or administrative decisions that are enacted, promulgated, or determined after the submission of post‑hearing briefs or proposed orders.

 (B) Except as otherwise provided herein or unless required for the disposition of ex parte matters specifically authorized by law, a commissioner, hearing officer, or commission employee shall not communicate, directly or indirectly, regarding any issue that is an issue in any proceeding or can reasonably be expected to become an issue in any proceeding with any person without notice and opportunity for all parties to participate in the communication, nor shall any person communicate, directly or indirectly, regarding any issue that is an issue in any proceeding or can reasonably be expected to become an issue in any proceeding with any commissioner, hearing officer, or commission employee without notice and opportunity for all parties to participate in the communication.

 (C) The following communications are exempt from the prohibitions of subsection (B) of this section:

 (1) a communication concerning compliance with procedural requirements if the procedural matter is not an area of controversy in a proceeding;

 (2) statements made by a commission employee who is or may reasonably be expected to be involved in formulating a decision, rule, or order in a proceeding, where the statements are limited to providing publicly available information about pending proceedings;

 (3) inquiries relating solely to the status of a proceeding, unless the inquiry: (a) states or implies a view as to the merits or outcome of the proceeding; (b) states or implies a preference for a particular party or which states why timing is important to a particular party; (c) indicates a view as to the date by which a proceeding should be resolved; or (d) is otherwise intended to address the merits or outcome or to influence the timing of a proceeding;

 (4) a communication made by or to commission employees that concerns judicial review of a matter that has been decided by the commission and is no longer within the commission’s jurisdiction; however, if the matter is remanded to the commission for further action, the provisions of this section shall apply during the period of the remand;

 (5) where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized provided:

 (a) the commissioner, hearing officer, or commission employee reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication; and

 (b) the commissioner, hearing officer, or commission employee makes provision promptly to notify all other parties of the substance of the ex parte communication and, where possible, allows an opportunity to respond;

 (6)(a) subject to the provisions of Chapter 4 of Title 30, communications, directly or indirectly, regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding for the purposes of an allowable ex parte communication briefing if:

 (i) the Executive Director of the Office of Regulatory Staff or his designee attends the briefing and files a written certification, within seventy‑two hours of the briefing, attaching copies of all statements and all other matters filed by all persons pursuant to subsubitems (ii), (iii), and (iv) of this subsection, with the chief clerk of the commission that such briefing was conducted in compliance with the provisions of this section and that each party, person, commissioner, or commission employee present has complied with the reporting and certification requirements of subsubitems (ii), (iii), and (iv); and within twenty‑four hours of the submission by the executive director, the commission posts on its web site the written certification, statements, and other matters filed by the executive director;

 (ii) each party, person, commissioner, and commission employee present files a written, certified statement with the Executive Director of the Office of Regulatory Staff within forty‑eight hours of the briefing accurately summarizing the discussions in full and attaching copies of any written materials utilized, referenced, or distributed;

 (iii) each party, person, commissioner, and commission employee present, within forty‑eight hours of the briefing, files a certification with the Executive Director of the Office of Regulatory Staff that no commitment, predetermination, or prediction of any commissioner’s action as to any ultimate or penultimate issue or any commission employee’s opinion or recommendation as to any ultimate or penultimate issue in any proceeding was requested by any person or party nor any commitment, predetermination, or prediction was given by any commissioner or commission employee as to any commission action or commission employee opinion or recommendation on any ultimate or penultimate issue;

 (iv) each commissioner or commission employee present at the allowable ex parte communication briefing grants to every other party or person requesting an allowable ex parte communication briefing on the same or similar matter that is or can reasonably be expected to become an issue in a proceeding, similar access and a reasonable opportunity to communicate, directly or indirectly, regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding under the provisions of subsection (C)(6) of this section and files a written, certified statement with the Executive Director of the Office of Regulatory Staff within forty‑eight hours of the briefing stating that the commissioner or commission employee will comply with this provision;

 (v) the commission posts on its web site, at least five business days prior to the proposed briefing, a notice of each request for an allowable ex parte communication briefing that includes the date and time of the proposed briefing, the name of the person or party who requested the briefing, the name of each commissioner and commission employee whom the person or party has requested to brief, and the subject matter to be discussed at the briefing;

 (vi) the person or party initially seeking the briefing requests the briefing with sufficient notice, as required in subsubitem (v), to allow the initial briefing to be held at least twenty business days prior to the hearing in the proceeding at which the matter that is the subject of the briefing is or can reasonably be expected to become an issue, and the initial briefing must be held at least twenty business days prior to the hearing in the proceeding; and

 (vii) any person or party desiring to have a briefing on the same or similar matter as provided for in subsubitem (vi) requests a briefing with sufficient notice, as required in subsubitem (v), to allow the briefing to be held at least ten business days prior to the hearing in the proceeding at which the matter that is the subject of the briefing is or can reasonably be expected to become an issue, and any such briefing must be held at least ten business days prior to the hearing in the proceeding;

 (b) any person or party may object to the attendance of the Executive Director of the Office of Regulatory Staff at an allowable ex parte communication briefing on the grounds of bias or a conflict of interest on the part of the executive director. Any such objection must be made in writing and must be filed with the executive director no later than twenty‑four hours prior to the scheduled briefing. If the objecting person or party and the executive director agree upon a neutral person, that person shall serve in the executive director’s stead and shall comply with the reporting and certification requirements of the executive director contained in subsubitem (i) and the executive director shall comply with the requirements contained in subsubitems (ii) and (iii). The costs of such person’s services shall be charged to the party requesting the briefing and may be an allowable cost of the proceedings. If the objecting person or party and the executive director cannot agree upon a neutral person, the objecting person or party shall petition the Administrative Law Court for the appointment of a neutral person to serve in the executive director’s stead, and the petition shall be given priority over all other matters within the jurisdiction of the Administrative Law Court. In the petition, the objecting party shall set forth the specific grounds supporting the objecting person’s or party’s allegation of bias or conflict on the part of the executive director and shall generally describe the matters to be discussed at the briefing. It shall not be sufficient grounds that the executive director is or is likely to be a party to a proceeding. The executive director shall be given an opportunity to respond. Part of the executive director’s response shall include recommendations as to the experience required of the person to act in his stead. Upon a showing of actual bias or conflict of interest, the administrative law judge shall designate a person to act in the executive director’s stead and that person shall comply with the reporting and certification requirements of the executive director contained in subsubitem (i) and the executive director shall comply with the requirements contained in subsubitems (ii) and (iii). Such person must have the expertise to act in the executive director’s stead. The decision of the administrative law judge shall be considered interlocutory and not immediately appealable and may be appealed with the final order of the commission. The costs of such person’s services shall be charged to the party requesting the briefing and may be an allowable cost of the proceedings;

 (c) should the Executive Director of the Office of Regulatory Staff desire to conduct an allowable ex parte communication briefing, the chief clerk of the commission shall appoint a neutral person who shall serve in the executive director’s stead and that person shall comply with the reporting and certification requirements of the Executive Director of the Office of Regulatory Staff contained in subsubitem (i). The Executive Director of the Office of Regulatory Staff shall comply with the requirements contained in subsubitems (ii) and (iii);

 (d) nothing in subsection (C)(6) of this section requires any commissioner or commission employee to grant a request for an allowable ex parte communication briefing, except as provided in subsection (C)(6)(a)(iv) of this section;

 (7) a communication of supplemental legal citation if the party files copies of such documents, without comment or argument, with the chief clerk of the commission and simultaneously provides copies to all parties of record;

 (8) subject to the provisions of Chapter 4 of Title 30, communications between and among commissioners regarding matters pending before the commission; provided, further, that any commissioner, hearing officer, or commission employee may receive aid from commission employees if the commission employees providing aid do not:

 (a) receive ex parte communications of a type that the commissioner, hearing officer, or commission employee would be prohibited from receiving; or

 (b) furnish, augment, diminish, or modify the evidence in the record.

 (D) If before serving in a proceeding, a commissioner, hearing officer, or commission employee receives an ex parte communication of a type that may not properly be received while serving, the commissioner, hearing officer, or commission employee must disclose the communication in the following manner: a commissioner, hearing officer, or a commission employee who receives an ex parte communication in violation of this section must promptly after receipt of the communication or, in the case of a communication prior to a filing, as soon as it is known to relate to a filing, place on the record of the matter all written and electronic communications received, all written and electronic responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the commissioner, hearing officer, or commission employee, as appropriate, received an ex parte communication and must advise all parties that these matters have been placed on the record. Within ten days after receipt of notice of the ex parte communication, any party who desires to rebut the contents of the communication must request and shall be granted the opportunity to rebut the contents. Parties affected by a violation may agree to a resolution of any claim regarding such violation, including the waiver of a hearing and the waiver of the obligation to report violations under subsection (I) of this section.

 (E) Any person who makes an inadvertent ex parte communication must, as soon as it is known to relate to an issue in a proceeding, disclose the communication by placing on the record of the matter the communication made, if written or electronic, or a memorandum stating the substance of an inadvertent oral communication, and the identity of each person to whom the inadvertent ex parte communication was made or given. Within ten days after receipt of notice of the ex parte communication, any party who desires to rebut the contents of the communication must request and shall be granted the opportunity to rebut the contents. If no party rebuts the inadvertence of the ex parte communication within ten days after notice of the ex parte communication, the ex parte communication shall be presumed inadvertent. Parties affected by a violation may agree to a resolution of any claim regarding such violation, and the provisions of subsection (J) of this section shall not apply.

 (F) If necessary to eliminate the effect of an ex parte communication received in violation of this section, a commissioner, hearing officer, or commission employee who receives the communication may be disqualified by the commission, and the portions of the record pertaining to the communication may be sealed by protective order.

 (G) Nothing in this section alters or amends Section 1‑23‑320(i).

 (H) Nothing in this section prevents a commissioner, hearing officer, or commission employee from attending educational seminars sponsored by state, regional, or national organizations and seminars not affiliated with any utility regulated by the commission; however, the provisions of this section shall apply to any communications that take place outside any formal sessions.

 (I) Subject to any privilege under Rule 501 of the South Carolina Rules of Evidence, any commissioner, hearing officer, commission employee, party, or any other person must report any wilful violation of this section on the part of a commissioner, hearing officer, or commission employee to the review committee.

 (J) Any commissioner, hearing officer, commission employee, or person who wilfully violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred fifty dollars or imprisoned for not more than six months. If a commissioner wilfully communicates with any party or person or if any person or party wilfully communicates with a commissioner regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding less than ten business days prior to the scheduled hearing on the merits, during the hearing or after the hearing but prior to the issuance of a final order, including an order on rehearing, in a proceeding where such facts, law, or other matter is or can reasonably be expected to become an issue, the commissioner shall be removed from office. If a hearing officer or commission employee wilfully communicates with any party or person or any party or person wilfully communicates with a hearing officer or commission employee regarding any fact, law, or other matter that is or can reasonably be expected to become an issue in a proceeding less than ten days prior to the scheduled hearing on the merits, during the hearing or after the hearing but prior to the issuance of a final order, including an order on rehearing, in a proceeding where such facts, law, or other matter is or can reasonably be expected to become an issue, the hearing officer or commission employee shall be terminated from employment by the commission. For purposes of this section: (1) “wilful” means an act done voluntarily and intentionally with the specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or disregard the law, and (2) a violation of the provisions of this section must be proved by clear and convincing evidence before a commissioner, hearing officer, or commission employee can be removed from office or terminated from employment.

HISTORY: 2004 Act No. 175, Section 4, eff January 1, 2005.

Library References

Public Utilities 161.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 110 to 114, 208 to 209.

**SECTION 58‑3‑270.** Obtaining remedial relief from violation of prohibited communications; hearing before administrative law judge.

 (A) Any party seeking remedial relief from alleged violations of Section 58‑3‑260 may file a complaint with the Administrative Law Court.

 (B) A complaint seeking sanctions must include the following:

 (1) the name and address of the complainant;

 (2) the name and address of complainant’s counsel, if any;

 (3) the name and address of each person alleged to have violated the ex parte prohibition, hereinafter referred to as respondent;

 (4) the name and address of each respondent’s counsel, if known;

 (5) the facts constituting the alleged violation; and

 (6) the sanctions sought by the complainant.

 (C) A complaint filed under this section must be served on the commission, each respondent, respondent’s counsel, if known, and all persons on the commission’s service list for the proceeding that is the subject of the ex parte complaint.

 (D) Within seven days of service of the complaint, a respondent must file an answer with the Administrative Law Court and serve it on the complainant, the commission, and all persons on the commission’s service list for the proceeding that is the subject of the ex parte complaint.

 (E) The administrative law judge assigned to the ex parte communication complaint proceeding by the Administrative Law Court may issue an order tolling any deadlines imposed by any state statute for a decision by the commission on the proceeding that is the subject of the ex parte communication complaint. The administrative law judge assigned to the ex parte communication complaint proceeding by the Administrative Law Court must conduct a hearing and must issue a decision within sixty days after the complaint is filed.

 (F) The decision of the administrative law judge must describe the relevant facts of the case and must set forth the judge’s findings as to whether the ex parte communication was in violation of Section 58‑3‑260. The judge also must impose sanctions in accordance with subsection (G) of this section. In imposing these sanctions, the judge, as a matter of equity, must protect: (1) the rights and interests of parties who are not alleged to have violated Section 58‑3‑260, and (2) the public interest in general.

 (G) In his decision, the administrative law judge may impose the following sanctions:

 (1) dismiss the proceeding if the prohibited ex parte communication has so prejudiced the proceeding that the commission cannot consider the matter impartially;

 (2) issue an adverse ruling on a pending issue that is the subject of the prohibited ex parte communication if other parties are prejudiced by the prohibited ex parte communication;

 (3) strike evidence or pleadings if the evidence or pleadings are tainted by the prohibited ex parte communication;

 (4) issue a public statement of censure or explanation, if it is determined that the prohibited ex parte communication occurred but mitigating circumstances exist that:

 (a) negate the need for a more severe sanction;

 (b) indicate that the proceeding was not prejudiced to the extent that the commission is unable to consider the matter in the proceeding impartially;

 (c) indicate that the ex parte communication did not prejudice other parties; or

 (d) indicate that the ex parte communication did not taint the evidence or pleadings.

 (H) If the administrative law judge finds the complainant’s allegation of an ex parte violation was interposed for any improper purpose, such as to harass or cause unnecessary delay or increase the cost of the proceeding, the administrative law judge may issue an appropriate sanction against the complainant.

 (I) Any decision of an administrative law judge pursuant to this section shall be considered interlocutory in nature and is not immediately appealable until a final order of the commission has been issued. Any appeal of a decision of an administrative law judge pursuant to this section must be included in and made in the same manner as an appeal of the final order of the commission in the subject proceeding.

HISTORY: 2004 Act No. 175, Section 4, eff January 1, 2005.

Library References

Public Utilities 161, 167.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 110 to 115, 119 to 129, 208 to 209, 219 to 223, 240 to 241.

**SECTION 58‑3‑280.** Restriction on employment of former commissioners by public utility.

 A commissioner must not be employed or retained by a public utility for a period of at least one year following his service as a commissioner. 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.

HISTORY: 2004 Act No. 175, Section 4, eff February 18, 2004.

Library References

Public Utilities 111.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 5, 9, 11, 13, 172 to 174, 177 to 178.

ARTICLE 3

Law Enforcement Department

**SECTION 58‑3‑310.** Transportation Division Inspectors; commission and removal of inspectors.

 The law enforcement department of the Office of Regulatory Staff shall consist of such officers, inspectors, and agents as the Executive Director of the Office of Regulatory Staff considers necessary and proper for the enforcement of the Motor Vehicle Carrier Law and other related laws, the enforcement of which is devolved upon the department. The title of such officers, inspectors, and agents shall be “Transportation Division Inspectors”. The inspectors shall be commissioned by the Governor upon the recommendation of the Executive Director of the Office of Regulatory Staff. The Executive Director of the Office of Regulatory Staff may remove an inspector if he finds that the inspector is unfit for the position.

HISTORY: 1977 Act No. 90 Section 1; 2006 Act No. 318, Section 3, eff May 24, 2006.

CROSS REFERENCES

Public Service Commission Safety Enforcement incorporated into the Department of Public Safety, see Section 1‑30‑90.

Library References

Automobiles 63.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 130 to 138.

**SECTION 58‑3‑320.** Bond of inspectors.

 Each inspector shall execute a bond with a licensed surety company in the amount of not less than ten thousand dollars. The bond shall be filed with the Office of Regulatory Staff and shall be conditioned for the faithful performance of his duties, for the prompt and proper accounting of funds coming into his hands and for the payment of any judgment rendered against him in any court of competent jurisdiction upon a cause of action arising out of breach or abuse of official duty or power and damages sustained by any member of the public from any unlawful act of the inspector. The coverage under the bond shall not include damage to persons or property arising out of the negligent operation of a motor vehicle. The bond may be individual, schedule, or blanket, and shall be approved by the Attorney General. The premiums on the bonds shall be paid by the Office of Regulatory Staff from appropriated funds.

HISTORY: 1977 Act No. 90 Section 2; 2006 Act No. 318, Section 4, eff May 24, 2006.

Library References

Automobiles 63.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 130 to 138.

**SECTION 58‑3‑330.** Oath of inspectors.

 Before entering upon the duties of his office, each inspector shall take and subscribe before a notary public, or other officer authorized to administer an oath, an oath to faithfully perform the duties of his office and to properly execute the laws of this State.

HISTORY: 1977 Act No. 90 Section 3.

Library References

Automobiles 63.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 130 to 138.

**SECTION 58‑3‑340.** Inspectors to possess and exercise powers and authority of constables.

 The inspectors shall possess and exercise all of the powers and authority held by constables at common law.

HISTORY: 1977 Act No. 90 Section 4.

CROSS REFERENCES

Constables, generally, see Section 22‑9‑10 et seq.

Library References

Automobiles 63.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 130 to 138.

**SECTION 58‑3‑350.** Enforcement authority of inspectors.

 When acting in their official capacity, inspectors shall have statewide authority for the enforcement of all motor vehicle carrier laws and related laws.

HISTORY: 1977 Act No. 90 Section 5.

Library References

Automobiles 63.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 130 to 138.

**SECTION 58‑3‑360.** Inspectors to insure that violators are prosecuted.

 Inspectors shall enforce the Motor Vehicle Carrier Law, and related laws and insure that all persons violating any provision of these laws are properly prosecuted.

HISTORY: 1977 Act No. 90 Section 6.

Library References

Automobiles 63.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 130 to 138.

**SECTION 58‑3‑370.** Arrest procedure.

 When any person is apprehended by an inspector upon a charge of violating the Motor Vehicle Carrier Law or related laws, the following procedure shall be followed:

 (1) The person being charged shall be served by the arresting inspector with an official summons and arrest report. The report shall give the appropriate judicial officer jurisdiction to dispose of the case.

 (2) The person being charged may deposit with the arresting inspector a sum of money not to exceed one hundred dollars as bail in lieu of being immediately brought before the magistrate or other judicial officer; provided, that an official summons and arrest report may be issued without requiring any sum of money as bail.

 (3) The official summons and arrest report shall indicate the amount of bail deposited with the inspector and shall serve as a receipt for the sum.

 (4) The arresting inspector shall transmit any sum of money received from the person charged to the appropriate magistrate or other judicial officer.

 (5) Upon receipt of the sum of money, if any is required, as bail, the arresting inspector may release the person charged so that he may appear before the proper judicial officer at a time and place stated in, and required by, the official summons and arrest report.

HISTORY: 1977 Act No. 90 Section 7.

CROSS REFERENCES

Arrests, generally, see Section 17‑13‑10 et seq.

Library References

Automobiles 349(14.1).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1515 to 1517, 1519 to 1521, 1523 to 1524.

ARTICLE 5

State Regulation of Public Utilities Review Committee

CROSS REFERENCES

State Energy Office, distribution of federal funds, plans for use of funds, Energy Advisory Council, report, see Section 48‑52‑440.

**SECTION 58‑3‑510.** State Regulation of Public Utilities Review Committee established.

 There is hereby established a committee to be known as the State Regulation of Public Utilities Review Committee, hereinafter called the review committee, which must exercise the powers and fulfill the duties described in this article.

HISTORY: 2004 Act No. 175, Section 5, eff March 4, 2004.

Library References

Public Utilities 141.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 148 to 151.

**SECTION 58‑3‑520.** Membership; election of chairman; meetings; nomination of candidates for Public Service Commission and Executive Director of Office of Regulatory Staff.

 (A) The review committee shall be composed of ten members, three of whom shall be members of the House of Representatives, including the Chairman of the Labor, Commerce and Industry Committee, or his designee, three of whom shall be members of the Senate, including the Chairman of the Judiciary Committee or his designee, two of whom shall be appointed by the Chairman of the Senate Judiciary Committee from the general public at large, and two of whom appointed by the Speaker of the House of Representatives from the general public at large. The Speaker of the House of Representatives shall determine how its legislative members shall be selected. The Chairman of the Senate Judiciary Committee will select the members of the Senate. Provided, however, that in making appointments to the joint committee, race, gender, and other demographic factors should be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of the State. The members of the general public appointed by the Speaker and the Chairman of the Senate Judiciary Committee must be representative of all citizens of this State and must not be members of the General Assembly.

 (B) The review committee must meet as soon as practicable after appointment and organize itself by electing one of its members as chairman and such other officers as the review committee may consider necessary. Thereafter, the review committee must meet at least annually and at the call of the chairman or by a majority of the members. A quorum consists of six members.

 (C) Unless the review committee finds a candidate qualified and nominates the candidate for a seat on the Public Service Commission or for the Executive Director of the Office of Regulatory Staff, the candidate must not be elected to the Public Service Commission or appointed to serve as Executive Director of the Office of Regulatory Staff.

HISTORY: 2004 Act No. 175, Section 5, eff March 4, 2004.

Library References

Public Utilities 142, 150.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 156 to 158.

**SECTION 58‑3‑530.** Powers and duties.

 The review committee has the following powers and duties:

 (1) to nominate:

 (a) no more than three candidates for each seat on the Public Service Commission to be elected by the General Assembly. In order to be nominated, a candidate must be found qualified by meeting the requirements as provided in Sections 58‑3‑20 and 58‑3‑560;

 (b) no more than one qualified candidate for the Governor to consider in appointing the Executive Director of the Office of Regulatory Staff. In order to be nominated, a candidate must be found qualified by meeting the minimum requirements as provided in Section 58‑4‑30. The review committee must give due consideration to a candidate’s experience and expertise in matters related to public utilities. A person must not be appointed to serve as Executive Director of the Office of Regulatory Staff unless nominated by the review committee. If the Governor rejects a person nominated for the position of executive director by the review committee, the review committee must nominate another candidate for the Governor to consider, until the Governor makes an appointment;

 (2) notwithstanding any other provision of law, to set the salary of the Executive Director of the Office of Regulatory Staff;

 (3) to conduct an annual performance review of each member of the commission, which must be submitted to the General Assembly. A draft of the member’s performance review must be submitted to the member, and the member must be allowed an opportunity to be heard before the review committee before the final draft of the performance review is submitted to the General Assembly. The final performance review must be made a part of the member’s record for consideration if the member seeks reelection to the commission;

 (4) to evaluate the actions of the commission, to the end that the members of the General Assembly may better judge whether these actions serve the best interests of the citizens of South Carolina, both individual and corporate;

 (5) to develop and distribute to each party and its representatives appearing before the commission an anonymous and confidential survey evaluating the commissioners. At a minimum, the survey must include the following:

 (a) knowledge and application of substantive utility issues; ability to perceive relevant issues;

 (b) absence of influence by political considerations;

 (c) absence of influence by identities of lawyers;

 (d) absence of influence by identities of litigants;

 (e) courtesy to all persons appearing before the commission; and

 (f) temperament and demeanor in general, preparation for hearings, and attentiveness during hearings;

 (6) to submit to the General Assembly, on an annual basis, the review committee’s evaluation of the performance of the commission. A proposed draft of the evaluation must be submitted to the commission prior to submission to the General Assembly, and the commission must be given an opportunity to be heard before the review committee prior to the completion of the evaluation and its submission to the General Assembly;

 (7) to conduct an annual performance review of the Executive Director of the Office of Regulatory Staff, which must be submitted to the General Assembly. A draft of the executive director’s performance review must be submitted to the executive director, and the executive director must be allowed an opportunity to be heard before the review committee before the final draft of the performance review is submitted to the General Assembly;

 (8) to submit to the General Assembly, on an annual basis, the review committee’s evaluation of the performance of the Office of Regulatory Staff. A proposed draft of the evaluation must be submitted to the Office of Regulatory Staff prior to submission to the General Assembly, and the Office of Regulatory Staff must be given an opportunity to be heard before the review committee prior to the completion of the evaluation and its submission to the General Assembly;

 (9) to assist in developing an annual workshop of at least six contact hours concerning ethics and the Administrative Procedures Act for the commissioners and employees of the Public Service Commission and the Executive Director and employees of the Office of Regulatory Staff;

 (10) to make reports and recommendations to the General Assembly on matters relating to the powers and duties set forth in this section;

 (11) to submit a letter with the annual budget proposals of the Office of Regulatory Staff and the Public Service Commission, indicating the review committee has reviewed and approved the proposals;

 (12) to appoint a committee from the general public at large to advise the review committee on any of its powers and duties. Members must not be members of the General Assembly, members or employees of the Public Service Commission, or the Executive Director or employees of the Office of Regulatory Staff;

 (13) to undertake such additional studies or evaluations as the review committee considers necessary;

 (14) to review candidates for appointment to the South Carolina Public Service Authority Board of Directors as submitted by the Governor to determine whether the candidates meet the qualifications set forth in Section 58‑31‑20; and

 (15) to submit to the General Assembly, on an annual basis, a review of the state energy action plan of the State Energy Office as required by Section 48‑52‑430.

HISTORY: 2004 Act No. 175, Section 5, eff March 4, 2004; 2005 Act No. 137, Section 4, eff May 25, 2005; 2009 Act No. 19, Section 6, eff May 19, 2009.

Editor’s Note

2005 Act No. 137, Section 11, provides in part as follows:

“The provisions in SECTIONS 4 and 5 are effective for directors confirmed on or after this act’s effective date. Notwithstanding any other provision of this act, the Senate Judiciary Committee shall act instead of the State Regulation of Public Utilities Review Committee, mutatis mutandis, for any appointment made on or before July 1, 2005.”

CROSS REFERENCES

Financing applications, Public Service Commission, see S.C. Code of Regulations R. 103‑823.1.

Library References

Public Utilities 142, 145.1.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 26, 28 to 32, 156 to 166, 169 to 171, 177 to 178.

**SECTION 58‑3‑540.** Expenses.

 (A) The review committee members are entitled to such mileage, subsistence, and per diem as authorized by law for members of boards, committees, and commissions while in the performance of the duties for which appointed. These expenses shall be paid from the general fund of the State on warrants duly signed by the chairman of the review committee and payable by the authorities from which they are appointed, except as provided in subsection (B) of this section.

 (B) The expenses associated with the review committee’s duties to qualify and nominate candidates for the commission and the Executive Director of the Office of Regulatory Staff, to develop and distribute surveys, to develop an annual workshop on ethics and the Administrative Procedures Act, and to undertake studies shall be borne by the public utilities subject to the jurisdiction of the Public Service Commission. On or before the first day of July in each year, the Department of Revenue must assess each public utility its proportion of the expenses in proportion to its gross income from operation in this State in the year ending on the thirtieth day of June preceding that on which the assessment is made which is due and payable on or before July fifteenth. The assessments must be charged against the companies by the Department of Revenue and collected by the department in the manner provided by law for the collection of taxes from the companies including the enforcement and collection provisions of Article 1, Chapter 54 of Title 12 and paid, less the Department of Revenue actual incremental increase in the cost of administration into the state treasury as other taxes collected by the Department of Revenue for the State. The review committee must certify to the Department of Revenue annually on or before May first the amounts to be assessed. The expenses of the review committee shall be advanced by a legislative body and the legislative body incurring such expense shall be reimbursed by the State at such time as the funds have been collected from the corporations liable therefor and, when collected, placed in the state treasury.

HISTORY: 2004 Act No. 175, Section 5, eff March 4, 2004.

Library References

Public Utilities 144.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Section 156.

**SECTION 58‑3‑550.** Staffing; identification of Executive Director candidates.

 (A) The review committee must use clerical and professional employees of the General Assembly for its staff, who must be made available to the review committee.

 (B) The review committee may employ or retain other professional staff, upon the determination of the necessity for other staff by the review committee.

 (C) The review committee may employ consultants to assist in identifying candidates for the Executive Director of the Office of Regulatory Staff.

 (D) Except as provided in Section 58‑3‑540(B), the costs and expenses of the review committee must be funded in the annual state General Appropriations Act.

HISTORY: 2004 Act No. 175, Section 5, eff March 4, 2004.

Library References

Public Utilities 142.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 156 to 158.

**SECTION 58‑3‑560.** Election of commission members; screening and qualification of candidates.

 (A) Whenever an election is to be held by the General Assembly in joint session to elect a person to serve on the commission, the review committee must conduct its screening pursuant to the provisions of Section 2‑20‑10, et seq.; however, Section 2‑20‑40 is not applicable to a screening by the review committee.

 (B) In order to be nominated for a seat on the commission, candidates must meet the requirements of Section 58‑3‑20 and this section. In screening candidates for the commission and making its findings, the review committee must seek to find the best qualified people by giving due consideration to:

 (1) ability, dedication, compassion, common sense, and integrity of the candidates; and

 (2) the race and gender of the candidates and other demographic factors to assure nondiscrimination to the greatest extent possible of all segments of the population of the State.

HISTORY: 2004 Act No. 175, Section 5, eff March 4, 2004.

Library References

Public Utilities 142.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 156 to 158.

**SECTION 58‑3‑570.** Study of other state commission structures, responsibilities; report and recommendations.

 The review committee may conduct a comprehensive study of other states’ commissions’ structures, responsibilities, qualifications, and compensation. The review committee may prepare and deliver this report along with its recommendations to the General Assembly on or before January 15, 2006.

HISTORY: 2004 Act No. 175, Section 5, eff March 4, 2004.

Library References

Public Utilities 145.1.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 26, 28 to 32, 159 to 166, 169 to 171, 177 to 178.

**SECTION 58‑3‑580.** Organization of and allocation of staff to commission or Office of Regulatory Staff.

 The review committee must allocate personal service positions and other appropriations within the commission to either the commission or the Office of Regulatory Staff. The review committee must organize appropriate divisions within the commission and, as submitted by the executive director, within the Office of Regulatory Staff. Notwithstanding any other provision of law, the review committee is authorized to approve position descriptions and compensation schedules for each position within the Office of Regulatory Staff. Notwithstanding any other provision of law, the salary of the Executive Director of the Office of Regulatory Staff shall not be construed as limiting the maximum salary that may be paid to other employees of the Office of Regulatory Staff. The review committee’s authority to reorganize the agencies and assign personal service positions and other appropriations supersedes any provision of law to the contrary. In effectuating the review committee’s assignment of positions between agencies, the Budget and Control Board is directed to assign through transfer both the position and the appropriation for the position. Notwithstanding this section or any other provision of law, the Executive Director of the Office of Regulatory Staff has sole authority to select and employ personnel of the Office of Regulatory Staff. On and after June 30, 2004, a commission employee whose position is transferred to the Office of Regulatory Staff is, upon application to the executive director, entitled only to due consideration for the position.

HISTORY: 2004 Act No. 175, Section 5, eff March 4, 2004; 2005 Act No. 5, Section 5, eff December 3, 2004.

Library References

Public Utilities 142.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 156 to 158.